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BOOK ON 4TH GLOBAL SYMPOSIUM ON LABOUR & EMPLOYMENT LAWS, 2025

(RECENT TRENDS IN LABOUR AND EMPLOYMENT LAWS)

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BOOK ON 4th GLOBAL SYMPOSIUM ON LABOUR AND EMPLOYMENT LAWS, 2025

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FOREWORD

I extend my heartfelt congratulations to Dr. Mahendra Soni, the then Faculty In-charge of the Centre for Labour Laws, Prof. (Dr.) Mohammad Hussain, and the entire team of students and members of the Centre for their dedicated efforts and unwavering commitment in conceptualizing, organizing, and successfully conducting the 4th NLIU Global Symposium on Labour and Employment Laws, 2025. Their relentless hard work, intellectual engagement, and collaborative spirit have culminated in this remarkable publication, which stands as a testament to their pursuit of academic excellence and contribution to the field of Labour and Employment Laws.

I take immense delight in announcing the publication of the "Book on the 4th NLIU Global Symposium on Labour and Employment Laws, 2025," a remarkable endeavor by the Centre for Labour Laws.

As Vice-Chancellor, I would like to express my warmest congratulations to the entire team and the dedicated staff responsible for compiling this enlightening book. Their hard work and commitment to advancing labour and employment law studies have undoubtedly resulted in a publication that will significantly enhance our understanding of contemporary labour issues.

The significance of labour and employment law in today's dynamic socio-economic landscape cannot be overstated. Given the importance of issues such as technological advancements, workers' rights, and the enforcement of labour policies, the " Book on the 4th NLIU Global Symposium on Labour and Employment Laws, 2025" is a timely and valuable reference. It offers insightful analysis, legal perspectives, and research findings, serving as a rich resource for deep insights in the field.

The symposium, held on the 22nd - 23rd of March 2025 at the J.S. Verma Memorial Convention Centre, provided an academic platform for comprehensive discussions on key issues and new developments in labour and employment laws. The event witnessed participation from academicians, professionals, and scholars from across the globe.

ABOUT THE SYMPOSIUM

The Centre for Labour Laws (CLL), National Law Institute University, Bhopal, is delighted to present the IVth Global Symposium on Labour and Employment Laws. Since its inception, the Symposium has evolved into a distinguished platform fostering dialogue, scholarship, and collaboration among academicians, legal practitioners, policymakers, industry experts, and students.

The previous editions of the Symposium have witnessed enriching discussions on emerging themes in labour jurisprudence, the future of work, industrial relations, and the changing contours of employment regulation in the digital economy. With participation from leading law firms, global institutions, and eminent scholars, the event has consistently contributed to advancing discourse in labour and employment law.

Continuing this legacy, the fourth edition seeks to explore contemporary challenges and transformative developments shaping the world of work in an increasingly globalized and technology-driven environment. Through keynote addresses, panel discussions, and paper presentations, the Symposium aims to generate informed debate and actionable insights for reforming and strengthening labour regulation frameworks.

The 4th Global Symposium reaffirms CLL's commitment to promoting interdisciplinary research, critical engagement, and policy dialogue in the evolving field of labour and employment law—bridging the gap between academia, industry, and governance.

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MESSAGE FROM THE CHAIRPERSON

It gives me immense pleasure to present **Volume IV of the Global Symposium on Labour and Employment Laws (2024–25)**, published by the Centre for Labour Laws, National Law Institute University, Bhopal. This annual publication reflects our Centre's continuing endeavour to advance rigorous scholarship and critical dialogue in the field of labour and employment laws.

The Fourth Edition marks yet another milestone in our collective journey towards deepening understanding of the contemporary challenges and reforms shaping the world of work. Each contribution in this volume engages thoughtfully with issues such as the gig economy, social protection, fixed-term employment, gender equity, and the evolving judicial interpretation of labour rights, demonstrating the intellectual vitality of our contributors and the relevance of labour jurisprudence in times of economic and technological transformation.

The Centre for Labour Laws remains committed to fostering research that bridges theory and practice, and to encouraging young scholars to interrogate the intersections of law, policy, and human dignity in the world of labour. I express my sincere appreciation to all the authors, reviewers, and editorial team members for their dedicated efforts in bringing this volume to fruition.

I hope this compilation serves as a valuable resource for academics, practitioners, policymakers, and students who continue to engage with the ever-evolving landscape of labour and employment relations.

Dr. Mahendra Soni
Chairperson, Centre for Labour Laws
National Law Institute University, Bhopal

EDITORIAL NOTE

I am pleased to present the Book on 4th NLIU Global Symposium on Labour and Employment Laws, 2025. This book provides a detailed and comprehensive overview of the current state of labour laws, highlighting both the opportunities and challenges within the field.

It is the culmination of the hard work and dedication of the NLIU Centre for Labour Laws, including the Board of Advisors and Authors. I would like to express my sincere appreciation to everyone involved in the symposium for their invaluable contributions.

Labour laws form a crucial pillar in the legal industry, tackling a wide array of complex legal and implementation challenges. This book will serve as a valuable resource not only for legal professionals, researchers, and students but also for policymakers, business leaders, and individuals interested in understanding the evolving landscape of labour laws. I hope that this book will inspire further research and spark innovation within this arena, ultimately contributing to a more informed and equitable society.

I would also like to extend my sincere thanks to the Vice Chancellor of NLIU for his unwavering support and encouragement in bringing this book to life. The editorial board deserves special recognition for their commitment and diligence in ensuring the successful completion of this Book. I would like to express my gratitude to the NLIU Centre for Labour Laws, all the participants of the 4th NLIU. Global Symposium on Labour and Employment Laws, 2025, and the Board of Advisors for their tireless efforts in shaping this book. It stands as a significant achievement in the realm of labour law, and I am honoured to be associated with it.

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Critiquing The 'Contract-Based Employment Protection' of the Audio-Visual Workers

~Jyotishka Guha

Abstract

Labour Law has traditionally been seen as a mechanism to regulate the bilateral contractual relationship between an employer and the workers. The law works on the assumption that there is a significant difference of bargaining power between these two entities and the task of Labour Law is to bridge the gap by guaranteeing certain minimum rights to the workers. In return, it is expected that the worker will have a long-term employment relationship with a single employer.

However, with the rise of the Gig Economy, these age-old assumptions of Labour Law are increasingly being challenged. This is because now the workers are no longer committed to a single employer for a lifetime. They work for multiple employers simultaneously with a certain degree of flexibility. Hence, Platforms argue that they are Independent Contractors who have been employed on a Contract and should enjoy no labour rights.

In this context, critiquing the 'Contract-Based Employment Protection' for Audio-Visual Workers becomes important because the Act[1] itself allows for Contractual Employment between the Producers and the workers. It is argued that these people do Creative Work and Labour Law is not meant for them as they are 'Professionals'. However, using the Feminist Critique of Labour Law on the already existing Empirical Studies on these Workers, Author argues how looking 'an ideal worker' as an 'unencumbered man' who does not need any flexibility in work due to lack of family responsibility has led to the exclusion of the Audio-Visual Workers, who need flexible work standards but lack bargaining power like any other worker who come under the Labour Law Framework.

1. Introduction

Cine-Workers are people who are covered under the *Cine Workers and Cinema Theatres Workers (Regulations of Employment) Act, 1981 (hereafter 1981 Act)*. The Act defines a 'Cine-Worker' as anyone who earn *a salary up to Rs. 1600 per month or Rs. 50,000 in lump sum from*

[1] Cine Workers and Cinema Theatres Workers (Regulations of Employment) Act, 1981, s 3.

the particular feature film[2]. Further, unlike the general labour law framework, this Act only prevents the Producer from employing any Cine-Worker without signing a contract of employment. The Employees Provident Fund Act applicable to these workers who have worked in 3 or more feature films[3]. Lastly, there is another Cine-Workers Welfare Fund Act, 1981 which provides certain health benefits[4]. However, it is only given to those women workers who worked for at least 5 feature films and draw a remuneration of Rupees 1600 per month or Rupees 8000 in lump sum[5].

Over the years, the entertainment industry has grown and new forms of works have emerged. Now the industry is no longer confined to only featured films and also include documentaries, advertisement films, web-series, reality shows, podcasts and even YouTube Vlogs. Hence, during the drafting of the New Labour Codes, it was felt necessary to enlarge the ambit of this employment protection. Thus, when the 1981 Act was incorporated under the new Occupational Safety and Health Code, the ambit of the protection has been increased. Now it includes people working in the Digital Platforms, advertisement films, non-feature films and web series[6]. Further, the Cine Workers have been renamed as 'Audio-Visual Workers'. However, the Central Government still has the power to notify a wage limit to which the Act will apply[7]. It has also retained the 'Contract-Based Employment' of these workers[8]. Moreover, non-compliance with these provisions would amount to a meagre fine of maximum 1 lakh rupees and no criminal penalty[9]. Further, the Code has only incorporated the 1981 Act and did not include Cine-Workers Welfare Fund Act, 1981. Hence, the Cine-Workers Welfare Fund Act, 1981 is still limited in its application in terms of its wage ceiling and the number of films a worker has worked.

Henceforth, I will be using the term 'Audio-Visual workers' throughout the Paper.

2. Rise of the 'Gig Workers'

This Research has been done at the backdrop of the rise of the 'Gig Workers' post globalization. These workers typically do 'Atypical Work' on fixed-term contracts. Eg- Food Delivery

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[2] Cine-Workers and Cinema Theatre Workers Act 1981, s 2c.
[3] Cine Workers and Cinema Theatres Workers Act 1981, s 16.
[4] Cine-Workers Welfare Fund Rules 1984, r 31.
[5] Cine-Workers Welfare Fund Act, 1981, s 2b.
[6] Code on Occupational Safety And Health 2020, s 2(e).
[7] Code on Occupational Safety And Health 2020, s 2(f).
[8] Code on Occupational Safety And Health 2020, s 66.
[9] Code on Occupational Safety And Health 2020, s 97.

Partners or Cab Drivers. The Indian Government's Labour Policy has also changed over the years. While the 1st National Labour Commission Report has asked for regularization, and standard form of employment, the 2nd National Labour Commission Report, 2001 called for expanding the use of contract labour. This means a person has to work on fixed-term contract without any substantive labour law protection. Further, it also proposed flexibility to employers in lay-offs and retrenchment for ease of doing business.[10] The recent Codes on Labour Law also indicate the government policy of preferring flexibility over securing labour rights. Hence, while an attempt has been made to increase the ambit of labour law, the provisions on lay-offs and retrenchment have been eased. While earlier, prior permission of the Appropriate Government was required for laying off and retrenchment of workers in an establishment with 100 or more workers, the same number has been raised to 300 in the Industrial Relation Code[11]. Hence, employers have greater freedom in laying off and retrenching workers and also denying them the rights associated with it.

Similarly, the Supreme Court, in *Ficus Pax (P) Ltd. Vs Union of India*[12], during the Pandemic had stayed an Order of the Government which asks the employers to pay wages during the lockdown. The Court held that the workers can only negotiate with the employers for their wages and cannot claim as a matter of right because there was no work. However, the Court failed to acknowledge that Section 2(kkk) of the Industrial Disputes Act allows employer to lay-off a worker due to 'natural calamity or any other reason'. Hence, the Court could have easily construed the Pandemic to be the reason for laying off the workers. This would have made them entitled for the lay-off compensation[13]. However, the Court presumed that the workers could negotiate for wages with the employer by their own and failed to provide the statutory right under the Industrial Dispute Act. Thus, both the executive and the judiciary are using the flexibility and freedom of contract narrative to dilute the core labour laws.

3. Research Objective

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[10] Shraddha Chigateri, Labour Law Reforms And Women's Work: Assessing The New Labour Codes From A Gender Lens, (October 21, 2021) [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3947175] accessed 1st March, 2025.

[11] Rashmi Bagri, A Look At Lay off And Retrenchment Procedures in Light of New Industrial Relations Code, (Live Law, 8th January 2022) [https://www.livelaw.in/know-the-law/lay-off-retrenchment-industrial-relations-code-labour-rights-189044] accessed 1ST March, 2025.

[12] Ficus Pax (P) Ltd vs Union of India, (2020), 4 SCC 810.

[13] Industrial Disputes Act 1947, s 25C.

In this current context, there is a need to critique the Contract-Based Employment Model for Audio-Visual workers. This is one industry which has always relied upon contracts for their employment protection. Thus, my Research would seek to find out why this kind of employment protection was proposed at the first place, how has the protection worked so far and how the general labour law framework could be seen from a different perspective so that it could accommodate protection to this kind of workers as well.

4. Research Methodology

I would be using the Feminist Critique of the Labour Law Framework in my analysis. It tries to achieve three things by including gender as a category for analysis[14]. Firstly, it tries to expose the gender bias and overall neglect towards issues face by women in the workforce. Secondly, it tries to destabilize the existing normative foundations of labour law and argue for re-conceptualizing the definition of 'work' itself. Thirdly, it does a historical analysis of the labour law to find out why work done by men has always been prioritized and has been given economic value than work done by women. I will be using the Gender Bias argument to show how formal laws are ineffective in the Audio-Visual industry because the industry is largely informal in nature. Questioning the existing normative foundations of labour law could be useful to explain the lack of flexibility in the existing labour law framework which makes it inapplicable to this industry.

5. Chapterization

My Research is divided into 4 Parts. In the Part I, I would be giving a brief explanation of Audio-Visual Workers and the specificity of their working conditions and how they are different from other Atypical Workers working on fixed term contracts. In Part II, I will specifically deal with precarious conditions of women in the industry through the 'Gendered Notion of Work'. Through case laws, it will also question the claim that Labour Law is Gender Neutral in nature. In Part III, I will show how the Audio-Visual Workers possesses a challenge to the current labour law framework, both in terms of its application and through case laws on 'employer-employee' relationship. I will argue that Labour Law Framework is based upon the 'Male breadwinner/Female Caregiver Model' and only caters to the need of only certain section of workers in the workforce. It does not able to provide both flexibility and security and leaves

[14] Conaghan, 'Labour Law And Feminist Method' (2017), International Journal of Comparative Labour Law, 33(1).

out a chunk of the workers in the informal sector. I will also analyse the impact of the New Labour Codes on this industry. Part IV will conclude the Paper by giving certain recommendations on how labour law needs to be transformed so that it could provide both flexibility and security to these kinds of Atypical Workers.

Part I

6. Precarious Working Conditions of the Audio-Visual Workers

In this Part, I would highlight the precarious working conditions of Audio-Visual Workers, the hierarchy within the Audio-Visual Industry and the aspect of Bogus Self-employment post-globalization in the industry. While any form of 'Atypical Work' based on Non-Standardized Contract has precarious conditions of employment, there are certain aspects which make the Audio-Visual Workers unique in this respect.

6.1. Need for Flexibility

Audio-Visual Workers do creative work and hence, flexibility is very much required for career progression. Earlier, actors used to have long-term employment contracts with a particular film production company and drew a monthly salary. During the tenure of the contract, the actor could not work for any other company. For example, Shanta Apte was not given work by the Prabhat Studio because she had protested against the pay cut by the Studio. However, they could not work for any other Studios as well. Thus, such contracts used to be very disadvantageous for the actors because their creativity used to get hampered and they could not work as per their choices. Further, since the Producers were always at an advantageous position in power hierarchy, so these contracts were one-sided. Despite working for many years, actors were denied social security protection by the production companies. Sometimes actors had to get involved in legal battles when they unilaterally broke these long-term contracts due to its lack of flexible standards. Thus, the past experience shows that actors need flexibility to make progress in this profession[15]. Audio-Visual workers also need the ability to adapt in their own profession as well. Since a career in the film industry is very risky and uncertain, so there is no

[15] Madhuja Mukherjee, 'Bodies in Waiting: Remapping Gender Labour and Histories of Indian Film Industry' 2022 Vol 57 Issue No 22, EPW [https://www.epw.in/journal/2022/22/review-womens-studies/bodies-waiting.html] accessed 1st March 2025.

certainty that one would be successful in their career. So, it is often observed that a worker begins her career to be a certain professional and end up becoming something else[16]. There are three stages of Production in the Audio-Visual industry, namely, i) Pre-Production Stage (concept, design, casting and planning), Production Stage (shooting with the actors and crew members) and Post-Production Stage (editing, adding music and extra effects). Individuals can freely move between these sectors especially those between production and post-production stage[17].

6.2. Self-Exploitation

While workers doing Atypical form of Work on fixed term contracts have precarious conditions of employment, the precarity of Audio-Visual Workers is quite unique. One of the biggest motivations for joining atypical forms of work such as Swiggy/Zomato 'Delivery Partners' is the hope for a better pay. In a field study conducted by National Law School of India University (NLSIU) Bangalore, it has been observed that the Platform owners have abled to attract a large chunk of young workers by offering them decent salary at the beginning of their career[18]. These are mostly workers who were working in low-paid jobs. However, in the case of 'Audio-Visual workers' decent earning is not the expectation of workers at the beginning of their career. Young workers are mostly attracted by the glamour and recognition attached to this industry[19]. In fact, they contend that they were passionate about their work since childhood and did not think of any other career option. This kind of life-long dedication to their art makes them to forego material gains at the beginning of their career[20]. They feel that the creative autonomy would help them in self-actualization. By self-actualization, they get a sense that their profession would help them to reach their full potential which is not possible in a typical form of work.[21] The growth in the 'Audio-Visual Industry' is unlimited. Moreover, a perennial sense of insecurity and the prospect of unlimited growth makes a worker too much engrossed in her work. The desire for autonomy and recognition among the audience helps them to develop a

[16] Opender Chanana, *The Missing 3 In Bollywood: Safety Security Shelter* (UNI Global Union, 2011).
[17] Leung Wing-Fai, Rosalind Gill and Keith Randle, 'Getting in, Getting on, Getting out? Women as Career Scramblers in the UK Film and Television Industries', The Sociological Review, (2015) Vol 63 Issue 1.
[18] Kavya Bharadkar, Kaveri Medappa, Mohan Mani, Pradyumna Taduri, Sachin Tiwari, Is Platform Work Decent Work? A Case of Food Delivery Workers in Karnataka, NLSIU Bangalore, (2020) [https://www.nls.ac.in/wp-content/uploads/2021/09/OCCASIONAL-PAPER-SERIES-10-final.pdf] accessed 1st March, 2025.
[19] David Hesmondhalgh, Sarah Baker, *Creative Labour in 3 Cultural Industry* (Routledge, 2011).
[20] David Hesmondhalgh, Sarah Baker, *Creative Labour in 3 Cultural Industry* (Routledge, 2011).
[21] David Hesmondhalgh, Sarah Baker, *Creative Labour in 3 Cultural Industry* (Routledge, 2011).

sense of self-esteem and they internalize the exploitation at the starting of their career[22]. Hence, they are willing to work with very low or without pay at the starting of their career in order to get the connections and experiences for securing better working conditions at later point of their career.[23] Thus, glamour, autonomy, self-actualization and uncertainty become a way to justify self-exploitation.

6.3. Hierarchy Among the Workers

A film crew consists of diverse range of people who are at different levels of precarity. Generally, a film crew is divided into Above The Line Professionals and Below The Line Professionals. Above The Line Professionals are the Directors, Actors, Writers who do the creative work and their work ends once a Project gets over. A Producer has to hire these people when they want to make any Audio-Visual Production. These people indeed require flexibility in their work and have to negotiate with the Producers. While they do enjoy certain level of autonomy in their work, their work also depends on the whims of the Producers. Actresses working on television have to do long hours of work because there are deadlines within which a serial has to be released. While fainting and collapsing on the Set is very common, they still have to continue to work to meet the deadlines[24]. For others, getting work is itself very difficult and it is very common that they do not get any work despite waiting the whole day in the studio[25].

6.4. Bogus Self-Employment

The Below The Line Professionals include people who work behind the camera. They consist of camera crew members, assistant directors, lighting crew members costume and makeup artists, spot boys, stunt men etc. Further, a film studio also requires electricians, painters, sweepers who do regular mundane work. These workers are also employed as Daily wage labourers despite the fact that they are needed for every production. Some of them do dangerous works and there have been many incidences of injury and deaths during work[26]. Legislations

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[22] Neil Percival and David Hesmondhalgh, 'Unpaid Work in the Television and Film Industry', European Journal of Communication, (2014) [https://journals.sagepub.com/doi/abs/10.1177/0267323113516726] accessed 1st March, 2025.

[23] David Hesmondhalgh, Sarah Baker, *Creative Labour in 3 Cultural Industry* (Routledge, 2011).

[24] Opender Chanana, *The Missing 3 In Bollywood: Safety Security Shelter* (UNI Global Union, 2011).

[25] Madhuja Mukherjee, 'Bodies in Waiting: Remapping Gender Labour and Histories of Indian Film Industry' 2022 Vol 57 Issue No 22, EPW [https://www.epw.in/journal/2022/22/review-womens-studies/bodies-waiting.html] accessed 1st March 2025.

[26] Opender Chanana, *The Missing 3 In Bollywood: Safety Security Shelter* (UNI Global Union, 2011).

such as Workmen Compensation Act or the Factories Act, which has certain safety standards, do not apply to the industry. Moreover, Producers do not have any separate Safety Contracts with the workers and it only promises to bear the medical expenses[27]. However, this is wholly inadequate because these workers incur grave injuries during work. The person could be permanently injured or even die in the course of employment. The Workmen's Compensation Act takes these factors into account and give adequate compensation for the same.

In many countries, these Below The Line Professionals are employed as permanent employees of the Production House. For example, in Latin America, these professionals work on permanent contracts and enjoy health and retirement benefits[28]. Even in India, earlier they used to be employed on a permanent basis when the industry was small. In fact, periodic attempts have been made to apply the core labour legislations to the industry. A Tripartite Committee consisting of representatives of Ministries of Information and Broadcasting, Labour, Employment & Rehabilitation and the State Governments of Maharashtra and West Bengal had recommended to apply labour laws such as Industrial Dispute Act, Factories Act, Workmen Compensation Act, Payment of Wages Act, Employee's State Insurance Act, Employee's Provident Fund Act, Industrial Employment (Standing Orders Act) and the Shops and Establishment Act to the workers of this industry. Further, recommendation was also made to the State Governments to specify a minimum number of working hours for each class of employees in the industry[29]. However, nothing has been done in this regard.

The Unions, representing the various types of Below-The-Line Professionals, have entered into Memorandum of Understanding with the Producers. The MoUs only deal with certain basic terms of employment such as working hours and wages[30]. It does not say anything about social security nor it makes mandatory upon the Producers to enter into written contract with each cine-worker for employment. Further, while it had a clause which allowed for a Member of the Union to be present at the shooting site to look at the compliance with the MoU, the same has been struck down by the Court for being Anti-Competitive[31].

6.5. Globalization & Outsourcing

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[27] Opender Chanana, *The Missing 3 In Bollywood: Safety Security Shelter* (UNI Global Union, 2011).

[28] Juan Pinon, 'Labour Relations in Latin America' in Michael Curtin and Kevin Sanson (eds), *Precarious Creativity: Global Media Local Labour* (University of California Press, 2016).

[29] Opender Chanana, *The Missing 3 In Bollywood: Safety Security Shelter* (UNI Global Union, 2011).

[30] Opender Chanana, *The Missing 3 In Bollywood: Safety Security Shelter* (UNI Global Union, 2011).

[31] Vipul Shah vs All India Film Employee Confederation (2017) CCI.

Globalization has given far more autonomy to the Producers and led to 'outsourcing' of many works previously done by Indian artists. Now film production is not confined to India and Producers do shooting in foreign locations. This also leads to employment of foreigners as 'Production Extras' and make it more difficult for Indian junior artists to get work. While the Trade Unions have Member-to-Member Clauses with the Producers which allow for employment of only the members of the Trade Union in the film, such clauses are not very effective when shooting takes place in foreign locations[32].

Globalization has also given more choice to the audience and has changed their taste. Post globalization, the Hindi Film Industry has tried to compete with the Hollywood in terms of popularity and scale of production. This has led them to emulate Hollywood style of film making. Now stories are mostly written on the elites in the society and the working-class poor has gradually disappeared. In fact, the major film makers and producers also come from English speaking elitist families and they want the script to be written in English. Thus, English has become the dominant language in the industry and this has also created a major class barrier to enter into the industry. This barrier has also helped in maintaining the hegemony of the few well-established families in the industry[33]. The acceptance of this western culture by the Hindi Film Industry due to globalization has mostly affected women than men in the industry. Now the actor's physique, clothing and style matters more than its acting skills. Thus, since the 1990s, increasingly Producers mostly prefer 'Models' with slim bodies and fair skins, mostly foreigners, as Production Extras in the dance sequence. This has hugely affected the employment of traditional Indian dancers belonging to the Indian Dancer's Union[34].

Part II

7. Precarity & Women Through 'Gendered Notion of Work'

Since Audio-Visual industry has always been dominated by men, so the precarious condition of women in the industry needs special attention. This Part will highlight the precarious condition of women in the industry through the 'Gendered Notion of Work'.

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[32] Tejaswini Ganti, 'Class, Gender and Colorism in Bollywood Song Sequence' in Kristine Lene Hole, Dijana Jelaca, E. Ann Kaplan, Patrice Petro (eds), *The Routledge Companion To Cinema And Gender,* Routledge (2017).
[33] Tejaswini Ganti, 'No One Thinks Hindi Here: Language Hierarchies in Bollywood' in Michael Curtin and Kevin Sanson (eds), *Precarious Creativity: Global Media Local Labour* (University of California Press, 2016).
[34] Tejaswini Ganti, 'Class, Gender and Colorism in Bollywood Song Sequence' in Kristine Lene Hole, Dijana Jelaca, E. Ann Kaplan, Patrice Petro (eds), *The Routledge Companion To Cinema And Gender,* Routledge (2017).

7.1. Gendered Notion of Work

The labour law framework is premised on the male breadwinner/female caregiver norm. Even though women have come out of their homes to work, care work is still seen as their primary responsibility[35]. Thus, marriage becomes a barrier for women to get employment. An example could be the Air India Rules where an air hostess service would have been terminated if she marries within 4 years of her service or on first pregnancy. The Supreme Court upheld the marriage provision on the ground of family planning and motherhood[36]. Similarly, the Orissa Civil Service Rules had rules prohibiting employment of women after marriage[37]. Such restrictions were justified on the ground that marriage brings about certain obligations which could affect the efficacy of the service. While the Court had held this provision to be unconstitutional, there were also incidences where it had upheld such discriminatory provisions based on stereotypical grounds.

The other stereotypical ground for restricting certain forms of employment for women is for security for women. For example, women are not allowed to work in Mines and factories[38] during night hours[39]. Similarly, women cannot be employed near cotton openers in factories[40]. In *R.S. Singh vs State of Punjab,* the Punjab and Haryana High Court has upheld Governor's Order prohibiting employment of any female to any post in male's jail. The court justified it on the ground that it was a question of women's safety as there were disparities in physical capacities between men and women[41]. The Factories Act prohibits employment of women in night shifts. Even though the same has been struck down by the Madras High Court[42], it was defended on the similar arguments of difference in physical capacities between men and women.

Employment of women had been prohibited on moral grounds as well. Section 30 of the Punjab Excise Act, 1914 had prohibited employment of women in any premise where liquor was served. While striking down the provision, the Supreme Court held that such provision

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[35] Joanne Conaghan, 'Time to Dream? Flexibility, Families and Working Time in Judy Fudge and Rosemary Owens (eds), *Precarious Work, Women and The New Economy,* Hart Publishing (2006).
[36] Air India vs Nargesh Meerza, (1981) 4 SCC 335.
[37] Radha Charan Patnaik vs State of Orissa, AIR 1969 Ori 237.
[38] Factories Act, 1948, s 66.
[39] Mines Act, 1952, s 34.
[40] Factories Act, 1948 s 27.
[41] R.S. Singh vs State of Punjab, AIR 1972 P&H 117.
[42] R. Vasantha vs UOI (2001) IILJ Madras HC 843.

was made based on stereotypical morality and sexual roles[43]. Similarly, Maharashtra government had banned women Bar Dancers based on the grounds of immorality and obscenity. Flavia Agnes has pointed out that when the Maharashtra Police Act (Amendment) Bill was discussed in the Assembly, the Members had made stereotypical and sexist comments against the Bar Dancers. Their main contention was such profession is against Indian culture and 'moral policing' is required to stop it[44]. While the Supreme Court had lifted the total ban on this profession, it has kept certain restrictions based on the same grounds of morality[45]. For example, the provisions on ban on 'Obscene Dance', throwing of coins towards the dancers and restricting Bar Dancing to a period of 6 PM to 11:30 PM were upheld by the Court. Hence, both the government and the judiciary looked at the profession through the lens of morality and not as livelihood for women. The judiciary also did not question why such a restriction was not put on men because it automatically assumed that men will not take part in this profession. However, men could work as a bartender in the same premise and no restriction is put on it.

The 'gendered notion of work' could be seen in the Audio-Visual industry as well. Firstly, there is a job segregation in the industry based on sex stereotypes. In an empirical study done by Sarah Baker and David Hesmondhalgh, it has been pointed out that women are mostly employed in Public Relations and Marketing sector in the cultural industry. Similarly, in the Audio-Visual industry, most women work as the Above-The-Line Professionals such as actresses while men do the technical and craft jobs. The authors point out that even though working as an actress is more glamorous, but it is also more precarious in nature[46]. This job segregation within the industry is happening due to gender stereotypes. Inherent characteristics men and women make them more appropriate for certain kinds of jobs. For example, women are seen more appropriate for jobs like Public Relations and Marketing because of their generalized traits like sociability and caring attitude. While men are seen more appropriate for jobs requiring technical skills and craftsmanship because they are considered having more intellectual and physical abilities than women.[47] Further work of a stuntman, light man or cinematographer are predominantly done by men in the industry. Women are mostly confined

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[43] Anuj Garg vs Hotel Association of India (2008) 3 SCC 1.
[44] Flavia Agnes, Hypocritical Morality, (India Together October 2005) [https://indiatogether.org/manushi/issue149/bardance.htm] accessed 1st March, 2025.
[45] Indian Hotel & Restaurants Association (AHAR) vs State of Maharashtra (2019) 3 SCC 429.
[46] David Hesmondhalgh & Sarah Baker, 'Sex, Gender And Work Segregation in the Cultural Industry' in Bridget Conor, Rosalind Gill, Stephanie Taylor (eds) *Gender And Creative Labour,* The Sociological Review (2015).
[47] David Hesmondhalgh & Sarah Baker, 'Sex, Gender And Work Segregation in the Cultural Industry' in Bridget Conor, Rosalind Gill, Stephanie Taylor (eds) *Gender And Creative Labour,* The Sociological Review (2015).

to fashion related works in a production. As far as direction and production are concerned, women were not considered worthy of taking those jobs. This was mainly because women were considered too emotional and lack a 'commercial brain' which is needed for film production[48]. While notion has changed over the years and women film makers are coming out, but their movies are backed by independent studios and not by major film production companies[49].

Secondly, marriage still acts as a barrier for women in the industry, while men could continue to get work even after marriage. It has been observed in an empirical study in UK that while 70% of men employed in the Television Industry of UK are above the age of 35, most women are of the age of 25-34 years in the same workplace[50]. This is the case for even Above-The-Line Professionals like actresses and female directors. It is also difficult for women to take career breaks and restart their careers after marriage and raising children. This is because there is an inherent assumption that women, after a certain age, lose the creative energy that is required to work in this industry. Long and peculiar working hours, lack of creche or childcare facilities in the studios make it difficult for women to continue the profession after marriage and having children[51]. Thus, while flexibility as a concept was supposed to be beneficial for women as they could make a balance between work and family responsibility, the same is not available to women in the film and television.

Part III

8. Current Labour Law Framework and Audio-Visual Workers

This Chapter will explain the current labour law framework in India and how such laws do not apply to the 'Audio-Visual Industry'. Along with statutes, I will also rely on judicial pronouncements to explain the limited application of labour laws to the informal sector. Then I will explain the New Labour Codes and their status of applicability to this industry.

[48] Jain Gaines, 'What Was Women's Work in the Silent Film Era?' in Kristine Lene Hole, Dijana Jelaca, E. Ann Kaplan, Patrice Petro (eds), *The Routledge Companion To Cinema And Gender,* Routledge (2017).
[49] Nadia Tseng, Sundance Institute, Women in Film Los Angeles highlight barriers to Women Filmmakers, (Screen Daily 26 April, 2015) [https://www.screendaily.com/news/study-highlights-barriers-to-women-filmmakers/5087008.article] accessed 1st March, 2025.
[50] Wing-Fai, L., Gill, R. & Randle, K., 'Getting in, getting on, getting out? Women as career scramblers in the UK film and television industries' in Bridget Conor, Rosalind Gill, Stephanie Taylor (eds) *Gender And Creative Labour,* The Sociological Review (2015).
[51] George Morgan & Pariece Nelligan, 'Labile Labour: Gender, Flexibility and Creative in Bridget Conor, Rosalind Gill, Stephanie Taylor (eds) *Gender And Creative Labour,* The Sociological Review (2015).

8.1. Existing Labour Law Framework

Before explaining how the Audio-Visual Workers challenge the existing labour law framework and falls outside its scope, I will first explain what are the benefits given under the labour laws. The Industrial Disputes Act was meant to regularize the employment relationship in the workplace. It gives rights to both employers and the worker. While the employer has right to terminate the employment through retrenchment[52] and lay-offs[53], the worker could claim compensation for the same[54]. Further, employer does not have unrestricted right and need permission from the Appropriate Government for the same[55]. Similarly, Factories Act has many provisions on health, safety and welfare of the workers. It has also appointed inspectors who are there to look after the proper implementation of the provisions[56]. The Workmen Compensation Act prescribes paying compensation for any accident during the course of employment[57]. The Employees State Insurance Act asks every employee to be insured[58] through contributions from both the employer and the employee[59]. The employee can use the insurance in case of sickness[60], pregnancy[61] or disability[62]. Lastly, there is Payment of Wages Act and Equal Remuneration Act which ensures timely payment of wages[63] and no discrimination in payment of wages[64] and recruitment between male and female worker[65] respectively.

8.2. Audio-Visual Workers: Challenge to the Labour Law Framework

The Audio-Visual Workers present a challenge to the existing labour law framework in terms of its application and establishing 'employee-employer' relationship. The current laws are quite exclusionary in nature in terms number of workers and place of employment. For example, the Factories Act required 10 or more workers[66] and also there should be 'manufacturing activity'[67]

[52] Industrial Disputes Act, 1947, s 2(oo).
[53] Industrial Disputes Act, 1947, s 2(kkk).
[54] Industrial Disputes Act, 1947, s 25C.
[55] Industrial Disputes Act, 1947, s 25F.
[56] Factories Act, 1948, s 9.
[57] Workmen Compensation Act, 1923, s 3.
[58] Employees State Insurance Act, 1948, s 38.
[59] Employees State Insurance Act, 1948, s 39.
[60] Employees State Insurance Act, 1948, s 49.
[61] Employees State Insurance Act, 1948, s 50.
[62] Employees State Insurance Act, 1948, s 51.
[63] Payment of Wages Act, 1936, s 4.
[64] Equal Remuneration Act, 1976, s 4.
[65] Equal Remuneration Act, 1976, s 5.
[66] Factories Act, 1948, s 2m.
[67] Factories Act, 1948, s 2k.

in the establishment. The Supreme Court in *Uttaranchal Forest Development Corporation vs Jabar Singh*[68] has held that the test for 'manufacturing process' is there must be a transformation. Hence, a new article or substance should come out which could be sold, transported or delivered. The Court implied that the new substance should be tangible in nature. Thus, it is obvious that even if the 'Audio-Visual Workers' working in a Project fulfil the numerical criterion, it will still not get protection under the Act because film production will not be construed as a 'manufacturing activity'.

The ESI and EPF Act set the number of workers at 10[69] and 20[70] respectively for its application. the Supreme Court in *Bangalore Turf Club Ltd. Vs Regional Director, ESI*[71] has held that any professional activity will fall under the definition of 'establishment' under the ESI Act only when there is a systematic and habitual activity undertaken for production of goods and services. Given the fact that audio-visual production is a periodic activity, so it is unlikely that it would fall under the definition of the ESI Act.

Certain laws also give discretionary power to the Appropriate Government to apply the laws to whichever industry or establishment it would deem to be fit[72]. The Workman Compensation Act includes a list of 'employees' and 'establishments' to which it would be applicable[73]. Similarly the Minimum Wages Act is only applicable to the 'Scheduled Employments'.[74] The Payment of Wages Act, which asks for timely payment of wages is also applicable to only large establishments like 'factories' or 'industrial establishment'. The only Act which does not have any number criterion is the Industrial Disputes Act. However, the Act only applies to workers doing certain kinds of activities. Hence, in *Bharat Bhawan Trust vs Bharat Bhawan Artists Association*[75] musicians have been denied protection under the Industrial Dispute Act because performing art could not be equate with *production of goods and services*[76]. The Court accepted the argument that Artistic Work is a form of self-expression while labour law only deals with economic activities.

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[68] Uttaranchal Forest Development Corporation vs Jabar Singh (2007) 2 SCC 112.
[69] Employees State Insurance Act, 1948, s 1.
[70] Employees Provident Fund Act, 1952, s 1(3).
[71] Bangalore Turf Club Ltd. Vs Regional Director, ESI AIR 2015 SC 221.
[72] Apprentice Act, 1961, s 1(4).
[73] Workman Compensation Act, 1923, Sch 2.
[74] Minimum Wages Act, 1948, s 2(g).
[75] Bharat Bhawan Trust vs Bharat Bhawan Artists Association (2001) 7 SCC 630.
[76] Bangalore Water Supply And Sewerage Board vs A. Raj AIR 1978 SC 548.

8.3. Employer-Employee Relationship

Another major hurdle in getting protection under these statutes is to prove 'employer-employee' relationship. Traditionally, courts have used the 'control and supervision test' to determine the employment status. According to this test, a person will be an employee if the employer has the right to tell the employee not only what to do, but also how to do the activity[77]. Mere incidental control in terms of what work to be done would not suffice[78]. Thus, to prove employment relationship, it has to be ascertained who pays the salary and who has the ultimate control over the workers[79]. Such a test would leave out the Audio-Visual Workers because these people possess technical skills and the Producer cannot direct how to do the work.

The Indian Supreme Court has not stick to any particular test to determine employment status. In few cases, the Court has applied the Integrity Test where a person could be a worker if she does the integral part of the business[80]. Hence, ancillary work will not get employment protection. Such a test will only give employment protection to main actors and director since they are the one who do the main creative work. It will leave out all the other people like the spot boy, junior artists etc. The Supreme Court has acknowledged that in today's time, it is not possible to have only one determining factor to determine employment status. Thus, the court needs to look at many factors in order to ascertain the complex employment relationship. Some of these factors include who appoints the workers, pays the salary, right to reject the end product and terminate the employment etc[81]. Thus, the Supreme Court in *Silver Jubilee Tailoring House vs Chief Inspector of Shops and Establishment*[82] took a flexible standard and held that it was not necessary to be a full-time worker and a worker can work for multiple employers at the same time. Since the employer had the right to reject the end product and refuse to give work, so there was employee-employer relationship. Even though this test appears to be in consonance with the social realities of Audio-Visual workers, but the Court has restricted it only to Factories Act[83].

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77 Dharangadhara Chemical Works Ltd. Vs State of Saurashtra AIR 1957 SC 264.
78 International Airport Authority of India vs International Air Cargo Workers Union (2009) 13 SCC 374.
79 General Manager (OSD), Bengal Nagpur Cotton Mills Rajnandgaon vs Bharat Lal and Another (2011) 1 SCC 635.
80 Workmen of Nilgiri Co-operative Marketing Society Limited vs State of Tamil Nadu AIR 2004 SC 1639.
81 Balwant Rai Saluja vs Air India AIR 2015 SC 375.
82 Silver Jubilee Tailoring House vs Chief Inspector of Shops and Establishment AIR 1974 SC 37.
83 Balwant Rai Saluja vs Air India AIR 2015 SC 375.

The formal Labour Laws does not cater to the need of the informal set up of the industry. For example, the Industry is also notorious for pay disparity between men and women. The Equal Remuneration Act prohibits discrimination in wages between men and women for same or similar kind of work in the workforce[84]. However, in order to get relief under this Act, a woman has to find a comparator within the workforce who is doing same or similar kind of work. Such legislation does not work in the Audio-Visual industry because the industry is itself male dominated and females get less significant roles than men. Further, while the Act prevents discrimination in recruitment, but it does not extent up to termination of service[85], Thus, there is no remedy available to a worker if she is terminated from service because of demanding equal wages.

The above discussion on case laws suggests restricted application of labour laws only to certain establishments dealing with *production of goods and services* and proving 'employee-employer relationship' are the two main hurdles for Audio-Visual workers to get labour law protection

8.4. New Codes

The Central Government has brought 4 Labour Codes, namely, Code on Industrial Relations, Code on Wages, Code on Social Security and Code on Occupational Safety. The Code on Industrial Relations has incorporated the Industrial Disputes Act, Trade Union Act and the Industrial Employment (Standing Orders) Act. It has defined 'fixed-term employment' as someone who works on a fixed term written contract[86]. This definition is restrictive because it applies only when written contracts were signed. However, the Audio-Visual industry is notorious for not signing any written contract. Secondly, it does not provide any remedy against Bogus Self-Employment. For example, EU Fixed Term Work Directive gives rights to workers who are employed on Fixed Term Contracts. These rights include 'not to be treated less favourably' to a permanent employee in the same establishment and also right against successive fixed term contracts of employment[87].

The Code on Wages has removed the numerical criterion for its application. It has defined both 'employee'[88] and 'worker'[89]. While the definition of 'employee' has been linked with

[84] Equal Remuneration Act, 1976, Section 4.
[85] Equal Remuneration Act, 1976, s 5.
[86] Industrial Relation Code, 2020, s 2(o).
[87] EU Fixed Term Workers Directive, 1999, Cl 4.
[88] Code on Wages, 2019, s 2k.
[89] Code on Wages, 2019, s 2z.

'establishments', the definition of 'worker' has been used for people working in an 'industry'. Chapter 2 of the Code is on Minimum Wages and it uses the term 'employee'[90]. Hence, in order to be eligible for Minimum Wage, one has to work in an 'establishment'. The definition of 'establishment' includes industry, trade, business, manufacture or occupation[91]. Hence, the definition seems to be broad enough to include the Audio-Visual industry. Further, the Code also has provisions to fix wages on hourly or daily basis[92]. The Draft Rules of the Code has mentioned people working in the Cinema Project as Skilled Workers[93]. Hence, it is expected that 'Audio-Visual Workers' will at least be eligible for Minimum Wage when such wage is notified by the Appropriate Government. However, this also keeps the workers at the mercy of the executive to notify the Minimum Wage. The Appropriate Government also retains the discretion to apply the Payment of Wages Act to the Audio-Visual industry[94].

The Code on Social Security consolidated all the major social security legislations under it. While the Code has made progressive changes to make it applicable to the Audio-Visual Worker, there are still doubts on its effectiveness. For example, 'audio-visual production' has been included under the definition of 'establishment'[95]. However, provisions of Maternity Benefit are restricted to only those women who have worked for at least 80 days or more in an establishment[96]. This would exclude majority of women working in the Audio-Visual industry as their contracts last shorter than 80 days. Similarly, the Employees Compensation Act has been made applicable to people engaged in production of cinematographic pictures[97]. This can be beneficial for stuntmen and other Below The Line Producers as accidents and injuries are very common in this industry. The Employees State Insurance Act has been made applicable to every establishment in which at least 10 people are employed unless it is a seasonal factory[98]. Hence, it is still doubtful whether the ESI Act will apply to the Audio-Visual workers or not as work in the Audio-Visual industry is not perennial in nature. Payment of Gratuity still has the condition of rendering 5 years of continuous service and hence it will not apply to the Audio-Visual workers[99]. Lastly, although the Code mentions that the Cine-Workers Welfare Fund Act

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90 Code on Wages, 2019 s 5.
91 Code on Wages, 2019, s 2m.
92 Code on Wages, 2019, s 6(4).
93 Draft Rules on Code on Wages, 2019, Schedule E, Entry 39.
94 Code on Wages, 2019, Proviso to s 15.
95 Code on Social Security, 2020, s 2(29)(b).
96 Code on Social Security, 2020, s 60(2).
97 Schedule 2 Entry (xxi), Code on Social Security, 2020.
98 Code on Social Security, 2020, Schedule 1, Entry 4.
99 Code on Social Security, 2020, s 53.

has been repealed[100], it has not made any provision regarding its application. Hence, even if the Code has incorporated the Act, it is still not sure to which category of Audio-Visual workers do the Act applies under the present Code.

The Prevention of Sexual Harassment At Workplace Act, 2013 does not find any mention in any of the 4 Labour Codes. However, the Audio-Visual industry is notorious for such incidences where people want sexual favours to give work to women. Apart from the #MeToo Movement, incidences of sexual harassments came under spotlight in the Malayalam Film Industry as well. The Kerala High Court in *Women in Cinema Collective vs State of Kerala*[101] ruled that the film industry will come under the ambit of this Act and the Production houses need to form Internal Complaint Committee in light of the provisions of the Act[102]. However, its effectiveness is still doubtful due to various reasons. This is because women, particularly junior artists, are at the bottom of the hierarchy and are desperate to get work. Hence, they are unlikely to make any complain because of the fear of getting boycotted. Thirdly, even if the ICC dismisses the perpetrator from the Project, he might get another Project in the same industry. Hence, the victim could be forced to work with the perpetrator again in different projects.

I have discussed the core labour laws, its benefits and how the Audio-Visual Workers fall outside its scope. I have also analysed the New Labour Codes and its application on these workers. Further, I have looked at some judicial interpretations as well. Based on my analysis, I have found that Audio-Visual Workers face twin hurdles in getting the protection of these labour laws, firstly, labour laws do not apply to them because of informal nature of their work and secondly, it is difficult to prove 'employer-employee relationship' because of the prevalent flexibility discourse in this profession. The flexibility discourse projects these workers as free individuals who cannot be supervised by the employer. However, Courts have looked at the degree of control to determine the employment status of an individual. Further, while the New Codes have made an effort to bring these workers under labour law protection, it seems to be half-hearted. While certain Acts such as Minimum Wages Act and Employees Compensation Act will now be applicable to these workers, various other legislations like the Payment of Wages Act, Employees State Insurance Act are still not applicable to them. Further, the Codes

[100] Code on Social Security, 2020, s 164.
[101] Women in Cinema Collective & Anr v. State of Kerala & Ors. (2022) 2 KLJ 254.
[102] Prevention of Sexual Harassment At Workplace Act, 2013, s 4.

also fall short in addressing the issue of Bogus Self-Employment in this sector and laying down a flexible guideline for determining employment status of workers.

Part IV

9. Concluding Remarks And Recommendations

The Paper tried to explain the precarious conditions of employment of the Audio-Visual Workers under the present Contract-Based Employment Model and the failure of the labour law framework to accommodate these workers, It argues that while Audio-Visual workers need both flexibility and security in their work, the 'ideal worker' in the traditional labour law framework is an 'unencumbered man' who doesn't have any family responsibility and hence, flexibility is not required. Hence, anyone who wants flexibility in their work has to rely upon individual contract despite a huge difference in the bargaining power. Thus, there is a need to find a middle ground between the labour law framework and individual contracts so that everyone worker enjoys some basic rights despite falling outside the scope of the labour law framework.

This could be done by various ways. Firstly, certain labour law rights can be interpreted as part of fundamental rights so that every worker enjoys it. For example, in *Sanjit Roy vs State of Rajasthan*[103]*,* the Supreme Court held that the Government has to pay Minimum Wages to workers even if they were recruited to do famine related relief work. This is despite the fact that the law did not prescribe any Minimum Wage for these workers. Similarly, in *People's Union for Democratic Reforms vs Union of India*[104]*,* the Supreme Court had held that employers have to ensure Minimum Wages for each worker as not paying Minimum Wages would be tantamount to 'forced labour'. Thus, such a right-based approach would help in bridging the gap between contract law and labour law.

Secondly, this could also be done if the Social Security legislations are universalized and it does not remain contingent up on proving 'employee-employer relationship'. This includes all the major social security laws like Employees State Insurance, Provident Fund etc. Like in other countries, State also needs to bring sector specific schemes for people doing various forms of Atypical Work at least for the initial years of their career. Such financial support would help these workers to look for work and also cope up with the continuous cycle of work and

[103] Sanjit Roy vs State of Rajasthan AIR 1983 SC 328.
[104] People's Union for Democratic Reforms vs Union of India AIR 1982 SC 1473.

non-work. While we have certain schemes under the Unorganized Workers Social Security Act, 2008 the Act has not been implemented.

Thirdly, their need to be laws against Bogus Self-Employment. Eg- The EU Fixed Term Work Directive gives rights to workers who are employed on Fixed Term Contracts. These rights include ‘not to be treated less favourably’ to a permanent employee in the same establishment and also right against successive fixed term contracts of employment[105]. Further, MoU signed between the Trade Unions and Producers should be kept outside the purview of the Competition Act so that collective bargaining could be encouraged.

Lastly, rather than only focussing on the nature of work and the degree of control of the employer over the employee, courts should also consider the difference in the bargaining capacity between the two. Such an approach would ensure that a worker such as the Audio-Visual Workers are not denied labour law protection merely because they have some form of autonomy in their work.

[105] EU Fixed Term Workers Directive, 1999, Cl 4.

Triple Test, Double Standards: Reinterpreting Inclusion Of Housing Societies Under Labour Laws

~Madhura Gokhale

Abstract

Residential housing societies, though established to manage residential upkeep, routinely employ workers directly or via contractors for essential services like maintenance, security, and housekeeping. This paper examines their contested status under Indian labour laws, particularly the Industrial Disputes Act, 1947; the Contract Labour (Regulation and Abolition) Act, 1970; and the Minimum Wages Act, 1948. Courts in cases such as Som Vihar and Arihant Siddhi have excluded societies from these statutes by stressing their non-commercial, member centric character, diverging from the broader "triple test" in Bangalore Water Supply, which recognizes systematic activity, employer–employee relations, and service to human wants. Such restrictive readings leave workers vulnerable to exploitation and denial of statutory protections. Further, reliance on contractors does not absolve societies of liability, as Dharangdhara Chemical Works clarifies that real control and supervision determine responsibility. This paper argues for a recalibration of judicial interpretation to align with the welfare-oriented triple test, thereby extending legal safeguards to workers in housing societies. Such an inclusive approach is vital to uphold both the fundamental rights of employees and the protective spirit of Indian labour jurisprudence.

1. Introduction

Residential housing societies which are established to manage the upkeep and maintenance of residential complexes, often engage employees to perform essential services. Societies employ workers directly or via contractors to manage operations, including maintenance, utilities, housekeeping, safety, and bill payments.

Once formed, these associations bear the responsibility for ensuring adherence to legal requirements, including the welfare of the employees they engage. A significant aspect of housing societies' functioning pertains to their legal obligations under various Indian labour laws. These laws offer essential safeguards for workers, such as fair wages, social security benefits, safe working conditions, and protection against unjust termination.

This paper examines the ongoing debate over the inclusion of housing societies under labour laws and the extent to which their employees are protected by these statutes. For this analysis, the paper is divided into four sections.

The first section of the paper traces the evolution of the term 'industry' under the Industrial Disputes Act, 1947. The second section examines the applicability of labour laws to housing societies in India, focusing on statutes such as the *Industrial Disputes Act, 1947****(IDA)***, the *Contract Labour (Regulation and Abolition) Act,1970* ***(Contract Labour Act)*** and the *Minimum Wages Act, 1948*. This section delves into how the courts through various judgements have interpreted the coverage of housing societies within the ambit of these laws. The paper then addresses the issue of coverage of workers employed in the housing societies through independent contractors and how it affects the liability of the management of the housing society as the principal employer. The last section of the paper consolidates the arguments, emphasizing the necessity for courts to adopt a broader judicial interpretative approach and to reconsider judicial precedents regarding the inclusion of housing societies under Indian labour laws.

2. Evolution of The Term – 'INDUSTRY'

Section 2(j) of the IDA provides a comprehensive yet ambiguous definition of industry which has undergone significant judicial interpretation and expansion over the years. Initially framed to cover any business, trade, undertaking, manufacture, or calling of employers, the provision also includes employment, service, and industrial occupations or avocations of workmen.[1] However, the scope of this definition has often been subject to judicial scrutiny due to the use of terms like 'undertaking,' which is defined as any activity, business, or project engaged in

[1]The Industrial Disputes Act 1947, s(2)(j) ('IDA').

systematically. Because of this broad interpretation there was a need for a guiding principle to provide clarity and structure to the term.

The first significant attempt to clarify the definition of 'industry' was in the case of *State of Bombay and others vs The Hospital Mazdoor Sabha*,[2] where the court defined it as any systematic or habitual activity undertaken for the production or distribution of goods or the rendering of material services to a community, provided it involved employer-employee cooperation and was organized like a trade or business.[3] This decision emphasized the satisfaction of material human needs as a key component of industrial activity. This principle was further cemented by the Supreme Court's landmark decision in *Bangalore Water Supply & Sewerage Board vs. A. Rajappa (Bangalore Water Supply)*,[4] which provided the triple test to determine whether an activity qualifies as an industry.[5]

The three elements of the triple test are first, Systematic and organised activity, *second*, Cooperation between employers and employees and *third*, Production and Distribution of Goods and Services.[6] The first element requires that the activity be carried out in an organized and methodical manner, ensuring a structured and consistent approach rather than irregular or occasional efforts. The second element emphasizes the necessity of a cooperative relationship between the employer and employees, underscoring the collaborative nature of the work environment. The third element stipulates that the activity should focus on the production and distribution of goods and services intended to meet human wants and wishes, regardless of whether it is profit oriented or not.[7]

This interpretation significantly expanded the scope of 'industry' to include clubs, research institutes, cooperatives, educational institutions, professions, and charitable organizations, provided they met the triple test criteria. The court emphasized that the true focus should be on the functional nature of the activity rather than the profit motive or organizational intent.[8] The ruling explicitly rejected earlier narrow interpretations that excluded certain types of organizations from the definition based solely on their non-commercial or altruistic objectives.

[2] *State of Bombay and others vs The Hospital Mazdoor Sabha*, 1960 SCC OnLine SC 44 (*Hospital Mazdoor Sabha*).
[3] Hospital Mazdoor Sabha, para 17,21.
[4] *Bangalore Water Supply & Sewerage Board vs. A. Rajappa* (1978) 2 SCC 213 (*Bangalore Water Supply*).
[5] Bangalore Water Supply, para 140.
[6] ibid (n 5), para142.
[7] ibid.
[8] ibid (n 5), para 140.

However, this expansive interpretation led to concerns about its overreach. Post-Bangalore Water Supply, even entities such as temples and purely charitable organizations were classified as industries under Section 2(j).[9] This prompted the legislature to propose an amendment in 1982. This proposed amendment sought to exclude specific categories, such as sovereign functions of the government and certain charitable endeavours, unless they involved systematic employer-employee relationships akin to trade or business.[10] Despite its intent to curtail the broad scope established under Bangalore Water Supply, the amended definition has not been enforced, leaving the triple test as the prevailing standard.

In addition to the triple test, the judgment also introduced the dominant nature test, which evaluates the primary character of an organization. If an organization primarily engages in industrial activities, it can be classified as an industry, even if some departments or units are non-industrial in nature.[11] The evolution of the definition of 'industry' reflects the dynamic interplay between legislative intent and judicial interpretation. While the expansive interpretation provided by Bangalore Water Supply has enabled broader labour protections, it has also introduced challenges in distinguishing between industrial and non-industrial activities. Until such legislative clarity is achieved, the triple test serves as a fundamental basis for defining industry under the Industrial Disputes Act, 1947.

The next section of the paper examines how the courts in India have treated housing societies under the labour laws by specifically analysing Industrial Disputes Act, The Contract (Regulation and Abolition) Act and The Minimum Wages Act.

3. Coverage of Housing Societies Under Labour Laws in India

3.1. Industrial Disputes Act, 1948

Despite the Supreme Court's ruling in Bangalore Water Supply on determining whether an establishment qualifies as an industry under the IDA, courts in India continue to deviate from this standard. In cases concerning housing societies, courts often revert to traditional interpretations of industry either by flawed application or by ignoring the principles established

[9] *Safdarjung Hospital v Kuldip Singh Sethi* (1970) 1 SCC 735 (SC)
[10] The Industrial Disputes Act 1948, s 2(j).
[11] Bangalore Water Supply, para 142, 143.

in Bangalore Water Supply. This section critically examines two cases - Som *Vihar Apartment Owners Housing Maintenance Ltd. v. Workmen* (Som Vihar)[12] and *M/s Arihant Siddhi Cooperative Housing Society Ltd. v. Pushpa Vishnu More and Others* (Arihant Siddhi),[13] to argue that such interpretations are inconsistent with the intended purpose of the legislation and the framework established in Bangalore Water Supply. These deviations not only undermine the Act's objectives but also leave many workers outside its protective scope, due to which there is a need for reconsideration of how housing societies are classified.

The Supreme Court in Som Vihar excluded housing societies from being classified as industries on the grounds that the services provided were primarily for the personal benefit of apartment owners.[14] This reasoning overlooked the broader implications of such services and failed to adequately apply the triple test established in Bangalore Water Supply. The maintenance, cleanliness and security services which are generally offered by the housing society clearly involve systematic operations and an employer-employee relationship fulfilling the conditions of the test. By narrowly focusing on the societal purpose of serving its members, the court neglected the broader reality that these activities also constituted organised economic functions. This approach taken by the court reverted to a traditional understanding of 'industry' an interpretation that Bangalore Water Supply rejected.[15]

The exclusion of housing societies from the definition of 'industry' has serious consequences for employees. In Som Vihar, the decision left workers such as security guards without the protection of the IDA. This exclusion denies them remedies for unfair dismissal or claims to statutory benefits, even though their work is indistinguishable from similar roles in organisations traditionally classified as industries. Security guards in housing societies for instance perform the same duties as those in factories or commercial establishments but are denied parity solely due to the restrictive interpretation of the term industry. Without the legal safeguards of the statutes such as IDA, such employees are left vulnerable to exploitation, lacking the bargaining power necessary to secure equitable working conditions.

A similar misapplication of Bangalore Water Supply occurred in Arihant Siddhi. Here the court held that cooperative housing society was not an industry because of the reason that the primary

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[12] *Som Vihar Apartment Owners Housing Maintenance Ltd. v. Workmen* (2001) SCC OnLine SC 444. (*Som Vihar).*
[13] *M/s Arihant Siddhi Cooperative Housing Society Ltd. v. Pushpa Vishnu More and Others* MANU/MH/1927/2018 (*Arihant Siddhi).*
[14] Som Vihar, para 7.
[15] Bangalore Water Supply, para 142.

function was to provide housing services to its members and that its commercial activities such as charging fees for neon signs were merely ancillary.[16] This decision used the dominant nature test introduced in Bangalore Water Supply but in the wrong manner. First, while the dominant nature test assesses whether an establishment with diverse functions qualifies as an industry, the court relied on it exclusively, focusing solely on the society's primary purpose and dismissing the significance of its ancillary activities. Bangalore Water explicitly stated that ancillary functions satisfying the triple test must be included within the definition of an industry.[17] Second, the court also erred in overemphasizing the profit motive. It ignored the principle established that gaining profit or earning any commercial gain should not be considered as a determinative factor while classifying an establishment as an industry. The ambit of industry is not just limited to the production of goods but also includes production of services for human wants. By prioritizing profit in its analysis, this case deviated from the inclusive and welfare-oriented understanding established under section 2(j) of the IDA.

It further neglected the welfare objectives of the IDA. In this case, the watchman employed by the cooperative society had an employer-employee relationship and his duties were integral to the society's organised operations. Excluding the society from the definition of industry denied the watchman protections under the act, undermining its purpose. The judgment also failed to recognize the systematic nature of the society's activities and its reliance on employee cooperation to fulfil human needs. By satisfying the criteria of the triple test, the society clearly fell within the framework of the triple test. Nevertheless, the Bombay High Court's narrow interpretation of the dominant nature test disregarded this broader perspective.

By prioritizing the perceived personal nature of housing societies over the economic realities of their activities and the rights of their employees, these rulings undermine the consistency and inclusiveness that Bangalore Water Supply sought to achieve. This departure from established principles calls for a reconsideration of how housing societies are classified, ensuring that the purpose of the legislation that is to protect workers and promote industrial harmony is upheld.

3.2. Contract Labour (Regulation and Abolition) Act, 1970

[16] Arihant Siddhi, para 4,5.
[17] Bangalore Water Supply, para 86.

The Contract Labour Act defines an 'establishment' under Section 2(e) as any office or department of the government, local authority, or a place where "industry, trade, business, manufacture, or occupation" is carried out.[18] While the Act itself does not explicitly define 'industry,' courts have traditionally applied interpretations grounded in older and narrower conceptualizations of industry, often disregarding the Bangalore Water Supply, which laid down the 'triple test' for determining industrial activities.

In the case of *Smt. Rachana Gopinath & Another v. State of Karnataka* (Rachana Gopinath),[19] the Karnataka High Court dealt with the issue of coverage of housing societies under the Contract Labour Act. For coverage of any undertaking under this act, three conditions need to be fulfilled. One of the conditions is the numerical threshold which is a question of fact and warrants no discussion.[20] The other two conditions are regarding whether the undertaking can be classified as an establishment and the employees as workmen under section 2(e) and 2(i) of the Act respectively. The court relied on traditional definitions of 'industry' from older precedents like the Som Vihar and deviated from the more expansive framework established in the Bangalore Water Supply.[21]

It is argued that this interpretation fails to align with the purpose of the Contract Labour Act as a beneficial statute aimed at protecting labour rights. In Rachana Gopinath, the court emphasized the absence of a profit motive in the activities of the housing society and highlighted that its primary function was to render personal services to its members and thus cannot be classified as industries on the lines of reasoning given in Som Vihar.[22] However, this approach bypasses the principle established in Bangalore Water Supply, which ruled that profit motives are irrelevant for determining industrial status if the activity satisfies the triple test.[23]

Although the numerical threshold under the Act was not met in this specific case, the precedent set by Rachana Gopinath could have wider implications. Future cases involving housing societies that meet the numerical threshold may still face exclusion based on this narrow interpretation. This approach effectively defeats the legislative intent of protecting contract workers, as envisioned under the Contract Labour Act. The Court's reliance on outdated

[18] The Contract Labour (Regulation and Abolition) Act, 1970, s.2(e) ('Contract Labour Act').
[19] *Smt. Rachana Gopinath & Another v. State of Karnataka* 2016 SCC OnLine Kar 8348 *(Rachana Gopinath).*
[20] The Contract Labour Act, s.1(4)(a).
[21] Rachana Gopinath, para 10,11.
[22] ibid.
[23] Bangalore Water Supply, para 63,140.

interpretations misrepresents the purpose of the Contract Labour Act as a beneficial legislation. By narrowly construing 'establishment' and 'industry,' the court restricts the Act's applicability, undermining its ability to address contemporary labour dynamics in non-traditional setups like housing societies. A broader and more inclusive approach needs to be adopted.

3.3. Minimum Wages Act, 1948

This part of the paper focuses on the coverage of housing societies under the Minimum Wages Act, 1948 through the analysis of *Kiran Industrial Premises Co-operative v Janata Kamgar Union and Others* (Kiran Industrial Premises)[24]. This case, while addressing whether certain housing societies could be classified as industries under the Minimum Wages Act, deviated from the broader interpretative principles established in the Bangalore Water Supply.

In the Kiran Industrial Premises, the court focused heavily on the society's non-commercial nature, asserting that it merely facilitated maintenance and administrative activities without the profit motive.[25] The society collected charges for upkeep and utilities but did not generate surplus funds for profit. Consequently, the court ruled that such organisation did not meet the definition of commercial establishment under the Bombay Shops and Establishments Act, 1948 or an industry under the Minimum Wages Act.[26] The court emphasized the absence of risk, profit or commercial venture in the society's activities while ignoring the society's systematic and cooperative provision of essential services for its members could satisfy conditions of an industry as per the triple test established.

The deviation in this case lies in two critical areas. First, the courts treated the profit motive as the defining factor, second, it ignored the aspect of services being rendered as a qualifying activity under the Minimum Wages Act, which protects employees in both commercial and non-commercial setups where organized, cooperative activities are performed.

4. Delegation, Not Evasion: Why Housing Societies Can't Escape Worker Protections?

[24] *Kiran Industrial Premises Co-operative v Janata Kamgar Union and Others* 2001 (1) CLR 1046 (Bom) ('Kiran Industrial Premises)
[25] Kiran Industrial Premises, para 3,4.
[26] ibid.

The Management of housing societies try to evade their liabilities by either arguing that the housing societies are not industries/establishments under the labour laws or try to shift the liability to independent contractors. However, such arguments fail when the actual relationship is scrutinized through the lens of control, supervision and dependency as established through cases in India. The former part of this paper dealt with the first argument, this part of the paper argues that even if the employees of the housing societies are employed by an independent contractor, the management cannot evade the liabilities if certain conditions are fulfilled.

Precedents such as *Dharangdhara Chemical Works Ltd v State of Saurashtra* (Dharangdhara)[27] and *Sushilaben Indravadan Gandhi v The New India Assurance Company Limited* (Sushilaben)[28] underlines the principle that statutory provisions designed to protect workers cannot be evaded by the structural arrangements of employment. Dharangdhara introduced the supervision and control test emphasizing that the nature of employment hinges on the degree of control exercised by the employer over the worker or the employees.[29] In this case, the Supreme Court held that even when individuals appear to be working under independent contractors, the principal employer may still be liable if it can be established that the workers perform their duties under the employer's supervision and are integral to the principal's operations. In this case, it was affirmed that the employment relationship is determined not by contractual labels but by the actual control exercised.[30]

Sushilaben in a more nuanced analysis combined the supervision test with a multifactorial approach emphasizing that the factor of control over manner of work should not be taken as an exclusive factor to determine the supervision of the principal employer rather the employment arrangements must be viewed in the light of beneficial legislation.[31] Court stated that statutory frameworks like labour laws are intended to safeguard the weaker sections of the society and that the courts must interpret these laws in a manner that ensures the realization of their intended protections. By focusing on factors such as the degree of economic dependence, the integration of workers into the principal's operations, and the terms of employment, this case strengthened the argument that a principal employer cannot escape liability merely by delegating employment to independent contractors.[32]

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[27] *Dharangdhara Chemical Works Ltd v State of Saurashtra* 1956 SCC OnLine SC 11*(Dharangadhara*).
[28] *Sushilaben Indravadan Gandhi v The New India Assurance Company Limited* (2021) 7 SCC 151 (*Sushilaben*).
[29] Dharangdhara, para 26,27.
[30] ibid.
[31] Sushilaben, para 31.
[32] Sushilaben, para 33,36.

The management of housing societies exercise direct or indirect control over the workers' duties, schedules or manner of execution. For instance, if the society's management dictates the daily tasks of the employees or oversees their performance, the control test would apply. Even if workers are formally employed by a contractor, their livelihood depends on the housing society for continued work and remuneration. This dependence ties their role directly to the society. Sushilaben underscores the principle of beneficial legislation where the judiciary prevents entities from evading labour law obligations by employing intermediaries.

This perspective adopted by such cases reinforces that housing societies which benefit from the work of employees, even if employed through contractors, must ensure compliance with labour rights such as minimum wages, social security, and workplace safety. The employment of workers through independent contractors does not absolve housing societies of their legal responsibilities if they meet the criteria established through the cases.

5. Balancing The Scales: A Broader Definition of 'Industry' for Worker Welfare

Labour laws are beneficial legislations designed to support vulnerable sections of society. Therefore, if a housing society satisfies the criteria of the triple test and aligns with the specific provisions of these statutes, it should be covered under labour laws. The traditional understanding of 'industry' has evolved with changes in employment dynamics, and the broad interpretation adopted in Bangalore Water Supply reinforces the welfare objectives of these laws. Reverting to a restrictive interpretation would deprive workers employed by housing societies of the protections they are entitled to under these statutes.

Courts in India have often taken a narrow approach while determining the coverage of housing societies under labour laws. In classifying housing societies as industries, courts have frequently deviated from the triple test established in the Bangalore Water Supply. However, given that the primary objective of labour laws, such as the Industrial Disputes Act and the Minimum Wages Act, is to protect workers' rights and foster harmonious employer-employee relationships,[33] the courts should prioritize the nature of the employer-employee relationship over factors like profit motive or the commercial nature of the society's activities.

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[33] Kartik Srivastava, 'Evolution of Labour Law in India: A Three-Dimensional Approach' (2023) 3 Indian J Integrated Rsch L 1.

The issue becomes particularly concerning when workers employed by small housing societies fail to meet the numerical thresholds set by certain labour laws.[34] Since these societies typically engage only a handful of workers, a narrow interpretation of legal provisions could leave them without any legal recourse, depriving them of essential protections. Such a restrictive approach may further enable employers to exploit labour without accountability, ultimately defeating the purpose of labour legislation.

While a broader definition of 'industry' may raise concerns regarding potential misuse by parties seeking undue benefits, the triple test and dominant nature test established in *Bangalore Water Supply* offer a strong framework to mitigate such risks.

In this context, the Industrial Relations Code (IRC), enacted in 2020 alongside the Code on Social Security and the Code on Occupational Safety, Health, and Working Conditions, marks a significant legislative development.[35] The IRC consolidates three major labour laws, the Industrial Disputes Act, 1947, the Trade Unions Act, 1926, and the Industrial Employment (Standing Orders) Act, 1946 into a unified framework. Its primary objectives are to safeguard workers' rights, minimize conflicts between employers and employees, and establish mechanisms for the resolution of industrial disputes. A key aspect of the IRC is its redefinition of fundamental terms such as 'worker,' 'industry,' and 'employee.' The definition of 'industry' under the IRC is rooted in the elements of the triple test from *Bangalore Water Supply* and aligns with the 1982 amendment passed by Parliament, which was never enforced. It explicitly excludes institutions engaged in charitable, social, or philanthropic services, sovereign functions, and domestic services, addressing concerns raised in earlier legal debates. However, since these labour codes are yet to be notified and brought into effect, the definition of 'industry' under the Industrial Disputes Act remains applicable.

Until the new codes are implemented or the amended statutory definition is enforced, courts must continue to apply established judicial principles while ensuring their interpretation remains aligned with the welfare-centric objectives of labour legislation. This evolving legal landscape highlights the need for greater legislative clarity to strike a balance between employer interests and employee rights while adapting to contemporary industrial realities.

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[34] The Minimum Wages Act, 1948, The Contract Labour (Regulation and Abolition) Act, 1970.

[35] Sneha Varghese, 'The Industrial Relations Code, 2020: Legislative Commentary' (2022) 5 Int'l JL Mgmt & Human 1924.

6. Conclusion

The evolving interpretation of labour laws in India underscores the need for a broader and welfare-oriented approach to ensure the protection of workers' rights. Housing societies, though primarily established for non-commercial purposes, engage in systematic and organized activities that often meet the criteria of the triple test outlined in *Bangalore Water Supply*. Excluding these entities from the ambit of labour laws undermines the statutory objectives of fairness, equity, and social security for workers.

The analysis of judicial precedents in this paper reveals inconsistencies in the application of these principles, leaving many workers vulnerable to exploitation. To address these gaps, courts must prioritize the employer-employee relationship and the functional nature of the activity over profit motives or organizational intent. Legislative intervention is also essential to provide clarity and uniformity. Ultimately, aligning judicial and legislative actions with the welfare-centric objectives of labour laws will ensure justice and equity for workers employed by housing societies.

Apprentices As Workmen: Analysing Legal Definitions, Protections, And Rights

~Dhruv Minotra & Kritika Gupta

Abstract

The legal status of apprentices under Indian labour law, particularly under the Apprentices Act, 1961, raises significant ambiguities regarding their rights, protections, and classification as "non-workmen."[1] *While the Act aims to bridge the gap between theoretical knowledge and practical skills, it excludes apprentices from statutory protections available to regular employees under labour legislations such as the Industrial Disputes Act, 1947. This exclusion denies apprentices access to critical benefits, including minimum wages, dispute resolution mechanisms, and safeguards against arbitrary employer actions.*[2] *The Act defines apprentices as trainees undergoing structured on-the-job training under a contract, distinguishing them from workmen who enjoy full employment benefits like provident fund, gratuity, and job security. Apprentices receive stipends, which are typically lower than minimum wages, reflecting the skill-development focus of their training. While both apprentices and workmen are entitled to health and safety protections under laws like the Factories Act, 1948, workmen have additional rights, such as unionization and collective bargaining, which are not extended to apprentices.*[3] *The Apprentices Act has undergone amendments to enhance flexibility, including the introduction of optional trades and financial incentives under schemes like the National Apprenticeship Promotion Scheme (NAPS). However, challenges such as rigid regulations, poor industry-institution collaboration, and low participation rates, especially among marginalized groups, hinder the effectiveness of apprenticeship programs. Comparatively, international frameworks offer insights into best practices*

[1] The Apprentices Act 1961, s 18.
[2] Ramasamy Ravichandran, 'Bridging the Gap: The Role of Apprenticeship Training Programs' (2023) 6(1) JOVES 162.
[3] *Ibid.*

for expanding apprenticeship opportunities and promoting equity.[4] *This paper examines the legal distinctions between apprentices and workmen, evaluates the impact of excluding apprentices from statutory protections, and compares India's apprenticeship framework with global standards. It argues that clearer legal definitions, enhanced protections, and inclusive policies are essential to address skill gaps, improve employability, and ensure equitable labour market participation. By aligning with international best practices, India can strengthen its apprenticeship system to better serve its workforce and economic needs.*

Keywords: *Apprenticeship Rights, Labour Law Protections, Skill Development, Workmen Classification*

1. Introduction

The Apprenticeship Policy of India, since it was instituted in 1961, has withstood the test of time, adapting all along to the ever-changing requirements of industry, but it still finds itself today hosting a precariously low number of apprentices compared to its huge workforce and compared to every other country. Even considering the large percentage of jobs that are housed in the informal economy, India's system of apprenticeship is remarkably small and overly rigid with regulations.[5] The expansion of this system is considered to be essential not only in enhancing the supply of skilled workers that the rapidly expanding economy needs but also in helping deal with the inequities in labour market participation and promoting greater equity amongst India's marginalized groups. According to an ILO report of 2013, just 0.1% of India's official labour force participates in apprenticeships, compared to 4% in other nations. If so, it becomes imperative to investigate the reasons behind India's lack of success with apprenticeship policies and if there are any systemic issues with their creation and execution.[6]

The Apprentices Act, 1961, regulates apprenticeship programs through structured on-the-job training, with the Ministry of Skill Development and Entrepreneurship overseeing its implementation. The National Policy of Skill Development and Entrepreneurship 2015

[4] Erica Smith, Ros Brennan Kemmis, and Paul Comyn, 'How Can the Expansion of the Apprenticeship System in India Create Conditions for Greater Equity and Social Justice?' (2014) 54(3) Australian Journal of Adult Learning.
[5] Anita Sharma, Good Practices in Apprenticeships in India: Challenges and Opportunities (International Labour Organization, 2022).
[6] *Ibid.*

emphasizes that apprenticeships can play a pivotal role in the creation of a skilled workforce; significant expansion of opportunities, especially in the MSME sector.

Indian labour law also throws open several issues of legal analysis regarding the status of apprentices. Training under apprenticeship is an important part of vocational education, imparting practical skills for employment, but ambiguities in legal definitions, protections, and rights often cause problems. Classifying the apprentices as "non-workmen" under particular provisions denies benefits under labour legislations, such as the Industrial Disputes Act of 1947, which protect regular employees against the arbitrary will of the management. Such distinctions of law cut out access to protection by mechanisms to redress dispute, minimum wage and other such statutory benefits. In particular section 2 (r)[7] of the Apprentices Act, 1961 which defines workers reads as follows:

> *""worker" means any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency including a contractor and who gets his wages directly or indirectly from the employer **but shall not include an apprentice** referred to in clause (aa)."*

Although apprenticeship programs play a significant role in filling the skills gap, problems such as lack of effective regulatory frameworks, and vagueness in regard to the rights of apprentices stand in the way of making such programs more effective. Clear legal definitions and protections regarding the rights of apprentices may better their position and create a supporting ecosystem for the development of skills and employability.

2. Research Problem

The legal status of apprentices under Indian labour law creates significant ambiguities regarding their rights, protections, and classification as workmen. The Apprentices Act, 1961, defines apprentices as someone undergoing training in any industry or establishment undergone in pursuance of a contract of apprenticeship and excludes them from being classified as "workmen" under various labour legislations, such as the Industrial Disputes Act, 1947. This exclusion denies apprentices access to critical statutory protections, including dispute resolution mechanisms, minimum wages, and safeguards against arbitrary actions by employers. These legal distinctions, coupled with poor coordination between government

[7] The Apprentices Act 1961, s 2(r) (India).

authorities and educational institutions and inadequate regulatory frameworks, hinder the effectiveness of apprenticeship programs in addressing skill gaps and promoting equity in the labour market.

3. Research Methodology

This research paper, titled "*Apprentices as Workmen: Analyzing Legal Definitions, Protections, and Rights in Labour Law*", will employ a doctrinal methodology combined with an descriptive and comparative research approach. The study will draw upon primary sources, including key statutes and related policy documents, case laws as well as international frameworks. In addition, the research will utilize secondary sources, such as academic books, peer-reviewed journal articles, government and NGO reports.

4. Legal Framework Governing Apprentices and Workmen in India

The National Apprenticeship Scheme (NAS), was rolled out in 1959 by the government on a voluntary basis. Eventually this scheme got legal recognition via the Apprentices Act, 1961. The preamble of this act which states it aim provides that the act is intended to address the growing demand of skilled workers by providing hands-on and practical training to people[8] before they can become "workmen" as defined in the Industrial Disputes Act to ensure a steady stream of skilled workers entering any industry. Since the passing of the act the scope has increased to include a broader range of apprentices ensuring coverage of most of the industries.

The act prescribes certain establishments, which must engage apprentices and provide them both theoretical and practical experience such that they are ready to join the workforce. The act also establishes a regulatory framework to govern the relationship between apprentices and the employer involving both state and central government along with several authorities such as the apprenticeship adviser under their jurisdiction.[9] The Act aims to close the gap between vocational and theoretical skills and thereby assist in creating a talented labour force that can deal with the issues of a fast-changing economy. It is nearly impossible to determine apprentice participation rate in India due to most of them existing in the informal sector and lack of data

[8] The Apprentices Act 1961, Preamble (India).
[9] Gayithri K, Malini L Tantri and D Rajasekhar, A Critical Review of Apprenticeship Policy of India (Working Paper Series, Institute for Social and Economic Change, Bangalore, 2019).

thereof. In the formal sphere although data is more readily available the participation rates are minimal and do not showcase the actual grassroot scene. In 2019, the revised guidelines for the National Apprenticeship Promotion Scheme (NAPS) were released by the Ministry of Skill Development & Entrepreneurship which attempted to increase the engagement / employment of apprentices.

According to the data given during Rajya Sabha questions the apprenticeship distribution in India looks as follows[10]: -

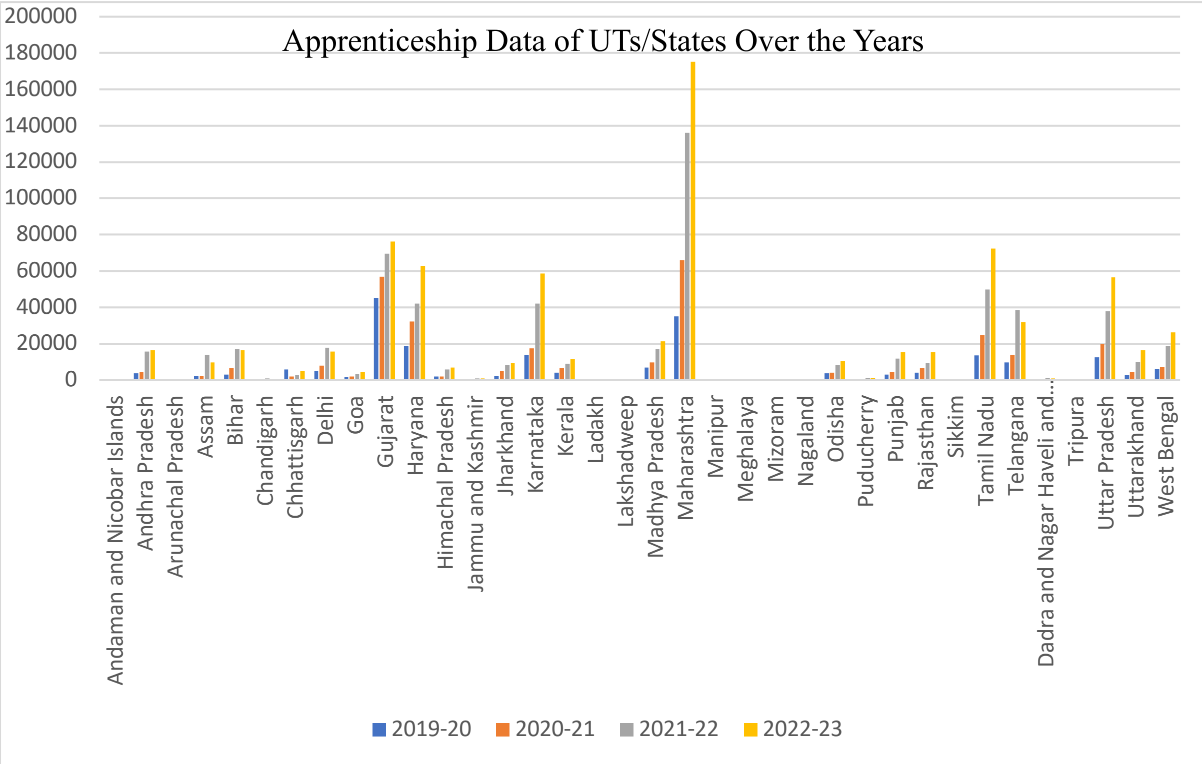

Figure 1: State wise distribution of apprentices

The government took the initiative to pay apprentices 25% of their stipend from their own coffers up to a maximum of 1,500 Rs per apprentice. Additionally, the scheme also covered the added training costs of 7,500 Rs per apprentice.[11] However, many businesses pay salaries / compensation that is more than the legally required minimum. For example, the Board of

[10] Ministry of Skill Development & Entrepreneurship, 'State/UT-wise Number of Apprentices Engaged under National Apprenticeship Promotion Scheme' (Open Gov't Data Platform India, 2019) https://www.data.gov.in/resource/stateut-wise-number-apprentices-engagement-under-national-apprenticeship-promotion-scheme accessed 14 February 2025.

[11] Ministry of Skill Development & Entrepreneurship, Revised Guidelines for Implementation of National Apprenticeship Promotion Scheme (NAPS), F No MSDE-01/01/2018-AP(PMU) (30 January 2019).

Apprenticeship Training (BOAT) goes above and above to bargain with industry for a revision in a technician stipend of at least Rs. 10,000 and a graduate stipend of between Rs. 12,000 and Rs. 15,000.[12] These are exemplary practices but without any statutory recognition the apprentices cannot claim higher compensation as a right.

Apprentices Act has been periodically amended to increase its flexibility for employers and apprentices. These amendments have brought in significant changes such as the introduction of optional trades, where employers are permitted to provide apprenticeship in non-designated trades that satisfy prescribed qualifications. Outsourcing of training was also provided such that employers can also outsource basic training to third-party organizations, which acts as an relief to industries lacking in-house training facilities.

Some of the most significant amendments to the act include the training of graduate and technician apprentices was covered by the first amendment, which was issued in 1973. The second amendment, which was enacted in 1986, expanded its scope to include technical (vocational) apprentices. While the fourth amendment in 2008 focused on including candidates who fall under the OBC category, the third amendment in 1997 defined the terms establishment and worker. The most recent amendment was proposed in 2014 and replaced the unit-wise regulation of apprentices and the system of trade with a band of 2.5% to 10% of the workforce. It also allowed industries to outsource training facilities, removed strict clauses like imprisonment in favour of fines, and introduced optional trades. The amendments also replaced harsh measures, such as imprisonment for non-compliance and in place put measures like monetary penalties to promote employer involvement.[13]

It is crucial to analyze the definition of "apprentice" before attempting to understand the provisions, protections, and potential gaps in safeguards available to apprentices. As per section 2 (aa)[14] of the Apprentices Act, an apprentice is: -

> *"a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship"*

Furthermore "apprenticeship training" as defined in section 2 (aaa)[15] means:

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[12] Tabassum Jamal and Kasturi Mandal, 'Skill Development Mission in Vocational Areas – Mapping Government Initiatives' (2013) 104 Current Science 590.
[13] Above n 5.
[14] The Apprentices Act 1961, s 2(aa) (India).
[15] The Apprentices Act 1961, s 2(aaa) (India).

> *"a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices"*

It can be thus be said that an apprentice is a person intending to join any designated trade going through an apprenticeship training under an employer according to his contract of apprenticeship. The training ensures that the apprentice is provided with both theoretical and practical experience in a way that makes him fit to join the industry.

There are several discrepancies in the provisions governing apprentices and workmen and the protections afforded to both of them. As per the Apprentices Act, 1961, anyone going through training under a contract of apprenticeship is an apprentice. Apprentices are considered trainees and not regular employees.[16] Notably sub-section 2 of section 18 of the Apprentices Act, 1961 makes it clear that any provision of any labour law shall not be applicable upon apprentices, therefore denying them a whole host of protections and privileges given to workmen.

Apprentices are not employees under the Apprentices Act and do not get the same statutory benefits as workmen. Specifically, apprentices are not eligible for provident fund, gratuity and employee state insurance as mentioned in Section 18 of the Act whereas workmen are eligible for all statutory benefits including minimum wages, provident fund and gratuity as per labour laws.[17] This difference highlights the temporary and training-oriented nature of apprenticeship which is meant to equip individuals with skills rather than full employment benefits.

The compensation structure for apprentices and workmen is also different. Apprentices get a stipend which is generally lower than the minimum wage prescribed for workmen. This stipend is meant to cover the basic living expenses during the training period, however the wages ranged between Rs. 2758-4984 cannot be said to be enough to qualify as living wages if they are below the prescribes minimum wages. However, the government has increased the stipend given to apprentices to range between 5000 Rs. For 5th-8th pass outs till 8000 for graduate degree holders.[18] Steps in this direction are an incentive for the workforce to enroll in such

[16] The Apprentices Act 1961, s 18 (India).
[17] *Ibid.*
[18] Ministry of Skill Development & Entrepreneurship, 'Stipend to Apprenticeship' (Press Information Bureau, Government of India, 14 September 2020) https://pib.gov.in/PressReleasePage.aspx?PRID=1653982 accessed 23 February 2025.

apprenticeship initiatives helping increase their skill set and make them attractive for potential employers.

The process and implications of termination of employment also vary between apprentices and workmen. For apprentices, the contract of apprenticeship can be terminated by either party with the approval of the Apprenticeship Adviser as per Section 7[19] of the Act. This lack of job security highlights the provisional nature of apprenticeship. Workmen are protected under the Industrial Disputes Act, 1947 which requires the employer to follow due process, including notice and compensation before terminating employment. This difference shows the different levels of job security and legal protections available to apprentices and workmen.

Apprentices and workmen both are entitled to health and safety protections under key labour laws like Factories Act, 1948 and Mines Act, 1952. Section 14 of the Apprentices Act explicitly states that apprentices will get the same level of workplace safety and health safeguards as workmen.[20]

However, workmen have additional rights that go beyond health and safety including the right to form unions and collective bargaining. These rights enable workmen to agitate for better working conditions and redress grievances collectively, a privilege not available to apprentices who are focused on skill development and training. The legal framework for apprentices and workmen in India is governed by the Apprentices Act, 1961 which aims to bridge the gap between theoretical knowledge and practical skills. Initially focused on trade apprentices, the Act has been modified to include optional trades, outsourcing of training and reduced penalties to encourage employer participation. Apprentices defined as trainees under a contract do not get statutory benefits like provident fund and gratuity unlike workmen who get full labour protections. While both are entitled to health and safety safeguards, workmen have additional rights like unionization. Differences in wages, job security and protections highlight the temporary and skill focused nature of apprenticeship compared to formal employment.[21]

In *National Small Industries Corpn. Ltd. v. V. Lakshminarayanan*[22], the respondent acted as a labourer for the appellant between the years of 1987 and 1990. In 1990 the respondent was given the title of Apprentice for a term of two years. When his 2-year apprenticeship lapsed in

[19] The Apprentices Act 1961, s 7 (India).
[20] The Apprentices Act 1961, s 14 (India).
[21] Ramasamy Ravichandran, 'Bridging the Gap: The Role of Apprenticeship Training Programs' (2023) 6 Journal of Vocational Education Studies 156.
[22] *(2007) 1 SCC 214*.

1992 the respondent claimed he was promised permanent employment but was dismissed. He argued that the dismissal was in contravention of Section 25-F of the Industrial Disputes Act of 1947 and that he was unlawfully dismissed since he had worked for more than 240 days. The appellant asserted that he was an apprentice rather than a regular employee and that his training was automatically terminated. The Labour Court ruled in the respondent's favor that he was deemed a “workman” in contravention of Section 25-F and the Madras High Court agreed. The rulings of the lower courts however were reversed by the Supreme Court. The Supreme Court has reaffirmed that the respondent was an Apprentice and not a regular employee under the Apprentices Act of 1961 and the appointment letter of the appellant was specific to the period of a two-year training. The Court ruled that apprentices are trainees in lieu of workmen and therefore labour laws such as the Industrial Disputes Act will apply to an apprentice rather than a workman. here was no evidence of his regularization as a permanent employee. The Supreme Court ruled the respondent was not a "workman," and his termination did not violate Section 25-F.

Furthermore, in *Haryana Power Generation Corpn. Ltd. v. Harkesh Chand*[23], the respondent was a day wage worker with the appellant from 1986 to 1990. They were terminated in 1990 and as such they filed a claim under the Industrial Disputes Act, 1947 to reinstate the respondent having suffered illegal retrenchment without following Section 25-F of the Act. The Labour Court ruled for the respondent and confirmation by the High Court that the Labour Court ruled in favour of the respondent with the rear in hand having been reinstated. The appellant argued that the respondent was an individual day wage worker as opposed to a regular employee and furthermore that termination of the respondent’s employment was not a retrenchment term as defined in the Act. They argued that regular employees and day wage workers were the same and that they were legally justified in being dis-aged. The Supreme Court probed whether the respondent was a workman under the Industrial Disputes Act and if his termination was against Section 25-F. The Court stated that even if a day wage worker was covered under the Act provided that the union met the criteria which includes continuous service of 240 days. The Court point out though that it was the employee who had to prove that the continuous 240 day service existed. In this case, the Court thought that there was insufficient evidence to prove that the respondent was a regular worker for 240 days continuously.

[23] *(2013) 2 SCC 29.*

In *Mukesh K. Tripathi v. LIC*[24], Tripathi was inducted as an Apprentice Development Officer by the Life Insurance Corporation of India (LIC) in the year 1987. His apprenticeship period lasted for one year and at the end of this period he was claiming that his future employment was assured to be permanent. By the year 1988 his services were terminated by the Life Insurance Corporation of India. He filed a lawsuit in order to prevail upon the court to rescind his termination and compensate him for back wages owing to him. The Labour Court decided the case in his favor stating that he was a "workman" as per the Industrial Disputes Act. Whilst this finding was overturned by the Supreme Court upon the reasoning from the Constitution Bench through the decision in *H. R. Adyanthaya vs. Sandoz (India) Ltd.* wherein it was pointed out that in order for an individual to be considered a "workman" they had to perform any manual, clerical, technical or operational work. The Labour Court decided that the appellant, who was an apprentice aged 21 years in 1988, did not reach the necessary quarter for being considered a "workman" under the Industrial Disputes Act. The Supreme Court confirmed this decision of the Labour Court, once again stating that the appellant was an apprentice under the 1961 Apprentices Act and not a "workman" under the Industrial Disputes Act. The appeals were rejected, and the rejection was held to be valid.

These cases indicate a dichotomy existing in the opinion of Indian judiciary with regard to the status of apprentices and whether they can be extended the same rights that workmen are, such as the one under section 25f of the Industrial Disputes Act. While the lower courts and tribunal recognize and extend these rights to the apprentices, the Supreme Court relying on the textual interpretation of the statute reverses such rights and has set the precedent that apprentices cannot be recognized as workmen.

5. Workmen v Apprentices and the Global Apprenticeship Scene

There are several differences in the protections afforded to workmen and apprentices. Naturally, the question arises that why such a difference is there. At this juncture it is important to look at the analytical study conducted by the WISE organization in collaboration with the

[24]*(2004) 8 SCC 387.*

University of Oxford. The study looked at the apprentice participation in 8 countries: Denmark, England, Germany, Australia, Finland, South Africa, Egypt, and India.[25]

The study found that apprenticeship schemes vary widely between countries, some of which like Germany and Denmark have established and high-participation systems, while others like India and Egypt are low participation with informal apprenticeship arrangements. Germany's apprenticeship is firmly entrenched in the vocational education and training (VET) system that combines work-based and school-based learning through the dual training route. This is an intensely regulated system with extensive employer involvement and state sponsorship to ensure both on-the-job training and formal education of the apprentices. India and Egypt, in comparison, have extreme reliance on informal apprenticeships, which are normally poor in terms of legal cover, fair pay, and organized instruction. There are not many formal apprenticeships in these countries and they are poorly regulated, with India's Apprentices Act, 1961, providing a legal framework but no incentive for employers to take part and no regard for the informal sector.[26] However, there has been in an increase in the number of registered and formal apprenticeships in the recent years. According to data from the apprenticeship dashboard the number of apprenticeships has increased from 35,518 in 2018-19 to 8,55,844 in 2024-25 which reflects a 2310% increase or a 94% increase per year.[27]

The definition of apprentices and whether to treat them as workers or not is particularly relevant because the naming of apprentices as "trainees" rather than "workmen" has a tendency to exclude them from statutory labour protections, such as minimum wages, dispute resolution mechanisms, and safeguards against arbitrary employer conduct. This exclusion is visible in India, for instance, where apprentices are not "workmen" for the purposes of the Industrial Disputes Act, 1947, and are excluded from fundamental labour rights.

The demographic profile of apprentices also identifies gaps in access and equity. Women and marginalized groups in most countries are underrepresented in apprenticeships, including India's scheduled castes. In India women comprise only 20% of apprentices and scheduled castes and tribe have been severely underrepresented in the education system, a mirror of

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[25] Maia Chankseliani, Ewart Keep and Stephanie Wilde, People and Policy: A Comparative Study of Apprenticeship Across Eight National Contexts (Report No RR.9.2017, WISE Institute and University of Oxford, 2017).
[26] *Ibid.*
[27]Ministry of Skill Development and Entrepreneurship, 'Apprenticeship Data Dashboard' https://app.powerbi.com/view?r=eyJrIjoiYTkyNWI0OTYtZmU0OS00MzM4LTgyZWItMjk3MDcyNWQ0NjEzIiwidCI6IjcyNGI4ZWQxLTgxODMtNGNiOS1iNWIwLTFlZDY3YWZlYWNmMSIsImMiOjEwfQ%3D%3D accessed 20 February 2025.

broader social and labour market in South Africa disparities are also found in apprenticeships with whites overrepresented relative to their proportion in the population. These inequalities highlight the importance of inclusive policies that address social and gender equity in apprenticeship systems so that all apprentices are able to enjoy fair pay legal safeguards and prospects for skill acquisition.[28]

Employer commitment is an essential ingredient of the success of apprenticeship schemes. In nations such as Germany, employers have a central role to play in defining apprenticeship policy through social partnership arrangements that encompass cooperation among employers, trade unions and vocational schools. The collective approach to policy-making guarantees that apprenticeships keep pace with industrial needs and that apprentices enjoy good-quality training.[29] But in nations such as India and England, employer involvement is usually restricted with governments adopting a top-down approach to policy-making. The absence of employer incentives and the extent of informal work in India prevent the development formal apprenticeships.[30]

Apprenticeship quality is another key issue in particular regarding legal protections and rights. In most countries there has been a rapid growth in apprenticeship programs, causing the concern of dilution of quality as some programs provide little or no off-the job training or else specialized entry-level skills. For example, in England emphasis on apprenticeships has created pressures which mean some have complained that they lack specificity and relevance. Making sure that apprenticeships are accepted as a viable route to skilled work involves having strong legal frameworks which safeguard the rights of apprentices and guarantee high quality training.[31]

In order to ensure more protections and rights to be afforded to apprentices, they must be recognized as “workmen” and ensuring that they are given fair wages and training of such quality that they can enter their designated trade with no hiccups. A social and economic framework that aims to remove inequities in access and promotes involvement of the parties is critical to developing successful apprenticeship systems. Learning to align apprenticeship policies with international best practices and enhancing legal frameworks will enable India to

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[28] Above n 22.
[29] Matthias Pilz and Sarah Pierenkemper, ‘Apprenticeship Programs—Lessons from Germany & German Companies in India’ (2014) 49 Indian Journal of Industrial Relations 389, 389–400.
[30] Above n 22.
[31] *Ibid.*

better prepare apprentices for transition into the labour market with adequate rights and protection and thus will prevent their exploitation.[32] The recent Indian apprenticeship policy regulated by the 1961 Apprenticeship Act and its amendments has concentrated on expanding the scope and coverage of apprenticeships but neglected important issues such as preparing educational institutions and aligning education with employability requirements. This has resulted in a serious mismatch between demand and supply of skilled manpower. Even though India boasts a huge young workforce the country is hit by a critical skill shortage with up to 53% of employed youth experiencing skill deprivation according to a 2009 report by the Planning Commission. [33]

An indication of the level of industrial training institute graduates is the mismatch between the skills imparted and industry needs. Lack of insufficient staffing, outdated course material and lack of attention to soft skills are among the causes for the mismatch. ITIs find it easy to push apprenticeships because of overwhelmed staff and non-functional placement cells which are more interested in on campus recruitment than apprenticeship related activities. Strengthening ITIs and making their curriculum industry-compatible are essential to enhancing employability.[34]

The multiplication of different parallel skill training schemes by states and the Centre, such as Pradhan Mantri Kaushal Vikas Yojana (PMBVY), created inefficiencies from a lack of coordination and harmony. Simplification or emphasis on building upon established schemes should be more fruitful in facilitating the implementation of such initiatives. Further, the Administrative Framework Governing Apprenticeships is not consolidated in which duties are shared between Ministry of HRD and Ministry for Skill Development and Entrepreneurship. Implementing a consolidated administrative agency could solve these issues.

For industries to enroll apprenticeship schemes there are no incentives for industry while penalties for default, though introduced but not adequate to motivate participation. For example Germany's vocational training bonus, prove how incentives may encourage businesses to adopt apprenticeship programs. Such measures in India also could help boost the scheme’s impact as well as its reach. Further low awareness regarding apprentice programme, especially among

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[32] Hilary Steedman, Overview of Apprenticeship Systems and Issues – ILO Contribution to the G20 Task Force on Employment (International Labour Office, 2012).
[33] *Ibid.*
[34] Aya Okada, ‘Skills Development for Youth in India: Challenges and Opportunities’ (2012) 15 Journal of International Cooperation in Education 169, 169–93.

rural youth makes the process even more complicated. This can be smoothened by streamlining procedures, spreading awareness in rural areas via schools and making special administrative infrastructure at the district level.[35]

It should also be increased participation of industries in the design and implementation of apprenticeship schemes. Incorporating industries into the academic instruction is a much better approach than tackling both individually, such as of Germany's dual system of training, where academics are integrated with on-the job training. Providing an option to the youth to learn practical skills while in secondary and senior secondary institution will pave a way for seamless joining in the industry and will also help financially struggling families via the stipend provided to the apprentice.[36]

Apprenticeship issues including simplifying administration, improving vocational training quality, encouraging industry collaboration and establishing incentives for participating. Adapting global examples such as that of Germany and emphasizing scalable solutions / policies can assist India in reducing the skill gap and ensure that the youth have the skills desired by the employers leading to satisfaction for both the parties, enhancing the effectiveness of its apprenticeship policy.[37]

6. Conclusion

Indian system of apprenticeships under the Apprentices Act 1961 intends to narrow down the gap between theoretical education and practical knowledge. But the apprenticeship as a “non-workman” compartmentalizes the system from such important statutory rights like minimum wages levels and adjudication mechanism that are enjoyed by regular workers. Although it might be impossible to categorize apprentices as workmen due to their pre-employment training nature and temporary nature that qualifies them for a different classification in terms of statutory mechanisms, apprentices should rather be given similar protection rights as workmen to make the Indian policy of incentivizing the production of skilled employees a success. The omission of apprentices from statutory protections combined with weak regulatory mechanisms as also as well as low industry academia partnerships discourages the efficacy of the apprenticeship scheme in resolving shortages of skills within the labour market

[35] *Supra* Note 26.
[36] *Ibid.*
[37] *Ibid.*

and ensuring labour market equity. By comparing India's system of apprenticeship with global standards it may be seen that best practice would entail employer incentives, enhanced quality of vocational training and inclusive policies to make the system more effective and thus to ensure the increase in a skilled workforce by minimizing exploitation and to create equities in the labour market through the enhancement of education and training programs to ensure the transfer of relevant skills and knowledge to the labour market. Only by extending adequate protections to apprentices can India truly reap the benefits of its apprenticeship policy and create a robust, skilled workforce for the future.

Migration and Social Protection in India: Current Trends and Challenges

~Dr Vibhuti Nakta

Abstract

Migration has become a prominent trend among workers in India, driven by a combination of economic factors, regional disparities, and the search for better job opportunities. A significant number of migrants come from rural areas, seeking employment in urban centres, industrial hubs, and even in different states. This movement is largely motivated by the need for higher wages, better living conditions, and access to more diverse work opportunities, particularly in sectors like construction, agriculture, manufacturing, and domestic labour. Migration, both internal and international, has been a key strategy for improving livelihoods and escaping poverty in regions with fewer local employment options. The government has tried to resolve the needs of migrant workers through various policy interventions. However, these efforts have often been fragmented, and the implementation of protective measures remain inconsistent. Laws like the Inter-State Migrant Workmen Act and the newly introduced Code on Social Security aim to provide some level of social security and welfare for migrant workers, but there are significant gaps. Many migrant workers still lack access to social safety programs like health insurance, pensions, and unemployment benefits, particularly those employed in the unorganized sector. Furthermore, the existing social security schemes are often not portable across states, creating obstacles for workers who frequently move in search of work. One of the key issues in providing social protection for migrant workers is the limited accessibility and enforcement of existing programs. While there are initiatives like the Pradhan Mantri Shram Yogi Maan-dhan and the National Rural Employment Guarantee Act (NREGA), they frequently *neglect to take into account the distinctive needs of migrant labour. The inability to transfer benefits across state borders or to international destinations adds to their vulnerability. Furthermore, migrant workers in informal sectors who constitute the majority are often excluded from formal social security schemes due to their irregular employment status. While the Indian state has made strides in attempting to address the problems faced by migrant workers, the social protection system remains insufficient. There is a pressing need for policies that ensure greater inclusivity, portability, and enforcement, to safeguard the rights and well-being of migrant workers.*

***Keywords*:** Workers, migration, social security, law and policies

1. Introduction

Migration has been an intrinsic part of human history, shaping economies, societies, and cultures across the world. It is used to describe the movement of individuals across international borders or within national borders (internal migration). The motivations behind migration are diverse, ranging from economic aspirations and educational opportunities to environmental changes and conflicts. In India, migration has played a crucial role in demographic shifts, labour market dynamics, and urbanization trends, making it an essential area of study in contemporary discourse.

1.1. Historical Perspective on Migration

Migration is not a recent phenomenon; it has been a key driver of social and economic transformation for centuries. The 19th century, for instance, witnessed large-scale migration from Europe to North America, reshaping labour markets and economic landscapes[1]. India, too, has experienced waves of migration—both voluntary and forced. During the colonial period, British policies led to significant migration of Indian labourers to plantations in regions such as Singapore, Malaysia, and the Caribbean. These labourers were often employed under exploitative conditions in industries ranging from agriculture to mining and infrastructure projects.[2]

[1] Tim Dyson and Pravin Visaria, *Migration and Urbanization in India: Historical and Contemporary Trends* (2004).
[2] Priya Deshingkar and Daniel Start, *Seasonal Migration for Livelihoods in India* (ODI Working Paper, 2003).

Within India, internal migration patterns were equally pronounced. Employment in tea, coffee, and rubber plantations, along with industrial hubs like Bombay (now Mumbai), Madras (now Chennai), and Delhi, led to significant rural-to-urban movement. Even today, these historical patterns continue to shape migration trends in India, influencing economic structures and social demographics.[3]

1.2. Migration Patterns in India

Migration in India is a complex process influenced by economic disparities, social factors, and policy interventions. About 45.36 crore people, or 37% of India's total population, were identified as internal migrants in the 2011 Census, highlighting the country's extensive patterns of migration.[4] Migration data is classified based on birthplace and last place of residence, with reasons such as employment, marriage, education, and family relocation driving movement across regions. Over the years, migration classifications have evolved, with the 1991 Census adding business and natural disasters as migration factors, while 2001 Census introduced post-birth migration as a new category.

Broadly, migration trends in India can be categorized into four patterns:

- Rural-to-Rural (R-R) migration, often linked to marriage or agricultural work.
- Rural-to-Urban (R-U) migration, primarily driven by economic opportunities and better living conditions.
- Urban-to-Urban (U-U) migration, which occurs due to career advancements or business expansions.
- Urban-to-Rural (U-R) migration, which is relatively less common but can be observed in cases of retirement or economic distress.[5]

Another distinct trend observed in India is step-wise migration, where individuals initially move to smaller towns before transitioning to larger metropolitan areas. Urban migration has grown significantly in recent years, with many people relocating within short distances to larger cities. Seasonal and circular migration remains a key livelihood strategy for rural populations,

[3] Amitabh Kundu, *Urbanization and Migration in India* (Oxford University Press, 2020).
[4] Census of India, *Migration Data* (Government of India, 2011).
[5] Amitabh Kundu, 'Trends and Structure of Employment in the 1990s: Implication for Urban Growth' (1997) 32(4) *Economic and Political Weekly* 1399-1405.

no longer limited to only the poorest sections but also chosen by relatively better-off individuals as a means of economic mobility.[6]

1.3. Economic and Social Drivers of Migration

Migration in India is influenced by a combination of push and pull factors. Push factors, such as poverty, unemployment, environmental degradation, and absence of basic infrastructure, force individuals to leave their native regions. Conversely, pull factors—including better job prospects, higher wages, improved healthcare, and educational opportunities—attract people to urban centers and industrial hubs. [7]The economic liberalization policies introduced in 1991 further shaped migration patterns. While these reforms were expected to generate employment and spur rural-to-urban migration, they also triggered concerns about the decline of small-scale industries, pushing more workers toward cities.[8]

Migration plays a vital role in India's economic framework, addressing labour shortages in urban industries and supporting rural economies through remittances. Migrants contribute significantly to construction, manufacturing, and service sectors, thereby fuelling economic growth. At the same time, remittances sent by migrant's help sustain rural households, improving their financial stability and access to essential services.[9] However, despite these contributions, migrants often face difficulties in accessing housing, healthcare, and social security in their destination cities, leading to precarious living conditions. While economic motives primarily drive migration, crises such as conflicts, human rights violations, and environmental disasters also lead to large-scale displacement. In 2013, an estimated 51.2 million people worldwide were forced to migrate due to such circumstances, highlighting the vulnerability of displaced populations.[10] In India, migration due to climate change, such as droughts and floods, has become a growing concern, exacerbating socio-economic inequalities.[11] Recognizing the importance of migration, the Indian government has introduced several policies aimed at improving migrant welfare. Initiatives such as the One Nation One Ration Card (ONORC) scheme enable migrant workers to access subsidized food grains

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[6] Supranote 4.
[7] Dilip Ratha et al, *Migration and Remittances: Recent Developments and Outlook* (World Bank Report, 2022)
[8] Supranote 6.
[9] Supranote 8.
[10] International Organization for Migration, 2024.
[11] Ministry of Labour and Employment, 2023.

regardless of their location. Additionally, various labour laws and welfare programs seek to enhance the rights and protections available to migrant workers, ensuring better living conditions and social security.[12] However, gaps in policy implementation and bureaucratic hurdles continue to pose challenges, underscoring the need for more effective governance mechanisms.

2. Defining Social Protection

The term "social protection" refers to a variety of policies intended to protect people and communities against social and economic threats. Social protection is defined by Devereux and Sabates-Wheeler as any program that helps the impoverished with their income or consumption, shields vulnerable groups from threats to their means of subsistence, and raises the rights and social standing of disadvantaged groups.[13] It encompasses a number of tools, including labour market interventions (job training, placements, and wage subsidies), social insurance (maternity leave, pensions, and unemployment benefits), social assistance (cash transfers, vouchers, and public works programs), and more general social services meant to help the most vulnerable.[14] Social protection measures work across four key dimensions: protective, preventive, promotive, and transformative strategies.[15] Protective measures focus on immediate relief from poverty and deprivation, preventive strategies aim to mitigate livelihood risks, promotive interventions seek to enhance income-earning opportunities, and transformative measures address structural inequalities and discrimination.[16]

The majority of research on the connection between migration and social protection has been on how migrants utilize migration as an informal coping mechanism or their access to social protection.[17] According to certain research, social protection may be used as a substitute for migration by giving people enough chances and security in their original areas.[18] Traditionally, the term 'social security' has been used to refer to measures protecting workers in formal labour markets, but it has also been applied more broadly to actions aimed at preventing deprivation

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[12] Ibid.
[13] Stephen Devereux and Rachel Sabates-Wheeler, 'Transformative Social Protection' (IDS Working Paper 232, Institute of Development Studies 2004) 9.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] International Labour Organization, World Social Protection Report 2021-2022 (ILO 2021); Vera Espinoza et al., 'Migrants and Access to Social Protection' (2021) Global Social Policy.
[18] Tina Schüring et al., 'Social Protection as an Alternative to Migration?' (2017) *International Social Security Review*.

and vulnerability.[19] Dreze and Sen distinguish between the protective and promotional aspects of social security, where protective measures prevent a decline in living standards, while promotional measures enhance normal living conditions and help individuals overcome persistent deprivation.[20]

Kannan further refines this concept by differentiating between 'Basic Social Security,' which ensures a minimum provision of essentials such as food, healthcare, education, and housing, and 'Contingent Social Security,' which provides support in cases of adversity such as illness, accidents, or old age.[21] Many institutions, such as the Asian Development Bank (ADB) and the World Bank, place a strong emphasis on contingency-related risks when defining social protection, especially in informal economies.[22] However, taking a more comprehensive view, the International Labour Organization (ILO) defines social protection as a collection of government initiatives intended to shield people from financial and social hardship brought on by the loss or reduction of income as a result of unforeseen circumstances like illness, childbirth, work-related injuries, unemployment, disability, old age, or the death of a breadwinner..[23]

The ILO also advocates for a multi-dimensional approach to social protection, considering access to essential goods and services, risk prevention and protection, and the promotion of opportunities to break cycles of poverty.[24] Furthermore, social protection is viewed as an evolving system that should extend across different life phases: before, during, and after working years.[25] The International Organisation of Employers (IOE) has introduced the concept of a 'social protection staircase,' where the foundation is the Social Protection Floor, with social insurance and voluntary insurance forming the subsequent steps.[26] This model underscores the importance of a structured and progressive approach to social protection, ensuring comprehensive coverage for all individuals.

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[19] Abram de Swaan, *In Care of the State: Health Care, Education and Welfare in Europe and the USA in the Modern Era* (Polity Press 1988); International Labour Office, *Social Security: A New Consensus* (ILO 2001).
[20] Jean Drèze and Amartya Sen, Hunger and Public Action (Oxford University Press 1991); Jean Drèze and Amartya Sen, India: Development and Participation (Oxford University Press 2002).
[21] K P Kannan, 'Social Security in a Globalizing World' (2004) Economic and Political Weekly 41(21) 2123.
[22] World Bank, Social Protection Strategy: From Safety Net to Springboard (World Bank 2001); Asian Development Bank, Social Protection Strategy (ADB 2001).
[23] International Labour Office, World Labour Report 2000: Income Security and Social Protection in a Changing World (ILO 2000) 11.
[24] Ibid.
[25] ILO, World Social Protection Report 2004-2005 (ILO 2004).
[26] International Organisation of Employers, 'Social Protection for Employers' (IOE 2011).

India's per capita national income increased from INR 86,647 to INR 172,000 between 2014–15 and 2022–23,[27] a twofold rise. With the poverty rate falling from 55% to around 16% over the last 15 years, the nation has also pulled almost 415 million people out of poverty. Even though India has demonstrated an impressive development trajectory, the most recent Economic Survey recognizes that strong social protection systems are essential to sustaining this progress, especially in view of the economic difficulties made worse by the epidemic. The urban poor and migrant labourers are essential components of the larger social protection system. Addressing their vulnerabilities is crucial for promoting inclusive growth and strengthening social cohesion because of their vulnerability to changes in the economy, unstable living situations, and limited access to official safety nets.[28] The importance of putting in place comprehensive social protection measures that are suited to the particular difficulties encountered by these vital demographic groups was highlighted by the COVID-19 epidemic.

3. Understanding the Importance and Risks faced by Urban Poor People and Migrant Workers

At least 10% of India's GDP comes from migrant labour, making them a vital component of the nation's economy (ILO).[29] Since around 40% of India's population is made up of internal migrants, many of whom live in cities, there is a close connection between migration and urban poverty.[30] Approximately one-third of India's population, or 65 million people, reside in metropolitan areas, with 14 million slum families across the country, according to the 2011 Census.[31] Urban poor and migrant communities are particularly vulnerable, despite the fact that urban centers are hubs for employment and economic growth.

About 8% (30 million) of urban dwellers are multidimensionally poor, according to the NITI Aayog Multidimensional Poverty Index 2021.[32] Urban poor people and migrant workers have challenges that are social, economic, and geographical in nature. They have little access to social security benefits and work mostly in informal jobs.[33] Inadequate housing, inconsistent access to sanitary facilities and clean drinking water, and expensive out-of-pocket medical

[27] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1945144&utm_source.
[28] https://www.ft.com/content/fa2315d0-4093-485c-b9d2-1cebef5fab10?
[29] International Labour Organization (ILO), India Labour Migration Update 2022 (ILO, 2022).
[30] Ibid
[31] Office of the Registrar General & Census Commissioner, *Census of India 2011* (Government of India, 2011).
[32] NITI Aayog, *National Multidimensional Poverty Index: Baseline Report 2021* (Government of India, 2021).
[33] ILO (n 1).

costs are further difficulties.[34] For women, Scheduled Castes, Scheduled Tribes, the elderly, and those with disabilities, among other marginalized groups within these communities, these difficulties are much more acute.[35]

During the pandemic-induced lockdown, which caused widespread flight from urban to rural regions owing to the lack of livelihood security in cities, the need for a social safety net for migratory workers and the urban poor became clear.[36] Realizing this need, the federal government and state governments have implemented a number of policies to supplement current welfare programs with projects created especially for these populations. For example, the One Nation-One Ration Card (ONORC) program guarantees food security for migratory workers by permitting ration mobility between states,[37] while the PM Street Vendor's Atam Nirbhar Nidhi (PM SVANidhi) program offers microcredit to urban street sellers.[38] Additionally, the government has launched a national portal to register unorganized sector workers,[39] and several state governments have undertaken efforts to register and map the skills of migrant workers. These initiatives signify a growing emphasis on understanding and addressing the specific needs of these populations.

4. *Identifying Gaps: Challenges in Accessing Social Protection*

A number of obstacles still stand in the way of migrant workers' and the urban poor's access to social protection benefits, even in the face of many welfare measures. As listed below, certain issues come up in the planning, implementation, and accessibility of welfare programs:

4.1. Inadequate Outreach and Awareness Systems

The existence of social security programs, their qualifying requirements, and the application procedures are frequently unknown to migrant workers and the urban poor. Because of their lower educational attainment and lack of digital literacy, women in these categories confront

[34] NITI Aayog (n 4).
[35] Ibid
[36] Ministry of Home Affairs, *Report on Migration During COVID-19* (Government of India, 2021).
[37] Ministry of Consumer Affairs, Food & Public Distribution, *One Nation-One Ration Card (ONORC) Scheme* (Government of India, 2021).
[38] Ministry of Housing & Urban Affairs, PM Street Vendor's Atam Nirbhar Nidhi (PM SVANidhi) Scheme (Government of India, 2020).
[39] Ministry of Labour & Employment, *E-Shram Portal for Unorganised Workers* (Government of India, 2021).

even more information hurdles. Their capacity to obtain benefits to which they are entitled is severely hampered by this ignorance.

While gram panchayats play a key role in information dissemination in rural areas, urban areas lack similarly structured institutional mechanisms. Moreover, local government bodies frequently have insufficient capacity to conduct outreach at the ward or slum level.

4.2. Inadequate Data for Targeted Policy Interventions

A fundamental requirement for extending social protection to migrant workers and the urban poor is access to accurate, updated, and gender-disaggregated data. While Census and NSSO surveys capture internal migration statistics, they fail to regularly document seasonal and circular migration trends, complicating the ability of urban local bodies to integrate migrant workers into development plans. The national portal launched in 2021 to register unorganized workers has registered around 291 million out of the intended 380 million beneficiaries by December 2023. However, it does not categorize migrant workers separately, making it difficult to identify and target them effectively. Some states have independently recorded migrant worker data, but the lack of integration between state, local, and central databases leads to data inconsistencies, undermining efficient policy implementation. The dynamic nature of migration further complicates real-time data maintenance, limiting the effectiveness of targeted welfare initiatives.

4.3. Documentation Barriers Impending Access to Welfare Schemes

Migrant workers frequently struggle with documentation requirements necessary for scheme registration. Issues such as spelling errors, discrepancies in linking Aadhaar with ration cards, and missing names on family documents often prevent access to government schemes. These challenges are particularly pronounced for women who move from their natal to marital homes and do not have their names updated on ration cards, restricting their eligibility for entitlements. While rural beneficiaries often receive assistance from PRI-level officials in rectifying documentation errors, similar formal support mechanisms are largely absent in urban areas beyond the efforts of NGOs.

4.4. Complex Application Procedures and Linguistic Barriers

The application processes for social protection schemes are often cumbersome, requiring multiple steps that urban poor and migrant workers find difficult to navigate due to limited digital literacy. Moreover, registration portals and forms are frequently available only in official languages, creating linguistic barriers for migrants from diverse cultural backgrounds.

4.5. Limited Digital Inclusion affecting Digital Transfer Benefits (DBT)

While Direct Benefit Transfer (DBT) mechanisms have improved transparency and efficiency in welfare distribution, challenges persist due to digital exclusion. A study by KPMG covering 7,200 migrant workers and urban poor found that only 55 percent of returnee migrant workers owned smartphones. Limited smartphone access prevents beneficiaries from utilizing online portals and mobile applications necessary for availing scheme benefits. Women, in particular, face greater disadvantages due to lower digital literacy and limited smartphone ownership, restricting their ability to receive and utilize cash transfers.

5. Bridging Gaps and Building a Future: Lessons from States and Global Best Practices

To enhance the coverage, adequacy, and effectiveness of social protection schemes for the urban poor and migrant workers, it is essential to address existing gaps in service delivery. Social protection systems must also evolve to respond to emerging risks and future needs, with a strong emphasis on gender inclusivity. Some key lessons from state and international experiences include:

5.1 Data Integration for Better Identification and Inclusion

Integrating multiple databases allows service providers to verify migrant workers' eligibility through any available identification. For example, during the COVID-19 pandemic, Uttar Pradesh cross-referenced Public Distribution System, MGNREGA, and labour department databases to extend free rations to previously unregistered construction workers. Similarly, Brazil has successfully implemented integrated social registries to enhance social protection.

5.2 Multi-Channel Service Delivery for Greater Accessibility

Some states have effectively leveraged existing infrastructure to enhance service delivery. During COVID-19, Andhra Pradesh utilized Village Volunteers for door-to-door cash benefit distribution under the National Social Assistance Programme. Jharkhand successfully implemented kiosk-based panchayat bank models to improve financial accessibility.

5.3 Establishing Local Support Centres

Dedicated local centers can improve awareness and provide assistance in accessing social protection schemes. The 'Migrant Resilience Collaborative' is one such initiative supporting last-mile welfare delivery. Similar centers should be staffed with personnel sensitized to the needs of migrant workers, particularly women, and offer multilingual assistance.

5.4 Expanding Urban Wage Employment Programs

States such as Odisha, Kerala, and Himachal Pradesh have introduced urban wage employment schemes. Expanding such initiatives can provide financial security while also improving urban infrastructure and service delivery. Odisha's model highlights the role of women's self-help groups and Slum Dwellers Associations in successful implementation.

5.5 Enhancing Digital and Financial Inclusion

Promoting digital and financial literacy among migrant workers and the urban poor is crucial. Efforts should include training workshops, multilingual learning platforms, and partnerships with financial institutions to improve banking access.

To build an inclusive social protection system, collaboration with international agencies, private sector stakeholders, and civil society organizations is necessary to bridge funding gaps and strengthen policy implementation. A multi-stakeholder approach is essential to creating a comprehensive and accessible welfare system for these vulnerable populations.

6. Conclusion

Migration in India is a complex socio-economic phenomenon shaped by factors such as economic disparities, environmental changes, and social conditions. While migration has contributed significantly to India's development, it has also exposed migrants, especially women, children, and marginalized communities to vulnerabilities such as lack of access to social security, healthcare, education, and decent working conditions. The existing legal and policy framework, including the Inter-State Migrant Workmen Act, the Unorganised Workers' Social Security Act, and various state-led initiatives, aims to provide safeguards. However, gaps in implementation, lack of portability of entitlements, and inadequate data on migrant populations continue to hinder effective social protection. The COVID-19 pandemic further underscored these challenges, demonstrating the urgent need for robust social security measures tailored to the needs of migrants. Moving forward, strengthening social protection for migrants requires a multi-pronged approach, integrating migrant-inclusive policies, improving portability of benefits, enhancing skill development programs, and leveraging technology for seamless access to welfare schemes. A rights-based framework ensuring dignity, security, and well-being for migrants is crucial to achieving India's sustainable development goals and inclusive growth. A coordinated effort among policymakers, civil society, and local governance bodies is essential to create a migration-sensitive social protection system that upholds equity, justice, and human rights for all.

Swipe Right to Work: The Algorithmic Grip on Gig Labour

~Dimpal Khatri & Dhairya Jain

Abstract:

Current legislative frameworks continue to view the gig economy as merely an expansion of conventional employment patterns, despite the fact that it is the greatest revolutionary change in labour relations since the industrial revolution. A legal dilemma has emerged as a result of this misalignment: gig workers are considered independent contractors despite their economic dependence on platforms. Since the algorithmic structure of gig employment transfers decision-making authority from human employers to opaque, data-driven algorithms, legal frameworks fail to address this fundamental issue. Therefore, worker regulations that were meant to deal with human-managed jobs can't fix algorithmic exploitation. Automated systems manage gig labour, unlike traditional employment relationships; they assign tasks, decide pay, and deactivate people without explanation. This study presents the idea of "Algorithmic Feudalism"—a situation in which platforms bypass legal constraints and operate as digital landlords, controlling a worker's access to employment to an almost absolute degree. Proprietary algorithms regulate pricing, job allocation, and dispute resolution, leaving workers with little influence over the matter. Platforms use surge pricing and incentive manipulation to increase labour extraction while transferring financial risk onto workers, a practice made possible by black-box algorithms that allow economic discrimination. Shadow bans, algorithmic downgrades, and deactivation without recourse are examples of digital exclusion techniques that form an unseen control structure in which employees are unable to dispute unjust treatment. Workers have no legal options when AI algorithms decide their job status, contrary to traditional labour regulations that presume human decision-making in employment disputes. Despite being the real boss, *algorithmic control is never controlled nor held to account. A new worker class known as "digital serfs" has emerged as a result of this power imbalance, yet they are unable to negotiate better working conditions for themselves. Algorithmic decision-making may slash a worker's wages in half without explanation. There is no algorithmic due process when AI systems terminate employees without human intervention. There are no systems in place for gig workers to band together and demand better working conditions as they are not considered employees but rather independent contractors. This article argues that a new strategy is required, one that acknowledges AI as an employer and governs it appropriately, rather than just modifying existing job categories. The reforms in this regard could include a Gig Economy's Algorithmic Accountability Act which would mandate that platforms be open and honest about the factors that go into assigning tasks, determining wages, and deactivating workers. The right of gig workers to challenge algorithmic judgements, demand transparency on pay changes, and seek justice for automated discrimination is outlined in a digital labour rights charter. In order to determine a platform's competitiveness in the market, a "Fairwork Score" must be established. This score will be based on the platform's algorithmic transparency, worker rights, and income stability. Gig workers should be able to legally engage in algorithmic collective bargaining with platforms to challenge discriminatory salary deductions and employment limits based on data insights.*

Key Words: Gig workers, Employment Laws, Algorithms, Feudalism, Digital Serfs

1. Background and Overview

Employment relations have been radically rethought in the last 20 years due to the digital revolution that has changed the nature of work. A less rigid and more decentralised structure has replaced the conventional employer-employee relationship due to the rise of technology that allow for remote employment and on-demand services. Among the most striking transformations to the nature of work since the industrial revolution is the rise of the "gig economy," which is defined by temporary work arrangements, independent contracts, and projects rather than jobs. Although this new way of working has the ability to provide more freedom and room for entrepreneurs, it has also brought up significant problems, the most significant of which is the legislative and legal gap between traditional labour rules and the reality of digital employment.

With over 7.7 million gig workers in India [1]and more than 1.5 billion globally[2], platform-based work is no longer an alternative—it is the new normal. Yet, despite their economic significance, gig workers remain in a legal Gray zone, lacking basic employment rights while being controlled by algorithms that determine their earnings, availability, and even termination. Imagine waking up each day uncertain whether you will earn enough to meet your financial obligations, not due to a lack of skill or effort, but because an opaque algorithm determines your access to work and compensation. For gig workers, this uncertainty is a persistent reality, despite their substantial contributions to the economy.

While the gig economy may indeed provide workers with more options for how and when they work, it also puts them in a more precarious position than ever before. Legally classifying gig workers as independent contractors ignores their financial reliance on the platforms they work for, which is the root of the problem.

2. How the "Gig Economy" Grew Popular

A new era in labour organisation and delivery has begun with the rise of digital platforms like Upwork, Uber, and Swiggy. Gig labour differs from traditional full-time jobs in that it is performed as needed, relies heavily on online and mobile technology, and is managed by algorithms. Almost every facet of freelance labour is now controlled by algorithms. This includes price, job distribution, performance reviews, and even firing.[3] Workers are ensnared in a system where they are expected to comply with choices made by automated algorithms without any room for redress or discussion, while platforms continue to play the role of digital landlords.

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

[2]Study team, "Working Without Borders: The Promise and Peril of Online Gig Work" book-chapter 2 https://documents1.worldbank.org/curated/en/099071923113511279/pdf/P17730205fbe2002709043043e4d4f7efee.pdf/ accessed 5 March 2025

[3]Zhang L and others, 'Gig Worker's Perceived Algorithmic Management, Stress Appraisal, and Destructive Deviant Behavior' (2023) PLOS ONE https://doi.org/10.1371/journal.pone.0294074 accessed 5 March 2025

This rapid expansion has transformed labour relations by shifting control from human employers to algorithmic systems. This shift has given rise to algorithmic feudalism, a system where digital platforms function as modern-day lords, while gig workers—lacking job security or bargaining power—are reduced to digital serfs. These workers are subjected to opaque, data-driven control mechanisms that determine their earnings, access to work, and even their continued participation in the labour market.

Gig platforms often advertise attractive hourly wages, promising flexibility and financial independence. However, studies have shown that actual earnings fall far below these projections. In reality, factors such as driver availability, time of day, demand density, and algorithm-driven pricing strategies create wage instability. Research indicates that many gig workers earn as little as $9–$11 per hour after expenses[4], despite being promised significantly higher rates.

This transformation is more than just a technical one; it represents a major redistribution of power in the employment market. Gig workers are susceptible to exploitation since platforms promote autonomy and flexibility while also creating a structural imbalance. Lack of social security, irregular pay, and the ability to negotiate collectively are common problems for workers.

3. Problem Statement

In conventional employment settings, a dissatisfied employee facing issues such as job security, payroll discrepancies, or inadequate health benefits can knock on their manager's door to seek redress. This interaction enables workers to voice their concerns, engage in dialogue and negotiation, and uphold a degree of accountability. However, gig workers operate in a completely different framework, where their livelihood is dictated by an impersonal algorithm rather than a human boss. Task assignments, wage calculations, and even terminations are governed by opaque digital systems, offering no space for discussions or appeal.[5] Owing to this absence of human oversight, employees lose their sense of autonomy and are reduced to insignificant data points in an automated system that prioritizes efficiency over fairness.

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[4]Zipperer R, BB, 'National Survey of Gig Workers Paints a Picture of Poor Working Conditions, Low Pay' (Economic Policy Institute, 2021) https://www.epi.org/publication/gig-worker-survey/ accessed 5 March 2025

[5]Jarrahi MH and Sutherland W, 'Algorithmic Management and Algorithmic Competencies: Understanding and Appropriating Algorithms in Gig Work' (2019) in Information in Contemporary Society: 14th International Conference, iConference 2019, Washington, DC, USA, 2019, Proceedings Lecture Notes in Computer Science, vol 11420, pp 578-589 https://doi.org/10.1007/978-3-030-15742-5_55/ accessed 5 March 2025

Legislative frameworks in many countries, including India, still see regular employment and the gig economy as complementary rather than diametrically opposed.[6] Thus, gig workers are not entitled to minimum wage, social security, paid leave, or the ability to form a union as they are formally considered independent contractors. The fundamental character of gig employment has changed, but this legal misclassification has remained. Nowadays, sophisticated computer algorithms rather than human supervisors make decisions about almost all aspects of the job.

Herein lays the meat of the matter: current labour legislation, draughted to deal with human-managed employment, are woefully unable to deal with the complexities of algorithmic exploitation.[7] There is a continued power imbalance since automated systems now deactivate personnel, establish rates, and allocate jobs with little to no accountability or transparency.[8]The "black box" refers to the hidden nature of these technologies, which makes it very difficult, if not impossible, for employees to question choices that directly impact their jobs.[9] One way to look at this is as "Algorithmic Feudalism," in which platforms essentially play the role of digital landlords, controlling a worker's ability to find labour without imposing any legal restrictions on them.

4. Research Questions

In light of these difficulties, the purpose of this article is to propose a new model of regulation that takes into account the specifics of gig employment. These are the main aims of the research:

- To investigate how inadequate existing labour regulations are for dealing with algorithmic management of gig workers.
- Aiming to present and develop the theory of "Algorithmic Feudalism" to explain the interplay of power in digital activity.

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[6] The Legal Status of Gig Workers in India' (Aarambh Legal, 2023) https://aarambhlegal.com/the-legal-status-of-gig-workers-in-india/ accessed 5 March 2025

[7]The Unsettled Status of Gig Workers in India: Towards a Comprehensive Legal Framework' (Centre for Labour Laws, 2024) https://cll.nliu.ac.in/the-unsettled-status-of-gig-workers-in-india-towards-a-comprehensive-legal-framework/ accessed 5 March 2025

[8]The Two Faces of Algorithmic Management in the Gig Economy' (2023) 56 Proceedings of the Annual Hawaii International Conference on System Sciences 642

[9]Delivery apps urged to lift lid on 'black-box algorithms' affecting UK couriers' (The Guardian, 20 January 2025) https://www.theguardian.com/business/2025/jan/20/food-delivery-apps-ubereats-deliveroo-justeat-urged-to-reveal-how-algorithms-affect-uk-courierss-work accessed 5 March 2025

- With the goal of discovering the most effective methods for controlling algorithmic control while safeguarding employee rights, we will examine legislative approaches and case studies from throughout the world, including the EU, UK and China.
- A digital labour rights charter, an algorithmic accountability law for the gig economy, and a Fairwork score system are all part of the ambitious agenda for policy changes that we want to present to India.
- To investigate methods of algorithmic collective bargaining that might enable digital-age freelance workers to secure improved working conditions.

The following research questions served as the basis for the article:

- The reality of algorithmic management in the gig economy is how current legal frameworks fail to capture it.
- How can the idea of algorithmic feudalism shed light on the imbalance of power between digital platforms and the people who work for them?
- How can we learn from other countries' regulatory models to create a fairer legal system in India?
- How can we regulate gig employment in a way that is open, accountable, and fair?
- What concrete steps may be taken to achieve this goal?

5. The Study's Importance

There are a number of reasons why this study is both relevant and important. One important thing it does is fill a need in the literature and policy discussions on how to control gig employment. There is an immediate need to re-evaluate conventional employment models and adjust regulatory frameworks in light of the growing dominance of digital platforms in global labour markets.

Another important takeaway from this research is the new perspective it offers on the exploitative characteristics of gig work—the idea of Algorithmic Feudalism. It calls attention to the structural injustices that support the status quo and disproves the conventional wisdom that gig labour is just a more flexible alternative to traditional 9 to 5.

Third, there are real-world takeaways for the Indian setting from comparing and contrasting overseas case studies. This study might help shape legislative changes that protect workers' rights and encourage innovation in India's rapidly growing digital sector, which employs a large number of gig workers.

Last but not least, the report suggests a number of policy changes that might help close the gap between legal safeguards and economic reality. These include more openness about algorithmic decisions and the creation of a digital labour rights charter. Not only would these suggestions try to make things better for India's gig workers, but they would also add to the worldwide discussion on how jobs would change in the digital age.

6. A Foundation in Theory

Fundamental changes to the management of human resources have resulted from the digital revolution's impact on the nature of work. Systems where labour is organised via complex technical processes are gradually replacing traditional employment models, which are marked by clearly defined employer-employee relationships and human-mediated monitoring. This change is best shown by digital platforms that use automated procedures to assign jobs, determine compensation, and check performance, such Upwork, Uber, and Swiggy. Not only has this new way of working dispersed conventional control mechanisms, but it has also broken the workforce into smaller, more autonomous contracts. Work possibilities and remuneration structures are constantly adjusted in real time in this data-driven, ever-changing world. That's why labour management frameworks need to be re-evaluated to account for these new realities.

6.1. The Phenomenon of Algorithmic Feudalism

We term the fundamental shift in power dynamics that is occurring as a result of this digital revolution as Algorithmic Feudalism. By mimicking feudal systems of yesteryear, digital platforms use opaque, data-driven algorithms to exert near-absolute control over its employees, thereby making them digital landlords.[10] Despite being formally recognised as independent contractors, gig workers are economically reliant on these platforms, which makes them vulnerable in a way that is reminiscent of mediaeval serfs.[11] An imbalance of power is maintained because platforms unilaterally define the parameters of participation, sometimes with little accountability.[12] Workers are still mostly in the dark about the decision-making

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[10]James Muldoon and Paul Raekstad, 'Algorithmic Domination in the Gig Economy' (2022) 20 European Journal of Social Theory 1

[11] id

[12]Rosenblat A, 'The Truth About How Uber's App Manages Drivers' (Harvard Business Review, 2016) https://hbr.org/2016/04/the-truth-about-how-ubers-app-manages-drivers accessed 5 March 2025 accessed 5 March 2025

processes that affect them, including job assignment, pay calculation, and deactivation, because of the opaque nature of algorithmic decision-making. This means that workers' economic security is undermined by the systems that control their job, even while gig labour seems to provide some degree of liberty.

6.2. The Impact of Black-Box Algorithms on Gig Work

The idea of black box algorithms is fundamental to how this digital control works. The algorithms behind automated decision-making in the gig economy are kept secret from both employees and outside authorities. Because these systems are proprietary, no one can learn the ins and outs of the decision-making procedures that impact workers' position and pay. Tasks like labour allocation, performance appraisal, and salary setting have been fully automated, adding to this opacity. Because these procedures are not overseen by humans, prejudices and mistakes may fester unchecked. Since algorithmic outputs are often affected by biassed data sets and incorrect procedures, empirical evidence imply that these opaque systems may potentially include discriminatory behaviours. When workers' lives are negatively affected by choices made by these opaque processes, they do not have any real remedy in this setting.

What these advances mean for workers' rights is very significant. The foundation of traditional labour safeguards like social security, minimum wage guarantees, and the right to collective bargaining is open and verifiable employment arrangements mediated by humans. The trend towards algorithmically controlled workplaces, however, casts doubt on these long-held beliefs. There are few options for gig workers seeking redress or challenging judgements made via algorithmic mediation because of the weakening of procedural protections, especially the lack of due process. There is an immediate need for new legal frameworks that deal with the intricacies of digital employment, as this regulatory vacuum highlights. In order to account for the facts of economic dependence under digital platforms, such paradigms must rethink the employer-employee relationship and place an emphasis on algorithmic openness and responsibility.

7. Legal Misclassification and Algorithmic Control in the Gig Economy.

Despite the continued growth of the gig economy, existing legal frameworks have struggled to keep pace with the challenges posed by digital platforms. Gig workers have been predominantly categorised as independent contractors, which has a significant impact on their legal rights and protections, such as access to benefits, overtime compensation, and the minimum wage, in contrast to regular employees. This misclassification deprives gig workers of these crucial protections, although the platform that governs them exerts the level of control that mirrors the traditional employment settings and yet the law remains unresponsive to their plight.

The widespread use of algorithmic management techniques, reduces worker autonomy, further worsens this problem. Algorithmic control can be understood through four key characteristics: constant tracking of workers' behaviour through data; continuous performance evaluation based on the gathered data; the automatic implementation of decisions with little or no human intervention; and the fact that workers interact primarily with a system rather than with human supervisors.[13]

These features collectively contribute to the emergence of a new worker class known as "digital serfs." Gig workers, despite their substantial contributions, find themselves trapped in a system where every aspect of their work is controlled by an algorithmic based digital platform. Employees are given little or no leverage to negotiate on the persistent issue, effectively depriving them of the bargaining power that traditional employees enjoy.Gig workers are left with little to no legal recourse when they are subject to unfair, opaque decisions made by algorithmic management systems. Ultimately gig workers are left vulnerable by the dual problems of legal misclassification and unrestricted algorithmic control, highlighting the urgent need for extensive regulatory reform.

7.1. The Inadequacy of Existing Legal Frameworks

Traditional labour laws were conceived in an era when human managers had direct control over the employees' ensuring mechanisms for collective bargaining, redress, and transparent decision-making. However, these frameworks have not evolved to take into account the realities of platform-based gig economy evolving rapidly in the current landscape, where digital platforms and AI-driven algorithms have become the final authority to decide upon the working conditions. The Code of Social Security 2020[14] in India, for instance, includes provisions

[13]Ankit Kapoor and Karthik Rai, "Gig Economy: A Tale of Algorithmic Control and Privacy Invasion" [2023]
[14]Code of Social Security 2020 (No 36 of 2020)

intended to protect gig workers, yet these safeguards are often rendered ineffective when control is exercised by an opaque algorithm acting rather than a human supervisor.

In the prevailing context, the algorithm functions as the ultimate "boss," making unilateral decisions on task allocation, wage adjustments, and even terminations without any accountability or clear recourse for the gig worker. Despite its crucial role, the algorithm remains beyond the reach of current legal standards. There is no statutory obligation for these digital platforms to disclose the criteria behind their automated decisions, nor is there any legal framework that treats the algorithm as an employer subject to labour laws. As a result, gig workers often referred to as independent contractors are denied basic rights including overtime compensation, minimum wage guarantees, and the right to challenge unfair practices.

To address this evident legal disparity, job classifications must be reconsidered in order to take the algorithm into consideration as a crucial component of the employment mechanism. New legislation should acknowledge the algorithmic decision-making process as being equivalent to a human management function, thereby providing gig workers, the ability to challenge the algorithm's decisions while retaining the safeguards that are usually provided to traditional employees.

8. Comparative Analysis: Global Regulatory Approaches and Case Studies

Legislative concerns regarding algorithmic exploitation and digital labour rights among workers, compelled governments all around the world to begin looking into potential legal frameworks, as the gig economy continues to expand. Gig workers are vulnerable to this algorithm based digital platforms that lack transparency and are not subject to any checks and balances due to the unavailability of the statutory framework. While some jurisdictions have implemented proactive legal mechanisms to address algorithmic decision-making in employment, others lag behind, leaving gig workers vulnerable to opaque and unchecked AI systems. This chapter provides a comparative analysis of different legal approaches, focusing on the European Union's GDPR and AI Act, China's Algorithmic Regulations and various case studies.

8.1. The European Union’s Approach: GDPR and the AI Act

The General Data Protection Regulation [15](GDPR) and the Artificial Intelligence (AI) Act represent two significant regulatory efforts by the European Union (EU) to tackle algorithmic control and ensure accountability in AI-driven employment.

a) The GDPR, enacted in 2018, is a landmark privacy law that also has implications for algorithmic management. **Article 22** of the GDPR explicitly addresses automated decision-making, granting individuals the right to:

- Challenge AI-driven employment decisions, including task allocation and wage calculations.
- Request human intervention when affected by a fully automated system.
- Access an explanation regarding how algorithmic decisions impact them.

Despite these provisions, the GDPR has limitations when applied to gig work. It was primarily designed as a data protection law, not a labour rights framework. The focus is on ensuring individuals have control over their personal data, rather than addressing wage transparency, job security, or collective bargaining rights for gig workers.

b) The AI Act: Addressing Algorithmic Bias in Employment

The EU AI Act [16](2024) complements the GDPR by categorizing employment-related AI systems as "high-risk". It aims to:

- Ensure transparency in algorithmic decision-making by requiring companies to disclose AI-based employment practices.
- Reduce algorithmic discrimination by enforcing bias-monitoring mechanisms.
- Introduce strict compliance measures, including AI audits, to prevent exploitative labour practices.

However, like the GDPR, the AI Act still faces implementation challenges. Its effectiveness depends on how rigorously the EU enforces AI audits in gig work. The legislation remains insufficient in granting gig workers collective bargaining rights, leaving them with little recourse to challenge AI-driven decisions.

[15]Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L 119/1

[16]Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 2024 laying down harmonized rules on artificial intelligence (Artificial Intelligence Act) [2024] https://artificialintelligenceact.eu/wp-content/uploads/2024/01/AI-Act-FullText.pdf/ accessed 5 March 2025

8.2. China's Regulatory Model: Transparency and State Oversight

China has taken a different approach to AI regulation, focusing on government oversight and platform transparency. The 2022 Regulations on the Administration of Internet Information Service Recommendation Algorithms mandate that:

- Platforms must disclose how AI systems allocate work and determine wages.
- Workers have the right to request explanations regarding employment decisions.
- AI-driven employment decisions must align with fair labour standards.

A key provision in China's regulations is Article 20[17], which ensures that algorithms do not jeopardize workers' wages or rights. The government has also mandated that gig platforms like Meituan (China's food delivery company) and Didi (China's ride-hailing company) reform their AI models to prioritize worker well-being.

As compared to the method that the European Union undertakes, which is based on individual rights, China's model places an emphasis on direct state action, which requires businesses to make their AI decision-making processes accessible to the authorities. On the other hand, because the state controls the governance of artificial intelligence, China's approach does not include any worker-led bargaining tools. Additionally, it does not provide legal mechanisms for workers to form labour unions or demand greater wages, despite the fact that it does enforce transparency.

8.3. United Kingdom Case Study: Uber BV v Aslam [18](2021)

The legal classification of gig workers has been a subject of intense debate across multiple jurisdictions, with Uber at the centre of some of the most significant legal battles. Courts around the world have examined whether Uber drivers should be treated as independent contractors or workers/employees, a determination that carries critical implications for their rights, benefits, and protections.

- Background of the case

The claimants, Yaseen Aslam and James Farrer, were Uber drivers who brought a claim before the Employment Tribunal in 2016, arguing that despite not having a traditional contract of employment. Uber exercised significant control over their work. They asserted that they

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[17]Administrative Provisions on Algorithm Recommendation for Internet Information Services https://appinchina.co/government-documents/administrative-provisions-on-algorithm-recommendation-for-internet-information-services accessed 5 March 2025

[18]Uber BV v Aslam [2021] UKSC 5, [2021] 1 WLR 457.2021] UKSC 5

qualified as “workers” under Section 230(3)(b) of the UK Employment Rights Act 1996[19], entitling them to minimum wage protections, paid holidays, and other labor rights. Uber, however, contended that drivers were independent contractors operating under contracts with passengers, with Uber merely acting as an intermediary.

- Legal Issues Considered

The court examined whether Uber drivers met the criteria of “workers” and, if so, during what periods they could be considered as working. The legal determination rested on whether Uber exerted control comparable to that of a traditional employer.

- Key Findings

The Supreme Court upheld the rulings of the Employment Tribunal, the Employment Appeal Tribunal, and the Court of Appeal, concluding that Uber drivers were indeed “workers” under the law. The key factors leading to this decision included:

- Uber fixes the fare and controls pricing, leaving drivers no discretion to set their own rates.
- Uber determines contract terms unilaterally, limiting negotiation between drivers and passengers.
- Uber exercises control over drivers' work, including monitoring their routes and penalizing deviations.
- Drivers bear financial risk for negative customer feedback, reinforcing Uber’s control over their conduct.
- Uber minimizes driver-passenger communication, preventing direct business relationships.

The court came to the conclusion that Uber had built its platform in such a way that it could exert a large amount of influence over drivers. Furthermore, the court found that Uber had treated drivers as a standardised workforce that provided services that benefited Uber rather than as independent entrepreneurs.

Here is a table that compares several regulatory frameworks across different countries. It shows how each model handles algorithmic transparency, worker safeguards, enforcement methods, and overall efficacy.

Table 1: Comparative Analysis of Gig Economy Regulations

[19]UK Employment Rights Act 1996, s 230(3)(b)

Jurisdiction	Transparency of Algorithmic Decisions	Worker Protections	Enforcement Mechanisms	Overall Effectiveness
European Union (GDPR & AI Act, 2024)	Platforms must disclose AI-based employment decisions. Workers can request explanations for algorithmic decisions. Transparency rules apply more to personal data than wage setting.	AI-driven hiring & firing decisions are classified as "high-risk" and must be monitored. Right to challenge algorithmic decisions. No direct collective bargaining rights.	Companies must conduct AI audits & disclose practices. No specific penalties for non-compliance in gig work.	Strong on transparency but weak on direct worker empowerment. Still lacks enforceable labour rights for gig workers.
China (Algorithmic Regulations, 2022)	Platforms must disclose algorithmic wage-setting mechanisms to regulators. Workers have the right to request explanations for job allocation & pay changes.	Government-mandated wage protections. AI decisions must comply with fair labour standards. No unionization or worker-led bargaining tools.	Government actively monitors and penalizes platforms. Heavy state oversight of algorithmic labour platforms. No independent worker advocacy allowed.	Strongest enforcement but lacks worker-led protections. Transparency is government-facing, not worker-facing.

United Kingdom (Uber BV v Aslam, 2021)	No explicit law on algorithmic transparency. Court rulings have only classified gig workers as "workers" but don't mandate AI disclosure.	Court ruled Uber drivers are "workers" entitled to minimum wage & benefits. Recognized gig workers' employment rights under Employment Rights Act, 1996.	Legal recourse through courts (Uber decision sets a precedent). No regulatory body overseeing AI-driven employment decisions.	Strong case law protection for gig workers. No general legislation on AI transparency in gig work.
India (Code on Social Security, 2020 & Karnataka Bill, 2024)	No national AI transparency law yet. Karnataka Bill mandates that platforms disclose task allocation & wage adjustment criteria upon worker request.	Gig workers classified separately, not as employees. No minimum wage guarantees, social security, or collective bargaining rights nationally. Karnataka Bill provides limited protections.	No national enforcement mechanism for algorithmic labour protections. No penalties for platforms engaging in algorithmic bias or unfair deactivations.	India lags behind in worker rights & transparency. Karnataka Bill is a promising step but needs nationwide expansion.

9. Lessons for India: Evaluating and Reforming the Regulatory Framework

As the gig economy continues to reshape global labour markets, India has to deal with an urgent need to re-evaluate and reform its legislative structure in order to ensure that gig workers are treated fairly and are protected from arbitrary judgements of the algorithm based digital platforms. Despite the fact that Indian labour laws have progressed to provide recognition for gig employment in accordance with the Code on Social Security, 2020, these rules continue to be inadequate in addressing the challenges of algorithmic control. Drawing lessons from the European Union's AI Act, China's Algorithmic Regulations, and key legal battles like Uber BV v. Aslam in the UK, India can develop a comprehensive regulatory framework that balances platform flexibility with worker protections.

9.1. India's Code on Social Security, 2020. [20]

The code marks a significant step by acknowledging gig and platform workers as distinct categories within its labour framework. However, several critical issues persist: Firstly, the Code defines a "gig worker" as someone engaged in work outside the traditional employer-employee relationship. This classification excludes gig workers from being recognized as "employees" or "workers," thereby denying them access to fundamental labour rights such as minimum wage, occupational safety, and collective bargaining. Secondly, the current legislation does not address the role of algorithms in managing gig workers, including key aspects like wage determination, task assignments, or deactivations. This leaves workers susceptible to opaque and potentially unfair automated decision-making processes.

Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024

A novel step towards regulating digital platform-based algorithmic decision-making has emerged in Karnataka with the introduction of the Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024[21]. This legislation mandates that aggregators provide transparency by disclosing the underlying criteria and functioning of their algorithms when requested by workers. By doing so, it aims to empower gig workers with a right to know how crucial employment decisions such as task allocation, wage adjustments, and account deactivations are made. This effort represents a significant move by the government to address the opacity inherent in algorithmic management systems, thereby laying the groundwork for a more accountable and equitable framework governing digital labour platforms. Such initiatives

[20]Code of Social Security 2020 (No 36 of 2020)

[21]The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024 https://ksuwssb.karnataka.gov.in/storage/pdf-files/draftnotification.pdf accessed 5 March 2025

are crucial for safeguarding workers' rights in an increasingly digitalized economy, where the traditional employer-employee relationship is rapidly being replaced by algorithm-driven oversight.

9.2. The Way Forward

The rapid expansion of the gig economy has exposed critical gaps in labour regulations, particularly in addressing algorithmic decision-making and worker protections. While platforms promise flexibility and autonomy, the opaque nature of AI-driven management systems has led to widespread concerns regarding wage instability, job security, and legal accountability. India, like many other jurisdictions, is at a crossroads—should it regulate the gig economy using traditional employment laws, or should it develop a new legal paradigm that recognizes the unique challenges of algorithmic labour management? The way forward lies in a comprehensive and balanced regulatory framework that ensures transparency, fairness, and accountability while fostering the growth of digital labour markets. This section outlines a three-pronged approach for the key reforms India must undertake, drawing lessons from global best practices and emerging legislative efforts at home.

9.3. Reforming the Legal Framework: Recognizing Algorithmic Control

One of the fundamental issues with current labour laws is their failure to recognize the role of algorithms in employment decisions. In the traditional employment model, decisions regarding hiring, wage adjustments, and terminations are made by human employers, making them accountable under labour laws. However, in the gig economy, these decisions are increasingly made by AI-driven systems, which operate outside legal scrutiny. This regulatory blind spot has allowed platforms to exercise employer-like control while avoiding employer responsibilities.

To address this, India must introduce a Gig Economy Algorithmic Accountability Act that explicitly classifies AI-driven employment decisions as an employer function. This law should mandate that platforms disclose the logic behind job assignments, pay fluctuations, and account deactivations, ensuring that gig workers have the ability to challenge unfair algorithmic decisions. A crucial element of this reform is the amendment of the Code on Social Security, 2020, which currently classifies gig workers separately from traditional employees but fails to grant them meaningful rights. Drawing inspiration from the UK Supreme Court’s ruling in

Uber BV v Aslam, which reclassified Uber drivers as "workers" entitled to minimum wage and benefits, India must create a new employment category for gig workers that recognizes their economic dependence on platforms while preserving their work flexibility.

The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024 is a progressive step toward gig worker protections, as it mandates platforms to disclose algorithmic decision-making processes upon worker request. However, to ensure uniform protection across the country, similar legislation must be enacted at the national level. A federal regulatory body should oversee platform compliance and establish penalties for algorithmic discrimination, unjust deactivations, and wage manipulation.

9.4. Ensuring Transparency and Due Process in Algorithmic Decision-Making

Algorithmic opacity is a defining feature of the gig economy, as workers have little insight into how AI systems determine their wages, job availability, and account status. Unlike traditional employment models where workers can engage in dialogue with employers, gig workers are left at the mercy of black-box algorithms that make unilateral and often arbitrary decisions. To counter algorithmic exploitation, India must mandate greater transparency in AI-driven employment decisions and establish due process mechanisms for workers to challenge unfair actions.

A potential solution is the creation of a Fairwork Score system, which evaluates gig platforms based on algorithmic transparency, worker protections, and wage stability. This score would hold platforms accountable by publicly ranking them on fair employment practices, similar to how China enforces AI regulations on gig platforms. Platforms with low Fairwork Scores should be subject to regulatory scrutiny, financial penalties, or even platform restrictions if they fail to comply with worker protection laws.

Additionally, gig workers must have a legal right to challenge algorithmic decisions, particularly regarding wage deductions, deactivations, and job denials. This can be achieved by establishing a Digital Labour Rights Tribunal, modelled after data protection authorities under the EU's GDPR, where workers can file complaints and demand explanations for algorithmic actions. Furthermore, mandatory AI audits should be introduced to monitor biases in hiring, pay distribution, and work allocation, ensuring that platforms cannot exploit algorithmic loopholes to discriminate against certain worker groups.

9.5. Empowering Gig Workers: Enabling Collective Bargaining in the Digital Age

One of the most significant shortcomings of India's current labour laws is the exclusion of gig workers from collective bargaining rights. Since gig workers are classified as independent contractors, they lack the ability to unionize and negotiate employment terms. This leaves them vulnerable to unilateral wage reductions, sudden deactivations, and exploitative incentive structures that platforms impose without consultation. To correct this imbalance, India must recognize algorithmic collective bargaining, where gig workers can negotiate with platforms over AI-driven employment decisions, wage calculations, and work conditions.

Spain's Rider Law (2021) provides a valuable precedent, as it grants gig workers the right to unionize and mandates transparency in algorithmic management practices. A similar framework in India would allow gig workers to form platform-specific worker councils that could engage in negotiations with digital platforms, ensuring that wage deductions and incentive structures are not manipulated unfairly.

Financial constraints often prevent gig workers from challenging platform decisions legally. To address this, a Gig Workers' Legal Aid Fund should be created, supported through platform contributions, to provide workers with free legal assistance in disputes over algorithmic employment decisions. Furthermore, social security contributions from platforms must be mandatorily enforced, ensuring that gig workers have access to pension schemes, healthcare benefits, and income stability measures.

10. Conclusion

Under the gig economy, opaque, data-driven algorithms control wages, work allocation, even job security; human employers no longer have control over these factors. Platforms now essentially serve as de facto employers without assuming any of the responsibilities often associated with worker protections and labour rights, which has resulted in an unbridled power disparity even as digital workforce has presented new economic opportunities. Because algorithmic management has grown so popular and resulted in an unparalleled degree of economic reliance without legal acknowledgement, millions of gig workers are caught in a system where they take on the risks of employment but lack numerous advantages.

When considering the history of gig employment, this paper reveals how inadequate present legal systems are for handling algorithmic labour management. Conventional labour policies were created with the presumption that businesses would make open, accountable decisions and that worker would have ways to oppose unfair treatment. Conversely, in this digital age, platforms have replaced human managers with AI algorithms functioning independently, making decisions without human scrutiny, explanation, or accountability. This study suggests that a phenomena known as "Algorithmic Feudalism" has evolved out of this. Under this arrangement, workers are still regarded as independent contractors and have no rights to collective bargaining, social security, or legal recourse; platforms almost all power over where and how people may find work.

Though the European Union, China, the United Kingdom, and Spain have all learnt a lot, comparing regulatory regimes throughout the globe reveals that none of any one area has worked out how to solve this issue totally. Gig workers still lack sufficient direct job rights even if under the EU's General Data Protection Regulation and the AI Act substantial progress towards algorithmic transparency is achieved. Among the most interventionist models, China's Algorithmic Regulations mandate platforms to disclose whether or not artificial intelligence influences employment decisions; nonetheless, these rules exclude any means for worker-led negotiations. Although algorithmic management is still mostly uncontrolled, the Uber BV v. Aslam ruling in the UK has changed the way gig workers are classified. Spain's Rider Law, which lets gig workers join together and negotiate employment and pay plans depending on algorithms, shows potential as one unionisation strategy.

India's future calls for a strong, multifarious approach. The Code on Social Security, 2020 aimed to incorporate gig workers in the legal system, but it neglected platform responsibility, therefore putting workers in a legal state of ambiguity even as it tried to include gig workers in the legal system. The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024—which needs algorithmic transparency—has to be enlarged into a national framework if we are to give uniform protections across industries. A Gig Economy Algorithmic Accountability Act must be developed to make platforms expose the elements utilised for job allocation, wage modifications, and termination as well as to honour AI-driven employment decisions as an employer function. Due process procedures including the right to challenge algorithmic results and demand human oversight should be written in law.

Just as crucial for acquiring legal validity for structural protections is institutionalising them. A Fairwork Score system would hold platforms accountable by publicly ranking systems on worker protections, openness, and justice. Mandatory AI audits help to actively monitor algorithmic bias in order to prevent prejudice in pay cuts, dismissals, and hiring decisions.

Platforms should help to ensure gig workers have economic security, healthcare, and retirement benefits.

Change mostly depends on giving gig workers greater agency. Gig workers' classification as "independent contractors" has been weaponised to prevent them from forming unions, therefore leaving them scattered and powerless against algorithmic rules imposed by platforms. Algorithical collective bargaining should let gig workers in India establish their own pay rates, working conditions, and grievance policies. Spain's Rider regulation, which lets platform workers organise unions, is a wonderful illustration of a regulation allowing individuals a role in how algorithms impact their employment.

Traditional 9 to 5 employment will go; the gig economy is here to stay. Without control, however, it might turn into a digital slavery system wherein workers lose agency, are prone to covert AI-driven abuse, and cannot defend what is rightly theirs. Although legislators have to determine whether or not to control gig employment, the fundamental issue is how to reconcile giving workers some flexibility in their work hours with safeguarding of their rights. This paper offers a collection of suggested remedies that could result in a more fair and long-term digital employment environment. These include steps to boost openness, generate a Fairwork Score, apply artificial intelligence-driven employment monitoring, and provide algorithmic collective bargaining rights.

Reform has to happen now, not elsewhere in the future. In the gig economy, platforms will have unlimited power and individuals will be nothing more than replaceable pieces in an algorithmic machine unless something is done quickly. India is in a unique position to develop a new labour law paradigm that is fair for its population and creative as well. If legislators act strongly, the gig economy might help people rather than using them, therefore enabling a society wherein technology supports rather than exploits individuals.

Working Mothers: The Impact And Implementation Of The Maternity Benefit Act, 1961

~Aarusha Yadav & Jislet Johnraj

Abstract

India's Maternity Benefit Act, 1961, is both protector and puzzle for working mothers in the changing game of gender parity. Passed primarily to protect women's work in maternity, it enforces 26 weeks of paid leave, nursing breaks, and medical bonuses-a revolutionary step toward workplace equality. This paper critically examines the dual legacy of the Act: contributions to maternal health, workforce participation, and constitutional values of non-discrimination against systemic loopholes in the Act that perpetuate exclusion and unintended economic consequences. MBA provisions, undoubtedly, have empowered women in the formal sector by facilitating postpartum recovery and infant care while affirming their right to continuity of employment. Pioneering judicial decisions, including Dr. Kavita Yadav v. Ministry of Health (2023) and Smt. Sonali Sharma v. State of U.P. (2023), reflect the judiciary's determination to defend these rights, even for contractual employees. Yet, the Act's limited coverage, leaving out 80% of India's women workers in the informal sector, exposes a stark contrast. As well the exclusion of paternity leave cements gendered caregiving norms while increasing compliance costs on employers; a 2018-19 Team Lease services poll counters, discourages women's employment thus losing 1.8 million jobs per annum. Thus, the paper calls for radical change as concrete solutions to the above-mentioned gaps: raising the duration of maternity leave up to 32 weeks, working in introduction of paternity leave, and expanding the scope of coverage to small and medium-sized enterprises with the arrival of childcare centers and telecommuting facilities. These measures, supplemented by *stepped-up awareness campaigns, can transform the MBA from a patchwork policy to a coordinated framework for inclusive growth. Redefining workplace equality, shifting the focus away from motherhood as a 'career killer' and towards it as a shared social responsibility through the removal of structural disparities and aligning with international best practices.*

Keywords: *Maternity Leave, Gender Equality, Workforce Participation, Maternal Health, Workplace Equity.*

1. ***Introduction***

Workplace equality continues to be a challenge, especially for women subjected to systemic problems beyond mere employment discrimination. The PIB press release dated October 13, 2023, shows that the 2022-23 Periodic Labour Force Survey (PLFS) report reveals that the female labour force participation rate in India has risen to 37.0%.[1], but maternity discrimination is a systemic problem that bars their career prosperity and economic independence. Despite legal protection, prejudices in employment persists dismantling women's capacity to combine motherhood and paid work Maternity policies, in specifically, determine women's labor force attachment, career advancement, and economic status. Not only are women economically vulnerable because of pregnancy-based work discrimination but in addition bear the unequal burden of caregiving responsibilities. Withholding maternity benefits push most women out of the workforce, thus perpetuating past gender disparities in wages and employment.

The gestation phase is a hard time, especially for women who work. Working women likely consider gestation as an obstacle, leading to fewer opportunities, career stagnation, and in some cases of loss of job. While the Maternity Benefit Act[2] (hereinafter, referred to as 'The Act') is supposed to include these cases, its enforcement is still irregular, especially in the informal economy. It is necessary that anticipating employees are given benefits to continue their career path without their means of living being influenced by pregnancy.

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[1]Ministry of Women and Child Development, 'Female Labour Force Participation Rate Jumps to 37.0%' (Press Information Bureau, 13 October 2023) https://pib.gov.in/PressReleasePage.aspx?PRID=1967291 accessed 4 March 2025.

[2]The Maternity Benefit Act 1961.

Maternity benefits are intrinsic to workers' rights, protecting women from being compelled a decision of whether to become a mother or a professional. Pregnancy and childbearing entail immense physical, psychological, and economic assets which need proper support from employers and governments. Denial of maternity benefits not only puts the health and well-being of the mother and child but also sustains discrimination in the workplace, deterring women from the labor force. Recognition of the problem, various global conventions, such as the International Labour Organization's Maternity Protection Convention[3], highlight the value of paid maternity leave policy, employment protection, and mandatory workplace adaptation for the protection of the rights of working mothers. These protectionist laws that do not disproportionately punish women for their natural roles, thereby promoting the concept of equality at work. Besides being a statutory provision, maternity benefits constitute an economic good that guarantees social gender equality and security at work. There was a growing imperative to address this issue.

The Legislative Council of Bombay, with the support of Dr. B.R. Ambedkar established the Maternity Benefits Act[4] on July 28, 1928 to rectify these inequities. The Act, 1961[5] (53rd Act of 1961) was subsequently passed by Parliament on December 12, 1961, the day the Republic of India turned twelve.

The main goals of the Act of 1961[6] are to control women's employment for predetermined amounts of time prior to and following childbirth, as well as to offer financial assistance and related services during this time. On August 11, 2016, the Rajya Sabha approved the Maternity Benefit (Amendment) Bill, 2016[7], which made changes to the original 1961 Act[8]. On March 9, 2017, the Lok Sabha approved the same bill. The changes were subsequently approved ex post facto by the Union Cabinet, which was presided over by Prime Minister Narendra Modi. On March 27, 2017, the President signed off on the changes. The MB Amendment Act, 2017 went

[3]International Labour Organization, Maternity Protection Convention, 2000 (No 183) (adopted 29 June 2000, entered into force 29 April 2002) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312222 accessed 4 March 2025.
[4]The Maternity Benefit Act 1961.
[5]id.
[6]id.
[7]Maternity Benefit (Amendment) Bill 2016 (India) https://prsindia.org/billtrack/the-maternity-benefit-amendment-bill-2016 accessed 4 March 2025.
[8] The Maternity Benefit Act 1961.

into effect on April 1, 2017, except for Section 11A[9], which provided crèche facilities, which became effective on July 1, 2017.

Over the years, key amendments, such as the 2017 extension of paid leave from 12 to 26 weeks, have attempted to strengthen these protections.[10] A government statement claims that the changes will help the 1.8 million women who work in the organized sector.[11] However, gaps in implementation and employer compliance continue to hinder its effectiveness.

Despite legislative advances, maternity protection for Indian women is still out of reach, especially for women in the informal economy, where the overwhelming majority do not have paid leave, job security, or employer support. This disparity raises fundamental questions about the inclusivity of Indian labor laws and the need for extensive policy reforms. While India requires a provision for 26 weeks of paid maternity leave, countries like Sweden, Norway, and Canada have more inclusive parental leave policies with increased leave, flexible work schedules, and employer subsidies. A comparative policy analysis of those policy models identifies wide policy gaps in India's policy and recommends options for change. This research critically analyses the efficacy of The Maternity Benefit Act regarding workplace discrimination, its effect on women's work, and in enforcing issues it is facing. It also looks at how other countries' best practices can help India in the evolution of broader and more encompassing maternity policy framework.

2. Legal Framework for Maternity Benefits: Maternity Benefit Act, 1961

2.1. Definition and scope of maternity leave

The time that a new mother takes off from her work obligations to give birth and then care for her infant is known as maternity leave. The 2017 modifications potentially apply to the unorganized sector and expand applicability to include contractual and consultant women employees.

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[9] The Maternity Benefit Act 1961, s 11A.

[10]Shankar IAS Parliament, 'Maternity Benefits (Amendment) Act, 2017' (Shankar IAS Parliament, 17 April 2023) https://www.shankariasparliament.com/current-affairs/maternity-benefits-amendment-act-2017 accessed 4 March 2025.

[11]Press Information Bureau, Government of India, ‘Amendments to the Maternity Benefit Act, 1961’ (Cabinet, 10 August 2016) https://pib.gov.in/newsite/PrintRelease.aspx?relid=148712 accessed 4 March 2025.

2.2. Applicability of the Act

Establishments with ten or more employees, such as factories, mines, plantations, stores, and other businesses, are subject to the Act[12], as modified. The benefits of the revised Act are now extended to women working as consultants and on contracts, as well as to those in the unorganized sector. To prevent conflicts resulting from receiving duplicate benefits, it is important to highlight that the Act, does not apply to women employed in factories or other companies covered by the Employee State Insurance Act, 1948[13], where they get maternity benefits under Section 50 of the ESI Act, 1948[14].

2.3. Eligibility for Benefits under the Act

A female employee, whether hired directly or through an agency, must have worked at an establishment for at least 80 days in the 12 months prior to her anticipated delivery date in order to be eligible for maternity benefits under the Act[15]. This criterion guarantees that women who have worked continuously for a considerable amount of time are eligible for the benefits, giving them stability in their jobs and finances during their pregnancy.

2.4. Provisions of the Maternity Benefit Act, 1961

The Act[16] was passed to offer working women a range of benefits while they were on maternity leave. An examination of the Act's main provisions can be found below:

Maternity Leave- The Act requires women who work in establishments with ten or more workers to take a twenty-six-week maternity leave. The previous clause, which stipulated twelve weeks of leave, has been significantly improved by this provision.

Nursing Breaks- Women who are breastfeeding their infants are entitled to nursing breaks under the Act.

Other Benefits-

1. Medical Bonus: The Act includes a medical bonus, which is a lump sum amount granted to women to cover medical expenditures incurred during pregnancy and delivery.

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[12] The Maternity Benefit Act 1961.
[13] The Employee State Insurance Act 1948.
[14] The Employee State Insurance Act 1948, s 50.
[15] The Maternity Benefit Act 1961.
[16] The Maternity Benefit Act 1961.

2. Leave for Miscarriage or Medical Termination of Pregnancy: The Act permits women to take leave in the case of a miscarriage or medical termination of pregnancy, giving them enough time to heal.

Penalties- The Act imposes fines on employers that fail to follow its terms. Employers that fail to pay the mandatory maternity benefits to their employees may face a fine of up to Rs 5,000.

Non-Discrimination-Pregnancy and maternity-related discrimination against women are specifically forbidden by the Act.

2.5. Impact and Critical Analysis

The Act[17] is a pioneering legislation that recognizes the vital importance of maternity and provides significant support to working women during maternity leave and has made a significant contribution to the lives of women and families in India by promoting gender equality in the workplace and enhancing maternal and child health and well-being. By giving women, the time and monetary help required for postpartum recovery and care of the child, enhancing the physical and psychological well-being of the mother-baby relationship directly.

The Act[18] is vital in facilitating gender equality in the workplace. It safeguards working mothers' interests by recognizing the significance of maternity and offering badly required assistance to women at this decisive moment in their lives. In the matter of *Smt. Sonali Sharma v. State of Uttar Pradesh and Others*[19], it was held that*, 'there is no bar for an employee claiming Second Maternity benefit within a span of two years from the award of First Maternity benefit.'* This ruling enhances the legislative purpose of the Act. It fortifies the employment rights of working mothers by making certain there are no capricious restrictions to seeking maternity benefits with regard to time gap between the pregnancies.

The law outlaw’s pregnancy-related discrimination and guarantees re-employment on maternity leave, thereby developing a good working environment that allows women to keep their careers going without incurring excessive penalties on account of maternity. Therefore, it has inspired more women to join the economy. The support is essential in motivating women to keep working and become financially independent and thereby contribute to the economic empowerment of women.

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[17]id.
[18]id.
[19]Smt Sonali Sharma v State of Uttar Pradesh and Others [2023] AHC-LKO 77697.

Moreover, the Act has hugely increased awareness of maternity benefits among women. Such awareness has resulted in more women taking maternity benefits, thus ensuring more women receive the benefits to which they are entitled during pregnancy and the post-natal period, as well as ensuring improved working conditions by providing for nursing breaks and other facilities for lactating mothers in the workplace. These provisions render the workplace more amenable to the needs of new mothers, thus improving the overall workplace environment for women.

However, there exist limitations. The Act[20] only applies to companies that have ten or more employees, thus leaving a huge portion of the female workforce in India, particularly those in small-scale enterprises and the informal sector, outside its scope.[21] It is essential to address these shortcomings in order to ensure the provision of protections and benefits under the Act to all women in the labor force, thereby moving towards complete gender equality and improving maternal health in the workplace. Hence, the provisions of the Act thus do not benefit a large percentage of the working female population, especially those who work in small businesses and the informal sector.

The legislation lacks provisions of paternity leave, which would be crucial to promoting gender equality in the workplace. The lack of paternity leave reinforces cultural gender roles in that it assigns the responsibility of childcare to women alone without considering the fact that fathers also have responsibilities in childcare. The imposition of paternity leave would adopt a balanced system of doing childrearing work and provide for equitable distribution of domestic chores.

The Act offers maternity leave and several benefits; however, these might be inadequate for women who require additional support during their leave. The financial support provided by the Act might not be enough to cover the cost of labor and postpartum care, thus calling for a review of the benefit levels to address the needs of women and their families during this critical phase.

Women are not sufficiently cognizant of their rights under the Act. Lacking awareness may lead to women not receiving benefits to which they are entitled under law. Sufficient awareness needs to be achieved through focused information campaigns and training so that women are

[20]The Maternity Benefit Act 1961.
[21]'Maternity Benefit Act, 1961' (Drishti Judiciary, 12 December 2023) https://www.drishtijudiciary.com/current-affairs/maternity-benefit-act-1961 accessed 4 March 2025.

sufficiently cognizant of their rights and can sufficiently avail themselves of benefits provided by the Act. The 2016 amendment to the Act, 1961[22], has undermined women's work in India by raising employers' expenses. According to a survey by Team Lease Services, the shift would lead to a net loss of 12 million jobs for women across industries in 2018-2019. Although the amendment raised women's retention rates from 33% to 56%, it led to a gigantic fall in the number of employed women, and 1.1 to 1.8 million employments lost during the year 2018-19.[23] Employers now bear the whole expense of longer maternity leave and crèche facilities, while post-maternity retention expenses equal 80% to 135% of an annual compensation to a female employee.[24] The expense of 26 weeks of compensated maternity leave, crèche facilities, and temporary employees while on maternity leave discourages females from work and restricts them from pursuing further careers.[25]

3. Constitutionality of the Maternity Benefit Act, 1961

The Act[26] has faced multiple constitutional challenges in courts across India. However, the judiciary has continuously supported the Act's validity, upholding its adherence to the principles of gender equality entrenched in the Indian Const.

The Act of 1961[27] is a pillar of gender equality and social justice, consistent with the fundamental principles stated in the Indian const. Article 14[28] ensures that all citizens are treated equally before the law and have equal protection under the law and thus exhibits this by giving equal chances for women in the workplace through maternity leave and other benefits, thereby establishing a discrimination-free employment environment. Article 15[29] forbids sex discrimination, and the Act goes beyond that by explicitly prohibiting discrimination against women because of their pregnancy or maternity status.

[22]Maternity Benefit (Amendment) Bill 2016 (India) https://prsindia.org/billtrack/the-maternity-benefit-amendment-bill-2016 accessed 4 March 2025.
[23]Anirban Nag, 'India's Maternity Law may cost 1.8 million women their jobs' (The Economic Times, 27 June 2018) https://www.livemint.com/Industry/zk3UjAbQVOkJlSVaFogXUM/Maternity-law-may-cost-18-million-women-their-jobs.html accessed 4 March 2025.
[24]id.
[25]id.
[26] The Maternity Benefit Act 1961.
[27]id.
[28] The Indian Constitution 1950, art 14.
[29] The Indian Constitution 1950, art 15.

In the case of *Dr. Kavita Yadav v. The Secretary, Ministry of Health and Family Welfare Department and Others*[30], the Hon'ble Supreme Court stated that,

> *'Continuation of maternity benefits is inbuilt in the statute itself, where the benefits would survive and continue despite the cessation of employment. In our opinion, what this legislation envisages is entitlement to maternity benefits, which accrues on fulfillment of the conditions specified in Section 5(2) thereof, and such benefits can travel beyond the term of employment also. It is not coterminous with the employment tenure…… once the appellant fulfilled the entitlement criteria specified in Section 5(2) of the Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute "discharge" and attract the embargo specified in Section 12(2)(a) of the 1961 Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act.'*

This judicial pronouncement signifies the importance of maternity benefits by ensuring that maternity benefits are not contingent on tenure of employment. This interpretation prevents employers from evading from their obligations by terminating the contract earlier, reinforcing the principle that maternal benefits override contractual constraints. The court also recognized a legal fiction where women are deemed to be in employment even if her actual contract has expired for the sole purpose of availing. maternity benefits. This ensures that expecting mothers can receive full benefits without the fear of termination and essentially, loss of financial security.

The Act's[31] recognition of the value of maternity and provision of support during maternity leave are consistent with Article 21[32], which guarantees the right to life and personal liberty. By providing maternity benefits, and protects women's rights to a safe and healthy maternity time, safeguarding their and their children's well-being.

In the case of *Saroj Kumari v. State of Uttar Pradesh and Others*[33], it was held that,

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[30]Dr Kavita Yadav v Secretary, Ministry of Health and Family Welfare Department & Others [2023] SCC OnLine SC 1067 (17 August 2023).
[31] The Maternity Benefit Act 1961.
[32] The Indian Constitution 1950, art 21.
[33]Saroj Kumari v State of Uttar Pradesh and Others [2023] AHC (LKO) 85733 (Allahabad High Court, 14 March 2023).

> *'These provisions have been made by Parliament to ensure that the absence of a woman away from the place of work occasioned by the delivery of a child does not hinder her entitlement to receive wages for that period or for that -6- matter for the period during which she should be granted leave in order to look after her child after the birth takes place. The Act of 1961 was enacted to secure women's right to pregnancy and maternity leave and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker, if they so desire.'*

This judgement emphasizes the importance of maternity benefits, workplace inclusivity, and gender equity. It ensures that women can exercise their reproductive rights while continuing in their professional trajectories. It upholds the nations commitment to welfare and social justice in good faith and good conscience.

The Act's adherence to the Directive Principles of State Policy, which require the state to promote women's welfare and prevent their exploitation, demonstrates its dedication to protecting women's rights and its provisions for maternity leave, nursing breaks, and other benefits demonstrate the state's commitment to protecting women's well-being during pregnancy and combating exploitation in the workplace.

4. Economic Impacts Based On Perspectives Of Labor Markets And Employers

The current chapter is a follow-up analysis of the economic implications of the enactment of the Maternity Benefit (Amendment) Act, 2017[34] (hereinafter "the Act") and with a particular emphasis on its implications on employer businesses and labor market dynamics. Not only does the Act increase the period of paid maternity leave from 12 to 26 weeks but also adds other obligations, for instance, the requirement of establishments with 50 or more employees to make arrangements for crèche facilities. It is thus germane that policymakers and legal scholars assess the resulting monetary and administrative burdens. For the purpose of facilitating this analysis, the discussion herein is complemented by recent empirical data and statistics.

The above legislative changes, while seeming to advance gender equality and safeguard the rights of working mothers, at the same time introduce a number of economic implications. Of specific concern here is that small and medium-sized enterprises (SMEs) have been shown to

[34] Maternity Benefit (Amendment) Act 2017 (No 6 of 2017).

incur higher costs of compliance and operational restrictions. In addition, the Act has also been shown through recent data to have unintentionally influenced recruitment practices and thereby potentially disadvantage childbearing-age women.

4.1. Employer Perspective: Business Restrictions, Compliance Expenses, and Hiring Biases

4.1.1. Compliance Costs for SMEs

According to the provisions of the Act, small and medium enterprises (SMEs) have faced severe financial hardship. The extended maternity leave mandate forces employers to compensate missing employees for as long as 26 weeks, a directive that inevitably puts pressure on the financial reserves of companies operating on slim profit margins. According to the International Trade Centre's 2016 SME Competitiveness Outlook, a 10% increase in regulatory burden decreases the export value of small firms by 3.2%, compared to a 1.6% reduction for larger firms.[35]In India, small-scale fintech companies spend approximately ₹0.9 to ₹1.17 crore annually on compliance, while larger fintechs incur costs ranging from ₹2.5 to ₹3.2 crore per annum. These expenses encompass personnel, legal consultations, and regulatory fees, highlighting the substantial financial burden compliance imposes on SMEs within the fintech industry.[36]

4.1.2. Employment Biases and Gender Discrimination

Against the background of the increased fiscal burden, a corollary effect has been the evolution of discrimination in hiring against women, particularly those belonging to the 25-35 age brackets. Employers, with regard to the longer pay-out liability and the prospect of disruption to productivity, are reported to exhibit unwillingness to hire the female gender. A survey by LocalCircles (2020) involving 8,500 responses from SMEs, startups, and entrepreneurs revealed that nearly 50% of these businesses reduced female hiring over the past year. Specifically, 33% did not hire women at all, while 16% hired fewer women than in the previous year. The financial implications of the Maternity Benefit (Amendment) Act, 2017, which increased paid maternity leave from 12 to 26 weeks, were cited as a significant factor for this

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[35]International Trade Centre, 'Burdensome regulations add costs, stifle small firms' ability to export' (ITC, date not stated) https://www.intracen.org/news-and-events/news/burdensome-regulations-add-costs-stifle-small-firms-ability-to-export?utm_source=chatgpt.com accessed 4 March 2025.

[36]The Economic Times, 'How much do Indian fintechs spend on compliance?' (n.d.) https://bfsi.economictimes.indiatimes.com/news/fintech/how-much-do-indian-fintechs-spend-on-compliance/110858284 accessed 4 March 2025.

trend.[37]Such preferences, as much as they are implicit, raise grave questions of equal employment opportunity and could even be contrary to the underlying intent of the Act along with more general principles of non-discrimination enacted in constitutional jurisprudence.

4.1.3. Business Limitations and Competitive Disadvantages

Apart from that, the imposition of enhanced compliance requirements and related hiring biases has been shown to raise operating costs for firms. In India, small-scale fintech companies spend approximately ₹0.9 to ₹1.17 crore annually on compliance, while larger fintechs incur costs ranging from ₹2.5 to ₹3.2 crore per annum.[38] These expenses encompass personnel, legal consultations, and regulatory fees, highlighting the substantial financial burden compliance imposes on SMEs within the fintech industry. In India, labor-intensive export sectors such as apparel, marine products, plastics, and gems and jewelry have experienced a decline in global market share over the past five years. The Federation of Indian Export Organisations (FIEO) attributes this trend to rising labor costs and other competitiveness challenges.[39] Rising labor and compliance costs can adversely affect international competitiveness. Therefore, policymakers must balance the Act's social objectives with the economic need to sustain a competitive business environment.

4.2. Trends in the Labor Market: Women's Employment, Opportunities for Advancement, and Leadership Positions

4.2.1. Female Labor Force Participation and Employment Rates

India

Economic indicators

	2010	2015	2021
GDP: Gross domestic product (million current US$)	1 669 620	2 146 759	2 891 582[b]
GDP growth rate (annual %, const. 2015 prices)	8.5	8	4.2[b]
GDP per capita (current US$)	1 352.7	1 638.6	2 116.2[b]
Economy: Agriculture[e] (% of Gross Value Added)	18.4	17.7	17.7[b]
Economy: Industry[f,g] (% of Gross Value Added)	33.1	30	29.1[b]
Economy: Services and other activity[h] (% of GVA)	48.5	52.3	53.1[b]
Employment in agriculture (% of employed)	51.5	45.7[i]	41.5[i,d]
Employment in industry (% of employed)	21.8	24.1[i]	26.2[i,d]
Employment in services (% employed)	26.7	30.3[i]	32.3[i,d]
Unemployment[i] (% of labour force)	5.6	5.6	5.4[d]
Labour force participation rate[i] (female/male pop. %)	25.7 / 80.5	21.7 / 77.9	20.3 / 76.0[d]

[37]Maia Jenkins, 'Small firms in India admit to hiring fewer women because of maternity leave costs: Survey' (People Matters, 11 March 2020) https://www.peoplematters.in/article/benefits-and-rewards/small-firms-in-india-admit-to-hiring-fewer-woman-because-of-maternity-leave-costs-survey-24966?utm_source accessed 4 March 2025.

[38]The Economic Times, 'How much do Indian fintechs spend on compliance?' (n.d.) https://bfsi.economictimes.indiatimes.com/news/fintech/how-much-do-indian-fintechs-spend-on-compliance/110858284?utm_source accessed 4 March 2025.

[39]Press Trust of India, 'India's share in exports in labour-intensive sectors declining: FIEO' (Business Standard, 1 October 2023) https://www.business-standard.com/economy/news/india-s-share-in-exports-in-labour-intensive-sectors-declining-fieo-123100100366_1.html?utm_source accessed 4 March 2025.

Table1- UNITED NATIONS[40]

Despite attempts by the legislature to add more women to the workforce, India has witnessed a shocking deterioration, with the female labour force participation rate declining from 25.7% in 2010 to 21.7% in 2015, and then to an all-time low of 20.3% in 2021, as per United Nations statistics. The 2017 amendment to the Maternity Benefit Act, aimed at empowering working mothers by providing more paid leave, has ironically reinforced systemic biases, inadvertently discouraging employers from hiring or keeping women on the rolls because of perceived cost and operational inconvenience. This legislative failure underscores the need for holistic policy changes beyond maternity benefits, such as childcare supported by the state, equal parental leave, and return to work, to dismantle structural barriers and ensure maternity does not translate into professional exclusion. Continued exclusion of women from the workforce not only restricts their economic agency, but also diminishes India's overall economic performance, innovation potential, and progress towards gender equality, and therefore requires an overhaul of labour policies that treat women's participation as an economic necessity, not a drain.

While the Act seems to have the objective of promoting the retention of women in the labor market, empirical realities show that its implementation has yielded mixed outcomes as far as female participation in the labor market is concerned. This is a reality that is partly attributed to the reluctance of employers to recruit women due to the provision of long leaves by the Act. Thus, the shrinking of employment opportunities for women of reproductive ages is a daunting obstacle to the achievement of real gender equality in the labor market.

4.2.2. Career Development, Promotion, and Leadership Positions

The law, while protecting the maternity leave, does not go far enough to address the following problems women face in readapting to work. Evidence from research has demonstrated that, when they come back after extended leave, women are usually confined to positions with limited prospects for career development. Research indicates that women returning after extended leave are often confined to roles with limited advancement prospects. For instance, Catalyst's 2021 report on Women in Leadership in India found that women occupied only about 14% of top executive roles in the country, reflecting persistent barriers such as the 'glass ceiling' and implicit bias against career interruptions.[41]

[40]United Nations, 'IN – India' (n.d.) https://data.un.org/en/iso/in.html accessed 4 March 2025.

[41] Catalyst, 'Women in Leadership in India 2021' (Catalyst, 2021) https://www.catalyst.org accessed 1 March 2025.

4.2.3 Comparative Global Perspectives

In contrast, countries that couple parental leave policies with comprehensive childcare support enjoy markedly higher female employment rates. While the years after World War II saw a rise in women's labor force participation across every OECD country, growth in participation began at different points in time and proceeded at different rates in each country. In 2016, for example, Sweden's female labor force participation rate was 70%, while it was only 56% in Germany and 40% in Italy.[42] Researchers comparing broad policy configurations argue that the different types of welfare states that emerged in rich countries after World War II have contributed to these differences.

Social democratic policies such as those seen in Sweden, for example, are characterized by subsidized childcare, paid parental leave that is designed to encourage both mothers and fathers to participate in childcare, and support for full employment. The Malaysian Employers Federation estimated that increasing maternity leave from 60 to 90 days would cost private sector employers an additional RM1.5 billion annually.[43] This projection includes both direct wage payments during leave and indirect costs related to hiring temporary replacements.

The above analysis clearly shows that the Act places significant economic burdens on employers and the labor market in general. On the one hand, the need for additional paid leave and related compliance costs has increased operating costs, especially in relation to small and medium-sized enterprises (SMEs), and has caused hiring discrimination that negatively impacts women in their childbearing years. On the other hand, the relatively mild effect on the aggregate number of women in the labor market, along with career obstacles, points to the need for an integrated policy response.

5. Global Models Of Paternity And Maternity Leave

The maternity and paternity leave benefits are core features of labor policy to promote gender equality, balance work and family life, and safeguard family well-being. The patriarchal caregiving model that dominates India has traditionally positioned women as family caregivers,

[42]Our World in Data, 'Female labor supply' (n.d.) https://ourworldindata.org/female-labor-supply accessed 4 March 2025.
[43]Human Resources Online, 'MEF expects 90-day maternity leave to cost bosses additional RM1.5 billion' (n.d.) https://www.humanresourcesonline.net/mef-expects-90-day-maternity-leave-to-cost-bosses-additional-rm1-5-billion?utm_source accessed 4 March 2025.

thus alienating men from household work. The progressive legislative framework adopted by India, as evident in the Maternity Benefit (Amendment) Act of 2017[44], has ushered in unprecedented progress in protecting the rights of working mothers, yet remains incomplete in its wholeness in the area of parental leave policies.

This chapter aims to present comparative analysis of model practices across the globe on maternity, paternity, and parental leave entitlements to provide insight into potential reforms in the Indian context. For this purpose, the chapter critically reviews well-documented case studies of Sweden, Canada, Japan, and Germany.

The chapter further elaborates upon how the absence of compulsory paternity leave entrenches gender stereotypes, examines judicial and legislative responses, and proposes employer-led action to induce equitable caregiving practice. At the nexus of legal precedents, socio-cultural perceptions, and policy recommendations, the chapter presents a compelling argument for the need to rethink caregiving roles in the interests of gender equality.

5.1. Case Studies

5.1.1 Sweden

Sweden has been repeatedly lauded as a model of cutting-edge parental leave policy. Its legislative framework prescribes a total of 480 paid parental leave days, which are to be shared between both parents in a gender-neutral manner. Importantly, the legislation allocates 90 days to individual parents subject to *a "use-it-or-lose-it"* clause.[45] This specific legislative clause, it is argued, is intended to encourage the engagement of fathers in child-care tasks, thereby compensating for typical gender disparities. The Swedish framework includes additional policies such as flexible work arrangements and substantialstate-sponsored childcare, which in combination allow for easy labor market reintegration of parents.

5.1.2 Canada

In Canada, the parental leave system is universalist and has strong support arrangements. Under the Employment Insurance (EI) program, eligible parents are entitled to a total of 18 months of maternity and parental leave, although only part of it is paid.[46] EI benefits are paid at 55%

[44]Maternity Benefit (Amendment) Act 2017 (No 6 of 2017).
[45]'Work-Life Balance' (Sweden.se, no date) https://sweden.se/work-business/working-in-sweden/work-life-balance accessed 4 March 2025.
[46]'Employment Insurance Maternity and Parental Benefits' (Government of Canada, no date) https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental.html accessed 4 March 2025.

of an employee's insurable earnings (capped weekly), and the leave can be shared between both parents, a design intended to promote a more balanced sharing of childcare duties.[47] World Bank (2021) statistics show that Canada had a female labour force participation rate of approximately 62%, a reflection of the beneficial impact of supportive policies.[48] Further, the Canadian system emphasizes universal childcare subsidies and the provision of high-quality publicly funded childcare programs, which help reduce the out-of-pocket expenses of childcare and enhance overall workforce efficiency.

5.1.3 Japan

Japan's parental leave policy has been designed largely as a palliative response to address demographic concerns, i.e., population aging and declining birth rates. Japanese law provides eligible workers with a maximum of 12 months of paid parental leave, for which social insurance schemes pay up to 67% of the worker's salary as compensation.[49] Recognizing the deep-rooted cultural reluctance towards paternity leave, Japan has introduced complementary incentives in the form of financial incentives and targeted public awareness campaigns to encourage paternal use. These measures aside, recent data provided by the Ministry of Health, Labour, and Welfare (Japan, 2021) reveal that only around 13% of eligible fathers avail themselves of their entitlement to take leave. In response to this, the Japanese government has introduced reforms within the workplace, including the adoption of flexible working hours and home working schemes, to remove structural impediments hindering the widespread use of parental leave benefits.[50]

5.1.4 Germany

The German parental leave policy provides eligible parents with a total of 14 months of paid leave, which can be shared between both parents. The employee is entitled to a financial benefit equal to 65% of their income during this time, although this is subject to legal limitations.[51] Germany has also implemented the *"parental allowance plus"* (Elterngeld Plus) scheme, which

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[47]'Employment Insurance Maternity and Parental Benefits' (Government of Canada, no date) https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental.html accessed 4 March 2025.
[48] World Bank, 'Labor force participation rate, female (% of female population ages 15+)' (World Bank, 2021) https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?locations=CA accessed 1 March 2025.
[49] Ministry of Health, Labour and Welfare (Japan), White Paper on Labour and Welfare 2021 (Ministry of Health, Labour and Welfare, Japan, 2021) https://www.mhlw.go.jp/english/wp/wp-hw/ accessed 1 March 2025.
[50] Ministry of Health, Labour and Welfare (Japan), Child Care and Family Care Leave in Japan (Ministry of Health, Labour and Welfare, Japan, 2021) https://www.mhlw.go.jp/english/policy/employ-labour/labour-standards/index.html accessed 1 March 2025.
[51]Germany Expat, 'Parental Leave in Germany: All You Need to Know' (2023) https://germanyexpat.de/parental-leave-in-germany/ accessed 4 March 2025.

enables parents to work part-time while simultaneously receiving lower benefits, thereby promoting ongoing labor market activity.[52] These policies have led to a female labor market participation rate of around 76% (OECD, 2021), as reported by the Federal Ministry for Family Affairs (Germany, 2021), and demonstrate the effectiveness of flexible work arrangements in reconciling work and family life.[53]

5.2 CEDAW Guidelines and ILO Standards

5.2.1 ILO Standards

The International Labour Organization, in its 2000 Maternity Protection Convention (No. 183)[54], set an international standard for maternity protection. The Convention requires member States to provide at least 14 weeks of paid maternity leave, that cash benefits are not to be less than two-thirds of the average earnings of the employee, and it excludes any form of discrimination or dismissal on the grounds of maternity. Furthermore, the Convention places high value on the provision of appropriate healthcare and breastfeeding support to working mothers. It also demands that such protective provisions be extended to paternity and parental leave to facilitate more equal sharing of childcare responsibilities.

5.2.2 CEDAW Guidelines

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[55] specifically emphasizes the requirement for generous paternity and maternity leave. Article 11[56] of CEDAW specifically provides that States Parties must take steps to end discrimination against women in the context of employment, including the establishment of legal provisions for paid maternity leave and the establishment of protection against dismissal.

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[52] OECD, 'Employment rate, female (% of female population ages 15+)' (OECD, 2021) https://data.oecd.org/emp/employment-rate.htm?locations=DE accessed 1 March 2025.

[53] Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), Parental Benefits in Germany (BMFSFJ, 2021) https://www.bmfsfj.de/bmfsfj/DE/Home/home_node.html accessed 1 March 2025.

[54] International Labour Organization, Maternity Protection Convention, 2000 (No 183) (adopted 29 June 2000, entered into force 29 January 2002) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO accessed 1 March 2025.

[55] United Nations, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) https://www.un.org/womenwatch/daw/cedaw/ accessed 1 March 2025.

[56] United Nations, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted 18 December 1979, in force 3 September 1981) https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx accessed 4 March 2025.

Moreover, CEDAW encourages the provision of state-subsidized childcare services, which are critical in facilitating women's sustained integration in the labor market.

5.3. The Gendered Caregiving Debate

Indian cultural values have long relegated caregiving as a feminine virtue, supported by legal codes like the TheAct, 1961[57], giving only 26 weeks of paid maternity leave to mothers. This legislative emphasis on maternity, as precious as it is, necessarily marginalizes fathers, perpetuating the stereotype that caregiving is a woman's domain. The National Family Health Survey (NFHS-5) indicates that women spend almost 297 minutes a day on unpaid care work, whereas men spend 31 minutes, an indication of systemic disparities in the division of domestic labor[58].

The World Economic Forum's Global Gender Gap Report 2023[59] places India at number 127 in gender parity, which it ascribes to entrenched stereotypes and caregiving overload by women. Discounting paternity leave, the state is complicit in these roles, restricting women's labor market engagement and men's emotional engagement with children. As Chakraborty (2019) contends, *"the lack of paternity leave consolidates the 'male breadwinner' model, suppressing the move toward joint parenting."*[60]

TeamLease Survey (2020) study found that over 50% of male employees perceived an increase in workplace bias against women due to enhanced maternity benefits. Additionally, 28% of male respondents felt that gender bias had intensified during the hiring process itself.[61]

According to a Statista survey, 46% of businesses reported hiring mostly male employees and only a few female employees after the amendment of the the Act.[62]

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57 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 11.

58 Ministry of Health and Family Welfare, Government of India, National Family Health Survey (NFHS-5) 2019–21 (Government of India, 2021) http://rchiips.org/NFHS/NFHS5Reports.shtml accessed 1 March 2025.

59 World Economic Forum, Global Gender Gap Report 2023 (World Economic Forum, 2023) https://www.weforum.org/reports/global-gender-gap-report-2023 accessed 1 March 2025.

60 Chakraborty S, 'The Lack of Paternity Leave Consolidates the "Male Breadwinner" Model in India' (2019) 12 Journal of Social Policy 67.

61 India Today Web Desk, 'More than 50% men feel increase in workplace bias against women because of maternity benefits: Study' (India Today, 27 November 2020) https://www.indiatoday.in/education-today/latest-studies/story/more-than-50-men-feel-increase-in-workplace-bias-against-women-because-of-maternity-benefits-study-1744661-2020-11-27 accessed 4 March 2025.

62 Statista, 'India: Gender bias in company hiring post Maternity Benefit (Amendment) Act' (Statista, June 2018) https://www.statista.com/statistics/878799/india-gender-bias-in-company-hiring-post-maternity-bill-amendment/ accessed 4 March 2025.

5.4. Judicial Perspectives and Legislative Failings

Indian courts have sometimes touched upon gender equality in caregiving. In *Secretary, Ministry ofDefence v. Babita Puniya (2020)*[63], theHon'ble Supreme Court reiterated the constitutional obligation of gender justice under Articles 14[64], 15[65], and 16[66]. Likewise, *Suchita Srivastava v. Chandigarh* Administration (2009)[67] acknowledged women's autonomy over reproductive decisions, implicitly alluding to the state's role in making caregiving-friendly environments.

But loopholes in the law remain. The Central Civil Services (Leave) Rules, 1972[68]grant 15 days of paternity leave to male government employees. However, there is no legal mandate for paternity leave in the private sector, leaving a significant portion of the workforce without access to such benefits. This legislative gap has contributed to a stagnant discourse on paternity leave and reinforces traditional caregiving norms that place the burden of childcare solely on mothers. Recognizing this gap, a Private Member's Bill addressing paternity benefit-related issues was introduced in 2017 in Parliament. The bill aimed to establish gender-neutral parental leave, extending benefits to biological fathers, adoptive parents, and other guardians. However, the bill failed to pass, with opponents arguing that paternity leave is unnecessary since fathers do not experience the physical demands of childbirth. This justification disregards the broader purpose of parental leave, not just postnatal recovery but also ensuring that both parents can actively participate in early childcare.

The Rajasthan High Court's ruling[69] is crucial in this regard, as it explicitly clarifies that leave is not solely linked to the biological process of childbirth but is a broader right associated with parental responsibilities. This judgment strengthens the argument for a legislative framework mandating paternity leave, ensuring that both parents are given the opportunity to contribute equally.

Private sector policies remain at the whims of companies, with only some such as Tata Steel and Infosys providing 30 days, at best as exceptions. Sweden's gender-neutral 480-day parental

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[63]Secr, Ministry of Defence v Babita Puniya [2020] AIR SC 1000 (17 February 2020).
[64]Constitution of India, art 14 (1950).
[65]Constitution of India, art 15 (1950).
[66]Constitution of India, art 16 (1950).
[67]Suchita Srivastava v Chandigarh Administration [2009] SCC OnLine SC 545 (Supreme Court of India, 2009)
[68] Central Civil Services (Leave) Rules, 1972 (as amended) (Government of India).
[69]Chanda Keswani v State of Rajasthan [2023] (PDF, accessed 4 March 2025) https://blog.pcsmgmt.com/wp-content/uploads/2023/11/Chanda_Keswani_vs_State_of_Rajasthan.pdf.

leave, with 90 days for each parent, is a model of balanced policy (Duvander & Johansson, 2019)[70].

The Vishaka Guidelines (1997)[71] and *Navtej Singh Johar v. Union of India (2018)*[72] have expanded concepts of gender equality under Article 21[73], but leave for fathers is not provided statutorily. The Code on Social Security, 2020[74], which repealed the Act, did not include paternity arrangements, an example of legislative silence.

In *B. Saravanan v. Deputy Inspector General of Police*[75], the Court emphasized the fundamental role of both parents in the pre-natal and post-natal development of a child, recognizing that the child's right to survival and well-being begins from the mother's pregnancy and extends throughout childhood. The Court acknowledged that in a welfare state, it is the duty of the State to ensure dignified pre-natal care for the foetus and to provide proper healthcare, hygiene, and sanitation for the child in the post-natal period.

Significantly, the Court held that the grant of maternity and paternity leave to biological parents, as well as parental leave to adoptive parents, is essential to securing the child's fundamental right to life under Article 21[76]. The Court further underscored that Articles 21[77] and 15(3)[78] guarantee the protection of a child's right to survival and development, which, in turn, establishes the fundamental right of biological and adoptive parents to avail maternity, paternity, or parental leave. The denial of such leave, therefore, would amount to a violation of the constitutional rights of both the child and the parents.

Realizing the decline of the joint family system, the Court stressed the importance of paternity and parental leave as a fundamental human right. It held that the refusal of paternity leave was a breach of Article 21[79], linking the petitioner's rights to the health of his child. The Court quashed the order of dismissal and ordered reinstatement.

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[70] Duvander C and Johansson E, Parental Leave Policies in Sweden: A Model for Gender Equality? (2019) Journal of European Social Policy 29.
[71] Vishaka v State of Rajasthan [1997] 6 SCC 241 (Supreme Court of India).
[72] Navtej Singh Johar v Union of India [2018] 10 SCC 1 (Supreme Court of India, 6 September 2018).
[73] Indian Constitution 1950, art 21.
[74] Code on Social Security, 2020.
[75] B Saravanan v Deputy Inspector General of Police, W.P.(MD) No.19561 of 2023 (Order dated 11 August 2023).
[76] Indian Constitution 1950, art 21.
[77] id.
[78] Indian Constitution 1950, art 15(3).
[79] Indian Constitution 1950, art 21.

This ruling sets a significant precedent in affirming paternity leave as a constitutional right, reinforcing the principle that childcare is a shared responsibility between both parents and that denying such leave is contrary to the constitutional mandate of ensuring the child's right to life and well-being.

Globally, men are over 50% more likely to be employed than women, the overall employment ratio has consistently remained above 1.5 from 1991 to 2023.[80] This highlights the extent of gender inequality in labour market participation.

In emerging market economies, the decomposition analysis reveals that differences in labour force participation (LFP) rates are the primary driver of the employment gender gap. In these markets, the gap has been increasing over time, largely because women's participation lags behind men's.

The note further documents that while population factors play a minimal role, disparities in LFP rates overwhelmingly explain the observed employment gaps. This suggests that policies aimed solely at increasing statutory maternity benefits, without corresponding measures to support women's re-entry and retention, may contribute to the widening gap in women's participation.

By adopting elements of gender neutrality, flexible work schedules, and significant government subsidy for childcare, India can promote gender equality and promote a culture that fosters sustainable economic growth. It is contended that a prudent and balanced approach, one that balances the imperatives of social justice and economic feasibility, lies at the heart of successful adoption of these international paradigms to the Indian reality.

6. Proposed Reforms and Suggestions

The period of maternity leave must be extended from 26 weeks to 32 weeks to provide mothers with sufficient time to recover from postpartum and to cater to the minimum needs of their newly born infants. Additional leave time would guarantee physical and mental health, thereby making mothers return to work in improved and healthier condition.

[80]Statista, 'Global Employment-to-Population Ratio by Gender' (Statista, no date) https://www.statista.com/statistics/266333/global-employment-to-population-ratio-by-gender/ accessed 4 March 2025.

Paternity leave arrangements must be made for facilitating active participation of fathers in child-rearing. Provision of paternity leave would promote shared responsibility between parents, enable the mother to recover sooner, and promote gender equality by acknowledging the input of both parents to early childcare.

Now, the Act only covers establishments with ten or more workers and thus leaves out self-employed women and workers in the unorganized sector. It is necessary to extend the coverage of the Act to small units and unorganized sector workers and thus extend legal protection and financial benefit to all working mothers regardless of their workplace.

Including work-from-home arrangements within maternity benefits will contribute significantly to work-life balance for new mothers. This will facilitate easier return to work for women, allowing them to sustain professional duties while still being able to perform postnatal childcare tasks. This is within the context of gender-balanced employment policy and ensuring that maternity leave does not constitute a break to career continuity. Employer-provided flexible work arrangements allow for workforce attrition for women following maternity to be averted, thereby facilitating increased workforce participation and upholding fair labour practices in accordance with the tenets of modern labour welfare.

It is important to have compulsory childcare facilities at the workplace, which are intended to support working mothers by enabling them to take children to work, thereby enabling easy integration of work responsibilities and childcare responsibilities. The availability of easily accessible, well-facilitated childcare facilities on premises develops a family-friendly work environment, reduces career interruptions, and enhances the rate of employee retention. These are consistent with international labor standards and enhance the ideals of gender equality and inclusivity at the workplace, ultimately serving the interests of both employers and employees by creating a more sustainable and caring organizational culture.

The increase in statutory medical bonus provided under maternity benefit legislation is a significant move in relieving the financial strain with costs incurred during pregnancy and childbearing. In the wake of the rising expenditure on prenatal services, delivery processes, and postpartum medical services, an enhanced medical bonus would provide higher financial security to working women. The strengthening of the provision is consistent with labor welfare provisions and works toward the broader goal of economic empowerment of women and workforce stability.

It is only through balanced policy measures that the twin objectives of safeguarding the rights of working mothers and promoting sustainable economic growth can be achieved at the same time. It is suggested that policymakers should give thought to implementing measures mitigating against the social objectives of the Act in the face of the economic needs of a competitive business culture, e.g., financial incentives to SMEs, increased support for childcare facilities, and the implementation of flexible working practices.

To promote gender equality in caregiving, India must introduce gender-neutral parental leave (12 weeks in total, 6 weeks each for mothers/fathers) by amending the Act on Icelandic lines, adopting flexible working patterns (teleworking, part-time work) on the lines of Germany/Japan. At the same time, improve subsidized childcare centers (urban/semi-urban crèches) on Canada's lines and encourage employers with tax relief (expanding Section 80JJAA) for providing ≥4 weeks' paternity leave on the lines of Sweden's *"use-it-or-lose-it"* system. To overcome cultural resistance, use CSR compulsions to introduce awareness interventions and offer judicial outreach through PILs to get paternity leave established as a fundamental right under Article 21 by invoking such precedent as *Anuj Garg v. Hotel Association of India*. On ILO Convention C156 lines, such reforms, having legislative change, employer incentives, childcare support, and mindset change in society, can reshape caregiving as a universal, gender-neutral responsibility to enable equal parental contribution and realize India's constitutional promise of gender justice.

7. Conclusion

Maternity protection protects the reproductive rights of mothers, ensures their economic security, post-childbirth recovery, and work continuity. The Maternity Benefit Act of 1961 maintains women's rights in India by ensuring paid leave, medical cover, and employment protection. But informal sector workers are mostly left out, and that raises questions about the coverage of the Act. India's system in comparison to other countries with strong family leave policies is badly in need of a reform. Some of the most pressing issues are the lack of employer sponsorship, exclusion of informal sector employees, and no paternity leave. Providing more leave, flexible work arrangements, and requiring paternity leave are the essentials of making maternity protection an effective and enforceable right.

CREATIVE RIGHTS IN THE SHADOWS: A CRITICAL ANALYSIS OF LABOUR LAW EXEMPTIONS IN KARNATAKA

~Joy Sharma

Abstract

The tertiary sector of the Indian economy, notably includes Information Technology (IT), IT-Enabled Services (ITES), Startups, Animation, Gaming, Graphics, Telecom, and other knowledge-based industries, which significantly contributes to the country's economy. In the State of Karnataka, particularly in and around Bengaluru, these industries employ approximately over 20 lakh people, predominantly highly trained technical graduates, and professionals. Despite their skill, qualifications, and contributions these employees often face arbitrary service conditions because since past many years the State Government by exercising its powers under the Industrial Employment (Standing Orders) Act' 1946, has conditionally exempted these industries from the application of the said Act. The conditions mentioned in the government order are often not complied by the employers, leading to widespread infringement of labour rights of employees in the specified sectors. Recently this conditional exemption has been extended till 2029. The most fatal part of such exemptions is the fact that such employers are granted the liberty to frame arbitrary service agreement terms without statutory limitations and supervision of the State. On the other hand, the Copyright Act' 1957 protects the original work of authors by granting them exclusive ownership rights for lawful commercial exploitation. Original work of employees of such industries includes diagrams, maps, tables, charts, plans, schematics computer programmes, databases, and other works of similar nature. Due to such exemptions the mentioned employers are at the liberty to arbitrarily frame service agreement terms and infringe statutory rights and other rights in rem of their employees who are eventually the original authors.

Right to property is a constitutional right under Article 300A of the Constitution of India and such arbitrary actions of the State on a prolonged basis, are profoundly infringing right to property which warrants immediate judicial review. Such prolonged exemption from application of a major labour law is violating the fundamental principles of both labour law and intellectual property law jurisprudence.

Keywords: Constitution of India, The Industrial Employment (Standing Orders) Act, 1946, The Copyright Act, 1957, right to property, work, ownership, labour rights, judicial review.

1. Introduction

Reflecting on historical jurisprudence, we observe that before the renaissance, society primarily adhered to Natural Law philosophy, which was rooted in concepts of morality, ethics, and reason, believed to be derived from a supreme source. Wrongdoing was assessed based on these fundamental principles. However, the post-Renaissance period marked a significant shift. With the advent of new scientific discoveries, technological advancements, and growth in trade and commerce, materialism began to take hold, leading to a tendency among those in power to infringe on others' rights for self-gratification. As society evolved, the importance of protecting individual rights through the State or Sovereign (especially right to life, liberty, and property) became increasingly apparent, leading to a paradigm shift from Natural Law philosophy. The focus shifted to codified laws (human made laws), emphasizing Positive Law. Thus, mere morality, ethics, good conscience were insufficient to control infringing attitude of the society. Eventually a more balanced approach was envisaged into the Labour Theory and Utilitarian Theory of John Locke and Jeramy Bentham respectively. The former emphasised more on the fact that labour or efforts incorporated by any individual behind any task must be recognised, protected, and rewarded under the law and at the same time the latter emphasised on the fact that law must ensure ‘maximum benefit for the maximum members of the society.’ Over the time these philosophies gained more significance with concept of ‘social solidarity,’ propounded by Leon Duguit. These jurisprudential philosophies formed the cornerstone of both intellectual property law and labour law jurisprudence.

The State is duty bound to enact laws by adhering to the principles enshrined under Article 39[1] of the Constitution of India and it forms one of the common bases of both intellectual property law and labour law jurisprudence in India. The provisions which are applicable for both the jurisprudence are:

- Article 39 (b) *"ownership and control of the material resources of the community are so distributed as best to sub serve the common good.",*
- Article 39 (c) *"operation of the economic system does not result in the concentration of wealth and means of production to the common detriment".*

Hence in both the jurisprudence, the duty of the State is to enact appropriate laws to ensure that material resources and the operation of economic system of the country do not concentrates in hands of few, rather it must be distributed in uniform manner to subserve the common necessities of the society and the constitutional goal of a welfare state is achieved. Eventually through Articles 39 (b) and (c) of the Constitution of India, State is protecting and rewarding individuals for their efforts and ensuring that law subserves the common good by ensuring maximum benefit for maximum members of society. Thus, the 'Labour Theory' of John Locke, the 'Utilitarian Theory' of Jeremy Bentham, and together with Léon Duguit's theory of 'Social Solidarity' are all recognised and incorporated by the Grundnorm of our nation. As a result of which foundational principles of both labour law and intellectual property law jurisprudence are laid.

2. Foundational Principles of Labour Law Jurisprudence

Principles like paradigm shift form Laissez Faire State to Welfare State, paradigm shift from master-slave relation to employer-employee relation, social justice, equity, security, right of workmen to form associations or unions and collective bargaining for better conditions of work, right to statutory contract, right to minimum wages and/or floor wages, right of workmen to seek tripartite consultation where the State acts as a facilitator to amicably settle labour disputes between employer and employee[2]. Such foundational principles protect the fundamental rights guaranteed under Part III of the Constitution of India. Following the directives enshrined in Article 39 (c), involvement of the State- in settling any industrial dispute predominantly for preserving the essence of mentioned principles, is one of the vital aspects of 'social solidarity'

[1] The Constitution of India, 1950 art 39.
[2] S.N. Misra, *Labour and Industrial Laws* (29th edn, Central Law Publications Allahabad 2021).

where the State itself is considered as a societal entity in resolving such differences and ensuring that appropriate wages, bonus, rewards, and other social securities are distributed uniformly to the deserving individuals of the society.

Innovation and creativity, if commercially viable forms one of the key ingredients for economic growth of any Sovereign and in such scenario the State under Article 300A[3] of the Constitution of India is duty bound to enact laws not only to protect innovators or creators or authors from infringements of their property rights but to reward them sufficiently for their mental efforts and cost incurred[4]. Intellectual properties are intangible in nature and it consists of bundle of property rights, over which the innovator or creator or author has exclusive ownership rights. At the same time while enacting such laws, the State exercising powers under Article 300A, to fulfil constitutional mandates under Articles 39 (b) and (c) (as discussed prior), has all the rights to restrict or curtail such exclusive ownership rights for the sake of public interest because such commercially viable innovations or creations forms part of material resources of the society and ownership and control must serve societal needs for economic upliftment of the Sovereign for attaining social justice.

3. Copyright Protection, A Duty Of The State To Protect Creativity

3.1. TRIPS Agreement and Its Impact On The Domestic Copyright Law:

Works recognised to be protected are original literary, musical, artistic, dramatic, cinematograph films and sound recordings. India being a signatory of the TRIPS Agreement' 1994[5] and duty bound under Article 51[6] of the Constitution of India, was obligated to incorporate the provisions of the agreement into the domestic law, the Copyright Act' 1957[7]. Provisions of the agreement consolidates the major provisions of all associated conventions (Berne Convention, Rome Convention and WIPO treaties). As per the Berne Convention 1886[8], a copyright owner is rewarded with a bundle of property rights with exclusive ownership. Such exclusivity includes right to translate, to make adaptations, to perform in public, to recite, to

[3]The Constitution of India, 1950 art 300A.
[4] Sreenivasalu N.S., *Law Relating to Intellectual Property* (3rd edn, Lexis Nexis Gurgaon Haryana, 2023).
[5]The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), 1994.
[6]The Constitution of India, 1950 art 51.
[7] The Copyright Act, 1957 (14 of 1957).
[8] The Berne Convention for the Protection of Literary and Artistic Works, 1886.

communicate to public, to broadcast, to make reproductions. The same has been incorporated by the Parliament under Section 14[9] after amendmentof the copyright law. The owner of such copyright is entitled to license or assign such bundle of property rights.

3.2. Special circumstances in service matters when the original author is not considered as first author

The Copyright Act' 1957 provides almost six circumstances when the original author is not considered as the first author. The most relevant circumstance to be quoted in line with the subject matter of this paper is Section 17 (c)[10]of the said Act, which states,

"In the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein."

In 2017, the Hon'ble Delhi Court interpreting the precedent set by the Apex Court[11], affirmed that in any employer-employee relationship governed by a legally valid service agreement, any original work of the employee (the author) created under the terms of such agreements, the first author will be the employer and it is his statutory right[12]. It also stated that such terms must be expressly mentioned in service agreements else the first owner will the employee who is eventually the original author.

4. Right To Statutory Contract, A Fundamental Principle Of Labour Law Jurisprudence

To establish a valid employer-employee relationship, a legally valid service agreement is mandated. Such legal validity is governed by the Industrial Employment (Standing Orders)[13] law which mandates that the provisions mentioned in the schedule of the said Act and rules framed by the appropriate government are ought to be incorporated in every service agreement. Such agreements only after proper scrutinization under the designated authority of the appropriate government will be held valid and legal. Thus, this enactment protects 'Right to

[9]The Copyright Act, 1957 (14 of 1957)s 14.
[10]The Copyright Act, 1957 (14 of 1957) s 17 (c).
[11]*Ram Pershad v. The Commissioner of Income-Tax New Delhi*(1972) 2 SCC 696.
[12]*Neetu Singh v. Rajiv Saumitra & Ors*(2017) Delhi High Court CS(COMM) 935/2016, [para 12].
[13] The Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

Statutory Contract' (which is one of the fundamental principles of labour law jurisprudence) of such individuals who are considered as 'employee' under the law/s.

4.1. Section 14 of Industrial Employment (Standing Orders) Act' 1946, a tool to curtail right to statutory contract:

Section 14 of the Industrial Employment (Standing Orders) Act' 1946 empowers the appropriate government to exempt any industrial establishment or class of such establishments to conditionally or unconditionally exempt from all or any of the provisions of the said Act. Deriving such powers the State Government of Karnataka since 2014 is conditionally exempting industrial establishments like Information Technology (IT), IT-Enabled Services (ITES), Startups, Animation, Gaming, Graphics, Telecom, and other knowledge-based industries from the entire applicability of the said Act. Recently this exemption has been extended till 2029[14]. Conditions mandated for such exemption are:

- ✓ Every such industries shall constitute internal committees to deal with complaints relating to Sexual Harassment of Women at Workplace.
- ✓ Every such industries shall constitute GRC (Grievance Redressal Committee) with equal proportion of number of employers and number of employees following the provisions of the Industrial Dispute Act[15]. The GRC is empowered to deal with any kind of complaints/grievances of employees.
- ✓ Any actions taken from the employer's end with respect to suspension or disciplinary actions or job termination or dismissal or demotion etc it must be communicated to the jurisdictional Deputy Labour Commissioner, Government of Karnataka.
- ✓ The jurisdictional Deputy Labour Commissioner as and when seeks information, the mentioned industries must furnish information regarding service conditions framed in service agreements.

4.1.1. Reasoning of the State of Karnataka for prolonged exemption:

As per Karnataka Information Technology Policy 2020-2025[16],

- ➢ Karnataka is one of the major IT hubs and global innovation centre,

[14] Government of Karnataka Gazette Notification, 2024 LD 328 LET 2023.
[15] The Industrial Dispute Act,1947 (14 of 1947).
[16]Karnataka Information Technology Policy 2020-2025 Order, 2019 ITBT 07 ADM 2019.

- NITI Aayog of Government of India has ranked Karnataka as the top most innovative states in the country,
- Several foreign countries are having global alliance with Karnataka,

Since, the employees working in such industrial establishments are applying mental work and lots of thought process, hence imposing statutory restrictions and mandates on this sector will eventually disturb spontaneity and flexibility to meet global demands and global time zone. Moreover, the State Legislature to meet global standards and expectations, enacted a law the Karnataka Innovation Authority Act, 2020[17]where it authorises the appropriate authority of

Government of Karnataka to exempt any participant from compliance with any law prevailing in the state for the purpose of innovation within the jurisdiction specified therein.

4.1.2. Aftermath of such prolonged curtailment of statutory right

According to the General Secretary of Karnataka IT/ITeS Employees Union (KITU), despite of receiving prolonged exemption from adhering to a major labour law from the State Government, majority of such industrial establishments have failed to adhere to the conditions mentioned in the government order.

As a result of which employees in such industrial establishments are at significant risk of having their basic human rights and fundamental rights infringed due to prolonged State encroachment[18]. Some of the ongoing irregularities are:

- ✓ Retention of original qualification certificates,
- ✓ Demand of huge monetary penalties,
- ✓ Unregulated contract labour practices,
- ✓ Mass layoff culture,
- ✓ Arbitrary terms and conditions of service agreements without supervisory scrutinization of the State.

[17]The Karnataka Innovation Authority Act, 2020 (7 of 2020) s 7.
[18] Kavita Kabeer, 'Concerns of 20 Lakh Ignored, As Karnataka Again Exempts IT Companies from Key Labour Law' (*The Wire,* 30 June 2024) <https://thewire.in/labour/karnataka-standing-orders-act-it-companies-exempt>accessed 26 February 2025.

5. Prolonged denial of the right to a statutory contract jeopardizes employees' ownership rights over their work

As discussed above that right to statutory contract is enshrined within the provisions of the Industrial Employment (Standing Orders) Act’ 1946 and every employee who are employed in such industrial establishments had all the rights to enjoy the fruits of a statutory service agreement until such establishments were categorically held exempted for more than a decade and recently extended for additional five years till 2029. As discussed, any original work accomplished by an employee under the terms of a valid service agreement, applying the provisions of Section 17 (c) of the Copyright Act’ 1957, the employer will be held as the first owner provided such terms are expressly stated in service agreements.

Due to such conditional exemption form the application of the Industrial Employment (Standing Orders) Act’ 1946 and as complaint above by the General Secretary of KITU, the employers of such industrial establishments following the present trend of framing arbitrary terms of service agreements, are at the liberty to bypass the mandates of Section 17 (c) of the Copyright Act’ 1957, infringing the statutory rights of employees who are original creator of works like diagrams, maps, tables, charts, plans, schematics computer programmes, databases, and other works of similar nature. Such arbitrary terms may even infringe into the moral rights[19] of employees under the Indian Copyright Act who are eventually the original authors.

Particularly for fresher’s, who are often unaware of their rights, this prolonged exemption makes their position extremely vulnerable to arbitrary actions from their employer’s end. As a result, basic principles and objective of intellectual property law jurisprudence are vitiated. This will unnecessarily increase the probability of number of copyright infringement suits before the judiciary because due to such exemptions the employers are free to bypass the vitals of *‘first schedule’* provided in the Industrial Employment (Standing Orders) Act’ 1946, which expressly mandates the mentioning of appropriate procedure in service agreements for redressal of any grievances due to any wrongful exactions of the employer.

[19] The Copyright Act, 1957 (14 of 1957) s 57.

6. Legal Recourse Suggested

It is a known fact that right to property is a constitutional right guaranteed under Article 300A of the Constitution of India. It can only be curtailed under the authority of law. Curtailing property rights of mentioned employees can only be accomplished under the procedure established by law. But due to such prolonged exemptions, the actions of State Government of Karnataka are unnecessarily encroaching into the copyright law which is an exclusive matter of the Union of India under the Constitution of India[20].

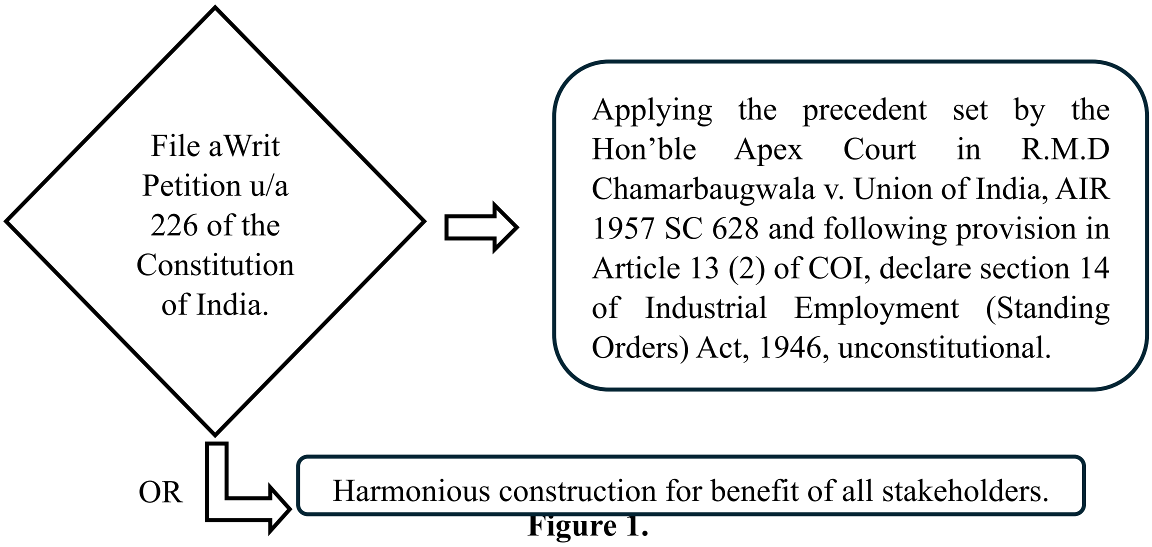

Figure 1.

6.1. Constitutional recourse under Article 226 of the Constitution of India:

As depicted in figure 1, mentioned remedies may be prayed before the Hon'ble High Court of Karnataka by filing a writ petition under Article 226[21] of the Constitution of India. Since jurisdiction under the mentioned Article is much wider as compared to Article 32[22] of the Constitution of India and the issue involves consideration of legal rights, constitutional rights, and fundamental rights hence recourse under Article 226 will be the most suitable option. However, to establish this contention a comparative analysis of both the Articles is provided below,

i. *Article 32:* It is a fundamental right (approaching the Supreme Court of India for protection of infringed fundamental rights is itself a fundamental right). *Article 226:* It

[20]The Constitution of India,1950 art 246, seventh schedule list I-union list entry 49.
[21]The Constitution of India,1950 art 226.
[22]The Constitution of India,1950 art 32.

is a constitutional right (approaching the High Court of appropriate jurisdiction under the said Article is not a fundamental right rather it is a constitutional right).

ii. *Article 32:* If fundamental right is infringed then a petition can be filed for its protection. *Article 226:* Not only for infringed fundamental right but also if any legal right and/or constitutional right is infringed then a petition can be filed for appropriate protection.

iii. *Article 32:* The Supreme Court of India can issue any order or direction or writs for the protection of fundamental rights. *Article 226:* The High Court of specific jurisdiction can issue any order or direction or writs for the protection of fundamental rights and/or legal rights and/or constitutional rights.

iv. *Article 32:* Such orders or directions or writs can be issued against the State (as defined under Article 12[23] of the Constitution of India) only. *Article 226:* Such orders or directions or writs can be issued not only against the State but also against any person, any authority or Government. (Note: irrespective of the fact that the seat of such Government or residence or place of operation is not within the jurisdiction of the High Court, the concerned Court may issue such order or direction or writs if the cause of action or part of cause of action falls within its jurisdiction).

Thus, it can reasonably be stated that the issue under consideration in this paper is a fit case to seek remedy before the Hon'ble High Court of Karnataka under Article 226 of the Constitution of India. Subsequently if the petitioner is aggrieved of any order or judgment of the High Court then a constitutional recourse by filing a special leave petition (SLP)[24] may be availed before the Hon'ble Supreme Court of India seeking appropriate justice, provided the petitioner satisfies the Apex Court that the High Court of Karnataka committed a grave miscarriage of justice while considering finality of its order or judgement[25].

6.1.1. Type of writ to be issued for appropriate justice:

a) *Mandamus:* Literal meaning *"we command."* This type of writ is used when a public official or public body or corporation or lower court or tribunal or even any government has not done the needed duty or refused to do. After this writ is issued, the duty needs to be resumed. For the issue in hand, if a writ of mandamus is issued by the High Court of Karnataka, then it will compel the State Government to focus on key aspects in protecting

[23]The Constitution of India,1950 art 12.
[24]The Constitution of India,1950 art 136.
[25]Narender Kumar, *Constitutional Law of India* (10th edn, Allahabad Law Agency Haryana 2018).

basic rights of employees associated with the mentioned industrial establishments. Mandamus may be issued because there are many pending grievances raised by affected employees and associated trade unions for prolonged exemption of major labour laws resulting into gross violation of statutory, constitutional, and fundamental rights.

b) *Certiorari:* Literal meaning *"to be informed"* or *"to be certified."* This type of writ is issued against an authority (quasi-judicial) or any subordinate court or tribunal which exceeds its jurisdiction. It is issued after the proceedings are over under such authority or court mainly to quash such proceedings. As per news reports[26] there had been multiple meetings and discussions held between the government and employees affected. Hence related orders after such discussionaffecting basic statutory, constitutional, and fundamental rights must be quashed. Through this writ the writ courts demand for the entire case file or related information to be submitted before it. Hence if this writ is issued then State Government of Karnataka will be compelled in producing all details and related information which will aid the High Court of Karnataka to quash government order dated 10th June 2024[27], for the sake of complete justice.

However, before invoking writ jurisdiction of a writ court, a common law mandate must be complied, as discussed subsequently.

6.1.2. Demand for justice, a common law mandate to invoke writ jurisdiction:

Demand for justice primarily encompasses a sense of fairness, equality, and desire for accountability. These are envisaged in the philosophy of Natural School of Jurisprudence. Its primary focus is on justice, equity, good conscience, principles of natural justice, fairness, equality. These forms the backbone of any legal system. Any deviation from these principles shall lead to distress, havoc, anarchy, and injustice at large. Thus, raising a demand to the appropriate authority for the protection of any infringed right in rem is the right of the affected party. Whenever any statute is enacted, it also provides provision where the details of the appropriate authority is provided to whom complaints or grievances may be filed by the affected party if any right in rem is infringed. It becomes the duty of such authorities to redress the grievance within the stipulated time limit. Thus, with respect to the issue discussed in this paper, prior invoking writ jurisdiction of Hon'ble High Court of Karnataka, it must be

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[26] Kavita Kabeer, 'Concerns of 20 Lakh Ignored, As Karnataka Again Exempts IT Companies from Key Labour Law' (*The Wire,* 30 June 2024) <https://thewire.in/labour/karnataka-standing-orders-act-it-companies-exempt> accessed 26 February 2025.

[27] Government of Karnataka Gazette Notification 2024, LD 328 LET 2023.

investigated and established that the common law mandate *'demand for justice'* had been complied or not. Every writ court in the country has incorporated this mandate in its rules. Few examples are cited below,

- **Hon'ble Supreme Court of India:**

As per 'Handbook on practice and procedure and office procedure, 2017[28]' of the Supreme Court of India it is clearly stated *"whether the concerned Government Authority was moved for relief(s) sought in the petition and if so, with what result."* This clearly depicts that the Supreme Court of India under Article 32 as well mandates that the petitioner prior approaching the writ court must establish that he has exhausted with all the remedies available to him and he has made a demand for justice to the appropriate government authority.

- **Hon'ble High Court of Punjab and Haryana:**

As per the 'Writ Jurisdiction (Punjab and Haryana) Rules, 1976[29]' the essence of the same is envisaged. It states *"statement about any alternative remedy, which was available to the petitioner and whether such remedy was availed of, and if not, the reasons therefore, and if availed with what results."* This clearly depicts and points those writ rules of the high court of Punjab and Haryana also mandates that the petitioner prior approaching the writ court must establish that he has exhausted with all the remedies available to him and he has made a demand for justice to the appropriate authority.

- **Hon'ble High Court of Andhra Pradesh:**

As per 'Writ Proceedings Rules, 1977[30]' of High Court of Andhra Pradesh the essence of the same is envisaged. It states *"whether any alternative remedy for the relief sought is provided for by or under any other law for the time being in force, and whether that remedy has been availed of and if so, with what result, by way of a separate paragraph."*

This clearly establishes that writ rules of the high court of Andhra Pradesh also mandates that the petitioner prior approaching the writ court must establish that he has exhausted with all the remedies available to him and he has made a demand for justice to the appropriate authority.

- **Hon'ble High Court of Karnataka (most relevant):**

[28]The Supreme Court of India- Handbook onPractice andProcedure andOffice Procedure, 2017.
[29] The High Court of Punjab and Haryana- Writ Jurisdiction (Punjab and Haryana) Rules,1976 r 20.
[30]The High Court of Andhra Pradesh-Writ Proceedings Rules,1977 r 5 (b) (iv).

'The Writ Proceedings Rules, 1977[31]' of High Court of Karnataka also envisages the same. It states *"in the petitions referred to in sub-rules (1) and (2), the petitioner shall state whether any other remedy for such redress is provided for/by or under any other law for the time being in force and whether that remedy has been availed of, and if so with what result."* This conclusively signifies that writ rules of the High Court of Karnataka also mandates that the petitioner prior approaching the writ court must establish that he has exhausted with all the remedies available to him and he has made a demand for justice to the appropriate authority.

For the issue under consideration, it is evident from the cited news report that due to such prolonged exemptions from application of the major labour law, KITU (Karnataka State IT/ITeS Employees' Union) representing the employees of the mentioned industrial establishments had multiple times approached the appropriate authority of the Department of Labour Government of Karnataka seeking protection of their basic statutory and fundamental rights but no actions had been taken, rather in June' 2024 it had been further extended till June' 2029. Thus, the common law mandate of sufficing *'demand for justice'* had been fulfilled and it is a fit case to invoke writ jurisdiction of the High Court of Karnataka under Article 226 of the Constitution of India.

6.1.3. Application of doctrines while deciding the case:

For the issue concerned, *either* of the mentioned legal principles may be applied for the sake of complete justice,

6.1.3.1. Application of the Doctrine of Severability:

Any act or omission of the State which curtails fundamental rights and human rights of an individual or a group of individuals then such an act or omission is considered void[32] (to the extent of its inconsistency with Part III of the Constitution of India) and it comes under the purview of judicial review. As per Hon'ble Apex Court in R.M.D Chamarbaugwala v. Union of India[33], applying the principle of 'Doctrine of Severability' a constitutional court is empowered to discard the inconsistent part of the law when valid and invalid provisions are distinct and so separable that after discarding the inconsistent provisions of the enactment, the remainder is an entire legislation. Based on such grounds and pleading the same, as per reports,

[31]The High Court of Karnataka- The Writ Proceedings Rules, 1977 r 2 (3).
[32]The Constitution of India,1950 art 13 (1).
[33]*R.M.D Chamarbaugwala v. Union of India*(1957) AIR SC 628.

the KITU had already filed a writ petition under Article 226 of the Constitution of India before the Hon'ble High Court of Karnataka, praying to consider Section 14 of the Industrial Employment (Standing Orders) Act' 1946 as unconstitutional because this section is the root cause of all mentioned issues and it has become a tool for prolonged arbitrary actions of the State infringing fundamental and human rights of lakhs of employees employed in the mentioned sector/s of Karnataka.

6.1.3.2. Application of the Principle of Harmonious Construction:

Generally, while adjudicating any dispute if the Court finds there is a repugnancy between two or more provisions of a statute, then it may so interpret by giving effect to both by harmonizing them with each other. The basic principle or assumption which governs here is that it is deemed that the Legislature never intend to give something in one hand and take away the same by the other hand[34]. Hence considering same for the issue in hand, it cannot be denied that the legislative intent behind relevant provision/s of the Industrial Employment (Standing Orders) Act' 1946[35] was mischievous in nature rather it provided powers into the hands of the executives to make application of the law flexible so that state specific scenarios and requirements could be handled and catered. Simultaneously this fact also cannot be denied that State of Karnataka being one of the leading states in housing, nurturing major global conglomerates and corporate houses and contributing significantly to India's GDP, strict adherence to all major laws is not practical always. But this vital fact must also be acknowledged that in the light of *'ease of doing business (EODB)'* and *'innovation'* prolonged exemptions of application of major labour laws (from year 2014 to 2029) grossly affects basic human rights of associated employees, which eventually makes them vulnerable to have their creative rights guaranteed under Article 300A of the Constitution of India in shadows. Thus, in the writ petition it may be prayed before the Hon'ble High Court of Karnataka to harmoniously construct provisions of section 14 of the Industrial Employment (Standing Orders) Act' 1946 and other provisions so that interests of all the stakeholders including the 'State' are protected.

7. Conclusion

[34]Prof. T. Bhattacharyya, *The Interpretation of Statutes*(11th edn, Central Law Agency Prayagraj, 2020).
[35]The Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) s 14.

The Hon'ble Supreme Court of India in Western India Match Co. v. Workmen[36], had categorically stated that certifying officers under the Industrial Employment (Standing Orders) Act' 1946 have adjudicating powers to test the fairness and reasonableness of service conditions considering the social interest of both the parties. This is an excellent example to understand the significance of right to statutory contract. Due to such prolonged exemptions from the application of the said Act, consequentially had severely infringed this right of lakhs of employees, eventually leaving them vulnerable to arbitrary actions of both employers and the State at large. Thus, a prolonged arbitrary action of the State in labour law jurisprudence simultaneously has left a wide scope for arbitrary actions in property law jurisprudence (intellectual property law). In the absence of standing orders or rules, significance of employer-employee relationship is vitiated and it deteriorates to master-slave relationship (as affirmed in Management of M.I.S Shiva Flour Mills Bhagalpur v. Workmen[37]). Its high time now that the State must be vigilant enough in protecting fundamental, constitutional, and statutory rights of such employees who are one of the pillars of the tertiary sector of Indian economy which is contributing above 54% (approximately) to India's Gross Domestic Product (GDP). One of the common major objectives of both labour law and intellectual property law jurisprudence is economic growth of the country. In the light of innovation and ease of doing business, if the workforce who contributes majorly to the Indian GDP is unnecessarily deprived of guaranteed rights, then such an act of omission of the State is a fit case for judicial review.

[36] *Western India Match Co. v. Workmen* (1973) AIR SC 2650.
[37] *Management of M.I.S Shiva Flour Mills Bhagalpur v. Workmen* (1970) AIR Pat 273.

THE 70-HOUR WORKWEEK DEBATE: A COMPARATIVE STUDY OF INDIAN LABOUR LAWS AND GLOBAL BEST PRACTICES

~Humam Zafar & Aman Hasan

Abstract

In an era where productivity and economic growth are increasingly tied to longer working hours, India faces a contentious debate surrounding the 70-hour workweek. Advocated by industry leaders as a means to accelerate national development, this culture of prolonged work raises critical questions about its impact on employee well-being and productivity. Drawing parallels with Japan's concept of karoshi *death caused by overwork this study investigates whether extended working hours are essential or if alternative approaches like upskilling, flexible work arrangements, and reduced micromanagement can drive sustainable workforce efficiency.*

India's labour landscape is shaped by landmark legislations like Minimum Wages Act (1948) Factories Act (1948), Mines Act (1952), and state-specific Shops and Establishment Acts, all designed to limit excessive working hours and prevent worker exploitation. Yet, enforcement remains inconsistent, specifically in service and corporate sector. Judicial interpretations of overtime calculation and working hour regulations have further influenced this landscape, while the upcoming labour codes propose a four-day workweek with 12-hour shifts, sparking fresh debates on productivity and work-life balance.

Beyond the corporate sphere, systemic overwork is prevalent in professions like law and medicine, where long hours are normalized. Although financial compensation is provided for overtime, its adequacy as a remedy remains questionable, especially considering the physical and mental toll of excessive work. The study evaluates India's wage calculation methods and explores whether comprehensive measures *addressing burnout, stress-related injuries, and mental health are needed to ensure holistic well-being.*

To propose sustainable solutions, this research examines global best practices from countries renowned for balancing productivity with worker welfare. Scandinavia's shorter workweeks, Germany's regulated overtime policies, and Japan's evolving approach to work-life balance offer valuable lessons. France's Right to Disconnect law serves as a model for safeguarding personal time, while expanded paid leave entitlements demonstrate the benefits of prioritizing employee well-being.

India stands at a crossroads where aligning labour policies with both economic goals and human well-being is paramount. By strengthening enforcement mechanisms, adopting flexible work models, and integrating proven global practices, India can foster a work culture that enhances productivity without compromising health. Through legislative reforms, judicial precedents, and international collaboration, this study advocates for a balanced approach that respects both the aspirations of a growing economy and the fundamental rights of its workforce.

Keywords: Working Hours, Overwork, Productivity, Worker's welfare

1. Introduction

An analysis of several socio-economic epochs reveals that the nature of work influences and alters the organisation of human society. The twentieth century witnessed unprecedented prosperity through the Industrial Revolution, commonly known as *"Fordism"*. In the post-Fordism era, the boom in white-collar professions, particularly in Information Technology, is regarded as the most significant disruption in labour jurisprudence. The conventional employer-employee relationship model has evolved to such a degree that it jeopardizes the basic principles of labour law jurisprudence. The traditional concept of command and control between employer and employee has become so complex that extending labour law protections to employees is virtually unfeasible. Now adding fuel to the fire, industrialists and corporate mammoths are suggesting long working hours up to 90 hours without giving due consideration to current labour legislation and the welfare of employees.

The recent back and forth over the suggested 70 hours work week in India has triggered wide ranging debate which brings fundamental issues into the public discourse, and touches the soul of labour rights, employee wellbeing and economic sustainability. India is already one of the most overworked countries and over 51% of employees work above 49 hours per week.[1] This culture of overwork has resulted in rising rates of burnout, declining mental health, and worsening quality of life. In reality, these working habits would not be sustainable as extensive research shows that long hours of work also lead to lower productivity alongside negative health effects and increased human error due to fatigue as well as diminishing returns.

The International Labour Organization has consistently accentuated the negative repercussions of excessive work hours, cautioning that while short-term output may increase, sustained overwork leads to long-term inefficiencies and economic stagnation.

India's labour laws meant to regulate working time have become increasingly ineffective in protecting workers in an evolving economic landscape. According to the Factories Act, 1948 and various labour laws, the standard workweek is 48-hours and any hours worked beyond that attracts overtime pay[2]. However, these protections are mostly for blue-collar workers, and corporate professionals, gig economy workers, and service sector workers are largely unprotected. The increase in hybrid work models and remote jobs has also contributed to this problem for some, creating an "*always-on*" work culture that does not distinguish between professional and personal life. While regulatory frameworks are in place, a lack of enforcement has enabled businesses to circumvent labour protections, thus normalizing overwhelming workloads.

Recent empirical studies provide a stark illustration of the detrimental effects of overwork. The FICCI-BCG report revealed that 58% of Indian employees experience chronic burnout, significantly surpassing the global average of 48%.[3] Similarly, the McKinsey Health Institute's 2023 report underscored that Indian professionals exhibit higher stress levels and lower job

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[1] Nandini Singh, 'India among top overworked nations, 51% employees work 49+ hours a week' (Business Standard, 20 September)< https://www.business-standard.com/india-news/india-among-top-overworked-nations-51-employees-work-49-hours-a-week-124092000495_1.html> accessed 24 February 2025.

[2] The Factories Act,1948 (63 of 1948), s 51.

[3] Raghav Aggarwal, '58% Indians feel burned out, higher than global average: Ficci-BCG report' (Business Standard, 3 September 2024)< https://www.business-standard.com/industry/news/58-indians-feel-burned-out-higher-than-global-average-ficci-bcg-report-124090300768_1.html> accessed 24 February 2025.

satisfaction than their global counterparts.[4] Meanwhile, data from the ILO reiterates that countries with well-regulated work-hour policies, such as Germany and the Netherlands, demonstrate higher levels of employee well-being without compromising economic productivity. These findings challenge the premise that extended work hours are necessary for economic advancement, instead highlighting that sustainable productivity is best achieved through balanced work policies.

The Economic Survey 2024-25 has recognized the urgent issues of overwork in India, calling for a rebalancing of labour policies to reconcile economic needs with workers welfare.[5] While the survey recognizes the contribution of hard work to national advancement, it cautions against the inefficiencies of worker burnout and deteriorating mental health. The report calls on policymakers to update labour legislation, improve regulatory enforcement, and promote a corporate culture that puts efficiency ahead of just hours on the job. Adopting best practices from around the world flexible schedules, mental health programs, and enhanced overtime regulations could yield a more equitable and sustainable framework for India's labour market.

This paper firstly aims to investigate the evolution of labour legislation and the changing dynamics of the concept of workers. Secondly, this research will delve into the changing definitions of industry and workmen in the present context, particularly in relation to white-collar professionals especially IT sector employees and will further discuss how, due to these archaic and obsolete laws, MNCs and corporations circumvent the rights of engaged employees and exploit them through legal grey areas. Subsequently, this research will investigate the condition of women in relation to overwork; later, it will delve into the methodologies for calculating overtime pay. Lastly, this research will present, through a comparative analysis of several best practices from regions with a labour climate similar to that of India, with possible solutions.

2. Evolution Of Labour Legislation In India

To trace the roots of labour legislation in India, one must divide the legislative spectrum into distinct time periods, reflecting the development of the Indian state and the changing economic

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[4] India tops in workplace burnout survey with 59% reporting symptoms (livemint, 3 November 2024)< https://www.livemint.com/news/india/india-tops-in-workplace-burnout-survey-with-59-reporting-symptoms-mckinsey-health-institute-11698999238983.html> accessed 24 February 2025.

[5] Jamine Anand, ‘ Over 55-60 hours workweek can impact one's health: Economic Survey’ (India Today, 1 February 2025)< https://www.indiatoday.in/budget/story/over-55-60-hours-workweek-can-impact-one-health-cautions-economic-survey-call-for-healthy-workplace-2673192-2025-02-01> 25 February 2025.

ideologies of the country. The evolution of labour law can be traced back to colonial rule, which was driven by the idea of a police state concerned solely with the enforcement and monitoring of laws[6]. Legislations such as *the Workers' Breach of Contract Act, 1959,* were enacted to uphold the colonial master's extreme control over native workers, who were treated as little more than human commodities[7]. The Act specifically sought to punish employees solely for the breach of contract, without distinguishing between simple and fraudulent breaches. Due to the Act's lack of reference to a workman's fraudulent intention, both employees and workers in general endured immense suffering[8].

Even though historians have several contradictory viewpoints regarding the development of labour legislation in the post-World War I era, there is consensus that several protective laws, such as the Factories Act, (1948), Mines Act, (1922) and the Workmen's Compensation Act, 1923, were enacted[9]. These laws originated due to poor working conditions, widespread labour exploitation in factories, and a changing political and industrial landscape. The colonial regime was compelled to introduce such reforms due to the impact of World War I and the growing collective voice of labour worldwide, particularly through the International Labour Organisation[10]. India was among the first to ratify treaties like the Hours of Work (Industry) Convention, 1919. Later, seeds of the independence movement were sown on the Indian subcontinent, establishment of the All-India Trade Union Congress as the voice of the workers had a significant impact on the development of labour laws in India. The colonial regime subsequently established the Royal Commission on Labour on 4th July 1929.[11]

Upon independence, major changes were brought about to colonial-era legislation to promote a more cooperative relationship between capital and labour. During a tripartite meeting in December 1947, it unanimously agreed that labour should get equitable compensation and improved conditions at work, while capital would, in exchange, have the complete cooperation of labourers to guarantee continuous production and enhanced productivity.[12] This mutual agreement encompassed a three-year a halt to, devoid of strikes and lockouts. The Industrial

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[6] Bejoy MS Raj, 'Labour standards in IT Industry'(2018) 11 CBR 64.
[7] Rohini Pillai & Bino Paul, 'Industry 4.0 and the Changing Employment Relations: A Case of the Indian Information Technology Industry' (2023) 16 NHRD Network Journal 94.
[8] Bejoy MS Raj, 'Labour standards in IT Industry'(2018) 11 CBR 64.
[9] Rajshree Mishra & Rijuta Misra,' Unionism in Indian BPOS : From Oblivion to Cognition' (2009) 2.1 GNLU L. Rev. 127.
[10] Rohini Pillai & Bino Paul, 'Industry 4.0 and the Changing Employment Relations: A Case of the Indian Information Technology Industry' (2023) 16 NHRD Network Journal 94.
[11] Narayan Chandra Sarangi,' Road to Nowhere-The Law & Policy Perspective on the Crisis in Labour Law Jurisprudence in India in the Wake of Covid-19' (2021) 8 NLUO LJ 39.
[12]Rohini Pillai & Bino Paul, 'Industry 4.0 and the Changing Employment Relations: A Case of the Indian Information Technology Industry' (2023) 16 NHRD Network Journal 94.

Disputes Act was adopted on April 1, 1947[13], superseding the Trade Disputes Act, and has since been integral to the statutory structure.

In the late 1980s, as economies that had adopted the socialist pattern were crumbling, India though following a somewhat mixed economy suffered economic deterioration due to government control, a socialistic framework, and the Licence Raj.[14] Facing a currency deficit in June 1991, the government swiftly adopted a new industrial policy, dismantling the last vestiges of import substitution, removing restrictions on private investment, and loosening restrictions on foreign investment. Against this backdrop, survival of the fittest became the core objective, and the demand for labour law reforms began gaining momentum in India.[15]

With the white-collar sector emerging as a key growth engine, liberalisation dismantled restrictive policies and opened the doors for foreign investment, leading to the rapid expansion of industries such as information technology and business process outsourcing (BPO)[16]. BPO has emerged as an important sunrise industry, providing jobs to millions of educated Indians. With the possibility to drastically change Indian society as a whole, expertise in software service exports has been presented in terms of India's comparative advantage in service providing and its skilled workforce endowment[17].

It is pertinent to note that the unprecedented economic growth ushered in by the NEP-1991 also gave rise to informal employment in India. The "work and earn" dynamic largely dominates this employment relationship, which remains outside the purview of formal labour laws. Although this regulatory loophole has been acknowledged on numerous occasions, ground realities have prevented any effective legislative measures to address it[18]. Nevertheless, this category of informal employment continued to sustain itself against all odds due to its inherent "work and earn" nature until it was disrupted by the lockdowns imposed during the COVID-19 pandemic in late March 2020 in India[19].

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[13] The Industrial Dispute Act, 1947 (14 of 1947).

[14] Narayan Chandra Sarangi,' Road to Nowhere-The Law & Policy Perspective on the Crisis in Labour Law Jurisprudence in India in the Wake of Covid-19' (2021) 8 NLUO LJ 39.

[15] N. Dasharath & Sujatha V. Durgekar,' Globalisation and its Implication on Law Relating to Women and Their Work-Life Balance' (2020) 6.1 IJLS 74.

[16] Rohini Pillai & Bino Paul, 'Industry 4.0 and the Changing Employment Relations: A Case of the Indian Information Technology Industry' (2023) 16 NHRD Network Journal 94.

[17] Narayan Chandra Sarangi,' Road to Nowhere-The Law & Policy Perspective on the Crisis in Labour Law Jurisprudence in India in the Wake of Covid-19' (2021) 8 NLUO LJ 39.

[18] Nausheen Nizami,' Measuring the Gap Between Labour Laws and Work in India's IT Industry and Policy Directions'(2017) 60 Ind. J. Labour Econ. 253.

[19] N. Dasharath & Sujatha V. Durgekar,' Globalisation and its Implication on Law Relating to Women and Their Work-Life Balance' (2020) 6.1 IJLS 74.

Faced with prolonged economic stagnation and driven by the need to revive the economy following COVID-19-induced lockdowns and subsequent economic losses, the government of India undertook labour law reforms. This initiative involved consolidating numerous existing laws governing wages, employment conditions, collective bargaining, and social security into a more streamlined framework[20].

By consolidating various legislations related to wages, payment of wages, equal remuneration for the same or similar work, and minimum wages, India notified the *Wage Code*[21] on 8 August 2019. This code seeks to harmonise conflicting definitions and operational challenges by clearly defining the term *"employee,"* which now includes individuals employed in supervisory, managerial and administrative role. Meanwhile, the meaning of *"worker"* does not include supervisory and managerial employees but includes working journalists and employees in sales promotion. The sections concerning the wages, minimum wages, and bonuses, as well as sections which prohibit discrimination in recruitment, remuneration, and service conditions, apply specifically to *employees*[22].

3. Legal Void: Archaic Obsolete Law In The White-Collar Industry

A couple of decades ago, the term *industry* primarily referred to factories. However, it has undergone a drastic transformation and is no longer limited to blue-collar workers but also includes white-collar professionals, particularly those engaged in Information Technology-enabled Services (ITeS) and Business Process Outsourcing (BPO)[23]. This research study will primarily focus on the plight of individuals working in ITeS and BPO, with a particular emphasis on the IT industry. It will specifically address issues related to long working hours and unpaid overtime in this sector[24].

Labour law in India is experiencing an identity crisis, as the concept of labour is dissolving. The IT sector perfectly fits under the concept of dispersed labour. IT workers are commonly

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[20] Nausheen Nizami,' Measuring the Gap Between Labour Laws and Work in India's IT Industry and Policy Directions'(2017) 60 Ind. J. Labour Econ. 253.

[21] The Code on Wages, 2019 (bill no. 184 of 2019).

[22] Rohini Pillai & Bino Paul, 'Industry 4.0 and the Changing Employment Relations: A Case of the Indian Information Technology Industry' (2023) 16 NHRD Network Journal 94.

[23] Deutsche Welle, 'Long hours, no overtime pay: Are India's archaic labour laws enabling worker exploitation?'(The Frontline, 04 September 2024) < https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece> accessed 25 February 2025.

[24] Narayan Chandra Sarangi,' Road to Nowhere-The Law & Policy Perspective on the Crisis in Labour Law Jurisprudence in India in the Wake of Covid-19' (2021) 8 NLUO LJ 39.

described as *knowledge workers*, whose work involves non-routine problem-solving skills by applying a combination of divergent and convergent thinking[25]. The booming growth of the Indian IT industry has established itself worldwide but has given rise to major labour concerns, one among them being the pervasive issue of long working hours and unpaid overtime[26].

Organisations exploit contractual provisions, legal loopholes, which compel employees to work overtime without enough remuneration. This phenomena is paradoxically prevalent across nations, authorities, and sectors, but it remains unregulated. Individuals in this industry are frequently termed cyber coolies or, at times, likened to a galley of slaves on Roman vessels[27].

The Constitution of India's Schedule 7 lists labour as a subject on the Concurrent List in entriy 22 and 24 respectively. This means that both the Central Government[28] and the States can make laws about it. Labour laws cover a wide range of topics, including workplace relations, wages, working hours, and terms of service. There are about 43 central labour laws and 91 state labour laws that are enforced[29].

Many things depend on the answer to the question of whether IT and ITeS workers are covered by current wage rules and can get perks like overtime pay. The Industrial Disputes Act of 1947[30], for example, deals with disagreements between workers and industries. According to the Act, both "workman" and "industry" are defined. To see if an IT worker is covered by the Act, it must be shown that both the employer and the worker meet the definitions of "workman."[31]

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[25] Vanshika Rastogi, 'Breaking the silence: How to identify and address subtle exploitation at work? '(ETHR World, 19 November 2024) < https://hrsea.economictimes.indiatimes.com/news/employee-experience/breaking-the-silence-how-to-identify-and-address-subtle-exploitation-at-work/115411319 > accessed 25 February 2025.

[26] Deutsche Welle, 'Long hours, no overtime pay: Are India's archaic labour laws enabling worker exploitation?'(The Frontline, 04 September 2024) < https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece> accessed 25 February 2025.

[27] Bejoy MS Raj, 'Labour standards in IT Industry'(2018) 11 CBR 64.

[28] Government of India, Ministry of Labour & Employment, "Labour Law Reforms Ministry of Labour & Employment/Government of India" <https://labour.gov.in/labour-law-reforms>accessed on 25 February, 2025.

[29] Chris Swartz, 'After 30 Years, Only 23 Countries Have Ratified Indigenous and Tribal Peoples Convention ILO 169' (Cultural Survival, 05 June 2019) < https://www.culturalsurvival.org/news/after-30-years-only-23-countries-have-ratified-indigenous-and-tribal-peoples-convention-ilo> accessed 25 February 2025.

[30] The Industrial Dispute Act, 1947 (14 of 1947).

[31] Avani Chokshi, 'Labour Laws: What about IT?' (AICCTU, 04 January 2024) < **https://www.aicctu.org/workers-resistance/v1/workers-resistance-july-2022/labour-laws-what-about-it**> accessed 25 February 2025.

4. Evolving Legal Definition Of 'Industry' And Its Impact On Information Technology Sector

The initial inquiry is easier to address concerning IT organisations. Section 2(j)[32] of the Industrial Disputes Act defines "industry" as any business, trade*, undertaking, manufacture, or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen*[33].

Furthermore, in the landmark judgement of ***Bangalore Water Supply v. A. Rajappa***[34]**,** the apex Court provided decisive set of three tests, which broadened the definition of *industry*. An industry exists firstly, if there is an organized activity; secondly, organisation through mutual consent between the employer and employee; and *thirdly*, distribution and production of goods and services which helps to fulfils human needs and wishes. Prima facie, if these conditions are met, the enterprise qualifies as an *industry*[35].

The court, overturning earlier precedents, held that *industry* should be interpreted broadly to encompass all organised activities involving an employer-employee relationship. This includes professions, clubs, cooperatives, educational institutions, research centres, and charitable projects, with only a few exceptions. In the context of the IT industry, this means that tech firms, software companies, and IT-enabled service providers fall squarely within this expansive definition, leaving them with minimal exemptions despite their unique operational models and modern work practices[36].

In 1982, significant amendments were made to expand the definition of *industry*. Building upon these changes, the *Industrial Relations Code, 2020,* further refines this concept by providing a more detailed definition under Section 2(p)[37]. According to this provision:

"Industry" refers to any systematic activity carried out through cooperation between an employer and a worker (whether employed directly by the employer or through an agency, including a contractor) for the production, supply, or distribution of goods or services, with

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[32] The Industrial Dispute Act, 1947 (14 of 1947), s 2(j).
[33] The Industrial Dispute Act, 1947 (14 of 1947), s 2(j).
[34] *Bangalore Water Supply v. A Rajappa* AIR 1978 SC 548.
[35] *Bangalore Water Supply v. A Rajappa* AIR 1978 SC 548.
[36] Drishti Miglani, 'APPLICABILITY OF LABOUR LAW IN IT SECTOR' (Indian Legal Solution, 17 April 2020) < https://ilsijlm.indianlegalsolution.com/applicability-of-labour-law-in-it-sector-drishti-miglani/> accessed 25 February 2025.
[37] The Industrial Relations Code, 2020 (35 of 2020), s 2 (p).

the objective of satisfying human wants or wishes—excluding those that are purely spiritual or religious in nature[38].

The evolution of the definition of *industry*, as explained above, encompasses IT industries as well. However, challenges arise when certain legal provisions are either inapplicable or ambiguous in terms of implementation and enforcement. This ambiguity opens the door for extensive debate and research. While some states have exempted IT industries from the *Industrial Employment (Standing Orders) Act*[39], they remain covered under the *Industrial Disputes Act, 1947*, ensuring employees are still seen as *workers* and given all the protections[40].

The IT industry fulfils all the essential criteria of an *industry*. It operates through a structured process of production and creation, relying on cooperation between employers and workers. Its core function is to produce, supply, or distribute goods and services that adapt to the evolving needs of society[41]. Unlike organisations primarily engaged in charitable, social, or philanthropic activities, the IT sector is commercially driven. Additionally, it does not perform sovereign functions of the government, such as defence research, atomic energy, or space exploration. Lastly, it is not primarily involved in domestic work[42].

Hence, the IT industry falls within the scope of *industry* under both the *Industrial Disputes Act*[43] and the *Industrial Relations Code*[44]. However, issues arise when certain provisions and welfare policies under these laws are not extended to specific sections of the industry, leading to an unequal and discriminatory environment within the sector.

5. It Employees And The 'Workman' Conundrum

The second question, whether IT employees fall under the ambit of "workmen" as stated under Section 2(s) of the *Industrial Disputes Act*[45], is particularly complex and ambiguous. In many office environments, employers deliberately classify staff as “officers,” “executives,” or “supervisors” to circumvent overtime regulations, as these rules do not apply to these

[38] The Industrial Relations Code, 2020 (35 of 2020), s 2 (p).
[39] The Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).
[40] The Industrial Dispute Act, 1947 (14 of 1947).
[41] N. Dasharath & Sujatha V. Durgekar,’ Globalisation and its Implication on Law Relating to Women and Their Work-Life Balance’ (2020) 6.1 IJLS 74.
[42] Rajshree Mishra & Rijuta Misra,’ Unionism in Indian BPOS : From Oblivion to Cognition’ (2009) 2.1 GNLU L. Rev. 127.
[43] The Industrial Dispute Act, 1947 (14 of 1947).
[44] The Industrial Relations Code, 2020 (35 of 2020).
[45] The Industrial Dispute Act, 1947 (14 of 1947), s 2(s).

categories. This practice creates a legal void, leaving the overtime rights of many white-collar IT employees uncertain. Section 2(s) of the *ID Act*[46] defines the term *workmen* as follows:
"[(s) 'workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward. But does not include a person who is subject to the Air Force Act, Army Act, Navy Act, or who is employed in police or an officer or other employee of prison or who is employed mainly in a managerial or administrative capacity or who, being employed as a supervisor, draws wages more than ten thousand per month[47]*."*

The definition of workman includes anyone employed in an industry for clerical or supervisory tasks. However, a later exception excludes those in supervisory roles, creating ambiguity as the same term carries different meanings within the Act[48]. This results in ambiguity, sometimes used by employers who contend that an employee's position is supervisory or managerial to exempt them from labour regulations. Consequently, several employees are deprived of the protections and benefits designated for labourers under the Act, particularly those who do not conform to the conventional "factory worker" definition[49].

The principal legislation regulating hours of work and overtime compensation is the Factories Act of 1948[50]. Chapter VI of the Act governs the working hours of adults. Per Section 51[51], no employee shall be permitted to work in a manufacturing for over 48 hours per week. Section 54[52] establishes a maximum daily labour hour restriction of nine hours. Section 55 stipulates that the duration of labour in a plant should not surpass[53] five hours without a mandatory rest time of no less than thirty minutes. Section 59[54] mandates that businesses compensate overtime at double the regular wage rate for hours exceeding the established limit. The terminology of the Factories Act explicitly pertains to "factory workers" or "workers," resulting in doubt concerning its applicability to IT sector personnel, who do not conform to the conventional "factory worker" definition.

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[46] The Industrial Dispute Act, 1947 (14 of 1947), s 2(s).
[47] The Industrial Dispute Act, 1947 (14 of 1947), s 2(s).
[48] Avani Chokshi, 'Labour Laws: What about IT?' (AICCTU, 04 January 2024) < **https://www.aicctu.org/workers-resistance/v1/workers-resistance-july-2022/labour-laws-what-about-it**> accessed 25 February 2025
[49] Drishti Miglani, 'APPLICABILITY OF LABOUR LAW IN IT SECTOR' (Indian Legal Solution, 17 April 2020) < https://ilsijlm.indianlegalsolution.com/applicability-of-labour-law-in-it-sector-drishti-miglani/> accessed 25 February 2025.
[50] The Factories Act, 1948 (63 of 1948).
[51] The Factories Act, 1948 (63 of 1948), s 51.
[52] The Factories Act, 1948 (63 of 1948), s 54.
[53] The Factories Act, 1948 (63 of 1948), s 55.
[54] The Factories Act, 1948 (63 of 1948), s 59.

No Supreme Court case has explicitly determined the inclusion of IT employees under the Factories Act. In ***Security Printing & Minting Corporation of India Limited v. Vijay D. Kasbe***[55], the Court determined that government employees, categorised as civil servants, are not entitled to double overtime pay under Section 59(1) of the Factories Act, as they do not meet the criteria of factory workers. The relevant paragraphs are

"It must also be borne in mind that there are three different categories of employment, if not more, in the country. They are: (i) (i) employment, which is statutorily protected under labour welfare legislation, so as to prevent exploitation and unfair labour practices; (ii) employment, which falls outside the purview of the labour welfare legislation and is hence governed solely by the terms of the contract; and (iii) employment of persons to civil posts or in the civil services of the Union or the State. Any court or tribunal adjudicating a dispute relating to conditions of service of an employee should keep in mind the different parameters applicable to these three different categories of employment[56]."

The court clarified that the Act applies exclusively to factory workers, excluding government employees who are governed by a separate framework[57]. As a result, the claim for double overtime pay by government employees was dismissed. This decision highlights the limitations of current labour laws and indicates that IT sector employees, who fall into a similar legal grey area, may encounter comparable challenges[58].

In a recent ruling, the Principal Labour Court in Chennai held that IT employees could be classified as workmen under the Industrial Disputes Act. The court emphasised that the key factor in determining this status is the primary nature of an employee's work rather than any incidental supervisory responsibilities. If an employee is actively engaged in the core tasks of a team while also overseeing some aspects of the work, their role cannot be deemed purely managerial[59].

Despite the massive scale of the IT industry, its employees are often not recognised as "workmen" under the Industrial Disputes Act. Interestingly, the Income Tax Department's

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55 *Security Printing & Minting Corporation of India Limited v. Vijay D. Kasbe* 2023 LawSuit(SC) 397.

56 *Security Printing & Minting Corporation of India Limited v. Vijay D. Kasbe* 2023 LawSuit(SC) 397.

57 Rohini Pillai & Bino Paul, 'Industry 4.0 and the Changing Employment Relations: A Case of the Indian Information Technology Industry' (2023) 16 NHRD Network Journal 94.

58 Deutsche Welle, 'Long hours, no overtime pay: Are India's archaic labour laws enabling worker exploitation?'(The Frontline, 04 September 2024) < https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece> accessed 25 February 2025.

59 Avani Chokshi, 'Labour Laws: What about IT?' (AICCTU, 04 January 2024) < **https://www.aicctu.org/workers-resistance/v1/workers-resistance-july-2022/labour-laws-what-about-it**> accessed 25 February 2025.

approach to tax concessions under Section 80JJ-AA of the Income Tax Act[60] highlights a contradiction. This provision allows companies to claim a 30% tax concession on the emoluments paid to newly hired workers, provided these employees meet the definition of "workmen" under Section 2(s) of the ID Act[61]. Many major IT firms have taken advantage of this concession, effectively acknowledging their employees as "workmen" for tax benefits. Nonetheless, regarding workplace rights, these corporations contend that such employees do not meet the definition of "workmen" under labour legislation, hence depriving them safeguards such as overtime compensation and job security. This discrepancy illustrates the pervasive ambiguity about the classification of IT professionals under labour regulations, resulting in persistent disagreements and contradictions in their legal position[62].

The Karnataka High Court, in ***Commissioner of Income Tax v. Texas Instruments India Pvt Ltd***[63], determined that IT personnel and software engineers are classified as "workmen" under the Industrial Disputes Act. The contention arose from the company's assertion for a tax concession according to Section 80JJ-AA of the Income Tax Act, which offers advantages for employing additional "workmen." The court observed that:

"According to section 2(s) of the ID Act, the definition of a workman is extensive, involving any individual possessing technical knowledge and self-skill within an industry. The classification of the assessee's business as an industry is indisputable. The personnel of the assessee are undeniably technical professionals proficient in software development and are employed by the assessee to provide services within the industry operated by the assessee. Consequently, a software engineer would be classified as a workman under Section 2(s) of the ID Act, provided that the individual does not assume a supervisory position[64]."

Subsequently, the court noted that:

"In our considered view, the concept of the workman has undergone a drastic change and is no longer restricted to a blue-collared person but even extends to a white-collared person. A couple of decades ago, an industry would have meant only a factory, but today industry

[60] The Income Tax (Amendment) Act,1998.
[61] The Industrial Dispute Act, 1947 (14 of 1947), s 2(s).
[62] Sabharwal S, "New labour codes in India: What it means for workers, employers, and HR tech" ET CONTRIBUTORS (May 2023)<https://economictimes.indiatimes.com/news/company/corporate-trends/new-labour-codes-in-india-what-it-means-for-workers-employers-and-hr-tech/articleshow/99900177.cms?from=mdr> accessed 26 February 2025.
[63] *Commissioner of Income Tax v. Texas Instruments India Pvt Ltd* I.T.A. NO.141 OF 2020.
[64] *Commissioner of Income Tax v. Texas Instruments India Pvt Ltd* I.T.A. NO.141 OF 2020.

includes the software and hardware industry, popularly known as the information technology industry[65].”

6. Shops And Establishment Act

From the above discussion, it can be inferred that there is a presumption that IT workers do not qualify as either “workers” employed in manufacturing under the Factories Act, 1948, or “workmen” engaged in supervisory and managerial roles under the Industrial Disputes Act, 1947[66]. IT, being a nascent industry, has long been exempted from labour regulations to facilitate its rapid growth and competitiveness in the global market. As labour is a subject on the concurrent list, the information technology industry falls under the category of shops and commercial establishments and is specifically governed by the Shops and Establishments Act enacted by each state[67].

According to Section 16 of the Telangana Shops and Establishments Act, 1988[68], no employee may work more than 8 hours per day and 48 hours per week. Section 16(2) grants an employee the right to receive overtime compensation for up to 6 hours per week. In accordance with Section 17[69], no employee may work uninterrupted for over 5 hours, given that a 1-hour break is granted within that period.

It has been noted that IT personnel frequently work above 12 to 14 hours consistently. This happens because many state governments, including Telangana, often offer exemptions to IT and ITES to attract both domestic and foreign investments and enhance company[70] to stimulate the expansion of the IT sector, the Andhra Pradesh government, via a government order in 2002, exempted the IT industry from the enforcement of six labour laws:, the Employment Exchange Act, the Factories Act the Minimum Wages Act, the Contract Labour (Regulation and Abolition) Act, the Payment of Wages Act, the Workmen’s Compensation Act, the Andhra Pradesh Shops and Establishments Act, and the Employees' State Insurance Act[71].

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[65] *Commissioner of Income Tax v. Texas Instruments India Pvt Ltd* I.T.A. NO.141 OF 2020.
[66] The Industrial Dispute Act, 1947 (14 of 1947), s 2(s).
[67] Narayan Chandra Sarangi,’ Road to Nowhere-The Law & Policy Perspective on the Crisis in Labour Law Jurisprudence in India in the Wake of Covid-19’ (2021) 8 NLUO LJ 39.
[68] The Telangana Shops and Establishments Act, 1988 (20 of 1988), s 16.
[69] The Telangana Shops and Establishments Act, 1988 (20 of 1988), s 17.
[70] Sanya Jain, ‘EY Pune employee, 26, died due to work stress. No one from company attended her funeral’ (Hindustan Times, 18 September 2024) <https://www.hindustantimes.com/trending/ey-pune-employee-anna-sebastian-perayil-26-died-due-to-work-stress-no-one-from-ernst-young-attended-funeral 101726637649530.html> accessed 25 February 2025.
[71] Deutsche Welle, ‘Long hours, no overtime pay: Are India’s archaic labour laws enabling worker exploitation?’(The Frontline, 04 September 2024) < https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece> accessed 25 February 2025.

The problematic issue is that, after the passage of almost twenty years, these exclusions persist due to governmental economic reasons and the influence of corporate behemoths. The Telangana government on May 30, 2024, exempted IT and related services from specificsections of the Telangana Shops and Establishments Act, 1988, for a further peri od of four years.[72]. The government is allowed to confer certain exemptions pursuant to Section 73, clauses (4) and (5) of the Telangana Shops and Establishments Act[73], which provide that:

"Clause 4 allows the government, by notification, to exempt any establishment or class of establishments or persons from any provision of the Act, either permanently or for a specified period, subject to conditions as deemed appropriate.

Clause 5 allows the government to apply, modify, or cancel any provision of the Act for any class of persons or establishments, except those mentioned in Clause (b) of Subsection (1)[74]."

A similar situation exists in other states, particularly Karnataka, the Silicon valley of India. The Karnataka government has introduced the Karnataka Shops and Commercial Establishments (Amendment) Bill, 2024, which primarily seeks to extend the current 10-hour workday to 14 hours[75]. This legislative gap has created a vacuum in labour protections, allowing both the IT sector and multinational corporations to exploit the situation. As a result, IT employees are left in a state of uncertainty, with no clear policies safeguarding their rights and the constant burden of ambiguity looming over them[76].

7. Overworked But Not Forgotten: Rethinking Protections For Women

The pressure of longer working hours is not limited to any one company and for women it offers a double difficulty. The workday ends with leaving the office; it then moves to unpaid labour at home. Women disproportionately bear too much work across boardrooms, bank counters, production floors, and hospital wards, usually without recognition or relief. A moving

[72] Ishita Goel, 'Telangana IT Sector Gets Exemption from Shops & Establishments Act' (Ahlawat Associates, 11 June 2024) < https://www.ahlawatassociates.com/news/telangana-ites-it-exemption-shops-establishments-act> accessed 25 February 2025.

[73] The Telangana Shops and Establishments Act, 1988 (20 of 1988), s 73.

[74] The Telangana Shops and Establishments Act, 1988 (20 of 1988), s 73.

[75] Shardha Rajam, 'Karnataka's 14-Hour Workday Proposal: The Burden on Women and Impact on Domestic Chores' (The Wire, 1 August 2024) < https://thewire.in/labour/karnatakas-14-hour-workday-proposal-the-burden-on-women-and-impact-on-domestic-chores> accessed 25 February 2025.

[76] Deakin S, Fenwick C and Sarkar P, 'Labour Law and Inclusive Development: The Economic Effects of Industrial Relations Laws in Middle-Income Countries' (Springer eBooks, 1 Jan 2014) <https://doi.org/10.1007/978-3-642-54660-0_6> accessed 26 February 2025.

reminder of this conundrum is A.S. Perayil, a 26-year-old EY employee[77] who died just after few months into her job due to strict deadlines and relentless pressure. Reflecting a growing trend of work-related tiredness, a similar incident took place in Lucknow where an employee of HDFC Bank[78] collapsed at her desk allegedly from heavy workload. These events are not rare but rather reflect a toxic work culture that pushes workers especially women over their limits.

8. International Laws Empowering Women

In the International scenario '*The Brandeis' case'*[79] was the first case which served as an example for the international community with regards to working hours for women where the US Supreme court looked into the constitutionality of limiting hours for female laundry workers. The apex Court, upheld the law of the state of Oregon which restricted hours of work for women in factories and laundries.

In addition to this, several accords aiming at advancing female equality have been developed by the International Labour Organization. Like Convention No. 175 of 1994 about part-time employment[80], it defines part-time work as hours worked less than the regular working hours. Among other rights to organize and engage in collective bargaining, to establish unions, to ensure occupational health and safety, to prevent employment discrimination, to offer social security, to provide paid leave, and to ensure maternity protection, it guarantees equivalent protections for part-time workers as those afforded to full-time workers. This helps women to keep on their professional paths in spite of family responsibilities.

Home labour Convention No. 177, 1996 guarantees equal treatment for all workers and offers the possibility for remote labour with compensation[81]. Article 4 of this convention gave

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[77] Sanya Jain, 'EY Pune employee, 26, died due to work stress. No one from company attended her funeral' (Hindustan Times, 18 September 2024) <https://www.hindustantimes.com/trending/ey-pune-employee-anna-sebastian-perayil-26-died-due-to-work-stress-no-one-from-ernst-young-attended-funeral 101726637649530.html> accessed 25 February 2025.

[78] HT News Desk, 'Lucknow: HDFC Bank employee dies after falling off chair, peers allege 'work pressure' (Hindustan Times, 25 September 2024) <https://www.hindustantimes.com/india-news/lucknow-hdfc-bank-employee-dies-after-falling-off-chair-peers-allege-work-pressure-101727231820235.html> accessed 25 February 2025.

[79] *Muller v. Oregon* (208 US 412).

[80] Part -Time Work Convention, 1994 (175 OF 1994) International Labour Organisation<https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312320> accessed 25 February 2025.

[81] Home Work Convention, 1996 (177 of 1996) International Labour Organisation<https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312322> accessed 25 February 2025.

homeworkers rights to union participation, safety, health, social security, and training. Similarly, Convention No. 171 of 1990, the Night Labour Convention,[82] states that night work shall last no less than seven straight hours. This covers the work done between midnight and five in a morning. This limit on night work for workers needs to be determined by competent authority after consulting the representative organisations of employers and employees and workers or by collective agreements. For night workers, particular policies must be followed to preserve their health, enable their family and social responsibilities, guarantee maternity protection, provide free health checks, and provide substitute employment for pregnant and postnatal employees.

The first agreement of the International Labour Organization, which set daily working hours to eight, was the ILO Declaration of Philadelphia[83], 1944. Later on, many more rules on working hours were put place. But fierce competition brought on by globalization has meant longer working hours to meet worldwide norms. The more responsibility meant negatively for work-life balance as well as for quality. Stressing improved working hours will help to balance family and professional obligations.

9. National-Level Laws Empowering Women

Indian labour laws impose strict regulations on the working hours of female employees in factories and commercial establishments, prohibiting their employment beyond specific permissible hours. Among these laws the section Factories Act, 1948 mandates[84] that women are only allowed to work between 6 A.M. and 7 P.M. but this provision faced legal challenges by the ruling of Madras High Court where section 66 (1) was held unconstitutional[85], this judgment prompted several state governments to amend their regulations, allowing women to work night shifts in factories, provided that employers implement necessary safety measures to protect female employees during these hours.

Another Act which talks also talks about the wellbeing of women by regulating work hours is The Mines Act, 1952 which mentions that In any mine above ground women workers are permitted between the hours of 6 am and 7 pm[86]. The Central Govt. may, by notification, vary

[82] Night Work Convention, 1990 (171 of 1990) International Labour Organisation<https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312316:NO> accessed 25 February.

[83] ILO Declaration of Philadelphia- adopted at the 26th session of the ILO, Philadelphia, 10 May 1944.

[84] The Factories Act, 1948 (63 of 1948), s 66(1)(b).

[85] *Smt. R. Vasantha v. Union of India* [(2001) I ILLJ 843 Mad].

[86] The Mines Act, 1952(35 of 1952), s 46(1)(b).

the hours of employment above ground of women. However, no employment of women between 10 pm and 5 am is permitted[87]. Moreover, women working above ground would be permitted a minimum break of eleven hours between the conclusion of one workday and the beginning of the subsequent work day[88].

10. Participation Of Indian Women In The Workforce

Depending on the sector, Indian labour regulations impose strict restrictions on the working hours of female employees in factories and commercial companies, therefore prohibiting their employment beyond specified permissible hours, which vary from 7:00 PM to 6:00 AM.[89] The law sets maximum daily and weekly working hours, including restrictions on overtime, therefore emphasizing that extended work hours should be the exception rather than the norm[90]. Any deviation from these limitations requires prior permission from government authorities, subject to conditions ensuring the welfare and safety of female workers. One such mandatory requirement is the provision of secure transportation for women working beyond the stipulated hours. Non-compliance with these safeguards results in penalties, and in cases where an employer's negligence leads to a crime against a female employee, the management may face criminal liability.

There has been a significant upward trend seen in women participation in the workforce but even after a no. Of rules, regulations and laws, India's rank in World economic Forum's Gender Gap Index is 129th placing India among the countries with the lowest levels of economic parity[91].

Women in India are often forced to choose between enduring burnout or exiting the workforce due to excessive work hours, inadequate work-life balance, and deeply ingrained societal expectations. Despite labour laws regulating working hours, the reality remains that women bear the dual burden of professional and domestic responsibilities, leading to heightened stress and exhaustion. Rising burnout rates and tragic workplace fatalities highlight the urgent need for systemic reform. To ensure sustained female workforce participation, organizations must

[87] The Mines Act, 1952 (35 of 1952), s 46(3).
[88] The Mines Act, 1952 (35 of 1952), s 46(2).
[89] The Factories Act, 1948 (63 of 1948), s 66(1).
[90] The Factories Act, 1948 (51 of 1948), 1948.
[91] India ranks 129 on Global Gender Gap index; Iceland on top: WEF (The Hindu, 12 June 2024) < https://www.thehindu.com/business/Economy/india-ranks-129-on-global-gender-gap-index-iceland-on-top-wef/article68280347.ece> accessed 27 February 2025.

prioritize employee well-being, while stronger enforcement of labour protections and cultural shifts in gender roles are essential to creating an equitable and sustainable work environment.
Keeping in mind the above studies it is imperative to keep in mind the health implications borne by women due to long working hours as women balance both their office duties and domestic chores, a study conducted by World Health Organisation (WHO) mentioned that long working hours increase deaths from heart disease and stroke and for women they are often burdened by the professional and nurturing duties which could positions them at a place where they find themselves working for almost the whole day. Director of the Department of Environment, Climate Change and Health at the World Health Organisation, Dr. Maria Neira, said that working for more than fifty five hours per week poses significant health risks and it is important that governments, employers and all the stake holders realize that long working hours can result untimely death and other physical and mental diseases[92].

11. Overtime Pay And Its Importance

Given the competitive nature of the business world, companies are increasingly looking for opportunities to outweigh this competition. Getting the employees to become more efficient is the only way to stay ahead in this race and in India working overtime has become a widespread practice in the nation, with employees across various industries regularly putting in extra hours to boost company productivity and generate more revenue.
Overtime pay has become crucial for several reasons. Firstly, it enhances employee satisfaction by ensuring fair compensation for extra work, thereby fostering motivation and reducing dissatisfaction. Secondly, it plays a key role in employee retention, as research indicates 28% of workers consider leaving their jobs due to unfair wages[93]. By providing appropriate overtime pay, employers can mitigate turnover and promote workforce stability. Additionally, accurate compensation practices contribute to organizational fairness and transparency, fostering a positive work environment where employees feel valued and equitably treated. Lastly, adherence to overtime pay regulations is essential to avoid legal repercussions, as non-compliance with India's labour laws can lead to severe legal consequences for employers.

[92] Working 55 hours a week increases risk of death: UN (Economic Times, 17 May 2021) <https://hr.economictimes.indiatimes.com/news/industry/working-55-hours-a-week-increases-risk-of-death-un/82706633> accessed 27 February 2025.

[93] Ravi Pandey, '89 % of employees in India claim to be highly motivated by challenges and extra responsibility at work, survey conducted by UKG' (UKG, 27 March 2024)<https://www.law.ox.ac.uk/sites/default/files/migrated/oscola_4th_edn_hart_2012quickreferenceguide.pdf > accessed 27 February.

12. Rules For Overtime Pay In India

India's legal framework for overtime is directed by a mix of central law and state regulation. Like Section 59 of the Factories Act, 1948 states that if any worker who works more than nine hours a day or more than forty-eight hours a would be entitled to overtime wages which would be twice his ordinary rate of wages[94].

Furthermore, Minimum Wages Act stipulates that if a salaried employee who is working more than the normal working hours, would be entitled to overtime pay by the employer at the rate set by this Act or any other applicable law, whichever is higher[95].

All Indian states have their own labour laws in addition to central labour laws which set overtime rules and regulations for employees in across different workplaces which is applied to both managerial and non-managerial roles in all shops and establishments.

According to Section 18 of Bidi and Cigar Workers (Conditions of Employment) Act, 1966, employees required to work overtime in any industrial establishment are entitled to receive wages at twice their ordinary rate[96].

Overtime regulations also have the provisions of regular breaks and intervals, that employees must be given at least a thirty-minute break during working hours, and the employers should ensure that employees don't work continuously for more than five hours without break[97].

There are also provisions laid down for imposing penalties for employers who violate overtime provisions. Those who are found violating the provisions of this act may face imprisonment of up to two years, a fine of up to rupees one lakh, or both. If the violation persists after conviction, a fine of one thousand rupees per day is imposed for each day of continued non-compliance.[98]

13. Calculation Of Overtime Pay In India

The methods of calculation of overtime pay can be divided into broad head, the first one would be for employees who get a fixed salary and another one for workers who get hourly wage.

13.1. Fixed Salary Employees

Overtime wage for this category is calculated by taking their Basic Salary and Dearness Allowance into account. Overtime pay for salaried employees is calculated by doubling the

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[94] The Factories Act, 1948 (63 of 1948), 1948.
[95] The Minimum Wages Act, 1948 (11 of 1948), s 14 (1).
[96] Bidi and Cigar Workers (Conditions of Employment) Act, 1966 (32 of 1966).
[97] The Factories Act, 1948 (63 of 1948), s 55(1).
[98] The Factories Act, 1948(63 of 1948), s 92.

hourly wage derived from their basic salary, dearness allowance, and other allowances. The total salary is first divided by the number of working days in a month to get the daily wage, which is then divided by the maximum working hours in a day to determine the hourly rate. This rate is then multiplied by 2 and further multiplied by the total overtime hours worked, ensuring fair compensation for extra hours. Illustration: A person earning 6 LPA worked 6 hours extra in the month of January 2025. Based on this information, we can say that his basic salary is 6 LPA with a Dearness Allowance of rupees five thousand and Rent allowance of rupees three thousand both decided by the company he works for. Now total days of the month he worked for is thirty and normally maximum working hours per day is eight hours, now putting the values in the above explained formula:

2 x [(50000+5000+3000)/30 x 8)] x 6 = We get Rs.2900 as the employee's overtime pay amount.

13.2. Hourly Wage Workers

Under this category only the basic salary is taken into account for the calculation of overtime pay and no other allowance is added in the formula.

Overtime Pay = 2 x [Basic Salary / (Total number of working days in a month) x (Maximum working hours in a day)] x Total overtime hours.

A stated above that every state has its own labour laws in addition to central laws which defines rules and regulations for employees who work overtime. This Act is applied to a wide range of businesses but doesn't apply to certain types of enterprises such as factories and mines.

14. International Best Practices

The new labour codes in India comprising the Code on Wages, 2019[99], Industrial Relations Code, 2020[100], Social Security Code, 2020[101], and Occupational Safety Health, and Working Conditions Code, 2020[102], have been criticized as old wine in a new bottle for consolidating existing laws without meaningful reforms. A key area requiring urgent revision is the regulation of working hours, as current provisions still allow excessive workloads, particularly in the informal sector. India can take inspiration from Scandinavian countries like Norway, where employees typically work 36–38 hours per week, have the right to reduced hours for health reasons, and enjoy flexible work arrangements. Norway also provides up to 52 weeks of sick

[99] The Code on Wages, 2019 (19 of 2019).
[100] The Industrial Relations Code, 2020 (35 of 2020).
[101] The Code on Social Security, 2020 (36 of 2020).
[102] The Occupational Safety, Health and Working Conditions Code, 2020 (37 of 2020).

leave, with employers covering full pay for the first 16 days before the National Insurance Scheme takes over[103]. Denmark, though less regulated, mandates overtime pay of 50% for the first three extra hours and 100% thereafter, along with five weeks of annual paid leave. Sweden leads in progressive labour policies, offering 480 days of paid parental leave under its parental leave act *(Föräldraledighetslagen)* and strong protections for flexible working hours, promoting workplace gender equality.[104]

Germany enforces strict overtime regulations, capping work shifts at eight hours per day, extendable to ten hours only if the average remains eight over six months. In contrast, India's new labour codes permit 12-hour shifts within a 48-hour weekly limit, potentially leading to worker exhaustion[105].

Japan, historically known for its overwork culture (karōshi—death due to overwork), is shifting towards a four-day workweek starting in April 2025 as part of its "work style reform." India, with its demanding work culture, should consider similar policies to improve work-life balance.[106]

Many nations have imposed stricter work-hour regulations than India. The European Union's Work-Life Balance Directive (2019/1158) sets minimum standards for parental, paternity, and carers' leave, while encouraging flexible working arrangements, especially for caregivers[107]. France implemented the *Loi Aubry* Aubry Laws in 1998, capping the workweek at 35 hours, boosting female workforce participation through extensive parental leave and childcare support. Additionally, France's Right to Disconnect law (2017) protects employees from work-related emails and calls outside working hours, reinforcing personal time[108]. India briefly considered similar protections in the Right to Disconnect Bill (2018), but it remains stalled[109].

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[103] Synne Lüthcke, 'Work-Life balance in Norway: Three things you should know' (Tekna, 20 December) < https://www.tekna.no/en/career/a-career-in-norway/work-life-balance-in-norway-three-things-you-should-know/> accessed 3 March 2025.
[104] Parental Leave Act (1995), s 8.
[105] Working Time Act (Arbeitszeitgesetz), (1994), s 3.
[106] Caroline Qiqige Wang and Crystal Wu, 'Is it possible for people in Asia to adopt a 4-day working week?' (South China Morning Post, 28 Feb 2025) < https://www.scmp.com/news/asia/article/3300614/it-possible-people-asia-adopt-4-day-working-week> accessed 3 March 2025.
[107] Daniel Nygard, 'Promoting Work-Life Balance: The EU's Directive 2019/1158' (UiB, 26 November 2024)< https://www.uib.no/en/jur/law-balance/174369/promoting-work-life-balance-eu%E2%80%99s-directive-20191158> accesses 3 March 2025.
[108] Alexander Hurst, 'Want the legal right to ignore your boss outside working hours?' (The Guardian, 23 August 2024)< https://www.theguardian.com/commentisfree/article/2024/aug/23/legal-right-france-disconnect-work-burnout> accessed 3 March 2025.
[109] Karan Yadav, 'Trapped by the clock: Should Indian Employees Have the Right to Disconnect After Office Hours?' (Times of India, 4 September 2024)< https://timesofindia.indiatimes.com/education/news/trapped-by-the-clock-should-indian-employees-have-the-right-to-disconnect-after-office-hours/articleshow/113065561.cms> accessed 3 March 2025.

A 2020 report highlighted that Indians worked an average of 2,117 hours annually, significantly above the OECD average of 1,749 hours. Without serious reform, India risks exacerbating worker burnout and declining productivity, while global counterparts move towards better work-life balance and efficiency[110].

15. Conclusion

As India positions itself as a leading global economy, it must critically reassess its approach to work culture. A workforce that is chronically exhausted and overburdened is unlikely to drive long-term economic success. Ensuring that labour policies are structured to safeguard worker rights while promoting innovation and productivity will be crucial in shaping a sustainable, competitive, and humane work environment. Ultimately, a nation's economic strength is not solely determined by the number of hours its citizens work, but by the quality of work they produce and the well-being of its labour force.

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[110] Charlie Giattino, Esteban Ortiz-Ospina, 'Working Hours' (Our World in Data, 2020)< https://ourworldindata.org/working-hours#article-citation> accessed 3 March.

Gig Economy and Labour Rights in India: Navigating Worker Protections in a Changing Labour Market

~Vivek Arora & Kunal Arora

Abstract

The gig economy has significantly reshaped India's employment landscape, offering flexible work opportunities while simultaneously raising concerns about worker protections. Platform-based jobs, prevalent in sectors like ride-hailing, food delivery, and freelance digital work, have proliferated due to technological advancements and evolving workforce preferences. However, this model challenges traditional labour frameworks, particularly concerning wages, job security, collective bargaining, and access to social security. Unlike traditional employees, gig workers in India are often classified as independent contractors, placing them outside the purview of conventional labour laws. Consequently, they frequently lack essential benefits such as minimum wages, provident fund contributions, and structured grievance redressal mechanisms, exacerbating concerns about job security and social protections. While the Code on Social Security, 2020, extends limited recognition to gig and platform workers by introducing welfare schemes, it falls short of granting them the rights available to formal-sector employees, leaving them in a regulatory grey area. This paper critically examines the precarious nature of gig work in India and assesses the adequacy of the existing legal framework. It compares India's approach with global regulations, such as California's AB5 law and the European Union's Platform Work Directive, to identify key gaps in India's labour policies and highlight *areas in need of reform. Ultimately, this study advocates for a balanced regulatory approach that preserves the flexibility of gig work while ensuring fair wages, social security, and accessible dispute resolution mechanisms, thereby contributing to a fairer employment ecosystem in India's digital economy.*

Keywords: Gig economy, Platform work in India, Labour Laws, Social Security for gig workers

1. *Introduction*

The contemporary business landscape is witnessing a fundamental shift in operational models, driven by technological advancements, evolving workforce dynamics, and changing consumer expectations. Traditional employment structures, characterized by long-term contracts and clearly defined employer-employee relationships, are increasingly being supplemented or in some cases, replaced by more flexible and decentralized work arrangements. Businesses today adopt a range of models, including conventional full-time employment, outsourcing, franchising, and, more recently, platform-based gig work. Among these, the gig economy has emerged as a disruptive and restructuring approach, redefining how labour is engaged, compensated, and protected. This transition has significant implications for economic productivity, labour rights, and regulatory frameworks, necessitating a critical evaluation of its long-term sustainability and impact on employment structures globally.[1]

The gig economy, characterized by short-term, on-demand, and task-based employment, has expanded rapidly across various sectors, facilitated by digital platforms that connect workers with consumers in real time. This shift has been particularly pronounced in emerging markets such as India, where technological proliferation, increasing internet penetration, and the widespread availability of smartphones have accelerated the adoption of gig work.[2] Sectors such as transportation (Uber, Ola), food delivery (Zomato, Swiggy), e-commerce logistics

[1] Taylor K and others, 'Physical and Psychological Hazards in the Gig Economy System: A Systematic Review' (2023) 166 Safety Science 106234.
[2] Aneja U, 'The Platform Economy and Gig Work: Opportunity and Challenges for India' [2020] Observer Research Foundation.

(Amazon, Flipkart), and professional freelancing (Upwork, Freelancer) have witnessed exponential growth, reshaping India's employment landscape.[3]

According to a NITI Aayog report of 2022 titled India's booming gig and platform economy: Employment trends and impact, India's gig workforce, estimated at 7.7 million in 2020-21, is projected to expand to 23.5 million by 2029-30 and currently about 47% of the gig workers are associated with medium skilled jobs, about 22% are in high skilled, and about 31% in low skilled jobs.[4] While this employment model has created substantial income-generating opportunities and enhanced labour market participation, it has simultaneously introduced new vulnerabilities, including employment precarity, income instability, and the absence of formal labour protections.[5]

A central challenge in regulating the gig economy arises from the legal classification of gig workers. Unlike traditional employees, gig workers are typically designated as independent contractors, exempting them from statutory protections such as minimum wages, provident fund contributions, and social security benefits. This ambiguous classification has fueled debates on the adequacy of existing labour laws in addressing the complexities of gig work.[6] Recognizing these challenges, the Indian government introduced the Code on Social Security, 2020, which extends certain welfare provisions to gig and platform workers. However, gaps in implementation, enforcement mechanisms, and employer accountability continue to impede its effectiveness, leaving workers in a precarious position.[7]

2. *Key Challenges for Gig Economy Workers in India*

The gig economy in India has revolutionized employment by offering workers unmatched flexibility, autonomy, and diverse income opportunities. Unlike traditional jobs, gig work allows individuals to choose their working hours, take on multiple projects simultaneously, and earn based on effort and efficiency. It has enabled economic inclusion by providing work opportunities to students, homemakers, and those in rural areas with digital access. Additionally, gig platforms facilitate skill-based employment, allowing professionals to

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[3] Thomas PN, 'The Gig Economy in India: Start-Ups, Infrastructure and Resistance' [2024] Taylor & Francis.
[4] India's Booming Gig and Platform Economy: Employment Trends and Impact (NITI Aayog, 2022).
[5] Joshi A, Jain S and Gupta PK, 'Challenges and Impact of the Gig Economy' (2024) 2 Sustainable Economies 96.
[6] Krishnamurthy P, 'The Gig Economy A Double-Edged Sword' (2025) <Available at SSRN 5139026>.
[7] Bergen LV, The Well-Being of High-Skilled Workers in the Gig Economy (2023).

monetize specialized expertise. For businesses, this model reduces overhead costs and enhances operational agility. However, despite these benefits, gig workers face significant challenges that threaten job security and long-term financial stability. The key challenges include:

2.1. The Legal Limbo: Gig Workers Without a Safety Net

The primary challenge is the lack of comprehensive legal definition and regulatory framework of "gig worker" and "platform worker" under Indian labour laws. This absence leaves them in a precarious position. While the Code on Social Security, 2020, defines these workers and extends certain benefits, it stops short of granting them essential labour rights such as minimum wages, job security, and collective bargaining. As a result, gig workers are often classified as independent contractors, excluding them from protections under key labour laws, including the Industrial Disputes Act and Minimum Wages Act and the social security benefits. This legal ambiguity leads to income instability, lack of social security, and unregulated work conditions, with workers facing long hours, algorithm-driven assignments, and arbitrary deactivations. Moreover, they lack the ability to unionize or negotiate better terms, making them vulnerable to exploitation.[8]

In an empirical study conducted in Tamil Nadu for the status of gig workers demonstrated the precarious conditions of gig workers, emphasizing job insecurity, income instability, and the absence of formal contracts. A critical challenge identified was the digital gap, which significantly hampered their productivity and income. This divide stemmed from disparities in internet availability and digital proficiency, limiting their ability to access work opportunities, negotiate fair wages, and efficiently utilize digital platforms. Additionally, poor working conditions, extended work hours, inadequate safety measures, and limited rest intervals contributed to both physical and mental strain. The absence of essential benefits such as healthcare, paid leave, and pension schemes further exacerbated their financial instability.[9] In another assessment, the extent of digital literacy and significant challenges associated with gig

[8] A Mishra and SG Dasttidar, 'Navigating the Challenges of the Gig Economy: A Legal Analysis of Protection to Gig Workers in India and Overseas' (2023) 1 Int'l JL Mgmt. & Human. 6, 2183.
[9] Kaleeswari K, 'Unveiling The Challenges of the Gig Economy in Tamil Nadu: An Empirical Study' (2024) Journal of Law and Legal Research Development 1-6.

economy further impacted the involvement of women workers in the labour market in Tamil Nadu.[10]

2.2. The Pay check Puzzle: Unpredictable Earnings and Financial Uncertainty

One of the most pressing issues faced by gig workers in India is income instability, stemming from the lack of guaranteed wages, unpredictable work availability, and fluctuating earnings. Unlike traditional employees who receive fixed salaries, gig workers are paid per task, making their income highly volatile. The absence of minimum wage protections under existing labour laws further exacerbates this issue, leaving workers dependent on market demand, platform algorithms, and surge pricing models.[11] Moreover, seasonal fluctuations, algorithm-driven work allocation, and sudden account deactivations contribute to financial uncertainty. Many gig workers face inconsistent earnings, struggling to cover essential expenses such as rent, healthcare, and education.

A study titled “Understanding the financial literacy of gig delivery partner” revealed that approximately 20% of these workers reported earnings between ₹2.5 lakh and ₹5 lakh annually. However, only 2.6% of the surveyed workers had an income in the ₹5 lakh to ₹7.5 lakh range. The findings were based on data collected from over 2,000 gig delivery workers across 40 cities in India[12]. Further, a report by Bengaluru based Fairwork India, published in October 2024, analysing the working conditions of platform workers across various digital labour platforms in India revealed that no platform secured the second point under Fair Pay, which mandated a commitment to ensuring workers receive a local living wage after deducting work-related costs or providing sufficient evidence that all workers earn at least this amount[13].

2.3. No Job, No Rights: The Fear of Sudden Termination

Beyond the challenges of legal classification, protection, and income instability, gig workers in India face significant job insecurity and a lack of termination rights. The absence of structured termination policies exacerbates this vulnerability, as unlike traditional employees covered under labour laws that mandate due process and severance benefits, gig workers operate without formal contracts. This makes them susceptible to arbitrary deactivation or

[10] G Yoganandham and MV Vishnuram, ‘Navigating The Digital Shift: The Impact of Technology and The Gig Economy on Women’s Participation in The Labour Market in Tamil Nadu An Assessment’.
[11] S Prasad, ‘The Economic Uncertainty of Gig Workers and Their Welfare in India: A Need for New Law’ (2023) Issue 3 Int'l JL Mgmt. & Human. 6, 1090.

dismissal from digital platforms without prior notice or justification.[12] Work allocation is often determined by algorithm-driven performance assessments, exposing workers to sudden income loss due to fluctuating ratings or system biases. Moreover, since gig workers are classified as independent contractors, they are excluded from critical safeguards such as wrongful termination claims, unemployment benefits, and legal recourse against unfair dismissals. While the Code on Social Security, 2020, recognizes gig workers, it fails to address job security concerns or establish formal dispute resolution mechanisms, leaving them in a precarious and unprotected employment landscape.

2.4. The Hidden Cost of Gig Work: Safety and Health Risks

The nature of work of the gig workers further exposes them to occupational safety and health risks. Gig workers particularly those in transportation, delivery, and manual labour operate in high-risk environments without adequate safeguards. Delivery personnel and ride-hailing drivers endure long working hours, exposure to extreme weather conditions, road accidents, and physical assaults, often without insurance coverage or medical benefits. The absence of mandated health insurance, paid sick leave, or disability compensation leaves them vulnerable to financial distress in case of injury or illness. Additionally, the algorithm-driven nature of gig platforms compels workers to prioritize speed and efficiency over personal safety, increasing the likelihood of accidents. An article published by East Asia forum in October 2023 titled "*India: Gig workers at risk of injuries & death amid attacks, incl. customer violence against Uber, Swiggy & Flipkart workers, incl. cos response & non-responses*" highlighted three violent attacks against gig workers: a female Uber driver whose neck was slashed, a Swiggy delivery worker who died after jumping from a third-floor window to escape a customer's dog, and a Flipkart delivery driver who was fatally stabbed. It alleges that most platforms denied responsibility and failed to implement preventive measures. The incidents were linked to 'necrocapitalism,' where worker exploitation maximized corporate profits. The article also critiqued algorithm-driven pressure, which forced workers to meet tight deadlines, increasing accident risks. Women workers were particularly more vulnerable to workplace abuse and violence[15]. Further, report published by Fairwork India published in October 2024, demonstrated that ride-hailing companies Ola and Uber, along with logistics firm Porter, failed to provide adequate working conditions for gig workers. The report further revealed that

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[12] A Stewart and P Williams, 'Regulating the Fairness of Work Contracts in the Gig Economy' (2023) 51(4) Federal Law Review 466-48.

numerous drivers found themselves trapped in a cycle of platform-driven promises, changing consumer behaviour, and impersonal support systems offered by Ola and Uber[13].

2.5. Gig Workers, No Union: The Fight for Collective Bargaining in India

Gig workers in India face a significant lack of collective bargaining power and formal representation. Unlike traditional employees who can form trade unions and negotiate wages, benefits, and working conditions, gig workers are classified as independent contractors under current labour laws. This classification excludes them from protections under the Trade Unions Act, 1926, and the Industrial Disputes Act, 1947, depriving them of a structured mechanism to voice grievances or negotiate with platform companies.

The algorithm-driven work environment further diminishes their bargaining power, as work assignments, incentives, and penalties are dictated by opaque digital systems rather than human negotiations. Moreover, the fear of account deactivation discourages workers from organizing or raising concerns about unfair conditions. While some informal worker associations have emerged, they lack legal recognition, making it difficult for gig workers to demand fair wages, job security, or improved working conditions. Without legal backing and structural reforms, gig workers remain in a vulnerable position, unable to collectively advocate for their rights in an increasingly digital and decentralized labour market.[13]

2.6. The Gender Divide: Why Women Gig Workers Struggle More

The cumulative impact of the challenges highlighted above deepens gender disparity and reinforces the underrepresentation of women in India's gig economy. A cross-sectional survey of 603 women gig workers across major metropolitan cities assessed how anxiety, job insecurity, and workplace challenges affect overall well-being. The findings revealed significant negative correlations, indicating that higher stress levels directly contribute to lower well-being.[14]

Additionally, the East Asia Forum article highlighted the greater vulnerability of women gig workers to crime and assault, further exacerbating safety concerns and limiting their

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[13] Rane V, 'Platform-Based Gig Workers: A Blind Spot in the Indian Labour Laws' (2023) <Available at SSRN 4821229>.

[14] R Singh, A Sharma A, N Gupta, M Mishra and R Kushwaha, 'Anxiety, Mental Health, Job Insecurity and Workplace Challenges: Exploring the Well-Being of Women Gig Workers in the Gig Economy' (2024) *Mental Health and Social Inclusion.*

participation. Workplace insecurity, gender-based wage gaps, and a lack of support structures make gig work particularly challenging for women.

These insights underscore the urgent need for targeted interventions and policy reforms to enhance working conditions, ensure job security, and establish robust safety measures. Addressing gender disparity in the gig economy requires legal protections, social security benefits, and a regulatory framework that ensures fair treatment and safety for all gig workers.

3. *Global Regulatory Approaches to Gig Economy Worker Protections*

Governments worldwide are adopting diverse regulatory approaches to address the challenges faced by gig workers while maintaining the flexibility that defines platform-based employment. Some jurisdictions are pushing for stronger worker protections by reclassifying gig workers as employees, ensuring access to minimum wages, job security, and collective bargaining rights. Others are exploring hybrid models that grant limited benefits, such as social security and accident insurance, without full employment status. There is also a growing emphasis on mandating platforms to contribute towards worker welfare through structured schemes.[15] Meanwhile, regulatory bodies in various countries are scrutinizing algorithm-driven work allocation to enhance transparency and fairness.[16]

As digital labour continues to expand, the debate remains centred on balancing innovation with equitable protections, ensuring that gig work remains a sustainable livelihood option rather than a precarious form of employment. Some of the notable examples include:

3.1. California: AB5 and Gig Worker Debate

California's Assembly Bill 5 (AB5), enacted in 2019, marked a significant legislative attempt to reclassify gig workers as employees, thereby entitling them to protections such as minimum wage, overtime pay, unemployment benefits, and workplace rights. The law introduced the ABC test, which places the burden on companies to prove that a worker is genuinely

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[15] I Ness, R Ovetz, I Roque, EM Swidler and A Zwick (eds), *The Routledge Handbook of the Gig Economy* (Routledge 2023).

[16] Katiyatiya LM and Lubisi, 'The Current Social Protection Discourse, Gig Economy within the Advent of COVID-19: Some Emerging Legal Arguments' (2025) 66(1) *Labor History* 64-76.

independent by demonstrating that they operate free from the company's control, perform work outside the company's core business, and maintain an independent trade or profession.[17] However, AB5 faced substantial opposition from gig economy giants such as Uber, Lyft, and Door Dash, who argued that such reclassification would fundamentally alter their business models. In response, California later introduced AB2257, which carved out exemptions for certain professions but continued to push for greater protections for gig workers. The ongoing legal battles and ballot measures, such as Proposition 22, which reinstated independent contractor status for app-based drivers while providing limited benefits, illustrate the complexity of regulating gig work in a jurisdiction with strong corporate lobbying and worker advocacy groups.[18]

3.2. Netherland: Reforming Gig Work Protections

The Netherlands has also taken a proactive stance in addressing the classification of gig workers. Dutch courts have increasingly ruled that ride-hailing and food delivery workers should be classified as employees rather than independent contractors, given that their work arrangements mirror traditional employment relationships. In cases involving major platform companies, the courts have highlighted that gig workers often lack genuine autonomy over their work, as platforms dictate pay structures, assign tasks algorithmically, and impose penalties for non-compliance. In response, the Dutch government has proposed stricter criteria for worker classification, emphasizing fair wages, social security benefits, and protection from unfair dismissal. The Netherlands' approach underscores a growing legal consensus that algorithmic control and dependent work arrangements necessitate stronger legal protections, even in a business model designed around flexible employment.[19]

3.3. European Union: The Platform Work Directive

The European Union (EU) has taken a comprehensive and structured approach to regulating gig work through the Platform Work Directive (PWD), adopted in 2023. Recognizing the urgent need to protect gig workers from precarious conditions, the directive introduces a

[17] Wang X, Lin YW and Han W, 'Does Regulation Help? The Impact of California's AB5 on Gig Worker' (2023).
[18] Palagashvili L, Suarez P, Kaiser CM and Melo V, 'Assessing the Impact of Worker Reclassification: Employment Outcomes Post–California AB5' (2024) *Mercatus Research Paper.*
[19] De Becker E, Seo H, Pulignano V and Schoukens P, 'Mapping Social Protection Coverage for Platform Workers: A Comparative Analysis of Belgium, Italy and the Netherlands' (2024) 26(1) *European Journal of Social Security* 3-26.

presumption of employment, meaning that platform workers will be classified as employees unless the platform can prove that they are truly independent contractors. This shift in the burden of proof is significant, as it prevents companies from exploiting legal loopholes to avoid employer responsibilities.[20]

Moreover, the PWD mandates transparency in algorithmic management, ensuring that gig workers understand how their work is assigned, how their performance is evaluated, and how pricing mechanisms affect their earnings. Workers are also given the right to challenge algorithmic decisions and request human intervention in cases of unfair automated dismissals. Furthermore, the directive strengthens collective bargaining rights, allowing gig workers to form unions and negotiate working conditions collectively.[21] This provision addresses the widespread issue of gig workers being excluded from traditional trade unions and collective labour agreements, which has historically left them vulnerable to unilateral contract changes and sudden income reductions. Additionally, the directive enforces data protection regulations, ensuring that platform workers' personal information is used fairly and transparently, preventing the misuse of worker data for surveillance or punitive measures.

3.4. United Kingdom: Redefining Worker Status

The United Kingdom has adopted a more nuanced regulatory approach, recognizing an intermediate category of workers known as “dependent contractors”. Falling between employees and independent contractors, these workers are granted certain employment rights, including minimum wage, paid holidays, and protection against discrimination, but are not entitled to the full range of employee benefits such as pension contributions or statutory redundancy pay.[22] The landmark Uber case of 2021, in which the UK Supreme Court ruled that Uber drivers must be classified as workers rather than independent contractors, set a major precedent for platform worker rights in the country. This decision reinforced that if a company exerts significant control over its workforce such as setting fares, allocating work, and penalizing refusals then the workers should be entitled to legal protections.[23] Despite these

[20] A Aloisi, S Rainone and N Countouris, ‘An Unfinished Task? Matching the Platform Work Directive with the EU and International’ (2023) *ILO Working Paper* 101.
[21] Jašarević and Božičić ‘Implementation of Decent Work Standards on Platform Workers: Different Approaches’ (2024) 58(4) *Novi Sad Faculty of Law: Collected Papers/Zbornik Radova: Pravni Fakultet u Novom Sadu*.
[22] Kobroń-Gąsiorowska , ‘The Legal Status of Gig Workers’ (2023) 2(II) International Law Quarterly 161-173.
[23] UK Supreme Court Judgement on Uber Case - Uber BV and others (Appellants) v Aslam and others (Respondents).

advancements, the UK’s approach still allows significant grey areas, with companies continuing to push for a flexible classification model that limits their obligations towards workers.

3.5. Spain: The Rider Law and Gig Workers

Spain has taken one of the most progressive stances on gig worker regulation through its Rider Law, which presumes that delivery riders working for digital platforms are employees rather than independent contractors. This law grants workers fixed wages, social security benefits, paid leave, and protections against unfair termination, ensuring that they are treated similarly to formal sector employees.[24] Additionally, Spain has mandated that platform companies disclose the algorithms used to determine work assignments and wages, addressing the opacity of digital management systems. While major gig economy platforms have challenged this law, Spanish courts have largely upheld it, reinforcing workers’ rights to employment protections and collective bargaining.

As global economies become increasingly dependent on platform-based gig work, jurisdictions worldwide are grappling with the challenge of balancing flexibility and worker protections. While countries such as California, the Netherlands, and Spain have leaned towards reclassifying gig workers as employees, others like the UK and France have adopted hybrid models that extend partial protections while maintaining flexibility.[25] The EU’s Platform Work Directive marks a significant step toward standardizing gig worker rights across member states, pushing for greater employment security, algorithmic accountability, and collective bargaining rights. However, the implementation and enforcement of these laws remain critical challenges, as platform companies continue to resist regulatory measures and advocate for maintaining the independent contractor model[33]. The evolving landscape of gig work regulation highlights the need for robust legal frameworks, strong enforcement mechanisms, and active worker representation to ensure fair, sustainable, and equitable working conditions in the platform economy.

[24] Moares FFT and Betancor Nuez G, ‘The Mobilisation of Food Delivery Gig Economy Workers (Riders)’ (2023) 47(3) Capital & Class 353-359.
[25] Cobo JMD, ‘Contractual Relations between Providers and Digital Platforms: The Spanish “Riders Law”’ (2023) 34(7) European Business Law Review.

4. *Adapting Global Approaches to the Indian Context*

The regulatory frameworks governing the gig economy in different parts of the world offer valuable insights, but their direct application to India requires adaptation to its unique socio-economic landscape, labour market realities, and legal framework. Unlike many Western economies where gig work often supplements traditional employment, in India, a significant portion of gig workers rely entirely on platform-based jobs for their livelihood. Many operate in precarious conditions without minimum earnings, social security, or job security. The absence of clear legal status has led to the exploitation of gig workers while allowing platforms to circumvent employer responsibilities. Thus, a nuanced approach that balances flexibility with worker protections is crucial.

4.1. Rethinking Employment: A Hybrid Framework for Gig Workers

One potential solution is the introduction of a hybrid employment framework that merges elements of traditional employment with the autonomy of independent contracting. Many countries have experimented with such models, with Spain introducing the *Riders Law*, which reclassified food delivery workers as employees rather than independent contractors. However, India's gig economy needs a more tailored approach.[26]

A viable alternative is the creation of a new worker classification such as "platform-dependent worker" who enjoys specific labour rights without being fully classified as an employee. These rights should include a guaranteed minimum earning structure, similar to the recently proposed UK policy that ensures gig workers earn at least the national minimum wage after accounting for expenses.[27]

A report by Digital Empowerment Foundations in India, where delivery partners for platforms like Zomato and Swiggy often earn as little as ₹20 per delivery, a regulatory floor on earnings could prevent exploitation.[28]

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[26] F Mannino, 'Ley Rider: A New Era for Digital Platform Workers' Rights in Spain' (2025) (1) *Diritto della Sicurezza sul Lavoro* 21-57.
[27] D Kurmi and G Das, 'The Gig Economy: Rethinking Work and Employment' in *Redefining Commerce and Management: New Paradigms for the Digital Age (Volume 1)* (2024) 151.
[28] Digital Empowerment Foundation, 'Swiggy Zomato Delivery Workers in India Entrepreneurs or Labour?' (2021).

Social security benefits such as health insurance, accident insurance, and pension schemes must also be integrated into this framework. A contributory system involving workers, platforms, and the government could mirror Brazil's model, where app-based workers contribute to a social security fund in exchange for basic protections.[29] In India, an extension of the existing *e-Shram* portal, which already registers unorganized sector workers, could facilitate such contributions for gig workers.

Additionally, protection against unfair terminations or arbitrary deactivation must be ensured. Workers on platforms such as Uber and Ola frequently report sudden deactivations with no explanation or opportunity for appeal. Implementing a structured dispute resolution and grievance redressal process, like the European Union's directive mandating human intervention in AI-driven decisions, would prevent platforms from unfairly penalizing workers without justification.

4.2. Strengthening Collective Bargaining and Sector-Specific Protections

The fragmentation of gig work makes collective bargaining difficult, but it remains crucial for improving working conditions. In many countries, gig workers have successfully organized to demand better rights. For instance, delivery workers in New York City fought for and secured a minimum wage,[30] while in South Korea, app-based workers established the *Riders Union* to negotiate fairer working terms.[31] In India, platforms like Dunzo and Blinkit saw delivery workers protesting against reduced payouts, yet without legal recognition, their demands often go unheard. Legalizing gig worker associations and allowing them to negotiate on behalf of workers would provide a necessary counterbalance to platform power.

Sector-specific regulations also hold promise in addressing challenges unique to different categories of gig work. In transportation, ride-hailing services like Uber and Ola could be mandated to provide fare transparency and working-hour limits, much like California's Proposition 22, which offers healthcare subsidies and minimum earnings to app-based drivers. Meanwhile, food delivery workers, who often operate under intense time constraints, should

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[29] FDS Martins, GS Góes, AT Firmino and LA Rangel, 'An Overview of the Social Protection of Workers in the Gig Economy of the Transport Sector in Brazil' (2023).
[30] NYC Department of Consumer and Worker Protection, 'First Annual Increase in Minimum Pay Rate for App-Based Restaurant Delivery Workers in New York' (April 2024).
[31] S Lee, 'The "AI Mode": How Food Delivery Riders in the Netherlands and South Korea Experience Algorithmic Management' (2024) 17(2) *Italian Labour Law e-Journal* 67-88.

be granted protections related to road safety and insurance coverage. A structured policy could require platforms to cover accident insurance costs or contribute towards emergency funds, similar to Germany's approach of mandating social security contributions for freelancers.

4.3. Policy Imperatives for a Fair and Sustainable Gig Economy

To bring structural improvements to India's gig economy, policymakers must prioritize comprehensive legal recognition, fair wages, social security, and dispute resolution mechanisms.

First, a well-defined legislative framework is essential. The ambiguity in existing labour laws allows platforms to classify workers as independent contractors, leaving them outside the purview of protections under statutes like the *Industrial Disputes Act* and the *Employees' Provident Fund Act*. The UK Supreme Court's ruling that Uber drivers are "workers" rather than independent contractors set an important precedent that India can learn from. By explicitly categorizing gig workers under Indian labour laws, legal uncertainty can be minimized, ensuring they receive appropriate protections.

A minimum earnings guarantee is another crucial intervention. In many cases, gig workers in India earn well below minimum wage due to platforms' commission structures. A 2021 report found that some Swiggy delivery partners in Bangalore were making just ₹30 per hour after factoring in fuel costs. Enforcing a minimum compensation threshold whether through hourly wages or fair per-task payouts would ensure gig work remains financially viable.

Furthermore, a mandatory social security framework must be implemented. Platforms must be required to contribute to a workers' welfare fund that provides health insurance, pension benefits, and accident coverage. Countries like France have already made strides in this regard by mandating Uber and Deliveroo to contribute to worker benefits. India could integrate such a scheme into its existing *Atal Pension Yojana* or leverage the *Code on Social Security 2020* to extend benefits to gig workers.

Occupational safety and health protections should also be tailored for high-risk gig work sectors. Delivery workers, for example, face significant road safety risks.[32] In 2021, Zomato

[32] SK Sasikumar and K Sersia, 'Digital Platform Economy: Overview, Emerging Trends and Policy Perspectives' (2020) 61(3) Productivity.

introduced accident insurance for its delivery partners, but participation remained voluntary. A government-mandated policy requiring platforms to provide insurance coverage and training in road safety similar to Singapore's *Work Injury Compensation Act* would offer necessary protection.

Algorithmic transparency is another urgent concern. Many platforms use opaque AI-based rating systems to allocate work and determine wages. Workers frequently report biased or unfair deductions due to low ratings, often without understanding how they are evaluated. Countries such as Italy have introduced laws requiring platforms to disclose how their algorithms impact workers' earnings and employment status. India should follow suit, ensuring that workers can contest algorithmic decisions and seek human intervention in cases of unfair treatment[23].

A structured grievance redressal mechanism must also be introduced. Presently, gig workers who face arbitrary pay cuts or deactivation have no formal recourse. Establishing independent arbitration bodies or enabling labour courts to handle gig work disputes could provide much-needed legal relief. For instance, the Netherlands recently ruled in favour of gig workers seeking recourse against unfair dismissals by app-based employers. India must create similar pathways for justice[24].

Finally, the promotion of skill development programs is essential for ensuring the long-term sustainability of gig work. Many gig workers lack access to career progression opportunities and remain trapped in low-paying jobs. The Indian government's *Skill India* initiative could be leveraged to provide training programs tailored to gig workers, helping them transition into more stable employment[47]. Singapore's *SkillsFuture* model, which offers lifelong learning credits to workers, provides a strong reference point for such an initiative[48].

5. India's Recent Measures to Support Gig Workers: Key Laws and Budget Announcements

The Code on Social Security, 2020 (CoSS, 2020) marked a significant step by defining 'aggregator,' 'gig worker,' and 'platform worker' for the first time. It introduced legal provisions to extend social security measures to gig and platform workers, acknowledging their growing role in the Indian economy. Advancing the Code's objectives regarding gig workers, the Indian government has implemented several initiatives to support gig workers, acknowledging their growing significance in the economy. Notably, the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023, the Karnataka Gig Workers Bill, and provisions in the Union Budget 2025-26 have been pivotal in this regard.

5.1. Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023

Rajasthan pioneered state-level legislation with the enactment of the Platform-Based Gig Workers (Registration and Welfare) Act in 2023. This Act mandates the registration of gig workers and aims to ensure their welfare through structured frameworks. By recognizing gig workers as a distinct workforce segment, the Act seeks to provide them with social security benefits, including health insurance and financial assistance during contingencies. The legislation also emphasizes the responsibility of platform-based companies to contribute to a welfare fund dedicated to gig workers, thereby promoting a collaborative approach to their well-being.[33]

5.2. Karnataka Gig Workers Bill

Following Rajasthan's lead, Karnataka introduced the Gig Workers Bill, reflecting a growing trend among states to formalize and protect the gig workforce. While specific details of the Karnataka Bill are pending finalization, it is anticipated to focus on similar aspects such as mandatory registration, social security benefits, and the establishment of a welfare fund. The bill underscores the state's commitment to integrating gig workers into the formal economy and safeguarding their rights.[34]

At the national level, the Union Budget 2025-26, presented by Finance Minister Nirmala Sitharaman, takes a comprehesive initiative to provide formal recognition and social security benefits to platform-based gig workers. A key measure is to facilitate the provision of identity cards and registration on the e-Shram portal, a national database for unorganized workers. This registration facilitates gig workers' access to various government welfare schemes, thereby formalizing their employment status. Additionally, the government extended healthcare benefits to approximately 10 million gig workers under the Pradhan Mantri Jan Arogya Yojana

[33] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023.
[34] The Karnataka Platform Based Gig Workers (Social Security and Welfare) Bill 2024.

(PMJAY), offering health coverage of ₹5 lakh per family per year. These measures aim to provide a safety net for nearly 1 crore gig workers, ensuring their access to essential services and social security. A pilot Aggregator Module has been introduced, allowing digital platforms to register themselves and their workforce in India's national database for unorganised workers. As part of this initiative, four leading aggregators Urban Company, Zomato, Blinkit, and Uncle Delivery have already completed their registration.

5. Conclusion

The gig economy presents a dual-edged reality for India's labour market offering flexibility and diverse income opportunities while simultaneously exposing workers to precarious conditions, including the absence of job security, social protections, and collective bargaining power. As digital platforms continue to redefine employment relationships, a proactive and balanced regulatory framework is imperative one that fosters innovation and economic dynamism without compromising worker rights and welfare.

To create a more equitable and sustainable gig economy, India must embrace a hybrid employment framework that bridges the gap between traditional labour protections and the evolving nature of platform-based work.

Implementing minimum earnings guarantees, ensuring universal access to social security benefits, and enforcing algorithmic transparency and accountability will be critical in safeguarding workers from exploitation. Furthermore, facilitating skill development and career mobility within the gig economy can enhance worker resilience and long-term financial stability.

As the world of work undergoes rapid transformation, India's labour laws must evolve to reflect these emerging realities. A forward-looking approach rooted in fair labour practices, robust social protections, and inclusive policy-making will enable India to harness the full potential of the gig economy. By fostering an ecosystem where workers and businesses thrive together, India can position itself as a global leader in shaping the future of work while ensuring economic growth that is both sustainable and inclusive.