VOL V

JLEL Journal

Centre for Labour Law, NLIU Bhopal

www.cll.nliu.ac.in

Centre for Labour Laws

Ten-Minute Deliveries, Zero Security? Re-thinking Gig and Platform Worker Protection for Food and Quick-Commerce Delivery Partners under India's Labour Codes

- *Krish Sharma*

ABSTRACT

The publication of the Code on Social Security, 2020 in India signified a change in the field of labour law that is likely to become the first formal acknowledgement that gig and platform workers made by the country were entitled to legal protection. However, even almost 6 years after the enactment, this commitment still remains largely unsatisfied due to the never ending delay in implementation and minimal action taken for enforcement. Swiggy, Zomato, Blinkit, and Zepto still have thousands of delivery workers unable to leave wage erosion, algorithmic unpredictability, and structural powerlessness. This paper evaluates the failure to achieve material change through statutory recognition by using the example of the reported strike actions and the uproar of gig workers during 2024-2025 in regards to the unfair pay they were receiving from the food delivery companies (Swiggy, Zomato, etc). There is a glaring inconsistency in the reports: Swiggy, Zomato and other apps continue paying inadequately low salaries, use non-transparent algorithms, and can just turn off accounts without appropriate repercussions, without facing any significant repercussions. One should not undermine the symbolic value of the Code on Social Security; nevertheless, it has already been shown to be toothless in the absence of mandatory platform regulations and a minimum standard of enforceability that has to be met. It does not have legally binding minimum incomes, open-source accountability, or trade union safeguards. Rather, the legislation delegates worker safety to voluntary registration and employer subsidies, which, in essence, transfers compliance costs on the companies to the workers as a matter of individual responsibility. Unless there are authentic implementation provisions, lawful rights are dreams but not realities. Naturally, this is based on comparative evidence, based on the ground-breaking cases in the United Kingdom (Uber BV v. This article suggests three levels of reform compliance with Aslam), the European Union platform work directive, and Brazil sectoral regulatory approach. To begin with, the legislation should also afford the right to collective bargaining to platform gig workers, preventing their deprivation of the objective direction in wage, hours, and working conditions determination. Second, the transparency requirements are necessary to enforce

algorithmic and due process safeguards to overcome the existing levels of opacity, as workers need the opportunity to dispute the deactivation and have a clearer picture of how their work is distributed and evaluated. Third, the legislation has to build a system of obligatory maximum rates and criteria of safety, secured by the strength of inspection and prosecution mechanisms. The reforms are administratively viable and conform to platform business models on regulated markets across the world. In their absence, statutory recognition will become useful mainly as an instrument of legitimizing the model of flexible exploitation that platform capital operates than confronting it. The paper concludes that the labour law in India is at a crossroad: either it continues its nominal laws which only maintain precarity as a structural issue within the country or it can adopt substantive rights that truly result in a situation where workers are able to negotiate the terms of their labour.

I. INTRODUCTION: THE PARADOX OF RECOGNITION WITHOUT SECURITY

Indian food and quick-commerce delivery industry has witnessed several instances of organised protests by the gig workers. Tens of thousands of Gig Workers of Swiggy, Zomato, Blinkit, Zepto, and others went offline to insist on what many were long deprived: decent wages, disclosures of the algorithms, and even the minimal level of employment protection. These were not grievances singly, but a general discontinuity. The complaints of the workers were extensive wage reductions, allegations of instant deactivation of accounts without prior notices, and virtually no labour protection or social security. Gig Workers had been officially recognised by the government under the new labour codes of India back in 2020, purportedly giving them their rights and protection. But how effective were they. The strikes however had revealed the empty character of this recognition, as some statutory protections had worked out in no improvement, material, in their lives at work[1].

[1] Vineet Bhalla, 'As gig workers strike on Dec 31, how countries have acted on their rights — and where India stands' Indian Express (New Delhi, 31 December 2025) https://indianexpress.com/article/explained/as-gig-workers-strike-on-dec-31-how-countries-have-acted-on-their-rights-and-where-india-stands-10448753/ accessed 15 January 2026. is this citation in OSCOLA 4th ed

The main contradiction of the crisis of the gig economy in India is its core. The Code on Social Security, 2020[2] (hereinafter "SSC") was claimed to be a breakthrough one, the first time when India officially acknowledged the status of gig and platform workers in the legal system. However, almost six years after, the promise is yet to be realized. The truth is that hundreds of thousands of delivery workers are virtually unprotected, they are left at the mercy of the algorithms which cannot be challenged, their salaries can be reduced by 20-30 percent without their negotiating, and their accounts can be terminated without notice or explanation.

This paper analyses the failure of protection promise to become a reality in the case of platform workers. Analysed through the lenses of the late 2024 to 2025 coordinated protests taken as evidence and analysis, I contend that the SSC has failed, essentially. As it is legal only on the nominal level, the Code does not have the strength to prevent exploitative practices entrenching by platform businesses. It offers no binding basic income levels, no significant clarity of an algorithm, and no real strikes. Instead, it privatizes worker protection to voluntary registration schemes and schemes paid by employers - that is, it leaves the burden of compliance to workers themselves.

II. THE EVOLUTION OF GIG WORKER CLASSIFICATION IN INDIAN LABOUR LAW

A. The Pre-2020 Void: Contract Labour and the Missing Worker

Along with pre-2020, the Indian labour legislation did not expressly address gig and platform workers. The three basic acts regulating Indian labour relations like the Industrial Disputes Act, 1947, the Trade Unions Act, 1926, and Factories Act, 1948 were all made prior to a different age. They made assumptions on workers being stable, location-based, and under one stable employer. This 20th-century model did not provide the yin to yang complements of defining platform work filtering arrangements.

[2] The Code on Social Security, 2020, No 36 of 2020 (India).

Once Ola and Uber joined in Indian ridesharing, and Swiggy and Zomato changed food delivery directions after 2010, all of them pursued the identical business model, which established their gig workers as independent contractors. This was not accidental. There were two key strategic roles of the classification. First, it enabled platforms to get around the labour law requirements of India altogether. As they classified the workers as independent contractors, the so called unicorn companies were able to skip minimum wage requirements, limits on the working hours, paid leave, and even social security contributions. Second, it simply transfigured the entire economic and operating risk to be the direct responsibility of the workers.

B. Code on Social Security, 2020: Statutory Recognition that is Conceptually Unclear.

The definition of the SSC of what it considers to be a gig worker and a platform worker is not ideal to start with. Section 2(kh)[3] gives the meaning of a gig worker as being a worker who does or is involved in a work arrangement and receives remuneration based on that activity not within the normal employer-employee relationship. Section 2(s)[4] provides the addition that a platform worker is a gig worker that fulfills work via an online platform. Whilst these definitions have been given good consideration, they contribute more issues to them than solutions.

The circular nature of such definition is a significant issue. To the Code, a gig worker is nothing but one who receives something out of the ordinary employer-employee relationship. However, what is meant by traditional with regards to Swiggy or Zomato? The relationship of a delivery partner with Swiggy is hardly a noncontrolling relationship. Swiggy controls all things: it allocates workers in algorithms, can show them on the map, evaluated by performance indicators, and even selectively admits them to work. The Code however considers it as not part of the traditional system. It doesn't.

The Code also ignores the basic power imbalance created in platform work. The bargaining power of a delivery worker is low practically to the extreme: they have no power to negotiate the prices of their pieces, no power to observe the algorithm that decides whether they will or will not be

[3] The Code on Social Security, 2020, s 2(kh).
[4] The Code on Social Security, 2020, s 2(s).

employed, and no methods to appeal when the platform decides to shut them down without any warning. However, the Code subjects gig workers to individual risk as independent entrepreneurs. The social security protection which it provides is thus voluntary[5]--subject to workers themselves enrolling and continuing earning rates. This puts the whole brunt of formalization on gig workers, majority of whom not only have uneven income, but they are also not digitally literate.

C. The Missing Link: Worker Status and Collective Rights

Most importantly, the SSC does not make the gig workers employees and does not automatically activate the right to collective bargaining. The SSC provisions of social security on maternity, disability, health, old age, and life insurance are stipulated in sections 109-114[6]. However, to gain entry one has to be registered and demonstrate incomes or donations- a formalization gatekeeping process, which locks out the most precarious people. On the contrary official data reflects that only 5.09 lakh Gig Workers were registered, which is a far departure from the estimated 31+ Crores of unorganised workers.

Further, the Labor Relations Code of 2020[7] (hereinafter IRC), and the legislation on strikes and relationship between industries, does not acknowledge the concept of gig workers as a bargaining entity. The IRC in section 2(zr)[8] sentences workers as those involved in manual or non-manual labor. However, platform workers who are classified as independent workers are not included in this definition that denies them the opportunity to unionize and participate in a collective action that is safeguarded.

This regulatory loophole is especially decisive to the sector of delivery. Their uproar among the gig workers, working under the umbrella of fast ecommerce companies provided the platform delivery workers with an electrical charge were technically unprotected actions by the gig workers as a collective without any backing of statutory safeguards. Gig Workers that took part in retaliation against on platforms by being temporarily or permanently deactivated, reduced in their

[5] The Code on Social Security, 2020, s 114.
[6] The Code on Social Security, 2020, ss 109-114.
[7] The Industrial Relations Code, 2020, No 35 of 2020 (India).
[8] The Industrial Relations Code, 2020, s 2(zr).

allocate tasks, and algorithmically demoted. There were no legal provisions that allowed workers to organize as they could, and they formed WhatsApp groups, social media, and peer networks and did not form a trade union as other groups would do normally. This casualness despite exhibiting the agency of workers also indicates the precarity of the organizing environment: falling outside of the law to secure rights as a collective, workers do not have the option to tap the institutional resources, access to legal counsel, or formal bargaining systems that traditional unions enjoy.

Also, the fact that the SSC has excluded gig workers when defining IRC as a bargaining unit has a systemic asymmetry. As corporate actors, platforms have the ability to bargain labour conditions with government over the policy front (lobbying, exceptions to regulations, tax breaks); workers, having no collective status, do not. It is not a formal asymmetry but one that has economic implications. By early 2025, when certain websites had suggested additional or complete commission cuts, gig workers lacked an established bargaining structure and could only object by a labour strike, a tactic that could only succeed when organised in large groups of workers and incurred some significant individual cost.

III. DELIVERY PLATFORMS AS A CASE STUDY: BUSINESS MODEL AND CLASSIFICATION STRATEGY

A. The Gig Economy in Food and Quick-Commerce Delivery

India By 2025, the food and fast-commerce delivery industry had been valued at an annual transaction of more than INR 25,000 crores. Swiggy, Zomato, Blinkit, Zepto and Amazon Fresh use (or involve) hundreds of thousands of delivery partners. The business idea itself is a misleading easy one: find restaurants/merchants and the consumers through app and utilize a distributed network of separate delivery workers, whom you can compensate on a job-by-job basis.

In the case of platforms, this model brings about operational leverage: no car fleet to be maintained, no jobs, no social security payments, no union bargaining. To the workers, it is a relief that you can work when you desire and take a break when you feel. Physically, the flexibility is of one direction only. On-demand platforms dictate the price of the piece, switch commission arrangements and impose algorithmic conch (penalties on acceptance, rating minimum, surge pricing) to control worker behaviour without them having employment commitments.

B. Classification and Deactivation: The Carve-Out Strategy

Platform contracts, which are disclosed in some cases, are more precisely characterized by a classification architecture. Swiggy, as an example, categorizes partners as service (independent contractors) without regarding them as employees or receiving statutory benefits. However the same agreement gives Swiggy trotting unilateral authority: to alter payment schemes on a 7 days notice, to deactivate accounts in case of violation of standards of quality, to insist on an high acceptance rate thresholds, and to ask real-time keeping of position[9].

It is not a case of independent contracting in any classical sense. It is dependent contracting: the worker is functionally lesser, economically dependant and controlled unilaterally by the employer but are legally non-employee relations. The reason why this type of sleight of classification has remained remarkably resilient is that it is positioned between the traditional labour law (that regulates employees) and the SSC (that acknowledges gig workers but does not necessarily give them employee status and protections against collective action).

C. The Coordinated Protests: Anatomy of Collective Grievance

During late 2024 to 2025[10], gig workers of Swiggy, Zomato, Blinkit, Zepto, and the others, all logged off collectively in large cities of India. The strikes were structured as informal WhatsApp teams and social media, and lacking formal unionization and legal strike notice (which, as it was mentioned, could not be afforded to employees who would not be recognized as workers), in the first place. Key demands included:

---

[9] *'Platform and gig worker unions to lead nationwide stir today' Times of India* (Mumbai, 27 November 2025) https://timesofindia.indiatimes.com/city/mumbai/platform-and-gig-worker-unions-to-lead-nationwide-stir-today/articleshow/125618631.cms accessed 05 January 2026.

[10] *'Gig workers union calls nationwide strike on NYE' Times of India* (New Delhi, 31 December 2025) https://timesofindia.indiatimes.com/city/delhi/gig-workers-union-calls-nationwide-strike-on-nye/articleshow/126257967.cms accessed 15 January 2026.

1.Reinstatement of base-level commission level (workers said that they had told a 20-30 per cent reduction in the past few months).
2.Donativeness of algorithmic assignment and performance standards.
3.Granted minimum income or daily wage.
4.Guarantee regarding arbitrary suspension of accounts.
5.Accident cover and health insurance.
6.Collective bargaining right without retaliation.

The strikes sunk in three key facts, firstly, workers were organizing in the absence of the law protecting union activity and this indicated the level of desperation and the ability to reason in groups. Second, the main need was not a legalized status (which workers knew very little about) but material standards of living: satisfactory remuneration, financial security, human dignity. Third, response by platforms was fast and harsh: others were suspended active strikers, others began to raise the acceptance rate demands, and others even initiated PR campaigns that purported that workers were misled into striking.

IV. THE STATUTORY FRAMEWORK: CODE ON SOCIAL SECURITY, 2020 – PROMISE AND GAPS

A. Social Security Provisions for Gig Workers

Under the SSC (which are mentioned in sections 109-114 of Code on Social Security), gig workers have a legal right to social security (which concerns maternity and child benefit; disability and occupational hazard cover; health and hospitalization insurance; old age protection and life and disability insurance).

On its face, these provisions are broad. However, there are systematic gaps on implementation[11].

[11] *Ministry of Labour & Employment, 'Welfare Schemes for Gig Economy Workers'* Press Information Bureau (Delhi, 1 December 2025) https://www.pib.gov.in/PressReleasePage.aspx?PRID=2196927 accessed 15 January 2026.

First, access is conditional. The worker is currently required to go for registration under schemes which have been meticulously frame by the appropriate government bodies under Section 109 of SSC in order to safeguard the interests of Gig Workers[12]. It may also need to have a continuous or intermittent engagement. Continuous engagement requires a minimum average earnings which as of right now remains unsettled and inconsistent. In the case of delivery workers whose incomes are unstable and have accounting issues frequently suspended, it is not guaranteed to reach these thresholds.

Second, the sharing of contributions is made. The SSC needs the contribution of workers and the state contributions. To workers with the current daily earnings of INR 300-400 (several delivery partners), all 1% changes significantly. The state contribution depends on the participation of the platform employers which is voluntary.

Third, coverage is partial. The SSC does not justify minimum salary or income requirements. It does not forbid wage reduction or algorithms manipulation. It will not focus on platform participation in contributions. It makes no extension of maternity leave or working hours protection. In a nutshell, it provides safety-net insurance but not work security.

These five pillars are a statutory obligation and their application is only at a limited scope. Take maternity benefit: cash benefit given by the SSC is equivalent to the average daily earnings. Nevertheless, maternity leaves are not available to many delivery drivers, especially men (who are the majority of all). The participation of women in food delivery industries is still weak at an estimated of 5-15 percent of labour. In the case of women who work during pregnancy or during the nursing period the amount of the benefit which is capped and non-renewable is temporary relief but it does not solve the fundamental insecurity which is loss of income by missing work.

The proposed old age protection pension under the schemes envisioned would be given when one reaches the age of 60, although the pension amount is low, not enough to sustain the minimum living standards. The level of the pension replacement is low since delivery work is physically

---

[12] *Ministry of Labour & Employment, 'Welfare Schemes for Gig Economy Workers'* Press Information Bureau (Delhi, 1 December 2025) https://www.pib.gov.in/PressReleasePage.aspx?PRID=2196927 accessed 15 January 2026.

advanced and a worker usually receives INR 300-500 a day. In addition, workers are required to make regular contributions over years, which is challenging with the turnover and unpredictability of income of the sector.

Disability cover covers occupational risks, however, the definition of disability qualifying is limited, and the disability claim is not a simple process and involves medical records, platform authentication and bureaucratic handling. An employee who gets injured during the delivery, and the injury does not constitute a severe occupational hazard as per the strict standards, may not be covered by benefits.

B. Draft Rules and Implementation Barriers

In late 2024, the Ministry of labour published draft regulations of the SSC that are to be implemented in 2026[13]. Key provisions include:

1. Workers have to have a stable relationship with at least one platform to be eligible in intermittent coverage.
2. Platforms can make contributions towards workers either through subsidies or earnings deductions.
3. The limit on the contribution made by the state is INR 100 per worker per month (a fig leaf).
4. The registration is online and must include Aadhaar, bank account and verification of platforms-obstacles to informal workers whose documentation is not complete.

This has been implemented slowly till now. Estimates of the platform and civil society reveal that only a handful of workers out of an estimated 2+ million delivery workers had taken social security benefits as of January 2026. This demonstrates platform passive resistance (not all platforms have actively supported registration) and skepticism to the benefit by workers (not all workers perceive the benefit as sufficient or available).

---

[13] Prabhakar C, ‘Implementation the Code on Social Security, 2020-Reg.’

V. THE REALITY CHECK: PRECARITY IN PRACTICE

A. Wage Erosion and Income Volatility

Delivery partners are under unremitting economic pressure, in spite of their statutory status as gig workers. Labour research, and media 2024-2025 research revealed the following trends:

1. Commission rate decreases: Swiggy and Zomato dropped effective per-delivery earnings on a per-delivery basis by 20-30 per cent. in late 2024, purportedly due to some sort of algorithm optimization. Workers lacked a negotiating mechanism and did not have a way out (with economic desperation).
2. Surge pricing capture: The result is a random filtering of workers, this is due to excessively high worker ratings and acceptance rates in which the algorithms allocate tasks based on these metrics. Workers who have older and inadequately rated phones receive low task assignments during peak hours.
3. Reductions in indirect compensation: The platform also proposed the introduction of quality bonus plans where worker whose earnings exceeded a certain threshold were not counted in the sums of bonus earned.
4. Retention reduces: In the light of wage loss, annual worker turnover on large platforms reached above 60 percent which means that platform work cannot be sustained as a primary source of income[14].

B. Algorithmic Control and Opacity

The delivery workers will also be under constant algorithm policy: live-location tracking through the app, acceptance rate of tasks (rejection debts), customer rating and lateness. However, none of these measures are open and refutable. There are numerous reports, field studies, and the Gig Workers themselves requesting the customers for a 5-star rating makes it clear as day, the opaque

---

[14] *Sakshi Singh, 'Why Restaurant Industry is Bleeding with Entry Level Workforce' Restaurant India* (9 April 2024) https://www.restaurantindia.in/article/why-restaurant-industry-is-bleeding-with-entry-level-workforce.11216 accessed 08 January 2026.

algorithmic allocation, deactivations, etc. that limits the workers ability to contest any unfavourable decisions.

A delivery partner who has been denied work due to a low rating has no access to information as to why their rating has deteriorated (platform user data is proprietary and non-public) and no way to challenge the rating. Likewise, when a worker has had his account suspended he or she receives a cryptic message: Your account has been deactivated due to breaking community guidelines. It has no investigation, no right to hear, no mechanism of the appeal.

This obscurity is in marked contrast with even informal labour contracts, which normally indicate the reasons of termination. It is Kendra Briken terms it algorithmic precarity worker its what remains a black-box system and is outside of laws and challenge.

C. Absence of Due Process and Unilateral Control

The unilateral authority of platforms to change terms (commission rates, quality standards, features of the app) with little opportunity to provide notice is provided by the delivery platforms contracts. In the case of workers, it translates to instability of the economy.

Worst still, deactivation of the accounts is irreversible. An gig worker who was deprived of his account deprived him of the sole customer, the source of his income, and his means of living. However, the shutdown usually is algorithmic (e.g. a rating-based cutoff) or just on such unspecified basis, and it is unannounced or untreatable.

This is the stark contrast of the unfair dismissal benefits in the Industrial Disputes Act or the Code on industrial Relations where investigation, a notice, and a hearing prior to the termination must be conducted. However, a delivery worker, technically a so-called gig worker in accordance with the SSC, is deprived of all these benefits.

VI. DOCTRINAL CRITIQUE: THE PROMISE-PRECARITY GAP

A. Symbolic Recognition vs. Material Protection

The Code on Social Security 2020 can be considered a breakthrough: this is the first time in Indian labour law, there is a recognition of indigenous workers in the category of gig workers[15], which should get the protection of the state. This symbolism matters. It justifies the grievances of the workers and creates a political platform to make other claims.

Yet symbols do not pay rent. Protection of materials involves enforced rights: minimum income, public procedure of dismissal, collective bargaining, and enforcing capacity of the state. These are all absent in SSC.

Instead it provides an optional insurance plan based on individual worker registration and continued income- this is a structure that transfers compliance risk to workers. An worker that lacks the necessary documentation or fails to match earnings levels obtains no protection. An employee that has their account deactivated will not receive documents to file benefits.

B. The "Flexibility Trap"

Gig work is being sold under the banner of flexibility. However, in reality flexibility is not bidirectional. Platforms implement flexibility as a strategic move: assignments based on algorithms means that the worker will not have a schedule security, the piece rates, and changes in commissions mean that the person will not have an income certainty, the ability to change the contract unilaterally means that the person will lack the possibility of legal proceedings. In the meantime, workers have to be available (able to achieve acceptance rates), reachable (tracked in real-time) and compliant (to prevent deactivation). It does not mean flexibility, it is strategic precarity.

The Indian labour law has historic standards of precarity protection (minimum wage, working hours, leave), and procedures (notice, investigation, appeals before termination). Accepting the

---

[15] *Ministry of Labour & Employment, 'Social Security Measures for Gig and Platform Workers'* Press Information Bureau (Delhi, 4 December 2025) https://www.pib.gov.in/PressReleasePage.aspx?PRID=2198746 accessed 15 January 2026.

category of the gig worker without question, the SSC has succeeded in avoiding all these protections. It does not regard precarity as a legal issue but a social insurance issue: workers will continue to be precarious however they are to be provided with an insurance cushion.

This is a backsliding to substantive labour rights as residual welfare provisioning.

C. Enforcement Gaps and Employer Evasion

The most severe and perhaps fatal gap, however, is the enforcement. The SSC is able to codify rights on paper, whereas the Ministry of Labour does not have the institutional capacity to enforce it. At the beginning of 2026, none of the large delivery platforms have been prosecuted on the grounds of systematic wage theft, its inability to pay to the social security of workers, or outright disabling accounts. Platforms are run without any fear of any consequences.

However, platforms are one leap ahead. They have devised better tactics to avoid the law: to designate the workers as casual workers to deny them some benefits, to harvest personal information without clear permission and to lobbying the legislations to seek industry specific exemptions on grounds of innovation. Once the regulations become stricter, they discover the loopholes.

Without the implementation, the statutory rights are just dreams.

VII. COMPARATIVE LENS: LESSONS FROM INTERNATIONAL PLATFORMS

A. The United Kingdom: Worker Status and Algorithmic Control

In 2021, the UK Supreme Court, in the case Uber B.V. v. Aslam, found that even though individual Uber drivers were treated as contractors, they were workers entitled to receive minimum wages and paid annual leave. This case was a breakthrough as it did not support the classical independence test but, instead, a substantial-over-form examination of the actual control and dependency.

The court ruled that Uber had exercised control over several important characteristics: unilateral prices, the ability to deactivate, the necessity to use GPS tracking, and rating vetting. This combination of facts was a sign of subordination even when the label is a contractor. Using this rationale on Indian delivery platforms would view workers as either employees or statutory workers. The rationale that was used by the Supreme Court was that of substance-over-form analysis: it examined what lay behind the labels of the contracts and the real-world relationship between the contracting entities. The court pointed out that two main requirements of worker status were met in relationship to Uber drivers (1) subordination: they lacked any actual control over material terms (fares, routes, requirements to accept a ride); (2) Economic dependence: driving with Uber was their main or only source of earnings, not additional employment.

After the publication of Aslam, the UK drivers were to receive minimum wages and paid holidays offered by Uber. Although Uber used to be palatable and seek technical exemptions, the principle of the law has now set in stone: with platform workers law now having minimum provisions in the UK. Two important aspects in this model than the one adopted by India are as follows: First, the Indian law created a specific category of workers, gig workers, without providing them with the comprehensive protection afforded by the existing legislation; the UK legislation made the platform worker a category of workers, irrespective of whether they were platform workers. Second, UK courts applied a rigid test of subordination and economic dependence; Indian law allowed platforms to define classification through contractual terms.

More recently, UK courts (in cases such as Uber v. Aslam follow-ups and subsequent platform worker litigation) have extended this framework, establishing that algorithmic control can constitute employer control for purposes of worker classification. This matters for India: delivery algorithms that assign tasks, rate workers, and enforce acceptance rates could, under UK-style reasoning, evidence the employer-worker relationship despite contractual independence claims.

B. European Union: Mandatory Transparency and Collective Bargaining

In December 2021, the EU issued a Directive on Platform Work proposing presumptions of employee status for workers under algorithmic management, mandatory algorithm disclosure, and collective negotiation rights. The Directive represents continent-wide acknowledgment that platform work requires special regulatory attention.

India has no equivalent. The SSC recognizes gig workers but does not confer employee status or mandatory collective bargaining rights. This represents a more limited intervention, leaving platforms substantial room to entrench casualization. This Directive has been politically adopted but it is still pending nation-wide transposition.

C. Brazil: Sectoral Minimum Wage and Bargaining Forums

One potential solution Brazil has tested is the sectoral approach: establishing minimum wages of platform specific minimum wages based on floors, and platform investment in training and safety, and sectoral bargaining forums. The patchiness of its implementation notwithstanding, the strategy shows that minimum standards do not require inflexible employment agreements.

The same could be done to India labour codes. The Occupational Safety, Health and Working Conditions Code, 2020 may contain sectoral wages and other workplace standards in relation to safety levels and workers in platforms. This has not occurred.

VIII. REFORM PROPOSALS: TOWARD SUBSTANTIVE PROTECTION

A. Reclassification and Worker Status

The presence of a statutory presumption of worker status of platform-interested people under algorithmic control and economic dependence would introduce IRC protections (unionization, collective bargaining, authorised strike) into unfair dismissal protections by default.

Alternatively, an amendment to IRC could be narrow, allowing collective bargaining to be applied to gig workers without the status being regarded as employees. This moderate course maintains flexibility of platform and ensures voice collectivity.

There would be in effect, a transformation in this reclassification. It would imply that they could unionize their delivery workers and make them enter into collective agreements with platforms. This would demand platforms to subject themselves to unfair dismissal procedures: by giving notice before deactivation, setting out the reasons behind termination, and allowing him to hear himself. It would expand legal rights to paid leaves, overtime pay and working hours restriction. Besides, reclassification would subject platforms to liability under occupational health and safety legislations, which would encourage an investment in occupational safety apparatus and education. Most importantly, it would put the question of algorithmic decision making under the domain of scrutiny by labor legislation, and transparent and fair systems would become a prerequisite.

B. Algorithmic Transparency and Due Process Rights

Platforms should be required to:

1. Disclose algorithmic criteria for task assignment, deactivation, and rating.
2. Provide workers visibility into their own scores and ratings.
3. Establish appellate mechanisms for disputed deactivations.
4. Conduct periodic algorithmic audits and publish redacted results.

Practically, algorithmic transparency would respond to one of the sneakiest types of control on the platform. At present, Swiggy, Zomato and other applications rank staff members through their own points of view since they rely on several variables: customer ratings, acceptance rates, delivery times, and cancellation rates. But workers do not know what weightings of these factors go on, or what a certain level rating causes task reduction or deactivation, and how ratings are determined. Customer ratings may fall, and the rating system of a worker may be reduced by 50 percent compared to a 4.8-rated worker, but the reasons why customers rated someone this way and the design of the system are not obvious. It would demand transparency, whereby the platforms would reveal the algorithm in a user-friendly language, give the ability to the worker to challenge contentious rating, and perform external audits of the algorithmic fairness. This cannot be modeled as a mere symbolic measure: this level of transparency would allow workers to organize around algorithmic practices, and would help in bringing legal measures against the existence of discriminative algorithms, and would hold the platforms accountable in case of an unequal effect on a disadvantaged social group (i. e. algorithms that try to systematically discriminate against women or workers in a specific region).

C. Enforceable Minimum Income Standards

Amend the SSC to require:

1. Guaranteed minimum piece rate or daily wage, indexed to inflation.
2. Prohibition on unilateral commission cuts exceeding 10% per quarter.
3. Mandatory platform contributions to worker social security.
4. Contribution floor (e.g., 5% of earnings).

This strikes a balance: platforms retain flexibility; workers gain income predictability.

D. Collective Bargaining and Right to Organise

Change the IRC to clearly grant collective bargaining set forth to the gig workers. Create industry bargaining platforms upon which the representatives of workers can bargain on minimum terms with platform associations. Insure against retaliation of workers against unionisation, including algorithmic downgrade due to unionisation.

E. Dispute Resolution and Due Process

Create a special tribunal whose sole authorities are to deal with platform worker conflicts. Claims of wrongful deactivation, wage theft, and cases of algorithmic bias should be brought before the tribunal and be awarded bindingly, particularly the simplified processes and anonymity of workers.

F. State Enforcement and Inspection

The Ministry of labour must also have a special wing labour compliance that performs an audit of wage records of workers, complaints, imposing fines to non-compliant ones, and also publishing an annual report of the culprits.

IX. OBJECTIONS AND LIMITATIONS

A. Feasibility and Political Economy

Opponents claim that regulation will push platforms off shore, decrease the availability of services or increase the costs. In the UK and EU, evidence indicates that it is not the scenario of doomsday: regulated platforms are still profitable. Nevertheless, there is actual capital flight to less regulated markets, and they have to be coordinated with policies.

On the other hand, the proposals made to reform have been actively opposed in the platform in terms of lobbying and litigation. Reform takes time, needs to be actively organized around workers, advocated by the civil society, and with political will some of which are scarce.

B. The Collective Action Problem

Delivery workers are widely spread geographically, digitally atomical, and economically desperate. It is more difficult to arrange them than to arrange factory workers with fixed positions. The localized and short struck the coordinated protests, although impressive, strikes. Maintaining the collective action is ballastful to organizations.

C. Partial Protections and Automation Risk

If reforms mandate minimum wages without employment guarantees, platforms may reduce task availability or accelerate automation. This risk is real but not unique to platform work: all minimum wage increases risk employment loss for marginal workers. The solution is proactive transition support (retraining, unemployment insurance) for displaced workers.

X. CONCLUSION: FROM HOLLOW RECOGNITION TO SUBSTANTIVE RIGHTS

The Code on Social Security 2020 achieved something symbolically significant: it placed gig and platform workers on India's labour law map. Yet symbols do not constitute protection. It has been several year since the enactment including the delayed implementation yet, delivery workers face wage erosion, algorithmic precarity, and absence of collective voice.

The late 2024 to 2025 delivery platform protests demonstrated that workers will not passively accept the gap between recognition and security. They will organize, demand fair treatment, and exert pressure on platforms and the state.

This article has argued that closing the recognition-security gap requires three layers of intervention:

(1) Reclassification or extension of collective rights, so workers have voice in setting terms.
(2) Algorithmic transparency and due process, so workers have visibility and contestation.
(3) Enforceable minimum standards (income, safety, hours), so precarity becomes bounded.

These reforms are administratively and politically challenging. But they are necessary and, the evidence suggests, compatible with platform business models in regulated markets.

India's labour law is at a crossroads. It can continue its current path: nominal gig worker recognition combined with structural powerlessness and persistent precarity. Or it can implement the promise of protection by extending substantive rights, establishing enforcement machinery, and empowering workers to negotiate the terms under which they deliver your food, packages, and commerce.

The decision is left to the lawmakers, courts and the civil society. The workers have already taken their word.

THE MYTH OF THE CLEAN SLATE: POST TRANSACTION LABOUR RESTRUCTURING AFTER PRIVATISATION OF STATE-OWNED ENTERPRISES

- *Vivek Rajurkar & Tanish Patel*

ABSTRACT

Privatisation of State-Owned Enterprises is perceived as an efficiency enhancing transfer of ownership, yet it carries residues of labour apprehensions of widespread displacement. This paper interrogates the myth of the 'clean slate' in privatisation by arguing that it is not a deregulated free-for-all and that post-transaction outcomes cannot be understood as a rupture from prior obligations. Instead, privatisation constitutes a form of organizational corporate restructuring, where the primacy of control over ownership, explained through residual claimant theory, reconfigures incentives, governance, and labour relations. Importantly, the effects of privatisation on labour are shown to be contingent, shaped by scale effects, workforce integration, and transitional measures. The public sector often works as an inefficient monitor, which leads to weak accountability. However, labour issues arising from privatisation do not stem from efficiency or competition itself. Instead, they come from opaque processes, sudden changes after transactions, and poor management of workforce integration and compensation harmonisation. Contrary to the narrative of lawless privatisation, the paper advances a rebuttal grounded in Indian law's calibrated approach drawing on cross-jurisdictional analysis, empirical and infographic insights. Statutory safeguards under §§ 25F and 25FF of the Industrial Disputes Act, 1947, continuity of service owing to the 'non-detriment principle' and constitutional jurisprudence encumbers privatisation's free pass and not function as an imperium in imperio in consonance with the Supreme Court of India's determination. The Air India case study operates as a reality check by grounding the theoretical claims in practicality with respect to efficiency claims and labour restructuring. The paper proposes a normative framework that juxtaposes financial restructuring principles onto organisational restructuring through a cross-class cramdown model. Anchored in non-detriment, intelligible differentia, and compensation harmonisation as a bridge, the framework seeks to reconcile workers' welfare with enterprise viability in post-privatisation restructuring.

TABLE OF CONTENTS

I. INTRODUCTION

Privatisation of State-Owned Enterprises (*hereinafter* SOEs) in India is often narrated as a moment of rupture. Once ownership is transferred from the State to a private entity, the enterprise is assumed to enter a "*clean slate*" phase enfreed from legal and welfare labour obligations especially associated with public employment. Privatisation is treated as a discrete act of disinvestment, rather than as a legally consequential process of reorganisation. As a result, the post-transaction phase of privatisation remains conceptually under-theorised in Indian law.

Privatisation is envisaged as a tool to reinvigorate apparently ailing SOEs.[1] It refers to the process through which the ownership of physical assets of an SOE is transferred and integrated into the private sector.[2] However, this definition lacks nuance.

Privatisation is not a monolithic concept. It is a multi-layered phenomenon with varied institutional, economic, and social implications. Major concerns circling it involve the restructuring of ownership and control and the consequent anxieties surrounding distributive inequities especially with regards to employee compensation and apprehensions of inevitable downsizing and retrenchment.[3] These concerns have contributed to a persistent stigma surrounding privatisation as a process inherently detrimental to labour interests.

This paper challenges this narrative. It argues that privatisation is not merely a transfer of ownership, but a form of organisational restructuring that reallocates control, governance, and risk within the enterprise. When viewed through this lens, privatisation cannot be understood as wiping the slate clean of pre-existing obligations, particularly those relating to labour. Instead, the post-transaction phase must be governed by continuity, constraint, and calibration. Labour relations do not reset at the moment of disinvestment; they persist, transform, and actively shape the restructuring process that follows.

---

[1] Steve R Letza, Clive Smallman and Xiuping Sun, 'Reframing Privatisation: Deconstructing the Myth of Efficiency' (2007) 37(2) Policy Sciences 159, 166.

[2] ibid 159-160; 'Privatisation' (*National Action Plans on Business and Human Rights*) <https://globalnaps.org/issue/privatisation/> accessed 25 January 2026.

[3] Letza, Smallman and Sun (n 1) 178; Morris Bornstein, 'Post-privatisation Enterprise Restructuring' (2001) 13(2) Post Communist Economies 189, 193-198.

Statutory safeguards such as §§ 25F[4] and 25FF[5] under the Industrial Disputes Act, 1947 (*hereinafter* IDA), alongside judicial insistence on the '*non-detriment'* of employees emphasising continuity of service and non-arbitrariness exemplify that labour rights cannot be extinguished with a mere shift in ownership. Their statutory continuation as § 73 of the Industrial Relations Code, 2020 (*hereinafter* IR Code)[6] showcases legislative determinacy to continue with the protections extended to workers. However, these protections are fragmented and reactive. They were not designed to address privatisation as a restructuring exercise involving incentive realignment, compensation harmonisation, and workforce rationalisation under private control. The law, therefore, both regulates privatisation and falls short of disciplining its distributive consequences.

Workers' apprehension towards privatisation goes beyond the fear of retrenchment. It extends to uncertainty surrounding erosion of long-term benefits, compensation stagnation, market transformation and adaptability, upskilling and retraining requirements, and the loss of institutional protections embedded in public employment. Simultaneously, private acquirers face strong incentives to restructure costs and labour, harden budget constraints, and reconfigure incentives in pursuit of efficiency. These competing pressures reveal privatisation as a contested restructuring process rather than a neutral market transaction.

Against this backdrop, the paper makes three contributions. *First*, it conceptually reclassifies privatisation as a species of corporate restructuring, thereby bringing it within the analytical framework traditionally applied to mergers, acquisitions, and insolvency-driven reorganisation. This shall ensure that the safeguard provisions applicable in corporate restructuring are extended to privatisation thus rebutting the distinct nature of privatisation which insulates it from legal encumbrances. *Second*, it examines how Indian statutory and judicial safeguards regulate labour outcomes in privatisation, while identifying their structural limits. *Third*, it proposes a normative framework for managing labour claims in privatisation by transposing the logic of '*cross-class cramdown*' from insolvency law which forms a subset of financial restructuring. This framework seeks to balance enterprise viability with labour

[4] The Industrial Disputes Act 1947, s 25F.

[5] The Industrial Disputes Act 1947, s 25FF.

[6] The Industrial Relations Code 2020, s 73.

protection by permitting structured override of consent, subject to a non-detriment baseline and procedural safeguards.

Part II of the paper situates privatisation within corporate restructuring theory, emphasising the primacy of control over ownership. Part III examines labour apprehensions during the privatisation process. Part IV analyses the existing legal framework governing labour protection in privatisation and its limitations. Part V explores how firm-level incentives are re-engineered post-privatisation. Part VI describes the need for a restructuring-based framework for labour treatment in privatisation. Part VII grounds the theoretical claims into reality with the case study of Air India. Finally, Part VIII proposes the normative framework for labour restricting by utilising the '*cross-class cramdown framework*'. Privatisation need not operate on a clean slate, and meaningful legal calibration can reconcile efficiency with labour continuity.

II. PRIVATISATION AS CORPORATE RESTRUCTURING: A LABOUR-CENTRIC REFRAMING

Privatisation signals a transition from a regime of statutory security and predictability to one governed by market discipline and managerial discretion.[7] This uncertainty is compounded by the expectation that private acquirers will rationalise wages, harmonise compensation, and reconfigure workforce incentives in pursuit of efficiency.

This section argues that when privatisation is conceptualised not merely as divestment but as a form of corporate restructuring, such fears need not be determinative. Properly planned privatisation procedures succeed in allaying such inhibitions by incorporating safeguards that ensure security of employment and remuneration. The operative non-detriment principle serves as a crucial mechanism to ensure employee security, thereby displacing apprehensions traditionally associated with privatisation.

A. Conceptualising Privatisation within Corporate Restructuring

[7] 'The end of privatisation?' (*The Economist*, 11 June 1998) < https://www.economist.com/britain/1998/06/11/the-end-of-privatisation> accessed on 25 January 2026; 'The painful privatisation of South Africa' (*The Economist*, 9 September 1999) <https://www.economist.com/international/1999/09/09/the-painful-privatisation-of-south-africa> accessed on 25 January 2026; 'Iranian Privatisation: A mess' (*The Economist*, 19 July 2001) <https://www.economist.com/business/2001/07/19/a-mess> accessed on 25 January 2026; Letza, Smallman and Sun (n 1) 159.

Corporate restructuring is a comprehensive process through which a company reorganises and consolidates its business operations in order to strengthen its capacity to achieve both short-term and long-term corporate objectives.[8] It typically involves alterations in organisational structure, ownership, or operational strategy, undertaken with the aim of enhancing efficiency, improving profitability, or responding effectively to evolving market conditions.[9]

Notably, corporate restructuring attracts apprehensions analogous to those commonly associated with privatisation. Reorganisation may disrupt existing operational arrangements, and processes such as downsizing often generate uncertainty among employees regarding job security, roles, and future prospects within the enterprise.[10] These concerns, while not unfounded, are frequently amplified by the perception that restructuring is inherently inimical to labour interests, an assumption that warrants closer scrutiny in light of protective legal and institutional frameworks governing such transitions.

Corporate restructuring may take multiple forms, each directed towards recalibrating different dimensions of the company. These forms are neither mutually exclusive nor purely technical; rather, they reflect distinct mechanisms through which firms seek to realign governance structures.

One such form is portfolio restructuring which seeks to make changes to the company's investment portfolio. With the deployment of strategies like rebalancing, diversification, or divestment, firms adjust the composition of assets they own in order to optimise returns, manage risk exposure, and sharpen strategic focus.[11]

A second, closely related dimension is financial restructuring, which addresses the firm's capital structure and financing arrangements. Businesses effect changes in their financial assets to increase profits and alleviate market-oriented risks.[12] Such changes are frequently

---

[8] The Institute of Company Secretaries of India, *Part I: Corporate Restructuring, Insolvency, Liquidation & Winding-Up* (ICSI 2021) 2.

[9] Basil Raju and Jyotirmoy Banerjee, 'Corporate Restructuring: A Strategic Approach to Modern Business Challenges' (2025) 8(1) IJLMH 392, 393.

[10] ibid 399-401.

[11] Nikhil Pandey, 'A Comprehensive Guide to Corporate Restructuring in 2023' (*Emeritus*, 30 March 2023) <http://emeritus.org/in/learn/leadership-corporate-restructuring/> accessed on 28 January 2026.

[12] Edward H Bowman and Harbir Singh, 'Corporate Restructuring: Reconfiguring the Firm' (1993) 14 Strategic Management Journal 5, 10-11.

characterised by significant adjustments to debt and equity positions, including debt restructuring, debt–equity swaps, and fresh equity financing.[13]

Finally, organisational restructuring targets the internal architecture of the enterprise. It entails modifications to the business model, management systems, and governance frameworks, often requiring changes in decision-making processes and internal hierarchies.[14] The process may result in the elimination of certain roles, the merging of functions, and the creation of new departments or teams.[15] While such changes are expected to enhance operational efficiency, they can disrupt the internal organisational homeostasis and generate uncertainty in working relations, particularly where role realignments or workforce rationalisation are involved.

Figure 1 showcases an infographic aid of the multidimensionality of corporate restructuring.

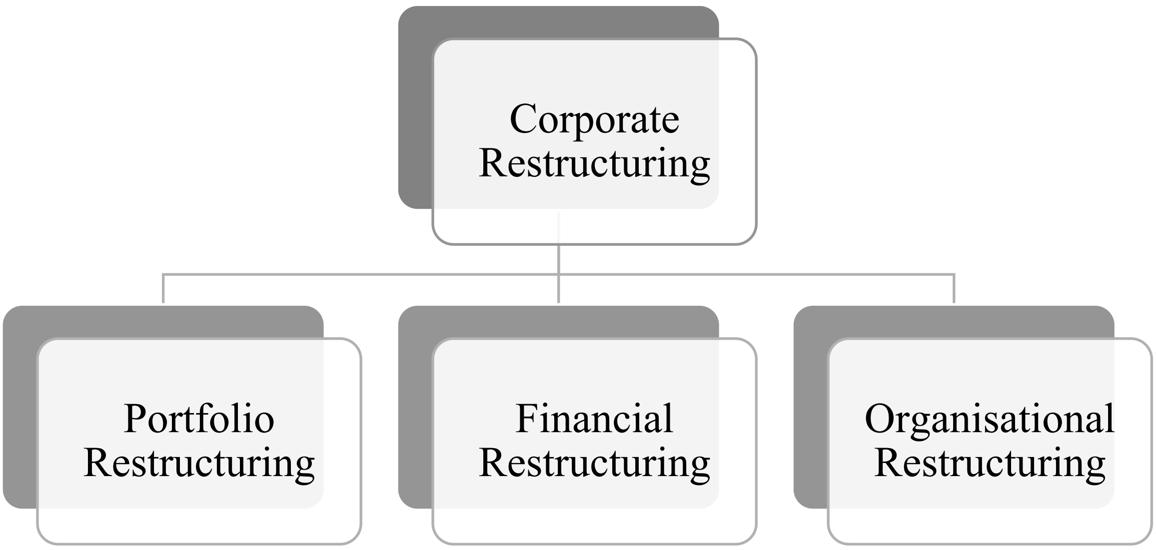


Figure 1: Multidimensionality of corporate restructuring.

---

[13] 'What Is Corporate Restructuring? A Comprehensive Guide' (*Santa Clara Leavey School of Business Blog*, 14 July 2025) <https://onlinedegrees.scu.edu/media/blog/what-is-corporate-restructuring> accessed on 28 January 2026.

[14] Mark L Mitchell and Kenneth Lehn, 'Do Bad Bidders Become Good Targets' (1990) 98(2) The Journal of Political Economy 372, 387; Kenneth Lehn and Annette Poulsen, 'Free Cash Flow and Stockholder Gains in Going Private Transactions' (1989) 44(3) The Journal of Finance 771, 772-774; Michael C Jensen, 'Agency Costs of Free Cash Flow, Corporate Finance, and Takeovers' (1986) 76(2) The American Economic Review 323, 323-324; Muhammad Shahid Iqbal and Khalid Mustafa, 'Ownership structure changes, reforms and corporate restructuring: Evidence from Japan' (2017) 12(2) Business Review 33, 41.

[15] Bowman and Singh (n 12) 11.

i. Privatisation as a Subset of Organisational Restructuring

Privatisation may be most coherently situated within the framework of organisational restructuring, insofar as it entails a reconfiguration of the ownership, control, and governance architecture of the enterprise. At its core, privatisation involves the reallocation of ownership, managerial authority, or operational oversight of an SOE, managed by the government to the private entities, typically through divestment, strategic sale, or public offering. Such transfers do not merely alter the ownership entitlement of the firm; they fundamentally recalibrate the internal allocation of control rights and accountability mechanisms within the firm.[16] In particular, privatisation through strategic disinvestment effects a decisive transformation in the enterprise's ownership and control structure, an outcome that lies at the heart of corporate restructuring.[17]

This reconceptualization is further buttressed by the residual claimant theory. In modern corporations, where production is undertaken by teams rather than individuals, effective managerial monitoring is indispensable to ensure efficient resource utilisation. Managers, however, are themselves agents whose performance requires oversight. This monitoring function is performed by shareholders, who possess residual claims over the firm's profits and therefore have the strongest incentive to oversee managerial conduct.[18] The allocation of residual claims to private shareholders thus serves as a critical governance mechanism, aligning managerial incentives with enterprise performance.

The public sector's limitation as an effective monitor stems from the nature of its incentive structures. Unlike private corporations, which are characterised by relatively streamlined principal–agent relationships, public sector enterprises operate within multilayered governance frameworks that dilute accountability and weaken oversight.[19] In the public sector context, the

---

[16] A Capek and P Mertlík, 'Organizational Change and Financial Restructuring in Czech Manufacturing Enterprises 1990-1995' (1996) Institute of Economics Working Paper No 55 <https://www.cnb.cz/en/economic-research/research-publications/institute-of-economy-working-papers/> accessed 28 January 2026; A Hayri and G McDermott, 'Restructuring in the Czech Republic - Beyond Ownership and Bankruptcy' (1995) CERGE - EI Working Paper Series No 66, 1 <https://www.cerge-ei.cz/pdf/wp/Wp66.pdf> accessed 28 January 2026; Gerhard Schüsselbauer, 'Privatisation and Restructuring in Economies in Transition: Theory and Evidence Revisited' (1999) 51(1) Europe-Asia Studies 65, 72.

[17] Bornstein (n 3) 193.

[18] Bob Rowthorn and Ha-Joon Chang, 'Public Ownership and the Theory of the State' in Thomas Clarke and Christos Pitelis (eds) *The Political Economy of Privatization* (1st edn, Routledge 1993);

[19] Vladan Ivanović, Vadim Kufenko, Boris Begović, Nenad Stanišić and Vincent Geloso, 'Continuity Under a

ultimate principals, the public, are separated from the agents managing SOEs by multiple intervening layers, including elected representatives, bureaucratic departments, boards of quasi-autonomous non-governmental organisations, and supervisory bodies of nationalised industries.[20] This proliferation of intermediaries distorts information flows and exacerbates information asymmetry.

These structural weaknesses are further compounded by the prevalence of rent-seeking behaviour.[21] In environments characterised by ambiguous or poorly defined property rights, rent-seeking enables '*sticking*' of inefficient institutional arrangements to persist and discourages engagement in productive economic activity.[22]

In extreme cases, this manifests in asset stripping, wherein agents extract value from public enterprises through the diversion or depletion of assets for private gain.[23] Those involved in asset stripping often wield enough political leverage to minimise the risk of punitive action.[24] Accordingly, weak rule-of-law frameworks play a decisive role in determining the consequences of privatisation and restructuring. Comparative experiences underscore this dynamic; for instance, in Serbia, elected officials and senior bureaucrats were able to appropriate substantial rents through above-market remuneration, institutional prestige, and patronage networks. Privatisation directly jeopardised these rent-based advantages, and while overt resistance was limited, asset stripping emerged as a viable fallback strategy to preserve

---

Different Name: The Outcome of Privatisation in Serbia' (2018) 24(2) New Political Economy 1, 1-4.

[20] ibid.

[21] Anne O Krueger, 'The Political Economy of the Rent-Seeking Society' (1974) 64(3) The American Economic Review 291, 291-293; Gordon Tullock, 'The Welfare Costs of Tariffs, Monoploies, and Theft' (1967) 5(3) Western Economic Review 224, 232; Dennis C Mueller, *Public Choice III* (Cambridge University Press 2003).

[22] Peter J Boettke, Christopher J Coyne and Peter T Leeson, 'Institutional Stickiness and the New Development Economics' (2008) 67(2) American Journal of Economics and Sociology 331, 333-334.

[23] Karla Hoff and Joseph E Stiglitz, 'After the Big Bang? Obstacles to the Emergence of the Rule of Law in Post-Communist Societies' (2004) 94(3) American Economic Review 753, 761; Božidar Cerović and Radmila Dragutinović Mitrović (2007) 14 Transition Studies Review 469, 475-480; Matjaž Koman and Verica Hadzi Vasileva Markovska, 'Transition firms in Illyria: Do Workers Still Manage? Evidence from Macedonian firms' (2007) 9(1) Economic and Business Review 23, 25; Matjaž Koman, Ljubica Knežević Cvelbar, Anðelko Lojpur and Janez Prašnikar, Effects of Ownership and Management Changes on Productivity in Privatized Montenegrin Firms' (2011) 49(3) Eastern European Economics 5, 6; Matjaž Koman, Milan Lakićević, Janez Prašnikar and Jan Svejnar, 'Asset stripping and firm survival in mass privatization: Testing the Hoff-Stiglitz and Campos-Giovannoni models in Montenegro' (2014) 43(2) Journal of Comparative Economics 274, 275.

[24] Nauro F Campos and Francesco Giovannoni, 'The Determinants of Asset Stripping: Theory and Evidence from the Transition Economies' (2006) 49(2) 681, 690.

entrenched interests.[25] Privatisation operates as a deliberate reorganisation of the firm's governance and monitoring structures, situating it squarely within the domain of organisational restructuring rather than as an isolated fiscal or policy intervention.

ii. Venturing beyond Ownership: The Primacy of Control

Private ownership renders a positive impact on firm's restructuring. This has been verified in a litany of studies.[26] Furthermore, it is an established fact that ownership concentration has a positive impact on restructuring activities owing to better monitoring incentives for those with the largest stake in the transaction.[27] However, The character of private sector engagement extends beyond ownership as a singular criterion.[28] While the composition of shareholdings determines the formal ownership structure of a company, ownership percentage alone is an incomplete indicator of corporate restructuring. Although the equity patterns affect the determination of the ultimate owner, the decisive factor for restructuring lies in transfer of control.[29] This argument is rooted in the fact that businesses environments are consistently in a flux.[30] Physical assets are treated as easily transferable commodities unsuccessful in determining material governance changes and restructuring. Globalisation, liberalisation, and deregulation[31] have introduced a plethora of choices of financing and governance, and hence it abandons the illusion that corporate boundaries are clearly delimited by their physical assets and remain unchanged in instances of an overhaul of ownership, capital structure, or governance.[32]

Consequently, the traditional understanding of equating ownership with mere capital is attrited with the introduction of a broader variable of control. Formal ownership of physical assets is

---

[25] William A Niskanen, *Bureaucracy and Representative Government* (Routledge 2007); Mueller (n 21).

[26] Iqbal and Mustafa (n 14) 43.

[27] ibid 33-34.

[28] John Burton, 'Privatization: The Thatcher Case' (1987) 8(1) Managerial and Decision Economics 21, 25.

[29] Letza, Smallman and Sun (n 1) 171.

[30] Luigi Zingales, 'In Search of New Foundations' (2000) 55(4) The Journal of Finance 1623, 1624-1625.

[31] Hector E Schamis, *Re-forming the State: The Politics of Privatization in Latin America and Europe* (University of Michigan Press 2002).

[32] Zingales (n 30) 1644.

less determinative than the locus of actual control within the firm.[33] This framework highlights that restructuring is triggered not simply by changes in equity distribution, but by shifts in decision-making authority and governance power.[34] Accordingly, privatisation constitutes organisational restructuring provided it results in a transfer of effective control over the enterprise's strategic direction, management, and operational policies. Control, rather than ownership percentage in isolation, thus emerges as the critical marker of restructuring.

Corporate restructuring literature consistently frames restructuring as a strategic intervention aimed at addressing operational inefficiencies, excessive debt burdens, declining market share, or organisational rigidity, with the ultimate objective of improving financial health and strengthening market positioning.[35] Privatisation is justified on analogous grounds: as a mechanism to reinvigorate or refinance underperforming state-owned enterprises, introduce market discipline, harden budget constraints, and reorient enterprise behaviour towards efficiency and responsiveness to consumer preferences.[36]

This alignment is most visible in the shared emphasis on reconfiguring governance and incentive structures. Corporate restructuring, particularly organisational and financial restructuring, seeks to realign managerial incentives, streamline decision-making hierarchies, and impose performance discipline through revised capital structures and accountability mechanisms.[37] Similarly, privatisation is grounded in public choice and property-rights theories that view private ownership and control as superior vehicles for enforcing allocative, productive, and dynamic efficiency. By replacing diffuse public oversight with market-based monitoring and residual claimant incentives, privatisation mirrors the core logic of restructuring: altering the internal architecture of the firm so that strategic, operational, and

---

[33] Letza, Smallman and Sun (n 1) 171.

[34] Thomas N Tarleau, 'Continuity of the Business Enterprise in Corporate Reorganizations and Other Corporate Readjustments' (1960) 60 Colum L Rev 792, 800.

[35] Bowman and Singh (n 12) 6.

[36] Burton (n 28) 22-23; Kathryn L Dewenter and Paul H Malatesta, 'State-Owned and Privately Owned Firms: An Empirical Analysis of Profitability, Leverage, and Labor Intensity' (2001) 91(1) The American Economic Review 320, 320-321.

[37] Stephen Daughters, 'What is corporate restructuring? A strategic guide to transforming your business' (*BPM*, 30 June 2025) <https://www.bpm.com/insights/corporate-restructuring/> accessed 29 January 2026.

financial decisions are disciplined by competitive pressures rather than political or bureaucratic considerations.[38]

A convergence of these two concepts was envisaged as the theme of the presentation by Gene Remoff.[39] He purported the argument that for firms in mature businesses, a management buyout, which is a variant of privatisation, can prove to be an effective restructuring mechanism. He observed that as a part of the privatisation process, the endeavours undertaken were in consonance with financial and portfolio restructuring to effect the redeployment of assets of the firm by adjusting the cash flow and reducing peripheral operations.[40]

iii. Labour Outcomes as the Common Thread

Labour dynamics, often treated as the normative fault line in debates on privatisation, further underscore its structural equivalence to corporate restructuring. Empirical and theoretical studies of restructuring consistently document workforce rationalisation, changes in compensation structures, and cultural reorientation as integral components of organisational transformation.[41] Restructuring is frequently accompanied by downsizing, particularly of middle-management layers, flatter hierarchies, and the redeployment of labour towards functions aligned with the firm's revised strategic priorities.[42] Yet, restructuring also generates new employment configurations: expanded roles, cross-functional responsibilities, and enhanced valuation of adaptable, high-performing employees with transferable skills.[43] Human resource strategies during restructuring increasingly draw on the Resource-Based View, recognising employees as valuable and inimitable assets whose effective redeployment is critical to long-term competitiveness.[44]

---

[38] David Donald and Alan Hutton, 'Public Purpose and Private Ownership: Some Implications of the "Great Capitalist Restoration" for the Politicization of Private Sector Firms in Britain' (1998) 32 Journal of Economic Issues 457, 458-460; Stephen Martin and David Parker, 'Privatization and Economic Performance Throughout the UK Business Cycle' (1995) 16(3) Managerial and Decision Economics 225, 225-227.

[39] Bowman and Singh (n 12) 7.

[40] ibid.

[41] Anne H Reilly, Jeanne M Brett and Linda K Stroh, 'The Impact of Corporate Turbulence on Managers' Attitudes' (1993) 14 Strategic Management Journal 167, 169-171.

[42] Bowman and Singh (n 12) 6-10.

[43] Santa Clara Leavey School of Business Blog (n 13).

[44] Patrick M Wright, Benjamin B Dunford and Scott A Snell, 'Human resources and the resource based view of

This is furthered by the Psychological Contract theory which seeks to explore the impact of restructuring on the psyche of the employees.[45] It is proposed that such an analysis would be better conducted if the employees are segregated into categories. Such a distinction could be based on criteria like marketable skills, adaptability, self-esteem, self-assessment, SWOT (Strength-Weakness-Opportunity-Threat) analysis among others.[46]

Comparative evidence from privatised enterprises reveals patterns of workforce reduction in overstaffed firms, widening wage differentials reflecting skill scarcity, and increased use of incentive-based compensation.[47] At the same time, the effects on employment are heterogeneous and context-dependent. In several instances, employment reductions were modest or mitigated by retraining, redeployment, or generous severance packages, while productivity gains were accomplished through alterations in the product portfolio, quality standards, and marketing strategies rather than through labour shedding alone.[48] These outcomes mirror restructuring dynamics observed in private-sector reorganisations, management buyouts, and post-merger integrations, where employment security is shaped not by the restructuring *per se*, but by institutional design, labour regulation, and transition management.[49]

Taken together, the alignment of objectives, efficiency enhancement, financial discipline, governance reform, and strategic repositioning, combined with the parallel treatment of labour as both a site of adjustment and a strategic resource, confirms that privatisation operates as a species of corporate restructuring. It is best understood not as an exceptional or externally imposed policy intervention, but as an organisational reconfiguration that employs ownership and control transfer as instruments to achieve restructuring outcomes. In this sense,

---

the firm' (2001) 27(6) Journal of Management 701, 711.

45 Maya Jose, 'A study of the Impact of Psychological contract on Organizational commitment among Temporary and Permanent Employees in Organizations' (2008) 3(2) Journal of Contemporary Research in Management 1, 2-6.

46 Charis Vlados and Dimos Chatzinikolaou, 'Towards a Restructuration of the Conventional SWOT Analysis' (2019) 5(2) Business and Management Studies 76, 77-78.

47 Bornstein (n 3) 194.

48 David Parker, 'Editorial: Lessons from Privatisation' (2004) 24(3) Economic Affairs 2, 5-6.

49 European Bank for Reconstruction and Development (EBRD), Transition Report 1999 (London 1999); Roman Frydman, Cheryl W Gray, Marek P Hessel and Andrzej Rapaczynsk, 'When Does Privatization Work? The Impact of Private Ownership on Corporate Performance in the Transition Economies' (1999) 114(4) Quarterly Journal of Economics 1153, 1164.

privatisation represents a recalibration of institutional incentives and organisational form, rather than a rupture from the established logic of corporate restructuring.

B. Safeguarding Labour: The Non-Detriment Principle of Corporate Restructuring

The efficiency gains from privatisation as a form of corporate restructuring are well documented. This can be illustrated through a performance comparison of British Airways and British Caledonian, wherein the latter privately owned firm enjoyed a 15% higher productivity than the former publicly owned firm even though the former enjoyed a competitive location advantage.[50]

Another illustration from the United States reveals that post-restructuring was markedly positive from a shareholder-value perspective, with income doubling between 1984 and 1991. Concomitantly, however, these gains were accompanied by a significant contraction in employment, with a reported 33% decline in the workforce, underscoring the persistent tension between efficiency objectives and labour outcomes.[51]

Similar dynamics have been observed in transition economies. In Poland, organisational restructuring results in adjustments in decision-making and control structures which in turn weakened the position of workers' councils, a key element of socialist enterprise models. Between 1991 and 1995, privatised enterprises in Poland experienced workforce reductions of approximately 25 per cent, alongside a pronounced increase in wage differentiation. Whereas socialist regimes had deliberately suppressed wage differentials to ensure parity, privatisation was a harbinger of market-based remuneration that stratified labour income according to varied criteria including education, skills, effort and responsibility. This marked a departure from a "*working-class nostalgia*" for income harmonisation, replacing it with market-oriented valuation of labour.[52]

The Indian experience reflects similar anxieties. Over the past five years, privatisation and strategic disinvestment have been associated with the loss of approximately one lakh SOE

[50] Richard Pryke, 'The Comparative Performance of Public and Private Enterprise' (1982) 3(2) The Journal of Applied Public Economics 68, 69-77.

[51] Bowman and Singh (n 12) 7.

[52] Schüsselbauer (n 16) 74.

jobs, occurring against the backdrop of an already strained labour market.[53] This has intensified concerns of unemployment and labour insecurity. Such outcomes have reinforced resistance to privatisation, not on the ground that efficiency gains are illusory, but because the costs of restructuring appear to be unevenly borne by labour.

Table 1 illustrates the figure of SOE jobs lost to privatisation in the past five financial years in India. It showcases the number of employees in operating CPSEs and representation of SCs, STs and OBCs in the same. Our core focus remains on the total number of employees to gauge the trend of retrenchment in SOEs.

Financial Year	Total Regular Employees (Numbers in Lakhs)	Representation of SCs, STs and OBCs in the Operating CPSEs					
		SC		ST		OBC	
		(Numbers in Lakhs)	%	(Numbers in Lakhs)	%	(Numbers in Lakhs)	%
2019-2020	9.20	1.60	17.44	1.00	10.84	1.99	21.59
2020-2021	8.60	1.49	17.28	0.90	10.46	1.93	22.40
2021-2022	8.39	1.46	17.38	0.85	10.19	1.90	22.63
2022-2023	8.41	1.44	17.17	0.83	9.86	2.00	23.77
2023-2024	8.12	1.44	17.76	0.88	10.85	2.13	26.24

(Source: The Public Enterprises Survey, annual document of the Department of Public Enterprises, Ministry of Finance, GoI.)

Table 1: SOE jobs lost to privatisation in the past five financial years in India.

[53] Basant Kumar Mohanty, '1 lakh government firm jobs lost to privatisation in 5 years, unemployment worsens' *The Telegraph Online* (22 August 2025) <https://www.telegraphindia.com/india/1-lakh-govenrment-firm-jobs-lost-to-privatisation-in-5-years-unemployment-worsens-prnt/cid/2119110#goog_rewarded> accessed on 31 January 2026.

Figure 2 showcases the tabular data for the number (in lakhs) of employees in SOEs graphically to visually determine a trend of retrenchment.

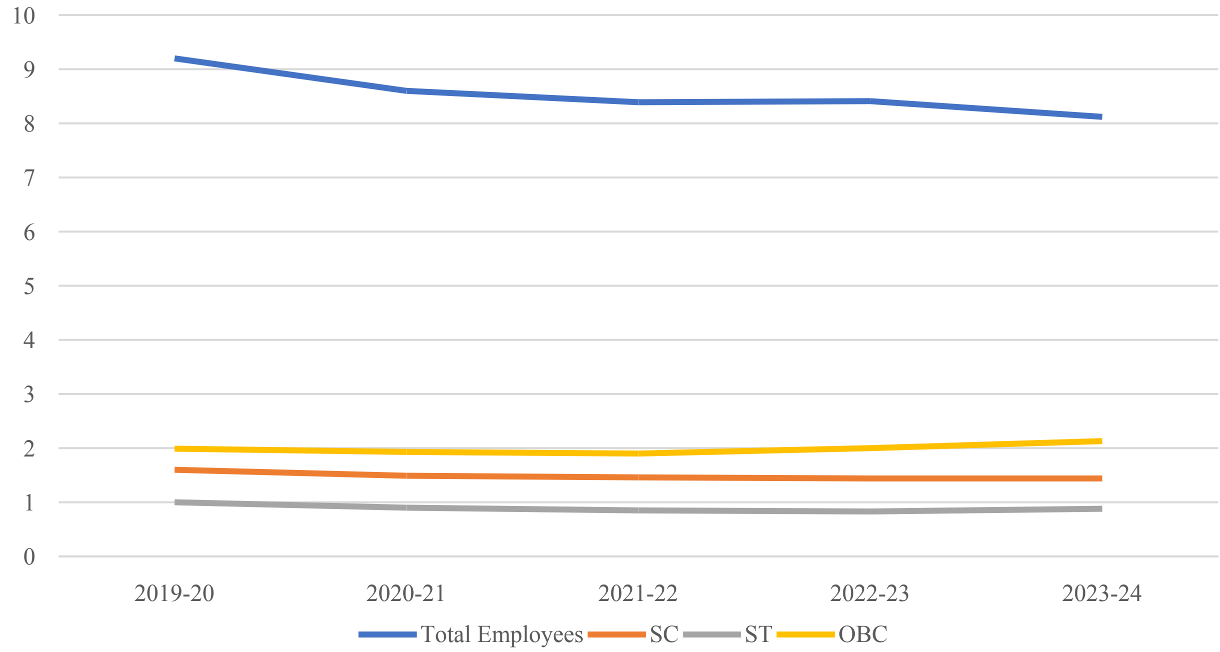


Figure 2: Visual representation of number (in lakhs) of employees in SOEs.

It is evident that the total range of employees in SOEs demonstrates a downwards trend which points towards retrenchment as privatisation is undertaken. Such data buttresses the apprehensions of labour surrounding privatisation and simultaneous restructuring.

Since labour apprehensions are an inevitable consequence of privatisation-led restructuring, it becomes necessary to examine whether these concerns can be institutionally mitigated rather than treated as an argument against privatisation itself. During restructuring, while corporate and contract law primarily safeguard the interests of shareholders and creditors,[54] it is the IDA[55] (statutorily continued by the IR Code) that intervenes to cushion the possible adverse impact of restructuring on labour. § 25FF[56] embodies the '*non-detriment principle*' within the context of corporate reorganisation by mandating that, upon a transfer of an undertaking, employees

[54] The Companies Act 2013, ss 230-232; SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, s 37.

[55] The Industrial Disputes Act 1947.

[56] The Industrial Disputes Act 1947, s 25FF.

must either be absorbed on terms '*no less favourable*' than those previously enjoyed or be compensated as if retrenched.

It is argued that such protection should be extended to privatisation as well. Considerable apprehensions regarding retrenchment can be allayed with such provision. It has been established that privatisation forms a subset of corporate restructuring. A literal reading of § 25FF demonstrates a possible inclusion of privatisation within its ambit. It embodies that the ownership or management undergoes a change of hands either by means of agreement or by operation of law. There exists an effective change of employers. Such reallocation of rights takes place in privatisation when the State exits to make way for private players.

Accordingly, to exclude privatisation from the protective ambit of § 25FF would require an artificial distinction unsupported by statutory text or legislative intent. Once privatisation is acknowledged as a species of organisational restructuring entailing a shift in ownership or managerial control of the undertaking, the labour safeguards applicable to corporate restructuring must, as a matter of doctrinal consistency, attach to it as well. The application of the non-detriment principle thus reconciles the efficiency-oriented objectives of privatisation with the constitutional and statutory commitment to protecting workmen from displacement arising solely from structural corporate change.

III. LABOUR UNDER TRANSITION: APPREHENSIONS SURROUNDING PRIVATISATION

Between 1991 and 1999, the Government of India injected approximately ₹612 billion into state-owned enterprises, while receiving dividend returns of only about ₹179 billion over the same period, amounting to an average return of roughly 3.4%.[57] This gap is particularly significant given that much of this capital infusion was financed through public borrowing at interest rates exceeding 10%, resulting in a persistent negative spread between the cost of capital and the returns generated by these enterprises.[58] This fiscal imbalance has repeatedly been cited as a key justification for pursuing privatisation to reduce inefficiency and reallocate public resources more productively.

---

[57] Gérard Roland (ed), *Privatization: Successes and Failures*, Foreword by Joseph E Stiglitz (Columbia University Press 2008) 36.

[58] ibid.

However, a substantial body of empirical research demonstrates that for workers, privatisation is less an economic reform and more a source of sustained fear, uncertainty, and insecurity. While scholars emphasise efficiency gains and improved performance,[59] labour-focused studies consistently show that these gains are often achieved through restructuring processes that impose disproportionate costs on employees.[60]

At the core of workers' anxiety lies the association between privatisation and downsizing. Layoffs are a recurrent feature of corporate restructuring (particularly in declining or transitional organisations) and, because they lie entirely beyond workers' control, they often inflict significant damage.[61] For instance, nearly one lakh jobs were lost in India due to privatisation over five years, primarily following strategic disinvestment involving the substantial sale of government shareholding and transfer of management control in ten CPSEs since 2016.[62]

Empirical evidence confirms that fear does not dissipate once employees are retained. Brockner et al., drawing on two empirical studies, show that the mere threat of future layoffs significantly shapes survivor behaviour and attitudes.[63] Employees with lower self-esteem reported substantially higher levels of worry about layoffs and increased work effort, indicating fear-driven motivation. However, this heightened effort was accompanied by psychological strain and reduced morale. In contrast, employees with higher self-esteem neither exhibited increased anxiety nor greater effort in response to layoff threats, suggesting that perceived job insecurity disproportionately erodes organisational commitment among more vulnerable workers.[64] Research further indicates that survivors' reactions are shaped by perceived fairness of layoffs

---

[59] Anant Kousadikar and Trivender Kumar Singh, 'Advantages and Disadvantages of Privatisation in India' (2013) 3(1) International Journal of Advanced System and Social Engineering Research 18, 21.

[60] D Wayne Taylor and Allan A Warrack, 'Privatisation of state enterprise: policy drivers and lessons learned' (1998) 11(7) International Journal of Public Sector Management 524, 525.

[61] Philippe Aghion and Olivier Jean Blanchard and Wendy Carlin, 'The Economics of Enterprise Restructuring in Central and Eastern Europe' in John E Roemer (ed), Property Relations, Incentives and Welfare (Palgrave Macmillan, 1997) 271, 280.

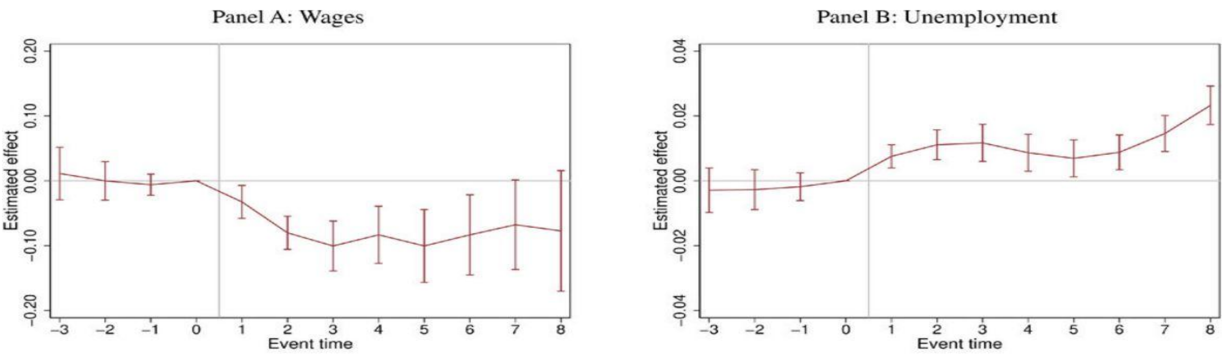
[62] Mohanty (n 53).

[63] Joel Brockner and others, 'Threat of future layoffs, self-esteem, and survivors' reactions: Evidence from the laboratory and the field' (2007) 14(S1) Strategic Management Journal 153.

[64] ibid.

and changes in working conditions, with unfair or opaque processes leading to mistrust, anxiety, and declining productivity.

Cross-country studies on employee attitudes towards privatisation reveal a consistent pattern of ambivalence. While some employees acknowledge potential economic and organisational benefits, fear dominates perceptions relating to job security, income stability, and social protection.[65] Studies highlight concerns about inadequate compensation, reduced participation in decision-making, and widening inequality. Employees frequently perceive losses in voice, fairness, and long-term security.[66] Additionally, educated middle-class workers often suffer redistributive losses, intensifying resistance and fear.[67] For instance, survey evidence from Sweden indicates that privatisation was associated with declining wages and rising unemployment among affected workers (Figure 3). While India's institutional and labour-market context differs significantly, such findings remain instructive, as they highlight the broader tendency of privatisation to expose workers to risk and to create fear.[68]



(Source: OLSON, TAC)

Figure 3: Declining wages and rising unemployment post-privatisation

---

65 Mehadi Mamun, 'Privatisation and Employees' Job Security: Lessons from Bangladesh' (2021) 11(2) International Journal of Human Resource Studies 204.

66 Daniele Checchi, Massimo Florio and Jorge Carrera, 'Privatization Discontent and Its Determinants: Evidence from Latin America' (2004) SSRN Electronic Journal <https://doi.org/10.2139/ssrn.721904> accessed 6 February 2026.

67 ibid.

68 Martin Olsson and Joacim Tåg, 'What is the Cost of Privatization for Workers?' IFN Working Paper No 1201 (2018) 8.

The Indian experience underscores the social consequences of poorly managed privatisation. The privatisation of the *U.P. State Cement Corporation* and the violent repression of worker protests in 1991 illustrate how fear can escalate into conflict when labour interests are marginalised.[69] Taken together, these material risks produce insecurity marked by the absence of status and predictability associated with PSU employment.

IV. REBUTTING THE "LAWLESS PRIVATISATION" MYTH

Privatisation in India operates at the intersection of economic reform and labour protection. As a form of corporate restructuring, privatisation falls within the framework of §§ 230–232 of the Companies Act, 2013.[70] Although it is often perceived as a threat to workers, Indian law does not treat privatisation as a deregulated free-for-all. Instead, it adopts a calibrated approach by enabling the State to restructure and divest public enterprises to achieve efficiency, while simultaneously retaining constitutional, statutory, and judicial safeguards to protect labour interests.

A. Judicial and Statutory Perception of Privatisation

As has been established in the foregoing sections, privatisation can be categorised as corporate restructuring, thereby allowing labour to law assume a central role. Indian employment protection measures (often criticised as rigid) serve precisely to mediate the social costs of ownership transfer.

The IDA is the backbone of such protection. § 25FF addresses workers' primary fear during privatisation: loss of employment upon transfer of ownership. It provides that where an undertaking is transferred, workers are entitled to notice and compensation as if retrenched, unless three cumulative conditions are satisfied: (i) continuity of service is maintained, (ii) terms and conditions are not less favourable, and (iii) the new employer assumes statutory liability for future retrenchment compensation. This provision ensures that privatisation cannot be used as a device to extinguish accrued service rights. It protects the employees from "*sudden job loss or adverse changes in service conditions*" associated with privatisation.

---

[69] Mukul, 'Workers against Privatisation' (1991) 26(30) EPW 1781.

[70] The Companies Act (n 54).

This provision has also been retained under the newly introduced labour codes as § 73 of the IR Code.[71] The statutory continuity of this protection further strengthens its vitality.

Similarly, § 25F mandates notice and retrenchment compensation before termination, making workforce retrenchment legally costly. Judicial interpretation has treated these provisions as mandatory and non-waivable, reinforcing the idea that labour protections travel with the worker, even as ownership changes. The court interpreting this section has held that workers cannot be compelled to join a new employer without their consent.

In line with the statute's protective spirit, Indian courts have been cognisant of workers' rights, recognising that while the Constitution protects economic autonomy, labour statutes impose procedural and substantive checks on industrial closure to balance business freedom with social justice.[72] Initially, Indian courts consistently recognised privatisation as a policy decision lying primarily within the executive domain. For example, in cases such as the *BALCO Employees' Union* and the *Delhi Service Forum*, the apex court held that decisions to disinvest or privatise PSUs are matters of economic policy and that courts should not interfere unless such decisions violate constitutional or statutory limits.[73] The court in these cases emphasised transparency and procedural fairness but refused to substitute judicial wisdom for executive economic judgment.[74]

However, this deference is not absolute. Precedentially, the disinvestment of BPCL and HPCL has been halted due to the reason that where PSUs are created through specific nationalisation statutes, privatisation cannot proceed without "*explicit parliamentary approval*."[75] This decision is crucial because it demonstrates that privatisation must conform to the statutory architecture under which a PSU was created. Executive expediency cannot override legislative intent.

---

71 The Industrial Relations Code (n 6).

72 'Right to Trade versus Protection of Workers: Legal Safeguards on Closure of Industrial Establishments' (*SCCTimes*, 5 July 2025) <https://www.scconline.com/blog/post/2025/07/05/right-to-trade-vs-worker-protection-industrial-closure/> accessed on 6 February 2026.

73 *Balco Employees Union (Regd) v Union of India & Ors* (2002) 2 SCC 333.

74 *Delhi Science Forum & Ors v Union of India & Anr* (1996) 2 SCC 405.

75 *Centre for Public Interest Litigation v Union of India and Ors* (2007) 139 DLT 289.

Notably, the Apex Court in the landmark decision of *Sunil Kumar Ghosh*[76] have also recognised that employees cannot be compelled to accept a new employer without their consent, and that where employment ceases on account of such transfer, then "*workmen are entitled to retirement/retrenchment compensation in terms of the Act*", which essentially points to the worker compensation section. This reflects an underlying commitment to the dignity and autonomy of labour.

Indian courts have further constrained privatisation by insisting that constitutional norms do not vanish when the State enters the market. In *Ramana Dayaram*, the Supreme Court held that public authorities must act non-arbitrarily even in commercial dealings.[77] Similarly, in *Som Prakash Rekhi*, the Court held that government-owned corporations performing public functions remain subject to constitutional obligations.[78] The Court opined that,

"*It is dangerous to exonerate corporations from the need to have constitutional conscience; and so that interpretation, language permitting, which makes governmental agencies, whatever their main, amenable to constitutional limitations must be adopted by the court as against the alternative of permitting them to flourish as an imperium in imperio*."[79]

These cases matter because they reject the notion that privatisation wipes the slate clean. Even where ownership shifts, the "*private owner remains bound by constitutional mandate*", thereby requiring fairness, reasonableness, and non-arbitrariness.[80] Labour interests thus enter the legal calculus indirectly through constitutional values, even where no explicit labour right is violated.

B. Rigid Labour Laws: Protection or Distortion?

Critics argue that India's Employment Protection Measures, described by the World Bank as among the "*most restrictive*" globally, impede labour mobility and discourage efficient restructuring.[81] Even after the Indian economy adopted economic policies in 1990, these rigid

---

[76] *Sunil Kumar Ghosh & Ors v K Ram Chandran & Ors* (2011) 14 SCC 320

[77] *Ramana Dayaram Shetty v The International Airport Authority of India* (1979) 3 SCC 489.

[78] *Som Prakash Rekhi v Union of India & anr* (1981) 1 SCC 449.

[79] ibid 148-B

[80] *Reliance Natural Resources Ltd v Reliance Industries Ltd* (2010) AIROnline SC 285.

[81] World Bank, 'India Country Overview' (2008).

Employment Protection Laws remained unchanged.[82] Statutes such as the IDA, Contract Labour (Regulation and Abolition) Act, and state Shops and Establishments Acts impose procedural burdens on employers, increasing the cost of layoffs and discouraging hiring.

Yet, this rigidity performs a vital redistributive function in the context of privatisation. It ensures that adjustment costs are not borne exclusively by workers, particularly in a labour market with weak social security outside public employment.[83] The law, therefore, acts as a shock absorber, preventing abrupt displacement and forcing the State and private acquirers to internalise social costs through severance pay, continuity obligations, and negotiated exits.[84] The court has also taken a similar pro-employee stance, ruling that the retrenchment provisions are "*reasonable restrictions*" and thus valid.[85]

Later cases, such as *Jessop & Co. Ltd.*[86] and *Modi Corp. v. Union of India*[87] reinforce the judiciary's evolving approach, in which courts shall scrutinise compliance, statutory authority, and labour safeguards, but will not question the government's judgment on pricing or timing. The role of the judiciary is not to block privatisation, but to ensure that it is lawful, transparent, and socially accountable.

Indian law does not treat privatisation as inherently hostile to workers. Instead, it recognises it as a legitimate instrument of economic reform, constrained by labour statutes, constitutional principles, and judicial oversight.[88] While gaps remain, particularly in enforcement, worker awareness, and delay, the legal framework already contains the tools to mitigate harm. The challenge, therefore, is not the absence of protection, but its effective deployment. Privatisation

---

[82] T Das, The Impact of Research on Policymaking: The Case of Labour Market and External Sector Reforms in India (Economic Research Network 2006).

[83] Pallavi Arora, 'The rigid employment protection legislations in India and its impact on the economy - Is flexicurity a viable solution?' (2012) 7 NSLR 91, 94.

[84] Nalin Bharti and Gopal Ganesh, 'Is Labour Law a Hindrance in India's Public Enterprises Reforms?' (2016) 83 Optimum Economic Studies 53, 63.

[85] *Workmen of Meenakshi Mills Ltd v Meenakshi Mills Ltd and Anr* (1992) 3 SCC 336.

[86] *Workmen of M/S Jessop And Co, Ltd v Jessop and Co Ltd* (1963) 1963 Supreme(SC) 334

[87] *Modi Corp Ltd v Union of India and Anr* (2002) 96 DLT 679.

[88] Jairus Banaji, 'Workers' Rights in a New Economic Order: The First Arvind N Das Memorial Lecture from the Association of Labour Historians' (2001) 6 36, 38.

in India, thus, doesn't need to pit efficiency and labour welfare necessarily, but rather, when the law is applied meaningfully, it can balance both.

V. INCENTIVE RE-ENGINEERING AFTER PRIVATISATION: PROMISE AND PERILS

A. Beyond Worker Loss: Reframing the Privatisation Debate

Privatisation is often narrated through a narrow lens of loss about lost jobs, shrinking wages, and weakened security.[89] These fears are not imaginary, and earlier sections have shown why labour law and constitutional protections matter deeply during ownership transitions. Yet, focusing only on risks gives an incomplete picture.[90] While understanding that privatisation creates costs, a growing body of empirical evidence suggests that, under certain conditions, privatisation can also reshape employee incentives, thereby improving productivity, earnings, and long-term career prospects.

At the core of this shift is a change in how firms operate once freed from bureaucratic constraints. Economic theory predicts that private owners impose more complex budget constraints, pursue efficiency, and restructure costs. If output were fixed, this would indeed imply job cuts. But empirical studies increasingly show that output does not remain static after privatisation.[91] Instead, many firms expand sales and output by entering new markets, adopting new technologies, and improving management practices. This "*scale effect*" often offsets, and sometimes outweighs, labour-saving efficiency gains.[92]

Extensive cross-country studies covering Hungary, Romania, Russia, and Ukraine find no evidence of "*substantial negative employment or wage effects*" following privatisation. Employment effects are statistically insignificant, and wage reductions, where they occur, are modest, usually between 3–5%, and limited to specific contexts of domestic privatisation.[93] By

---

[89] Suzanne Nola and Marleen Rueda, Privatisation, labour law and labour relations: A comparative report (IPPRED-18, Labour Law & Labour Relations Branch).

[90] J D Brown, J S Earle and Á Telegdy, 'Where does privatisation work? Understanding the heterogeneity in estimated firm performance effects' (2016) 41 Journal of Corporate Finance 329, 340.

[91] ibid.

[92] Doris A Oberdabernig, 'Employment effects of innovation in developing countries: A summary' (R4D Working Paper 2016/2).

[93] J S Earle and S Shpak, 'Impact of privatisation on employment and earnings' (2019) IZA World of Labour 93, 97.

contrast, firms acquired by foreign owners consistently show positive effects on both employment and wages.[94] These findings complicate the assumption that privatisation is inherently anti-labour, as shown in the figure below.

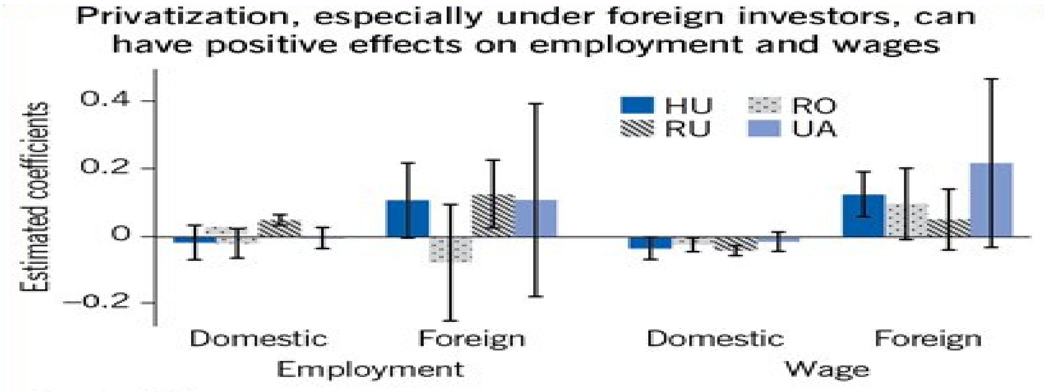


Figure 4: Positive effects of privatisation on employment and wages

Significantly, privatisation often changes not just the *number* of jobs, but the *quality* of work. Private firms rely more heavily on performance-linked pay, skill differentiation, and productivity incentives. While this raises workers' expectations, it also creates scope for higher wages without increasing unit labour costs.[95] Productivity gains allow firms to pay higher wages while remaining competitive, an outcome repeatedly documented in firm-level studies.[96]

International experience reinforces these findings. UK privatisation during the 1980s and 1990s, which is often criticised for its social costs, has nonetheless generated efficiency gains that benefited shareholders and senior employees while having a limited adverse impact on overall employment.[97] Sector-specific studies in telecommunications, transport, and utilities show improvements in productivity and service quality, often accompanied by higher skill premiums for workers.

B. The Indian Experience: Other Facets of Privatisation

---

[94] ibid 98

[95] Xu Ding, Do productivity gains translate into adequate wages? Firm-level evidence from Ethiopia *(LIMMS, 2018–2020)* (ILO Working Paper No 151, International Labour Organisation, Geneva).

[96] 1 Juuso Vanhala and Matti Virén, 'Profitable firms provide employment and pay higher wages' (Bank of Finland Bulletin, 29 June 2017) <https://www.bofbulletin.fi/en/2017/3/profitable-firms-provide-employment-and-pay-higher-wages/> accessed 5 February 2026.

[97] David Parker, 'The UK's Privatisation Experiment: The Passage of Time Permits a Sober Assessment' (2004) CESifo Working Paper No 1126, Centre for Economic Studies and ifo Institute (CESifo), Munich.

Indian evidence strongly supports these international patterns. The Economic Survey (2019–20), analysing eleven Central Public Sector Enterprises[98] which were subjected to strategic disinvestment initiatives implemented between 1999 and 2004, shows marked post-privatisation improvements in financial performance. The 11 CPSEs include *BALCO, CMC, Maruti, Jessop, Lagan Engineering, IPCL, HTL, Hindustan Zinc, Modern Food India, Paradeep Phosphates, and Tata Communications*. Net worth rose sharply, profitability turned from negative to positive, and returns on assets and equity consistently outperformed those of peer public-sector firms. For employees, the most telling indicator is gross profit per employee, which rose significantly (by over ₹21.34 lakh on average) after privatisation. This suggests that even where workforce size declined modestly, the value created per worker increased substantially.

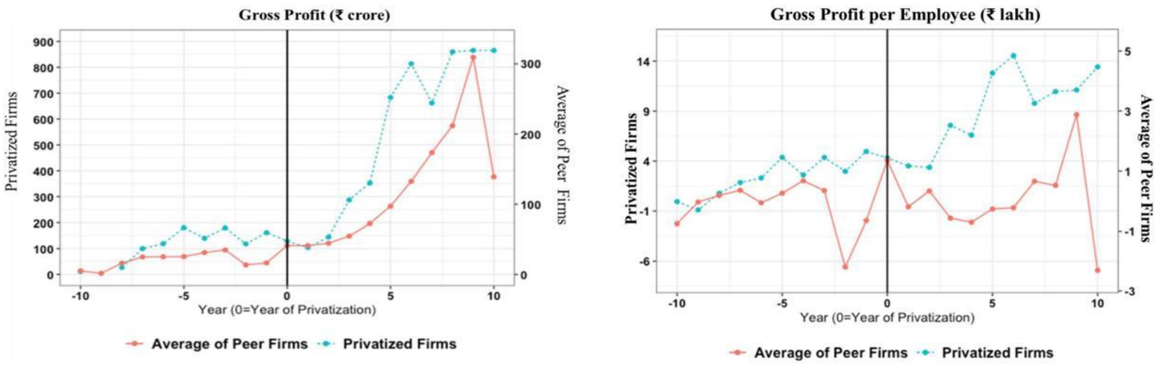
Metric	Pre-Privatisation	Post-Privatisation
Net worth of firms	Rs. 700 Crore	Rs. 2992 Crore
Net Profit of firms	Rs. 100 Crore	Rs. 555 Crore
Gross Revenue	Rs. 1560 Crore	Rs. 4653 Crore
Return on assets	(-)1.04 %	2.27 %
Return on equity	9.6%	18.3 %
Net profit margin	(-3.24) %	0.65 %
Sales growth	14.7 %	22.3 %

(Source: Economic Survey 2019-20 (Vol. 1))

Table 2: Post-privatisation improvement in performance in 11 CPSEs.

Additionally, comparing privatised firms with their peers makes clear that not only did the average profit of these 11 CPSEs increase post-privatisation, but also their gross profit per employee (Figure 5). These gains indicate that privatisation under supportive conditions can enhance labour productivity while also increasing wages, incentives, and career growth.

[98] Economic Survey 2019-20, Volume 1 (Government of India 2020).



(Source: Economic Survey 2019-20 (Vol. 1))

Figure 5: Increase in gross profit and gross profit per employee in CPSEs post-privatisation.

The BPCL–HPCL comparison offers a contemporary illustration. Following the announcement of BPCL's strategic disinvestment, its market valuation surged by approximately ₹33,000 crore relative to HPCL, as stock markets price expected future cash flows, clearly anticipating efficiency gains.[99] While immediate employment conditions remained unchanged, the increase in firm value reflects higher future earning capacity, creating room for better wages, incentives, and career mobility over time.

These positive outcomes do not override the distributive risks of privatisation. Rather, they underscore a central claim that the effects of privatisation on labour are contingent, not predetermined. What ultimately determines whether employees benefit from privatisation is not ownership change alone, but the surrounding ecosystem, competition, regulations, and labour protections.[100] Where these safeguards exist, privatisation can realign incentives by rewarding productivity, expanding opportunities, and converting stagnant public employment into dynamic private careers.

In this sense, privatisation need not be read as a story of labour loss or continuous growth. The challenge, therefore, is not to deny privatisation's potential gains, but to develop a legal

---

[99] Bilal Abdi, 'Economic Survey: BPCL disinvestment approval boosted shareholders value by Rs 33,000 cr' (*ETEnergyWorld*, 31 January 2020) <https://energy.economictimes.indiatimes.com/news/oil-and-gas/economic-survey-bpcl-disinvestment-approval-boosted-shareholders-value-by-rs-33000-cr/73799427> accessed 6 February 2026.

[100] Abdullah Al-Mutairi, Kamal Naser and Fatma Fayez, 'Employees and Managers Attitude towards Privatisation Programs: Evidence from an Emerging Economy' (2014) 6(12) International Journal of Economics and Finance 95, 95.

framework capable of preserving those gains while preventing their negatives. When managed carefully, it can also be a story of greater value per worker and shared growth.

VI. THE REQUIREMENT OF A NEW FRAMEWORK OF LABOUR RESTRUCTURING

One of the most immediate and tangible shocks workers experience during privatisation is not job loss, but pay disruption (i.e., it significantly slows employee compensation growth).[101] SOEs in India traditionally operate under relatively standardised, egalitarian compensation structures. Wages are regulated, increments are predictable, and benefits such as pensions, gratuity enhancements, healthcare, housing, and leave are embedded into service conditions. By contrast, private enterprises follow more unequal and market-driven pay models, marked by wide wage dispersion, performance-linked incentives, and weaker long-term social security. When ownership shifts from public to private, this structural mismatch in compensation regimes directly affects workers, often before any formal retrenchment occurs.

Empirical evidence confirms this concern. Studies examining listed SOEs in India between 2007 and 2022 demonstrate that an expansion of private ownership is not associated with substantial reductions in employment. Yet, it does result in a plummeting of the pace at which employee remuneration has expanded, particularly short-term pay and termination benefits.[102] Importantly, this reduction is not the result of mass layoffs, but of targeted cost optimisation, curbing what private shareholders perceive as "*excessive labour investment*."[103] While this may improve financial discipline, it also means that workers who remain employed often experience stagnant or declining real compensation, especially compared to their PSU counterparts.[104] Similar findings emerge from Bangladesh, where qualitative case studies show that workers in privatised enterprises earn less than those in comparable public firms.[105]

---

101 Yeyu Wu, Sujuan Xie and Yang Xu, 'Labour outcomes of partial privatisation in state-owned enterprises: Evidence on employment and compensation under mixed ownership' (2025) 105 International Review of Financial Analysis 105.

102 ibid.

103 Y Xiao, A Qian and D Zhu, 'State-owned shareholders and efficiency of labour investment: insights from private firms in China' (2025) Applied Economics 1.

104 Ira Kalish, 'Global economic outlook, January 2025' (*Deloitte Insights*, 24 January 2025) <https://www.deloitte.com/us/en/insights/topics/economy/global-economic-outlook-2025.html> accessed 6 February 2026.

105 Mehadi Mamun and Mamun Billah, 'Privatisation and Workers' Compensation in Privatised State-Owned

This is where Indian labour law becomes crucial. § 25FF of the IDA (presently § 73 IR Code) recognises that a transfer of ownership cannot be used to worsen employee conditions without consequence.[106] If a transfer does not ensure '*continuity of service*' or if the new terms are less favourable, employees are deemed to be retrenched.[107] They are entitled to statutory protection under § 25F, namely, notice pay and retrenchment compensation equivalent to fifteen days of average wages for each completed year of service. At the same time, § 25FF does not give workers an automatic right to reject continuity where genuinely favourable terms are offered.[108] Instead, it strikes a balance between employers preserving continuity while workers are not made worse off in substance.[109] Additionally, under § 67 of the IR Code, a workman who has completed at least one year of continuous service is eligible for lay-off compensation amounting to fifty per cent of basic wages and dearness allowance for the duration of the lay-off, capped at forty-five days in any year; beyond this period, retrenchment may be undertaken, with any lay-off compensation already paid adjustable against retrenchment compensation.[110]

This balance raises the central issue of compensation harmonisation. A continuity offer is lawful[111] only if the new terms are "no less favourable."[112] Courts have consistently held that this is not a cosmetic test. The overall compensation package, wages, allowances, increments, time spent in litigation, retirement benefits, nature of the job, and financial condition of the workers must be assessed holistically.[113] A freeze on increments, erosion of pension-linked

---

Enterprises in Bangladesh' (2020) 12(1) Business Management and Strategy 16.

[106] The Industrial Disputes Act 1947 (n 4)

[107] Section 25FF: Business Transfers & Employee Rights (*MAHESHWARI & CO*, 3 October 2025) <https://www.maheshwariandco.com/blog/section-25ffbusiness-transfers-employee-rights/> accessed 6 February 2026.

[108] Khyati Bhatia and Shreyika Walia, 'Workforce Continuity: Legal considerations for Employee Transfers' (*Bar and Bench*, 8 January 2024) <https://www.barandbench.com/view-point/workforce-continuity-legal-considerations-for-employee-transfers> accessed 6 February 2026.

[109]Business Transfers and Employee Rights under Section 25FF (*Lexology*) <https://www.lexology.com/library/detail.aspx?g=9e3efa52-0120-48d2-8668-cee27c8278c2> accessed 6 February 2026.

[110] The Industrial Disputes Act 1947, s 67.

[111] *Anakapalla Co-Operative Agricultural Society Ltd v Workmen* (1963) AIR 1489

[112] Key Employment Law Considerations in Business Transfers (*Trilegal Quarterly* Roundup, Issue 8, Apr-Jun 2023) <https://trilegal.com/magazine/key-employment-law-considerations-in-business-transfers-insights-issue-8.html> accessed 6 February 2026.

[113] *The Management Of Regional Chief ... vs Their Workmen Rep. By District ...* (2018) Appeal (Civil), 9832 of

benefits, or dilution of termination entitlements may render a continuity offer ineffective. In such cases, harmonisation becomes essential not merely for fairness, but for legal compliance.

From a practical standpoint, post-privatisation compensation harmonisation is also vital for organisational stability. Mergers and ownership transfers often bring together employees with different pay philosophies. Without harmonisation, firms risk internal inequities, morale collapse, and prolonged litigation. Research on post-merger integration consistently shows that perceived compensation unfairness, rather than absolute wage cuts, is a primary driver of attrition and resistance.[114] This is particularly acute in privatised PSUs, where workers compare their post-transfer conditions not with market averages, but with long-standing public-sector benchmarks.

Recent reforms reinforce this logic. The IR Code mandates the creation of a '*Worker Re-Skilling Fund'* under § 83, requiring employers to contribute an amount equivalent to fifteen days' wages for retrenched workers, in addition to statutory compensation.[115] Such retraining approach was undertaken in 2013 during the privatisation of AT&T wherein 100,000 of 240,000 employees whose jobs risked redundancy were retrained instead of being laid off and hiring new talent.[116] This was based on the premise that the company wouldn't lose the knowledge employees had developed, and the trust in the management would be sustained.

Ultimately, compensation harmonisation is not about preserving SOE-era generosity indefinitely. It is about managing the transition from public to private employment without converting efficiency gains into unilateral worker losses. Empirical studies show that private ownership disciplines soft budget constraints and reduces inefficient labour expenditure. Still, they also show that this adjustment disproportionately affects lower-skilled workers and short-

---

2018

[114] Yashasvi Sharma and A Seetharaman and Koilakuntla Maddulety, 'Employees' Resistance to Change during Post-Merger Integration in Services Organisations' (2024) 10(1) PEOPLE International Journal of Social Sciences 56 <https://doi.org/10.20319/pijss.2024.101.5668> accessed 6 February 2026.

[115] Gaurav Dayal, Sushrut Biswal, Paritosh Chauhan and Sukoon Dinodia, 'The Ripple Effect: How India's New Labour Codes Will Reshape M&A Transactions' (*LKS Law*, 11 December 2025) <https://www.lkslaw.com/insights/articles/the-ripple-effect-how-india-s-new-labour-codes-will-reshape-m-and-a-transactions> accessed 6 February 2026.

[116] Sandra J Sucher and Shalene Gupta, 'Layoffs That Don't Break Your Company' (*Harvard Business Review*, May–June 2018) <https://hbr.org/2018/05/layoffs-that-dont-break-your-company> accessed 6 February 2026.

term compensation.[117] Harmonisation, therefore, acts as a bridge by aligning pay structures, while recognising workers as essential stakeholders.[118]

In the absence of harmonisation, privatisation risks becoming legally, socially and economically short-sighted. With it, privatisation can proceed without severing the social contract that underpins public employment in India.

VII. PRACTICAL PROOF DEMONSTRATING THE NEED OF A FRAMEWORK: THE CASE STUDY OF AIR INDIA

Air India's privatisation must be situated against the backdrop of prolonged structural inefficiency under state ownership. Post the merger with Indian Airlines in 2007, it accumulated unsustainable debt, with total liabilities crossing ₹60,000 crore and equity turning sharply negative.[119] Government intervention increasingly took the form of recurrent capital infusions and subsidies, estimated at approximately USD 4.5 billion since 2012, merely to maintain operational continuity.[120] Projections suggested that continued public ownership would impose an additional fiscal burden of USD 1.5–2 billion over the subsequent two fiscal years, diverting scarce public resources from higher-priority developmental needs.[121] In a mature and competitive aviation market, such sustained state support was widely regarded as economically inefficient and market-distorting, allowing Air India to undercut private competitors despite persistent operational weaknesses. These conditions rendered privatisation not merely a policy preference but a restructuring necessity grounded in fiscal prudence and market rationality.

Air India's strategic disinvestment was implemented by effecting a comprehensive shift in ownership rights and managerial control, characteristic of organisational restructuring rather

---

[117] N Boubakri and W Saffar, 'State ownership and debt choice: Evidence from privatisation' (2019) 54 (3) Journal of Financial and Quantitative Analysis 1313.

[118] International Monetary Fund, *Privatization and Structural Adjustment in the Arab Countries* (Said El-Naggar ed, IMF 1989).

[119] John F O'Connell and George Williams, 'Transformation of India's Domestic Airlines: A case study of Indian Airlines, Jet Airways, Air Sahara and Air Deccan' (2006) 12(6) Journal of Air Transport Management 358, 359-360.

[120] Ministry of Civil Aviation, *Report of the Comptroller and Auditor General of India on Turnaround Plan and Financial Restructuring Plan of Air India Limited* (Report No 40 of 2016).

[121] ibid.

than a mere asset sale. Through its wholly owned subsidiary Talace Pvt. Ltd., Tata Sons assumed full equity ownership of Air India, including the associated shareholding in Air India Express and AISATS, for an enterprise value of approximately ₹18,000 crore.[122] As part of the restructuring architecture, Tata assumed responsibility for ₹15,300 crore worth of debt, while the leftover liabilities were hived off into a special purpose vehicle, Air India Assets Holding Ltd.[123] This separation of operational assets from legacy debt mirrors conventional corporate restructuring techniques designed to render the core enterprise commercially viable while isolating balance-sheet inefficiencies. The transaction thus reflects a classic reorganisation of ownership, governance, and financial structure, hallmarks of corporate restructuring, rather than a simple withdrawal of the State from commercial activity.

Post-privatisation, Air India's trajectory evidences measurable efficiency gains consistent with restructuring outcomes observed in private corporate turnarounds. Within three years of acquisition, the airline substantially narrowed its losses, from ₹11,387 crore in FY23 to ₹4,444 crore in FY24, and reduced its dependence on equity infusions from its new owner.[124] Organisational consolidation, including the merger of four airlines into two operational entities, modernisation of archaic IT systems, fleet augmentation and retrofitting, and workforce rationalisation, contributed to lower operating costs and improved service delivery.[125] Passenger revenue more than doubled, cargo revenues tripled, and Air India's market share on key metro routes rose sharply. The airline also reoriented its network to increase transit traffic and optimise international connectivity, indicating a shift towards commercially driven decision-making absent under public ownership.[126] While external disruptions, such as airspace closures, supply-chain delays, and competitive pressures, continue to pose challenges, the

---

[122] Lok Sabha, Unstarred Question No 2563: 'Privatisation of Air India' (17 March 2022)

[123] Nidhi Maheshwari and Divya Mishra, *Tata Group and Air India: Successful Acquisition Means Acquisition of People* (SAGE Publications 2023).

[124] 'Air India CEO outlines initiatives to fulfil post-privatisation growth ambitions' (*CAPA-Centre for Aviation*, 25 September 2024) <https://centreforaviation.com/analysis/reports/air-india-ceo-outlines-initiatives-to-fulfil-post-privatisation-growth-ambitions-696893> accessed 1 February 2026.

[125] ibid.

[126] ibid.

overall trajectory suggests enhanced allocative efficiency and governance discipline typical of post-restructuring enterprises.[127]

Efficiency gains, however, were accompanied by labour restructuring, an outcome not unique to privatisation but intrinsic to organisational reorganisation more broadly. At the time of takeover, Air India employed approximately 13,000 workers, many of whom were legacy employees operating under rigid, unionised frameworks.[128] As mandated by the disinvestment terms, all employees were retained for a minimum period of one year, after which voluntary retirement schemes were introduced. Multiple rounds of VRS, reskilling programmes, and internal role reassignments were undertaken over an 18-month transition period.[129]

Subsequently, around 180 employees, less than 1% of the workforce, were retrenched after failing to opt for VRS or fit into the restructured organisational framework. These separations were accompanied by a statutorily defined compensation measure that assigns fifteen days of average earnings to each year of service rendered, in accordance with labour law requirements, and contractual obligations were expressly honoured.[130] Notably, the workforce size has since expanded to approximately 18,000 employees, reflecting parallel hiring of new talent aligned with the airline's transformed business model.[131] While episodes such as pilot resistance during the Vistara–Air India merger underscore continuing labour tensions, particularly concerning wage restructuring and performance-linked pay,[132] these conflicts arise from organisational integration and pay rationalisation rather than arbitrary displacement.

The Air India experience affirms the labour inhibitions associated with privatisation while illustrating that labour dislocation under privatisation is neither automatic nor unregulated.

[127] ibid.

[128] Madeeha Mujawar, 'Air India lays off around 180 legacy employees' *CNBC TV18* (15 March 2024) <https://www.cnbctv18.com/aviation/air-india-lays-off-around-180-legacy-employees-19287751.htm> accessed on 1 February 2026.

[129] ibid.

[130] 'Air India lays off more than 180 employees to streamline business model' *Business Today* (16 March 2024) <https://www.businesstoday.in/industry/aviation/story/air-india-lays-off-more-than-180-employees-to-streamline-business-model-421693-2024-03-16> accessed on 1 February 2026.

[131] Arindam Majumder, 'Air India set to lay off 200 staff to recast business' *The Economic Times* (16 March 2024) <https://economictimes.indiatimes.com/industry/transportation/airlines-/-aviation/air-india-set-to-lay-off-200-staff-to-recast-business/articleshow/108533365.cms?from=mdr> accessed on 1 February 2026.

[132] '2 years after privatisation, Air India's turnaround is still on the tarmac' *The Economic Times* (10 April 2024) <https://economictimes.indiatimes.com/industry/transportation/airlines-/-aviation/2-years-after-privatisation-air-indias-turnaround-is-still-on-the-tarmac/articleshow/109193891.cms?from=mdr> accessed on 1 February 2026.

Rather, it mirrors labour outcomes observed in corporate restructuring across the private sector, where efficiency-oriented reorganisation is mediated through statutory and contractual safeguards. The retention clause, phased VRS, notice, compensation, and reskilling measures employed in Air India's privatisation closely align with the non-detriment principle embedded in § 25FF IDA and its successor, § 73 IR Code.

Accordingly, Air India's privatisation substantiates the central claim of this paper: privatisation operates in the vein of organisational corporate restructuring. Where such restructuring is legally conditioned by non-detriment in the private sector, there exists no doctrinal justification for excluding privatisation from similar labour protections. The case demonstrates that efficiency gains and labour security are not mutually exclusive but can be institutionally reconciled through restructuring-based safeguards.

VIII. THE FRAMEWORK: CROSS-CLASS CRAM DOWN IN ORGANISATIONAL RESTRUCTURING OF PRIVATISATION

Cross-class cramdown is a mechanism that permits the confirmation of a restructuring or reorganisation plan despite dissent from one or more classes of affected stakeholders, provided that specified fairness and non-detriment standards are satisfied.[133] At its core, the doctrine reflects a departure from strict unanimity in favour of structured fairness, recognising that complex reorganisations cannot be held hostage by individual or class-level vetoes where broader systemic viability is at stake.

Traditionally deployed within insolvency and bankruptcy frameworks in the US,[134] UK,[135] and Singapore,[136] such regimes themselves are a subset of financial restructuring in pursuit of resolving debt and ensuring business survival. The main objective is the preservation of the enterprise through rights recalibration, obligations, and capital structures.

It is proposed that while cross-class cramdown is conventionally associated with financial restructuring, its underlying logic is not confined to balance-sheet reorganisation. Insolvency

---

[133] Aastha Agarwalla, 'Corporate Restructuring in India: The Cross-Class Cramdown Provision' (*IndiaCorpLaw*, 1 August 2020) <https://indiacorplaw.in/2020/08/01/corporate-restructuring-in-india-the-cross-class-cramdown-provision/> accessed 2 February 2026.

[134] US Bankruptcy Code, chapter 11, s 1129(b).

[135] Companies Act 2006, s 901G.

[136] Insolvency, Restructuring and Dissolution Act 2020, s 70.

jurisprudence itself recognises that reorganisation frequently entails deep organisational restructuring, including operational rationalisation, workforce realignment, and changes in managerial control. Financial restructuring, in practice, is inseparable from organisational transformation. Thus such principles could be extended to organisational reform in light of safeguarding labour.

One of the principal sources of resistance to privatisation lies in the anticipation of labour displacement through retrenchment, workforce rationalisation, and wage restructuring.[137] If privatisation is conceptualised as a form of corporate restructuring, it must be governed by the same normative constraints that apply to restructuring more generally. In insolvency jurisprudence, cross-class cramdown emerged precisely to address situations where restructuring is necessary but unanimity among affected stakeholders is unattainable.

Drawing on this logic, this section proposes transposing the financial cross-class cramdown framework to the organisational restructuring of privatisation in order to ensure labour security.

The first element of the proposal is the formal recognition of workers as an affected stakeholder class within the privatisation process. Instead of treating employees as a homogenous group, they should be classified into sub-classes based on objective and restructuring-relevant criteria.

Such criteria may include various employment-related indices including marketable skills, transferability, educational qualifications, adaptability to retraining, labour market absorption capacity, and proximity to retirement. This classification is intended to create an *intelligible differentia* and acknowledge differentiated vulnerability.

These different classes of employees pursuing separate interests would be stakeholders in the privatisation process. The privatisation plan should be presented to them followed by sustained deliberations as to protection of their best interests. In order to protect arbitrariness and conflicts of interest, the framework mandates the constitution of an independent committee. The committee would operate as an oversight body whose primary function would be to conduct a structured evaluation of proposed workforce adjustments arising from privatisation.

---

[137] 'Privatisation move by UPPCL: 'Corp misleading on move, employee terms; 68,000 jobs at risk'' *Hindustan Times* (Lucknow, 28 November 2024) <https://www.hindustantimes.com/cities/lucknow-news/privatisation-move-by-uppcl-corp-misleading-on-move-employee-terms-68-000-jobs-at-risk-101732805526510.html#google_vignette> accessed on 3 February 2026; 'Privatisation to result in loss of bank jobs' *The Hindu* (New Delhi, 14 December 2021) <https://www.thehindu.com/business/privatisation-to-result-in-loss-of-bank-jobs/article37955794.ece> accessed on 3 February 2026.

It would become especially crucial when one class feels disadvantaged during the privatisation process specifically when their best interests are being overlooked. The committee's role will not be to veto privatisation or operational restructuring, but to assess the distributional impact on labour against a non-detriment benchmark.

Under this, a worker or worker-class may be subjected to termination or redeployment only if it can be demonstrated that they are not worse off when compared to a relevant baseline scenario. The baseline for comparison would not be continued public employment in perpetuity, but a realistic alternative scenario, such as continued employment under fiscal or operational distress, delayed but inevitable retrenchment absent privatisation, or enterprise stagnation with declining real wages and job security.

Where the committee concludes that the non-detriment test is satisfied, workforce reduction may proceed notwithstanding worker opposition. This represents a structured override of consent, analogous to cramdown in insolvency, but grounded in procedural fairness rather than contractual priority. It is pertinent to register that such override is contingent rather than being absolute. It is conditional upon class-based equitable assessment, sound and transparent reasoning by the committee, and documented satisfaction of non-detriment criteria.

To operationalise non-detriment, the framework requires that workforce reduction be accompanied by robust compensatory and transitional measures. These may include severance packages calibrated to tenure and wage levels.

This framework shall ensure that labour restructuring is not experienced as abrupt economic displacement but as a managed and consensual transition. By borrowing from the logic of cross-class cramdown, the framework situates labour treatment within the broader architecture of corporate restructuring law.

It functions in line with the widespread principles observed in various privatisations like Michelin. It underscores the promptness of declaration of restructuring and privatisation to the employees and undertaking of procedures post discussion with staff representatives.[138] It preserves managerial and policy flexibility necessary for successful privatisation while embedding labour protection within a legally intelligible structure. Privatisation thus emerges

[138] ibid.

not as an exceptional disruption of labour rights, but as a disciplined form of organisational transformation governed by principles of non-detriment and structured fairness.

IX. CONCLUSION

Privatisation in India is often spoken about as if it wipes the slate clean, as if the moment a state-owned enterprise is sold, its past disappears, along with the State's obligations to workers.[139] This paper has shown that this idea is a 'myth.' Privatisation is a clear form of operational restructuring falling within the ambit of corporate restructuring, and like all restructuring, it carries consequences that cannot be ignored.[140]

Once privatisation is understood as organisational restructuring rather than a purely economic policy, the debate changes. The real issue is no longer whether privatisation is good or bad for labour, but whether it is designed and implemented responsibly. Indian law already recognises that restructuring can cause serious harm to workers if left unchecked.[141] That is precisely why the IDA embeds the '*non-detriment principle'* in § 25FF, ensuring that workers are not made worse off merely because of changes in ownership.[142] There is nothing in the statute that justifies excluding privatisation from this protection. Doing so would require inventing an '*artificial distinction*' that the law itself does not endorse.

At the same time, this paper rejects the assumption that privatisation automatically destroys jobs and wages. Empirical evidence from India and other countries shows a more complex reality.[143] While some privatisations do involve downsizing, many lead to higher productivity, improved firm performance, and greater value per worker. The problem is not privatisation itself, but how the transition is handled. Workers do not fear efficiency or competition; instead,

---

[139] TT Ram Mohan, 'India's Privatisation Drive' (*The India Forum*, 8 March 2022) <https://www.theindiaforum.in/article/india-s-privatisation-drive> accessed 6 February 2026.

[140] G P Dang, 'Role of Privatisation in the Economic Development of India: Opportunities and Challenges' (2015) 5(7) International Journal of Research in Economics and Social Sciences 254 http://www.euroasiapub.org accessed 6 February 2026.

[141] Navigating a global restructure in India (*Pinsent Masons Out-Law*, 24 June 2024) <https://www.pinsentmasons.com/out-law/analysis/global-restructuring-india> accessed 6 February 2026.

[142] Understanding Section 25F of the Industrial Disputes Act: Retrenchment Rules Explained (*KN Kapoor & Co*) <https://knkapoor.co.in/understanding-section-25f-of-the-industrial-disputes-act-retrenchment-rules-explained/> accessed 6 February 2026.

[143] Economic Survey (n 98)

they are concerned about sudden wage reductions, erosion of benefits, loss of dignity, and uncertainty about the future.[144]

The Air India privatisation brings this tension and underscores the need for a restructuring-based labour framework.[145] The transaction entailed profound organisational reorganisation, including workforce rationalisation, wage restructuring, and eventual retrenchments. Although employees were temporarily insulated through a one-year retention clause and phased voluntary retirement schemes, labour displacement was not avoided. Subsequent retrenchments and continuing labour disputes, particularly around pay rationalisation and organisational integration, mirror labour outcomes commonly observed in private-sector corporate restructuring. Air India thus does not negate labour harm under privatisation, rather, it demonstrates that such harm is inherent to restructuring and must be regulated through legal safeguards.

Building on this insight, the paper proposes borrowing the logic of 'cross-class cramdown' from insolvency law to govern labour restructuring in privatisation. The idea is simple that workers must be treated as stakeholders. Different employee categories face various risks, and restructuring should reflect this reality. Where workforce reduction is genuinely necessary, it should be allowed, but only after demonstrating that affected workers are 'not worse off' than realistic alternatives and only with proper compensation and procedural fairness. This approach preserves managerial flexibility while preventing labour costs from rising.

In the end, the choice is not between privatisation and worker protection. Indian law already shows that both can coexist. What is required is a shift in perspective, from seeing privatisation as an exception to the law, to recognising it as a process entirely governed and regulated by it.[146] Privatisation does not erase rights. When treated as corporate restructuring, it becomes possible to pursue efficiency and reform without injustice and fear.

---

144 C S V Ratnam, 'Social and Labour Issues in Privatisation – an Overview' (1992) 28(2) Indian Journal of Industrial Relations 139 <http://www.jstor.org/stable/27767243> accessed 6 February 2026.

145 Employee unions oppose Air India privatisation, fearing job losses (*The News Minute*, 9 July 2019) <https://www.thenewsminute.com/money/employee-unions-oppose-air-india-privatisation-fearing-job-losses-105099> accessed 6 February 2026.

146 World Bank, *Legal Guidelines for Privatisation Programmes* in *Legal Guidelines for Privatisation Programmes* (World Bank 2000) 371–382.

PRIVATE SURVEILLANCE & PUBLIC RIGHTS: SECTION 7(I) AND THE DILEMMA OF PROPORTIONALITY IN EMPLOYMENT DATA PROCESSING

- *Priyansh Shrivastava & Vivek Rajurkar*

ABSTRACT

This essay examines Section 7(i) of the Digital Personal Data Protection Act, 2023, with particular attention to its operation in employment relationships. Section 7(i) permits non-consensual processing of personal data where such processing is "necessary for such other purpose as may be prescribed." In workplaces where power imbalances are prevalent, this provision lends salience, as employees often lack any meaningful capacity to refuse data practices tied to hiring, performance evaluation, or continued employment. The central inquiry is whether "necessity" functions as a substantive legal constraint that demands justification against defined purposes, alternatives, and intrusiveness, or as a permissive standard that legitimises employer convenience.

The analysis places Section 7(i) within the DPDP Act's architecture of purpose specification, notice, erasure, and security, and compares it with approaches under the GDPR, UK data protection law, and US privacy laws. It argues that purpose specification under Indian law cannot be reduced to a documentation formality, since its only plausible role in a consent-exempt frame is to structure and limit claims of necessity. The essay demonstrates how necessity claims in employment are often endogenous to technological design choices, rendering assertions of indispensability contestable rather than self-validating.

The essay further explores whether proportionality articulated in the *Puttaswamy* judgment can inform the interpretation of Section 7(i), particularly where processing involves biometric monitoring, behavioural surveillance, or algorithmic performance systems. It concludes that the indeterminacy surrounding "necessity" places decisive weight on forthcoming subordinate legislation. Depending on how necessity is specified, Section 7(i) may either operate as a narrow exception constrained by purpose, alternatives, and time limits, or as a broad authorisation for non-consensual workplace surveillance.

INTRODUCTION

Every morning, millions of Indian workers log in to systems that log them back in. The attendance biometric scanner that records your thumb also records when you arrive, your lunch duration, and your bathroom breaks. The performance dashboard that tracks your productivity can also spell the end of your employment life-cycle. You consented to none of this, yet objecting means unemployment.

Section 7(i) of the Digital Personal Data Protection Act, 2023[1] permits processing of personal data without consent where such processing is "necessary for such other purpose as may be prescribed." The question is whether "necessary" acts as a substantive constraint requiring demonstration of indispensability relative to specified purposes, or as a bar validating any use the Data Protection Board deems convenient.

Section 2(za)[2] defines "specified purpose" as "the purpose mentioned in the notice given to the Data Principal under sub-section (1) of section 6[3] for which personal data is to be processed." This definition is narrower than the "legitimate interests" basis laid down in GDPR Article 6(1)(f)[4], which requires a purpose to be stated in the notice[5]. In *Configuring the Networked Self*[6] Julie Cohen argues that purpose specification acts not as transparency for data subjects but as a constraint on discretion. It forces data controllers to clarify ex ante boundaries that can be evaluated for overreach before processing occurs. Who decides what data is "necessary" and on what evidentiary basis? In the workforce, this means an employer cannot cite "workforce management" as a specified purpose; they must identify discrete functions (payroll processing, attendance verification) that permit evaluation of its necessity.

---

[1] Digital Personal Data Protection Act 2023 (Act No 22 of 2023) s 7(i) (DPDP Act 2023).
[2] DPDP Act 2023, s 2(za).
[3] DPDP Act 2023, s 6(1).
[4] 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) OJ L119/1, art 6(1)(f) (GDPR).
[5] GDPR, recital 39.
[6] Julie E Cohen, *Configuring the Networked Self: Law, Code, and the Play of Everyday Practice* (Yale University Press 2012) 181–89.

Article 88[7] permits EU Member States to adopt specific rules for the processing of employment data "to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context," a provision that multiple Member States have interpreted as authorising derogations from standard consent requirements[8]. Germany's Federal Data Protection Act (§26 BDSG)[9] permits non-consensual processing where "necessary for the performance of the employment relationship," which German courts have interpreted broadly[10].

PURPOSE SPECIFICATION, AND THE MEANING OF NECESSITY

Section 6(2)[11] requires notice of purpose, nature of data, and manner of processing, even where consent is not required. This is peculiar. If Section 7(i) exempts employers from obtaining consent, why must they still provide notice of purpose? The UK Information Commissioner's Office addressed this precise question in its Employment Practices Code[12], explaining that purpose limitation is no bar to consent exemptions because it serves a different function, it establishes boundaries within which necessity operates and provides a basis for subsequent accountability. An employer collecting biometric attendance data cannot later use the same collection to justify performance-scoring algorithms without demonstrating that the expanded purpose was specified at the time of collection. The European Data Protection Board's Guidelines 2/2019 on Article 6(1)(b)[13] held that processing cannot be justified as necessary for contract performance if it involves "processing operations that are not objectively necessary for a purpose that falls outside of the scope of the employment relationship, such as pure behaviour monitoring.[14]"

The alternative interpretation, that notice under Section 6(2) creates no constraint on subsequent use, would render purpose specification meaningless in employment and convert Section 2(za) from a constraint into a mere documentation requirement. Yet this alternative cannot be dismissed. Nothing in Section 7(i) explicitly implements Section 2(za), and the Rules may define "necessary"

---

[7] GDPR, art 88.
[8] Christopher Kuner, Lee A Bygrave and Christopher Docksey (eds), *The EU General Data Protection Regulation (GDPR): A Commentary* (OUP 2020) art 88, paras 8–15.
[9] Bundesdatenschutzgesetz [Federal Data Protection Act] (Germany), § 26.
[10] Gregor Thüsing and others, 'Article 88 GDPR: Commentary' in Spiros Simitis, Gerrit Hornung and Indra Spiecker (eds), *Data Protection Law: A Commentary on the GDPR* (Nomos/Hart 2019) 1006–1008.
[11] DPDP Act 2023, s 6(2).
[12] Information Commissioner's Office (UK), 'The Employment Practices Code' (2011).
[13] GDPR, art 6(1)(b).
[14] European Data Protection Board, 'Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects' (Version 2.0, 8 October 2019) para 51.

purposes so capaciously that purpose specification becomes formality[15]. Despite Article 6(1)(b)'s limitation in processing "necessary for the performance of a contract," employers fall back on necessity for processing that was convenient but not indispensable, forcing the EDPB to issue guidelines stating that necessity "must be interpreted strictly and does not cover situations where the processing is useful but not genuinely necessary."[16]

MANAGEMENT AND THE ENDOGENEITY OF NECESSITY

In *The Quantified Worker*[17], Ifeoma Ajunwa documents how employers deploy management systems that create dependencies. The more granular the data collected, the more decision-making becomes reliant on it, which retrospectively justifies the collection as necessary. Applied to Section 7(i), this suggests that necessity cannot be evaluated solely from the employer's perspective, since that perspective is endogenous to existing data extraction. The employer implementing keystroke logging for remote workers will claim it is necessary for productivity verification, but the employer managing purely through output will find logging unnecessary. Neither can be simultaneously correct about necessity unless necessity means only "useful given our current infrastructure," which flattens the term into employer preference. Valerio De Stefano's research on "algorithmic management" lends some credence to this claim, showcasing that necessity claims in employment often rest on contested assumptions about productivity measurement. In "Negotiating the Algorithm,"[18] De Stefano argues that employers characterise surveillance technologies as necessary because alternative management methods, such as trust-based evaluation, output measurement, worker autonomy, etc., are systematically devalued within data-driven organisations. If necessity under Section 7(i) can be satisfied by assertions that automation improves efficiency, then necessity performs no gatekeeping function and every technological system can be justified as necessary relative to less technologically intensive alternatives.

GDPR Article 6(1)(b) permits non-consensual processing where "necessary for the performance of a contract to which the data subject is a party." In 2019, the EDPB issued Guidelines specifically

---

15 GDPR, art 5.

16 Orla Lynskey, *The Foundations of EU Data Protection Law* (OUP 2015) 142–148; Damian Clifford and Jef Ausloos, 'Data Protection and the Role of Fairness' (2018) 37 Yearbook of European Law 130, 145–149.

17 Ifeoma Ajunwa, *The Quantified Worker: Law and Technology in the Modern Workplace* (Cambridge University Press 2023) 67–92.

18 Valerio De Stefano, '"Negotiating the Algorithm": Automation, Artificial Intelligence, and Labor Protection' (2019) 41(1) Comparative Labor Law & Policy Journal 15, 28–32.

to narrow Article 6(1)(b)'s application in employment, stating that employers cannot rely on necessity for processing that serves their "commercial interests". The Guidelines cite "offering a discount scheme to an employee if he/she agreed to monitor their exercise habits via a smart watch" as impermissible under Article 6(1)(b) because such monitoring is not objectively necessary for the employment relationship. Processing must be evaluated not only against specified purposes but against alternative means and relative burdens on data subjects. The DPDP Act contains no equivalent guideline, and Section 7(i)'s reference to purposes "as may be prescribed" delegates this determination entirely to the Rules. The UK Data Protection Act 2018 takes a different approach. Schedule 1, Part 1, Paragraph 5[19] permits non-consensual processing for employment purposes "to the extent that the processing is necessary" for specified functions, but adds a proportionality clause: processing must be "proportionate to the aim sought to be achieved." The ICO's Employment Practices Code implements this through graduated necessity assessments, such as processing for core employment functions (payroll, compliance) receives deferential review; processing for performance management requires demonstration that less intrusive means were considered; and processing for behaviour monitoring faces heightened scrutiny and presumptive prohibition absent specific justification. The DPDP Act contains no mention of proportionality in Section 7(i) or elsewhere in the statute. This omission could indicate that proportionality is implicit in necessity.

The California Consumer Privacy Act[20] and its successor, CPRA, initially exempted employment data from most privacy protections. The employee exemption (Civil Code §1798.145(h)[21]) was temporary and subject to renewal, indicating legislative uncertainty about whether employment merits special treatment. When the CPRA extended and modified the exemption in 2020, it added notice and purpose limitation requirements while maintaining the consent exemption, effectively adopting the GDPR/DPDP model, i.e., no consent required, but processing must serve specified purposes. Yet without necessity or proportionality criteria, the CPRA permits employers to define purposes unilaterally. Californian courts have not developed the necessity doctrine in employment

[19] Data Protection Act 2018 (UK), sch 1 pt 1 para 5.
[20] California Consumer Privacy Act 2018, Cal Civ Code §§ 1798.100 (2018),
[21] California Consumer Privacy Act 2018, Cal Civ Code § 1798.145(h).

data cases because challenges rarely reach litigation, as the power asymmetry between employers and employees makes legal challenges extremely difficult[22].

Meanwhile, the European Court of Human Rights' judgment in *Bărbulescu v. Romania* (2017)[23] provides the most developed judicial analysis of necessity in the context of employment surveillance. Bărbulescu involved an employee dismissed for personal use of the workplace internet during working hours, discovered through employer monitoring. The Grand Chamber held that Article 8 ECHR (right to private life) requires necessity and proportionality even in employment contexts where monitoring serves legitimate business interests. The Court specified factors for evaluating necessity: whether the employee received advance notice of monitoring; the extent and intrusiveness of the monitoring; whether the employer provided legitimate grounds for the monitoring; whether less intrusive means were available; the consequences for the employee; and whether the employee had an opportunity to challenge the findings.[24]. The Court held that even where monitoring serves legitimate purposes, it must be "proportionate to the legitimate aim pursued" and "accompanied by adequate and sufficient safeguards against abuse."

Similarly, the Supreme Court in *Justice K.S. Puttaswamy v. Union of India* (2017)[25] laid down a proportionality test for state infringements of privacy: a legitimate state aim, a rational connection between the measure and the aim, necessity (no less restrictive alternative), and balancing of interests. Whether this proportionality test extends to the private sector through Section 7(i) remains unanswered. If it does, Section 7(i) must be read as incorporating the test laid down in *Puttaswamy*: processing is necessary only if no less restrictive alternative exists and the impact on employee privacy is proportionate to legitimate employment purposes.

It is pertinent to note that Section 8(5)[26] requires erasure once the specified purpose is achieved "unless its retention is required by law." In employment, this creates ambiguity: when is the purpose of performance evaluation "achieved"? The EDPB Guidelines on retention state that data must be erased when "there is no legal ground for keeping it,"[27] but provide no specific timeline

---

[22] Daniel J Solove and Paul M Schwartz, *Information Privacy Law* (7th edn, Aspen Publishing 2023) 889–892
[23] *Bărbulescu v Romania* App no 61496/08 (ECtHR, 5 September 2017).
[24] Bărbulescu v Romania (n 24) [114]–[122].
[25] *Justice K S Puttaswamy (Retd) and Anr v Union of India and Ors* (2017) 10 SCC 1, [127]–[149] (Chandrachud J).
[26] DPDP Act 2023, s 8(5).
[27] European Data Protection Board, 'Guidelines 01/2022 on data subject rights - Right of access' (Version 2.0, 28 March 2023).

for the erasure of employment data. Germany's BDSG requires erasure when data is no longer necessary for the purpose for which it was collected, but permits retention for "the assertion, exercise or defence of legal claims," which German employers interpret as authorising retention for statutory limitation periods (typically three years). This effectively converts purpose-based retention into litigation-based retention. Data is kept not because it serves ongoing employment purposes but because it might be needed for potential disputes.

The UK ICO Employment Practices Code recommends specific retention periods: recruitment data (6 months for unsuccessful candidates), sickness records (3 years from the end of sickness), training records (6 years from the end of training), but acknowledges these are guidelines, not mandates. The DPDP Act provides no retention specifications, delegating this entirely to Rules that have not been issued. If retention is indefinite, then purpose limitation and necessity become meaningless: employers can collect data for narrow purposes but retain it indefinitely for unspecified future uses. This is where purpose specification, necessity, and retention intersect: broadly defined purposes permit indefinite retention, which validates expansive collection on the ground that "we might need it later." The only mechanism for preventing this is to read 'necessity' as requiring demonstration that specific data serve specific, time-bound purposes.

CONSTRAINTS ON EMPLOYMENT DATA PROCESSING

Management systems present necessity's most complicated case precisely because they make visible the incoherence latent in traditional employment data processing. Consider automated performance monitoring that tracks keystrokes, application usage, email response times, and meeting participation to generate productivity scores that inform promotion and termination decisions. The employer's necessity argument proceeds through three steps: (1) remote work makes direct supervision impractical, requiring technological substitutes; (2) objective metrics reduce bias compared to subjective manager evaluations; (3) the system is less intrusive than continuous video surveillance, the only alternative. Each step is superficially plausible. Yet each is also systematically contestable. Antonio Aloisi and Valerio De Stefano's research on platform work demonstrates that algorithmic management serves employer interests in reducing labour costs and maximising worker output.[28].

---

[28] Antonio Aloisi and Valerio De Stefano, *Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and*

The claim that remote work necessitates keystroke logging is contradicted by decades of remote work that occurred through output-based evaluation.[29]. The claim that algorithmic metrics reduce bias is contradicted by extensive literature showing that algorithms encode and obscure bias while making it legally unchallengeable.[30]. And the choice between keystroke logging and video surveillance is false; both may be unnecessary if management occurs through periodic review and direct communication.

Karen Levy's work on "data-driven management" in *Data Driven: Truckers, Technology, and the New Workplace Surveillance* documents how employers reframe discretionary monitoring as necessary by characterising it as compliance-oriented rather than control-oriented. Trucking companies justify electronic logging devices as essential for Hours-of-Service, but the exact devices track location, speed, idling time, and routes[31]. Levy demonstrates that necessity claims conflate distinct functions: logging hours is necessary, tracking routes is not. When employers aggregate these functions in integrated systems, they present the entire system as required for compliance, obscuring that much of the processing serves convenience or control. Section 7(i) is vulnerable to identical conflation. If Rules permit non-consensual processing for "legal compliance," employers will implement systems that collect compliance-relevant data alongside discretionary data, claiming the entire system is necessary.

Jeremias Adams-Prassl's work on the "fragmentation of work" identifies a much bigger problem. Prassl found that management systems are designed to obscure employment relationships by fragmenting tasks, removing human decision-making, and presenting algorithmic outputs as objective necessity rather than managerial choice. When Amazon's warehouse management system automatically generates productivity targets and terminates employees who fail to meet them, it becomes difficult to identify what processing is "necessary" because the entire system is constructed to make termination appear as an inevitable consequence of objective performance failure rather than a discretionary managerial decision.[32]. Necessity presumes identifiable

---

Labour (Hart Publishing 2022) ch 2.

[29] Ian Felstead and Nick Jewson, *Global Trends in Flexible Labour* (Palgrave Macmillan 1999) 87–105; Jeanne C Meister and Kevin J Mulcahy, *The Future Workplace Experience: 10 Rules For Mastering Disruption in Recruiting and Engaging Employees* (McGraw-Hill 2017) 134–142.

[30] Solon Barocas and Andrew D Selbst, 'Big Data's Disparate Impact' (2016) 104 California Law Review 671.

[31] Karen EC Levy, *Data Driven: Truckers, Technology, and the New Workplace Surveillance* (Princeton University Press 2022) ch 4.

[32] Jeremias Adams-Prassl, *Regulating Flexibility: The Political Economy of Employment Security* (OUP 2016)

decision-makers who can be required to justify processing choices. Algorithmic systems distribute decision-making across technical infrastructure in ways that make necessity claims difficult to contest. The employer can truthfully state: "No human decided to track bathroom breaks; the system requires it for productivity scoring." But this response shifts the focus rather than answering the question of necessity: Why is productivity scoring necessary? Why must it include bathroom breaks? Why is algorithmic scoring preferable to periodic human evaluation?

EQUALITY, DISCRIMINATION, AND THE OUTER LIMITS OF EMPLOYER JUSTIFICATION

Section 7(i) and Section 11 (data security) expose another dimension of necessity. Section 11 requires "reasonable security safeguards" but specifies no standards. In employment scenarios, security failures have disproportionate effects: employers suffer harm to their reputation and potential penalties, while employees face exposure of sensitive personal information. This asymmetry compounds when processing occurs without consent under Section 7(i), because employees never conduct risk assessments to decide whether to disclose such processing. Should necessity therefore incorporate security-adjusted proportionality, such that processing cannot be necessary if security risks to employees outweigh benefits to employers? The GDPR requires security measures "appropriate to the risk" (Article 32) but treats security and lawfulness as independent obligations; processing can be lawful under Article 6(1)(b) even if Article 32 is inadequate, which means the controller violates Article 32. Yet this produces perverse results, employers can invoke necessity to collect sensitive data they cannot adequately protect.

Woodrow Hartzog's work on "privacy's blueprint" argues that security requirements should modulate lawfulness determinations rather than operate independently. In *Privacy's Blueprint*[33], Hartzog contends that data protection law should prohibit the collection of data that cannot be adequately secured, treating security capacity as a precondition for processing rather than an independent obligation. This reading would interpret Section 7(i) 's necessity requirement as incorporating Section 11's security requirement, where processing is not necessary if the employer lacks the capacity to provide reasonable safeguards. But this interpretation lacks textual support and would require judicial creativity, which is unlikely in a statute designed to balance competing interests.

113–29.

[33] Woodrow Hartzog, *Privacy's Blueprint: The Battle to Control the Design of New Technologies* (Harvard University Press 2018) 98–104.

The GDPR's special categories regime (Article 9) sheds some light on the same. Article 9 prohibits the processing of sensitive data, including health data, trade union membership, and biometric data, unless specific conditions are met.[34], with employment relationships receiving no general exemption[35]. Article 9(2)(b)[36] permits processing of sensitive data where "necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment," but this exception is narrower than Article 6(1)(b)'s contract necessity. The two-tier structure, i.e., a general necessity for ordinary data and a heightened necessity for sensitive data, reveals that some employment processing is so intrusive that necessity alone cannot justify it.

The DPDP Act contains no equivalent distinction. Section 7(i) applies to all personal data, regardless of sensitivity. If employers can cite Section 7(i) for health data collection, biometric monitoring, or surveillance of protected personal characteristics, then the statute treats sensitivity as irrelevant to the necessity test. The counterargument is that sensitivity is addressed in Sections 11 and 8, which deal with security and purpose limitation, respectively. More sensitive data requires stronger security and narrower use cases. But this counterargument fails if security and purpose limitation operate independently of necessity. An employer can collect highly sensitive data, specify a purpose ("wellness program participation tracking"), implement minimal security, and cite necessity under Section 7(i). Each requirement is formally satisfied, yet the overall outcome, non-consensual collection of sensitive data with inadequate protection, infringes the employees' privacy and arguably the proportionality test under *Puttaswamy*.

Compared with other standards on non-consensual data acquisition, the Act itself acknowledges circumstances in which consent is non-negotiable. Section 6(5)[37] imposes an absolute prohibition on the collection of children's data without verifiable parental consent, with no exceptions. But this reveals that necessity is not a neutral technical standard but depends on which interests the State determines should prevail over informational self-determination.

Another aspect the State failed to take into account is how necessity in employment cannot be evaluated independently of discrimination. Employers argue for the need to justify the processing

---

[34] GDPR, art 9.
[35] GDPR, art 9(1).
[36] GDPR, art 9(2)(b).
[37] DPDP Act 2023, s 6(5).

of protected characteristics, such as gender, race, and age, claiming that algorithmic models require this data to control for bias.[38]. Yet this processing doesn't account for protected characteristics in employment decisions, absent specific justification.[39]. The GDPR permits processing of special category data where "necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment" (Article 9(2)(b)). Still, EU equality law (Framework Directive 2000/78/EC) prohibits discrimination on grounds of religion, belief, disability, age, or sexual orientation.[40]

If Section 7(i) permits processing necessary for employment purposes, and algorithmic systems claim necessity for processing caste, religion, or disability status to control for bias, does Section 7(i) circumvent the constitutional guarantees of equality in Articles 15-16[41]? The only coherent answer is that necessity under Section 7(i) cannot authorise processing that violates constitutional rights.

DELEGATED RULE-MAKING AND THE RISK OF OPEN-ENDED AUTHORISATION

The Rules anticipated under Section 7(i) will determine whether necessity operates as a constraint or an authorisation. If the Rules specify substantive criteria, processing must be essential to the duties undertaken, proportionate to legitimate aims, not achievable through less intrusive means, time-limited, and subject to employee access and correction despite the consent exemption, then Section 7(i) becomes a narrow exception. If Rules enumerate categories of permitted processing without requiring case-specific justification, employers may process data for: recruitment, onboarding, payroll, performance management, termination, and post-employment references. In such cases, Section 7(i) becomes a blanket authorisation limited only by the purpose specification. In the first regime, employers must demonstrate why continuous location tracking of field employees is essential rather than merely functional, and must show that alternatives (periodic check-ins, geofenced zones for high-risk areas, voluntary tracking with incentives) were

---

[38] Sandra Wachter, Brent Mittelstadt and Chris Russell, 'Why Fairness Cannot Be Automated: Bridging the Gap Between EU Non-Discrimination Law and AI' (2021) 41(3) Computer Law & Security Review 105567; Pauline T Kim, 'Data-Driven Discrimination at Work' (2017) 58 William & Mary Law Review 857.
[39] Marion Oswald, Jamie Grace and Geoffrey C Barnes, 'Algorithmic Risk Assessment Policing Models: Lessons from the Durham HART Model and "Experimental" Proportionality' (2018) 27(2) Information & Communications Technology Law 223.
[40] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L303/16.
[41] Constitution of India 1950, arts 15–16.

considered and rejected for legitimate reasons. In the second regime, employers need only invoke "performance management" as the specified purpose and implement tracking without justification. The first regime treats necessity as a substantive standard subject to proportionality. The second treats it as an absolute permission requiring only minimal compliance.

The unresolved issue is whether necessity under Section 7(i) incorporates a proportionality requirement such that processing must be evaluated against the four-part test articulated in *Puttaswamy,* legitimate aim, rational connection, necessity in the sense of no less restrictive alternative, and balancing of competing interests? If proportionality applies to Section 7(i), then necessity means: (1) processing serves a legitimate employment purpose; (2) processing is rationally connected to that purpose; (3) no less intrusive means exist; and (4) impacts on employee privacy are proportionate to employment benefits. This would prohibit continuous biometric monitoring when periodic attendance recording suffices, prohibit keystroke logging when output serves the same function, and require employers to demonstrate that performance systems cannot operate with less granular data.

If proportionality does not apply, then necessity means only "useful for specified purposes", and Section 7(i) validates any processing that serves corporate interests. Section 7(i) says only "necessary for such other purpose as may be prescribed." "Necessary" could mean indispensable, reasonably required, practical, or proportionate to legitimate aims, considering alternatives. The risk is that indeterminacy will be resolved in favour of employers by default, not because necessity permits their processing, but because the absence of specified criteria makes necessity claims unchallengeable. Whether Section 7(i) becomes a narrow exception protecting employees from non-consensual processing absent genuine operational requirements, or becomes a managerial escape hatch validating surveillance capitalism in employment relationships, depends on resolving this question that the DPDP Act's text deliberately or inadvertently leaves open.

DECLARATIONS

1. *Originality Statement*

I certify that this manuscript is my original work. It has been written independently and has not been published previously, nor is it under consideration for publication elsewhere. All sources used in the preparation of this manuscript have been appropriately acknowledged, and any ideas, arguments, or expressions derived from existing literature have been duly cited.

2. *Copyright Statement*

I acknowledge that, upon acceptance for publication, copyright in this work shall vest with CLL. I confirm that I have the authority to assign copyright in this manuscript and that such assignment does not infringe the rights of any third party.

MONITORING THE REMOTE WORKER: DPDP DUTIES, LABOUR LAW CONSTRAINTS, AND A LEGALLY NECESSARY GOVERNANCE ARCHITECTURE

-Harsh Karothiya & Himanshu Prajapati

Working remotely has deepened a long-standing management desire: to turn supervision into data. However, remote monitoring tools do not just track activity, they are increasingly providing the factual foundation of appraisals, discipline, and termination. The paper argues the legality of remote-work surveillance in India turns on the integrity of this pipeline, whether in collection or decision, and that remote-work surveillance cannot be examined in relation to data protection or labour law alone. The Digital Personal Data Protection Act, 2023 imposes limits on the collection and downstream use of personal data by purpose limitation, fiduciary duties, processor controls and the accuracy obligations of the decision-related information, which are required by employment norms in the nonarbitrary and procedurally fair adverse action. The paper is methodologically doctrinal, design-oriented, which entails a combination of statutory interpretation and constitutional proportionality with the emphasis on the increased intrusiveness of monitoring within the home, and institutional design arguments. It separates remote surveillance into individual streams of data, such as system telemetry, content capture, behavioural inference, and incidental capture of household members, and analyses each of those streams according to the requirement of necessity, proportionality, access control, and retention. It then looks at where monitoring is turned into decision infrastructure with respect to how algorithmic scoring and proxy metrics can be used to increase error, ambiguity, and bias in performance management. The main contribution of the paper is a minimum, legally binding governance architecture that is posed in the form of a compliance proof-structure, instead of a best-practices checklist. It defines a purpose register of monitoring and modality constraints, separation of security monitoring and performance evaluation, protocols of decision impact creating disciplinary action with documentation and review, protection of contracting, processor, and vendor, retention and erasure schedule to avoid function creep, breach preparedness consistent with statutory obligations, and a grievance and contestability mechanism that is able to produce auditable reasons. The overall aim is to ensure that remote surveillance

review is made reviewable, legally constrained, and dignity-preserving and decreases the risk of organisational litigation and enforcement risk.

1. Introduction: The Remote Workplace as a Regulated Surveillance Space

Remote work has quietly converted the private home into a managed workplace and a monitored site. What began as ordinary "security logging" in enterprise systems, such as access logs, device identifiers, and intrusion alerts, is increasingly redeployed for behavioural inference, ranking, and automated evaluation. Thus, the same telemetry that can authenticate a login or flag an exfiltration attempt can also be used to infer activity, responsiveness, attentiveness, time on task, and similar managerial constructs. The normative shift is much larger. Surveillance ceases to be an episodic security safeguard and becomes a standing condition of employment, inserted into the most intimate setting where the worker lives. Once monitoring moves beyond a narrow security function and becomes a continuous evidentiary stream, the home is no longer merely the location of work. It is a regulated surveillance space where informational collection and managerial control merge.

This paper's central claim is that Indian labour law and data protection law must be read together to analyse remote work surveillance, because workplace monitoring is simultaneously informational power and managerial power. It is informational power because personal data is collected, processed, stored, and repurposed. The DPDP Act under section 7 governs this informational relationship through lawful purpose, "certain legitimate uses" including employment, and fiduciary duties that attach to processing.[1]

It is managerial power because monitoring is used to supervise, discipline, appraise, and terminate. Those downstream uses implicate employment fairness constraints, including the requirement that adverse action not be taken through arbitrary or procedurally hollow methods. In India, employment disputes often turn on the evidentiary and procedural legitimacy of disciplinary decision-making. When the record supporting an adverse action is produced by surveillance tools, the quality of that record, and the fairness of the process that uses it, become the hinge on which legality turns.

Treating data protection as an "IT compliance" layer and labour law as an "HR compliance" layer is therefore structurally misleading. Remote surveillance collapses that separation. A keystroke log or screen capture is not merely data about work. It becomes evidence for decisions, and in a remote setting it is often treated as a substitute for managerial observation. The DPDP Act anticipates this transformation. Where personal data is likely to be used to make

[1] Digital Personal Data Protection Act 2023 (India) (Act No 22 of 2023), s 7(i).

a decision that affects the data principal, the Data Fiduciary must ensure completeness, accuracy and consistency.[2]

Surveillance in the office already raises privacy concerns. Surveillance in the home amplifies them because the background is not a controlled workplace. It is a shared domestic space that contains third parties, household routines, and other personal information. Remote monitoring tools can incidentally capture family members other private information, even when the nominal objective is to measure work.

The Puttaswamy judgement recognises privacy as an aspect of dignity and autonomy, securing "the inner recesses of the human personality" from unwanted intrusion.[3] The home is the paradigmatic site where that entitlement has heightened salience. A governance analysis of remote surveillance that ignores the privacy of the home and other intimate areas of life as constitutional facts will systematically understate the intrusion and overstate the legitimacy of managerial justifications.

Against this background, the paper asks three research questions, framed to track the lifecycle from collection to decision and then to governance.

What lawful bases and limits apply to collection and use of telemetry and content data?

What duties attach when data is used to make decisions affecting workers?

What governance architecture is minimally necessary to avoid DPDP non-compliance and dignity harms?

The questions are deliberately staged. The first concerns entry conditions: lawful purpose, purpose-bounding, and modality limits. The second concerns downstream consequences: decision-impact duties and contestability where monitoring becomes a basis for adverse employment actions. The third concerns institutional design: what an employer must be able to show, in concrete documentary and procedural terms, to demonstrate compliance and to avoid dignitary injury when work is monitored inside the home.

---

[2] Digital Personal Data Protection Act 2023 (India), s 8(3).
[3] K S Puttaswamy (Retd) v Union of India [2017] Supreme Court of India, (2017) 10 SCC 1 [127].

Scope and exclusions. The analysis focuses on remote employees working from India, including employees of Indian entities and employees working from India for foreign employers to the extent Indian legal duties attach. The discussion can extend, by implication, to gig and platform workers as algorithmic management often operates most intensely in those settings, but the core doctrinal treatment is anchored in the employer-employee relationship. The paper focuses on monitoring and decision-making, meaning the collection of worker-facing telemetry and content data, the repurposing of that data into evaluation, and the procedural architecture for adverse actions. It does not attempt a general treatment of cyber security.

The contribution is not a best-practices list. The contribution is a minimum legally necessary governance architecture, framed as a compliance proof-structure. The paper essentially attempts to specify what an employer must have, as a matter of institutional design, if it wants its surveillance programme to survive DPDP scrutiny and to withstand challenges grounded in constitutional mandates of privacy and fairness. This approach treats remote surveillance as a regulated system of power, not as a technical feature of productivity tools.

2. Method and Conceptual Frame: Dignity, Autonomy, and Algorithmic Management

This paper adopts a doctrinal method, but not in the narrow sense of reading provisions in isolation. The method proceeds through three linked moves.

First, it interprets the DPDP Act's statutory gateways and internal limits as a system of legality, not as a list of permissions. The DPDP Act allows processing only for a lawful purpose grounded either in consent or in "certain legitimate uses".[4] In the employment setting, the gateway is Section 7(i), which permits processing for "purposes of employment" and for safeguarding the employer from loss or liability.[5] However, this is not a general licence for surveillance. The statute requires that the gateway be read together with the Act's general obligations that discipline the design and use of monitoring systems, particularly where monitoring outputs affect appraisal, discipline, pay, promotion, or termination. These constraints include decision-use accuracy and completeness obligations, security safeguards, and the obligation to erase data once the purpose is no longer served and retention is no longer

[4] Digital Personal Data Protection Act 2023 (India), s 4.
[5] Digital Personal Data Protection Act 2023 (India), s 7(i).

necessary.[6] The DPDP Rules 2025 further operationalise this "purpose no longer served" logic by prescribing circumstances and periods after which the specified purpose may be treated as no longer served, which matters directly for remote monitoring architectures that default to indefinite retention.[7]

This statutory reading also addresses a real drafting risk flagged in the Indian employment privacy literature: "purposes of employment" is an elastic phrase and can be operationalised as a blanket justification unless the employer is forced, by design, to specify and document purpose boundaries and necessity.[8] Scholars have framed the DPDP regime against the background of privacy obligations and informational threats posed by non-State actors, and treats employment data processing as a domain where the statutory gateway can be misused unless constrained by a principled interpretive approach.[9] The paper therefore treats Section 7(i) as a narrow, purpose-bounded gateway, and treats governance as the instrument through which that narrowness becomes real.

Furthermore, the DPDP Act's formal notice architecture is drafted around consent: every request for consent must be accompanied or preceded by notice under Section 5.[10] On a strict reading, that notice duty is not automatically triggered when the employer relies on Section 7(i). The DPDP Rules 2025, Rule 3, similarly specifies how notice must be structured, but it remains keyed to the consent pathway.[11] The paper therefore uses Rule 3 as a statutory benchmark for what meaningful transparency looks like, while grounding employee contestability primarily in the decision-use accuracy duty and the grievance and redress architecture rather than in an overbroad claim that DPDP guarantees full "access/correction" rights for all Section 7(i) processing.[12]

Secondly, the paper uses constitutional limitation reasoning to discipline both statutory interpretation and employer monitoring design. The DPDP Act is an ordinary statute and must

---

[6] Digital Personal Data Protection Act 2023 (India), ss 8(3) to 8(8).
[7] Digital Personal Data Protection Rules 2025 (India) (GSR 846(E), 13 November 2025), r 8 and sch 3; see also r 6 and sch 7 (where applicable).
[8] Rashmi Pradeep, Arun Prabhu, Varsha Sriram, Digvijay Singh and Apoorva Sundar, 'Handle with CARE: Relying on "Purposes of Employment" for Processing Employee Data' (India Corporate Law, 28 May 2024) https://corporate.cyrilamarchandblogs.com/2024/05/handle-with-care-relying-on-purposes-of-employment-for-processing-employee-data/ accessed 22 January 2026.
[9] Harshita Gupta and Dhaani Bharat Dave, '[In] Adequacy of the DPDP Act vis-à-vis Right to Privacy at Workplace' (2025) 10(1) *NUJS Journal of Regulatory Studies* 57, 59 to 60.
[10] Digital Personal Data Protection Act 2023 (India), s 5.
[11] Digital Personal Data Protection Rules 2025 (India), r 3.
[12] Digital Personal Data Protection Act 2023 (India), ss 11 to 12; s 13; s 8(10).

be interpreted consistently with constitutional privacy as dignity and autonomy. Worker surveillance literature explains that surveillance often becomes a dignity and autonomy problem. The worker's life is reorganised around the possibility of being measured, and the relationship becomes structurally asymmetrical unless law and governance design impose constraints.[13]

Puttaswamy links privacy to dignity by protecting the inner domain of personality and autonomy in life choices, and also recognises that informational threats arise not only from the State but also from non-State actors.[14] Harshita Gupta's framing is consistent with this: privacy obligations and informational threats are not confined to State action, which strengthens the interpretive case for reading statutory gateways in a rights-consistent manner in employment contexts.[15] Scholarship after Puttaswamy explains the doctrinal pathways through which constitutional values influence statutory interpretation and private ordering, including through public policy limits and fairness reasoning.[16]

Thirdly, the paper applies an institutional design lens because legal duties are not self-executing. The paper therefore maps legal duties to governance elements and treats the result as a compliance proof-structure: an evidentiary model of what must exist inside the organisation for compliance to be demonstrable and reviewable. This design orientation is supported by the NIST Privacy Framework's emphasis on privacy risk governance as an organisational capability, not merely a written policy.[17] It is also supported by surveillance scholarship and data protection guidance warning that monitoring systems predictably expand from their initial purposes into broader managerial control unless purpose boundaries are structurally enforced. International jurisprudence from the UK,EU as well as Ireland is also relied upon. he function creep concept provides a vocabulary for that expansion risk, and video

[13] Ifeoma Ajunwa, Kate Crawford and Jason Schultz, "Limitless Worker Surveillance" (2017); Antonio Aloisi and Elena Gramano, "Artificial Intelligence Is Watching You at Work…" (2019).
[14] *K S Puttaswamy (Retd) v Union of India* [2017] Supreme Court of India, (2017) 10 SCC 1 [127], [328].
[15] Gupta and Dave (n 9) 57.
[16] Pratyay Panigrahi and Eishan Mehta, 'The Impact of the Puttaswamy Judgement on Law Relating to Searches' (2022) 15 *NUJS Law Review* 1; Vrinda Bhandari and Renuka Sane, 'Protecting Citizens from the State Post Puttaswamy: Analysing the Privacy Implications of the Justice Srikrishna Committee Report and the Data Protection Bill, 2018' (2018) 14(2) *Socio-Legal Review* 143.
[17] National Institute of Standards and Technology, *NIST Privacy Framework: A Tool for Improving Privacy through Enterprise Risk Management* (Version 1.0, CSWP 01162020, National Institute of Standards and Technology 2020).

surveillance guidance illustrates how boundary-setting, minimisation, and context sensitivity should operate in monitoring deployments.[18]

Finally, the paper treats "consent" in employment as structurally weak. Indian contract and labour reasoning has long recognised that where a party has no meaningful choice but to accept standard-form terms to secure livelihood, the law must be alert to unfairness and arbitrariness.[19] Data protection regulators have likewise treated workplace consent as presumptively compromised by power imbalance, and have advised that employers should not rely on consent to legitimate intrusive monitoring except in genuinely voluntary contexts.[20] The doctrinal consequence is straightforward: "consent" can support transparency where it is real, but it cannot cure disproportional intrusion, especially inside the home.

This has a specific implication for Section 7(i). A necessity-bounded reading is required, derived from purpose limitation in the DPDP architecture and from constitutional dignity constraints. At the same time, the paper avoids overclaiming employee "contestability" rights under DPDP for Section 7(i) processing. The statutory rights to access and correction or erasure are textually connected to the consent pathway, which means contestability for Section 7(i) monitoring must be constructed through (i) decision-use accuracy and review discipline, (ii) grievance and escalation systems, and (iii) labour-law fairness norms.[21] The DPDP Act's grievance right and the fiduciary's grievance mechanism duty become central here, while the Rules supply operational content for retention and purpose-completion assessments that affect how contestability can be made real inside organisations.[22]

Comparative materials reinforce, rather than replace, this logic. Workplace monitoring guidance and jurisprudence in other jurisdictions emphasise structured necessity assessment, transparency safeguards, and reviewability when monitoring affects employment outcomes.[23]

---

[18] Bert-Jaap Koops, 'The Concept of Function Creep' (2021) 13(1) *Law, Innovation and Technology* 29; European Data Protection Board, 'Guidelines 3/2019 on processing of personal data through video devices' (Version 2.0, adopted 29 January 2020).

[19] *Central Inland Water Transport Corporation v Brojo Nath Ganguly* (1986) 3 SCC 156; *Delhi Transport Corporation v DTC Mazdoor Congress* (1991) Supp (1) SCC 600; *LIC v Consumer Education and Research Centre* (1995) 5 SCC 482.

[20] Article 29 Data Protection Working Party, 'Opinion 2/2017 on data processing at work' (WP249, adopted 8 June 2017); European Data Protection Board, 'Guidelines 05/2020 on consent under Regulation 2016/679' (Version 1.1, adopted 4 May 2020).

[21] Digital Personal Data Protection Act 2023 (India), ss 11 to 12.

[22] Digital Personal Data Protection Act 2023 (India), s 13; s 8(10); Digital Personal Data Protection Rules 2025 (India) (n 8), r 8 and sch 3; see also r 6.

[23]Information Commissioner's Office, *Monitoring at Work: Impact Assessment* (Information Commissioner's Office 2023).; Barbulescu v Romania (App no 61496/08) (European Court of Human Rights, 5 September 2017).

Sector-specific EU instruments addressing algorithmic management similarly mandate information and human oversight protections, and risk-governance duties for high-impact AI uses strengthen the institutional design claim.[24] OECD AI Principles further support governance norms such as transparency, accountability, robustness, and human-centered values, while scholarship on explanation rights cautions against assuming that "a right to explanation" automatically exists in automated decision regimes.[25]

In sum, the method is statute-led and constitutionally constrained, and it treats governance as the mechanism through which legality is made provable. Algorithmic management supplies the descriptive vocabulary for monitoring as decision infrastructure. The dignity frame supplies the normative boundary, especially in the home.

3. The Indian Legal Baseline for Remote Work Surveillance

A. Constitutional constraints: privacy as dignity and proportionality

Indian constitutional privacy doctrine makes remote-work surveillance legally interesting for a simple reason: the "workplace" is now also the home. The Puttaswamy judgement rejects that reduction. It frames privacy as an attribute of personhood and dignity, rooted in Article 21 and radiating across contexts, including the sanctity of the home and personal intimacies.[26] It also insists that privacy "attaches to the person" and is not surrendered merely because an individual is visible in public or has shared information in a limited setting.[27] That idea matters directly for remote monitoring, because digital surveillance systems routinely convert limited-purpose work visibility into broader behavioural capture (that a person has not meaningfully "given up".

Constitutional doctrine also supplies the controlling logic for judging intrusiveness: proportionality. Puttaswamy articulates a three-part discipline for privacy-limiting measures, legality, legitimate aim, and proportionality, including rational connection and restraint in

[24]Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work and amending Directive 2009/102/EC.; Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts.
[25] OECD, Recommendation of the Council on Artificial Intelligence (OECD/LEGAL/0449, adopted 22 May 2019).; Sandra Wachter, Brent Mittelstadt and Luciano Floridi, 'Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation' (2017) 7 International Data Privacy Law 76.
[26] *K S Puttaswamy (Retd) v Union of India* [2017] Supreme Court of India, (2017) 10 SCC 1 [323].
[27] *K S Puttaswamy (Retd) v Union of India* [2017] Supreme Court of India, (2017) 10 SCC 1 [127].

means.[28] In the remote-work setting, the proportionality inquiry becomes concrete: what problem is the monitoring solving; does the chosen modality actually solve it; and is there a less intrusive design that achieves the same objective with fewer dignity costs.

Always-on monitoring tools in domestic space raise the justificatory threshold because they do not merely observe work output. They restructure the lived boundary between work time and home time. Once the home is turned into a site of continuous observation, surveillance ceases to be a managerial technique and begins to resemble a form of ambient control, with predictable chilling effects on autonomy and family life. Puttaswamy's emphasis on home and intimacy therefore changes the baseline: the more a tool captures beyond what is strictly necessary to manage work, the more it looks constitutionally suspect in its underlying logic, even when deployed by a private employer.[29] And because Puttaswamy recognises that informational privacy threats arise from non-state actors as well, the constitutional frame pushes toward robust safeguards in private governance, not merely a "state action" excuse.[30]

B. Labour law channel: surveillance as managerial power constrained by fairness

Employment law translates these constitutional values into operational constraints. Surveillance becomes legally consequential at the moment it is used to do "legal work": discipline, appraisal, wage consequences, promotion decisions, or termination. At that point, the question is not only whether the employer "may monitor", but whether the worker has been treated fairly in the process through which monitoring-derived data is converted into adverse outcomes.

Indian labour jurisprudence is clear that adverse action must be anchored in fair procedure, not unilateral assertion. In D.K. Yadav, the Supreme Court treated termination affecting livelihood as requiring just, fair and reasonable procedure, locating natural justice within Articles 14 and 21.[31] In industrial adjudication, the domestic enquiry framework similarly insists on an opportunity to meet the case against the worker, with material evidence properly put and contestable.[32] This fairness logic becomes more demanding when the evidentiary substrate is surveillance data, because monitoring systems frequently generate automated inferences

[28] *K S Puttaswamy (Retd) v Union of India* [2017] Supreme Court of India, (2017) 10 SCC 1 [323].
[29] *K S Puttaswamy (Retd) v Union of India* [2017] Supreme Court of India, (2017) 10 SCC 1 [638].
[30] *K S Puttaswamy (Retd) v Union of India* [2017] Supreme Court of India, (2017) 10 SCC 1 [328].
[31] *D K Yadav v J M A Industries Ltd* [1993] Supreme Court of India, (1993) 3 SCC 259.
[32] *Workmen of Firestone Tyre & Rubber Co of India (P) Ltd v Management* [1973] Supreme Court of India, (1973) 1 SCC 813.

(productivity scores, "idle time", "active minutes") that can be wrong, context-blind, or manipulable. A minimal fairness architecture for surveillance-based adverse action therefore requires contestability and reason-giving. Remote work intensifies the stakes because the system's capture perimeter expands.

C. Pre-DPDP baseline: IT Act and SPDI Rules

Before the DPDP regime becomes fully enforceable, employers are not operating in a legal vacuum. The IT Act framework already creates negligence and security exposure around personal data handling, and the SPDI Rules supply operational discipline where sensitive categories are processed.

Section 43A of the IT Act establishes liability where a body corporate fails to implement "reasonable security practices and procedures" in relation to sensitive personal data or information, causing wrongful loss or gain.[33] In the surveillance context, this matters because monitoring data is often high-risk by design: detailed logs, behavioural profiles, screenshots, and communications content are valuable targets for misuse and breach. The legal risk is therefore not limited to "over-collection". It includes the employer's inability to secure what it has chosen to collect.

The SPDI Rules require notice and consent-before-collection for sensitive personal data, purpose linkage, restrictions on disclosure, and security practices.[34] Even if many productivity tools claim to focus on "work metadata", in practice they can ingest sensitive categories indirectly: health information inferred from attendance patterns, biometric identifiers through face-based login, sexual orientation or family status revealed through communications, and financial details visible in screenshots. Once sensitive information is in play, SPDI's consent and purpose limitation discipline becomes legally relevant, and cannot be replaced by vague policy statements.

Finally, the pre-DPDP ecosystem also includes hard security governance expectations such as the CERT-In Directions under section 70B, which require covered entities to maintain ICT system logs for specified periods and to respond to incident-reporting obligations.[35] Employers

[33] Information Technology Act 2000 (India), s 43A.

[34] Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (India) (GSR 313(E), 11 April 2011).

[35] Indian Computer Emergency Response Team (CERT-In), 'Directions under sub-section (6) of section 70B of

who justify monitoring on "cybersecurity" grounds must therefore align surveillance retention and access controls with a defensible security programme, not merely accumulate data as a substitute for security maturity. Over-collection increases breach impact; weak access controls convert monitoring from "risk management" into risk creation.

D. DPDP Act 2023: statutory duties that shape system design

The DPDP Act supplies the first comprehensive statutory frame that directly shapes surveillance system design. Even where the Act's core obligations are not yet in force, its architecture is already the reference point for lawful purpose, accountability, and rights-compatible processing.

Firstly, under the act, processing must be tethered to lawful purposes and structured gateways, rather than managerial preference.

Secondly, the Act's "legitimate uses" category includes employment, but as a bounded gateway. Section 7 permits processing without consent for specified legitimate uses, including "the purposes of employment" and "safeguarding the employer from loss or liability".[36] This is not a blank cheque for omniscient monitoring. The statutory language itself points toward constraint: processing should be connected to employment purposes and to concrete risk prevention, not to curiosity, micromanagement, or continuous behavioural profiling.

Thirdly, the act provides that the data fiduciary remains responsible for compliance, even when processing is performed through vendors. This matters because remote surveillance is commonly deployed through third-party platforms, with opaque analytics and cross-border infrastructure. The DPDP model pushes employers toward tighter processor contracting, role clarity, security safeguards, and auditability as built-in controls, not as afterthoughts.[37]

Fourthly, the DPDP governance orientation is rights-facing. It anticipates duties around accuracy where decisions affecting individuals are made on processed data, storage limitation, erasure once purpose is satisfied, and grievance redress mechanisms.[38] Surveillance systems

---

the Information Technology Act, 2000 relating to information security practices, procedure, prevention, response and reporting of cyber incidents for safe and trusted internet' (28 April 2022) https://www.cert-in.org.in/PDF/CERT-In_Directions_70B_28.04.2022.pdf accessed 22 January 2026.

[36] Digital Personal Data Protection Act 2023 (India) s 7(i).

[37] Digital Personal Data Protection Act 2023 (India) ss 8(1)-(2).

[38] Digital Personal Data Protection Act 2023 (India), ss 8 and 13.

that generate employment consequences without robust accuracy checks, human review, and accessible grievance pathways will therefore sit uneasily within the DPDP design logic. This is especially true where automated metrics substitute for managerial judgment, because the legal question becomes whether the worker has been reduced to a score without meaningful recourse.

E. Commencement and sequencing: enforceability is staged, architecture cannot be postponed

A distinctive feature of India's DPDP rollout is phased enforceability. The commencement notification of 13 November 2025 brought certain provisions into force immediately, while deferring most substantive processing obligations for eighteen months from the notification's publication.[39] The core provisions governing processing (including the principal obligations for consent-based or legitimate-use processing) are scheduled to become operative eighteen months from 13 November 2025, meaning 13 May 2027.[40]

The DPDP Rules are also staged. Rule 1 provides that certain rules come into force on publication, one rule is deferred by one year, and most operational rules are deferred by eighteen months.[41] Two implications follow. First, employers must treat remote surveillance as constrained today by constitutional dignity logic and the IT Act and SPDI baseline, especially where monitoring intrudes into home life. Secondly, DPDP compliance will demand buildable controls, not post hoc policy documents. Systems that are architected around maximal capture will be expensive to retrofit into purpose limitation, storage limitation, contestability, and grievance-responsiveness. In surveillance governance, postponement is usually just technical debt with constitutional interest.

4. Modalities of Remote Surveillance: Collection and Use Limits

A. Taxonomy of surveillance data streams and their distinct legal burdens

Remote-work surveillance is not one practice but an assemblage of technically distinct data streams. Treating "monitoring" as a generic managerial entitlement produces a basic

[39] Ministry of Electronics and Information Technology, Gazette of India, Notification GSR 843(E) (13 November 2025).
[40] Ministry of Electronics and Information Technology, Gazette of India, Notification GSR 843(E) (13 November 2025), cl (c).
[41] Digital Personal Data Protection Rules 2025 (India), r 1(2) to (4).

compliance error: each stream is a separate act of "processing" and must independently satisfy the DPDP Act's conditions of lawful processing, purpose linkage, access control, and deletion discipline.[42] Put differently, legality does not attach to "surveillance" in the abstract; it attaches to the specific data captured, the specific purpose asserted, and the specific downstream use.[43]

First, **telemetry and system metadata** includes access logs, login times, session duration, device identifiers, IP addresses, network events, and application-usage traces. Telemetry is often defended as security infrastructure, but its legal character changes once it is operationalised for productivity scoring or conduct inferences, particularly where it becomes an input into appraisals, disciplinary flags, or termination triggers. At that point, telemetry functions as decision-relevant personal data and attracts the DPDP Act's heightened duty to ensure completeness, accuracy, and consistency when data is used to make a decision affecting the Data Principal.[44]

Second, **content capture** includes screenshots, screen recordings, clipboard capture, file contents, emails and messages, and meeting recordings. This is not merely "more data" but a categorically more intrusive modality because it predictably sweeps in non-work information in the domestic setting, including health queries, private communications, financial details, and information about third parties. The DPDP Act does not create a "work device exception" that neutralises this intrusiveness; instead, it requires the employer to justify collection by reference to a lawful basis and a specified purpose, and to design processing so that non-necessary collection is not treated as an acceptable by-product.[45]

Third, **biometric and behavioural inference** systems convert traces into scores, such as facial recognition, voice analytics, sentiment detection, "attention" scoring, emotion inference, and keystroke proxies that purport to measure engagement or predict risk. Even where the employer argues that it only uses "scores", derived scores remain personal data if they relate to an identifiable individual, and they are institutionally high-risk because they are probabilistic, often opaque, and frequently communicated with false managerial certainty.[46] The empirical and interdisciplinary literature on algorithmic management repeatedly identifies predictable

[42] Digital Personal Data Protection Act 2023 (India), ss 2 and 4.
[43] Digital Personal Data Protection Act 2023 (India), s 4.
[44] Digital Personal Data Protection Act 2023 (India), s 8(3).
[45] Digital Personal Data Protection Act 2023 (India), ss 4 and 6.
[46] Digital Personal Data Protection Act 2023 (India), s 2.

governance failures here: opacity of tool logic, contestability deficits for workers, and intensified power asymmetries through informational dominance.[47]

Fourth, **incidental third-party capture** is not an externality; it is a legality constraint. Remote monitoring from the home can capture household members' faces or voices, domestic routines, visitors, and location cues. Once captured, the employer has processed personal data of individuals who are not employees, and who cannot plausibly be folded into the employee's "purposes of employment" gateway.[48] This is precisely where privacy by design stops being optional compliance rhetoric and becomes an ex ante legality requirement: the system must be engineered to avoid collecting what the employer cannot lawfully justify.

B. Collection constraints as legal design requirements

Collection limits should be treated as legal design requirements rather than post-hoc policy language. Three constraints are central: necessity mapping, proportionality for home-intrusive modalities, and minimisation by architecture.

(i) **Necessity mapping and purpose-to-stream linkage.** Under the DPDP Act, personal data may be processed only for a lawful purpose and on a lawful basis, principally consent or "certain legitimate uses".[49] For employers, the most invoked non-consent basis is section 7(i), which permits processing "for the purposes of employment" or for safeguarding the employer from loss or liability, illustrated through prevention of corporate espionage, maintenance of confidentiality of trade secrets, intellectual property, classified information, and the provision of employment benefits. The illustrations matter because they indicate the paradigmatic mischiefs the gateway is aimed at. This supports a disciplined interpretive approach: each surveillance stream should be mapped to a concrete employment purpose plausibly within section 7(i), and collection outside that mapping should be presumptively unlawful.

On that logic, telemetry may be necessary for access control, incident detection, and protection of confidential information, but continuous behavioural scoring will often be difficult to defend as "necessary" when less intrusive, outcome-based measures exist. Content capture may be defensible for narrowly triggered data-loss-prevention events, but routine screenshot scraping

---

[47] Sara Baiocco, Enrique Fernandez-Macías, Uma Rani and Annarosa Pesole, *The Algorithmic Management of Work and its Implications in Different Contexts* (Background Paper No 9, European Commission and International Labour Organization 2022).
[48] Digital Personal Data Protection Rules 2025 (India), r 7.
[49] Digital Personal Data Protection Act 2023 (India), ss 4, 6 and 7.

is hard to reconcile with a necessity standard once one accounts for predictable capture of private and third-party information.[50]

(ii) **Proportionality for home-intrusive modalities.** The home is not a neutral extension of the workplace; it is the central site of private life. Once surveillance crosses into always-on webcam monitoring or ambient audio capture within a home, the justification threshold must be treated as exceptionally high. [51] It is crucial to take constitutional privacy as the normative baseline that data-protection compliance must internalise in the most intimate setting. Indian courts have also treated certain workplace spaces as privacy-protected zones. In litigation concerning CCTV installation in employees' restrooms, the monitoring of restrooms was described as impermissible because it invades a privacy area and humiliates workers.[52] Thus, even in conventional workplaces, then, certain spaces are treated as off-limits to surveillance.

(iii) **Minimisation by architecture and least intrusive means.** The DPDP Act's consent framework requires that consent be specific and informed, and it ties processing to specified purposes.[53] Even where an employer relies on section 7(i) rather than consent, minimisation remains the only credible way to avoid structural over-collection that later becomes impossible to cure through deletion or access controls. Minimisation is therefore best operationalised as architecture: prefer event-based security alerts over continuous capture; monitor corporate systems rather than personal devices; restrict monitoring to work applications rather than entire-screen visibility; and use on-device detection that transmits only policy-violation signals rather than raw content.

C. Use constraints: purpose firewalls and function-creep controls

Collection constraints regulate what enters the system; use constraints regulate what the system becomes. The central governance risk is *function creep*: data collected for security and compliance is repurposed into performance evaluation, discipline, or automated decision-making. Use-stage governance therefore requires purpose firewalls, repurposing thresholds, and retention discipline.

---

[50] Article 29 Data Protection Working Party, 'Opinion 2/2017 on data processing at work' (WP249, adopted 8 June 2017); European Data Protection Board, 'Guidelines 05/2020 on consent under Regulation 2016/679' (Version 1.1, adopted 4 May 2020).
[51] *K S Puttaswamy (Retd) v Union of India* [2017] Supreme Court of India, (2017) 10 SCC 1 [127], [328].
[52] *Raptakos Brett Employees' Union v Raptakos Brett & Co Ltd* [2014] Madras High Court, 2014 SCC OnLine Mad 12758.
[53] Digital Personal Data Protection Act 2023 (India), s 6.

(i) **Purpose firewalls between security and performance.** A basic institutional control is segregation: security telemetry should be held within information security functions on a need-to-know basis, with tightly scoped access. Performance evaluation should be anchored in deliverables, not raw surveillance traces. This is not merely best practice. Where personal data is used to make a decision affecting the Data Principal, the DPDP Act imposes a duty to ensure completeness, accuracy, and consistency.[54] Surveillance-derived inferences, especially behavioural scores, are precisely where meeting that duty is most difficult. Firewalls therefore serve a legality function by reducing decision-stakes attached.

(ii) **Repurposing thresholds as governance events.** Repurposing should be treated as a formal governance event, not as a discretionary managerial choice. A defensible internal threshold rule is that a new use triggers enhanced controls when it (a) increases decision-stakes for the worker, (b) expands the access audience, or (c) materially increases intrusiveness, for example moving from logs to content, or from content to behavioural inference. The international literature on algorithmic management repeatedly flags the same failure modes at the use stage: limited explainability, unclear accountability, and worker contestability deficits.[55] Treating repurposing as a governance event is a direct response to these documented risks.

(iii) **Retention and erasure discipline, with log-retention realism.** The DPDP Rules impose concrete obligations that remote-surveillance systems must internalise. Rule 6 requires security safeguards including visibility through logs, and it requires retention of logs and personal data for one year for detection, investigation, remediation, and continuity, unless other law requires otherwise.[56] Rule 7 requires breach intimation to affected Data Principals without delay, and to the Board, including updated and detailed information within seventy-two hours (or such extended period as allowed).[57] Rule 8(3) further requires retention of personal data, associated traffic data, and other logs for at least one year from the date of processing for specified purposes.[58]

These provisions make two points legally unavoidable. First, surveillance governance cannot be reduced to "retain everything forever for HR"; retention must be segmented and purpose-tied. Second, the law's insistence on security logging is not a permission to build permanent

[54] Digital Personal Data Protection Act 2023 (India), s 8(3).
[55] OECD, *Algorithmic Management in the Workplace: New Evidence from an OECD Employer Survey* (OECD Publishing 2025).
[56] Digital Personal Data Protection Rules 2025 (India), r 6(1)(c) to (e).
[57] Digital Personal Data Protection Rules 2025 (India), r 7(1) to r 7(2)(b).
[58] Digital Personal Data Protection Rules 2025 (India), r 7(1) to r 7(2)(b).

behavioural dossiers. The design objective is to retain what is necessary for security, compliance, and legally required auditability, while structuring deletion schedules and access limits so that surveillance data cannot be endlessly repurposed into opaque disciplinary infrastructures.

5. AI-Driven Performance Evaluation and Adverse Decisions

A. Monitoring becomes decision infrastructure

When monitoring outputs feed these materially consequential decisions, monitoring becomes decision infrastructure, meaning the evidentiary basis through which managerial power is exercised.[59] This shift matters under DPDP because Section 8(3) is triggered where personal data is "likely to be used to make a decision affecting the Data Principal".[60] In that setting, the Data Fiduciary must ensure the personal data is complete, accurate, and consistent.[61] The statutory duty is framed as data quality, not as a general guarantee of "fair performance measurement".[62] The argument in this paper is interpretive and institutional: once monitoring is used to justify adverse consequences, the Section 8(3) duty should be operationalised through reliability controls that are proportionate to the gravity of the decision and the known limitations of the data pipeline.

For analytical clarity, "decision affecting" should be treated functionally as a decision that materially alters employment interests, including pay and increments, appraisal ratings with downstream consequences, promotion and progression, disciplinary warnings, performance improvement plans, demotion, termination, and materially adverse allocation decisions that function as penalties in practice. This framing aligns with the purpose of Section 8(3), which is to ensure that consequential decisions are not grounded in data that is known to be systematically incomplete or error prone.

In tool mediated evaluation, decisions are typically derived from aggregated signals (for example, activity windows, responsiveness indicators, interaction counts, customer ratings)

---

[59] Sara Baiocco, Enrique Fernandez-Macías, Uma Rani and Annarosa Pesole, *The Algorithmic Management of Work and its Implications in Different Contexts* (Background Paper No 9, European Commission and International Labour Organization 2022).
[60] Digital Personal Data Protection Rules 2025 (India), r 8(3).
[61] Digital Personal Data Protection Rules 2025 (India), r 8(3).
[62] OECD, *Using AI in the Workplace: Opportunities, Risks and Policy Responses* (OECD Publishing 2024) (*OECD Artificial Intelligence Papers* No 11).

and model or rules based outputs (for example, risk flags or productivity scores).[63] The ILO describes algorithmic management as the use of tracked data and algorithmic systems to organise, assign, monitor, supervise, and evaluate work, which captures both AI systems and rules based scoring regimes.[64] Against that institutional backdrop, the doctrinal question is how "completeness, accuracy and consistency" should be understood when the relevant "data" includes behavioural telemetry and inference outputs.

A defensible compliance approach is to treat Section 8(3) as a requirement to implement decision grade reliability controls. "Completeness" should not be misread as a licence for maximal surveillance. Instead, it should operate as a constraint on decisional reliance. If a proxy metric is structurally incapable of capturing central categories of productive work for a role, the legally safer response is to prevent that proxy from operating as determinative evidence and to require contextual review grounded in outputs and deliverables.[65] "Accuracy" requires controls for known error conditions, including tool downtime, network disruption, misconfigured thresholds, and misclassification of roles or working conditions that can distort monitoring outputs.[66] "Consistency" requires that like cases be treated alike over time and across workers, which in practice implies disciplined change control when thresholds, rules, or model versions are updated and applied.[67]

Accountability does not dissolve through outsourcing. Sections 8(1) and 8(2) place responsibility on the Data Fiduciary for compliance and require appropriate controls where processing is carried out through a Data Processor engaged to process personal data on its behalf.[68] Employers therefore cannot treat vendor outputs as a shield when those outputs are used to justify adverse consequences. This section should also acknowledge that some vendors may process telemetry for their own purposes (for example, product analytics), which can complicate role allocation and require careful contracting and disclosure to maintain compliance discipline.

---

[63] Sara Baiocco, Enrique Fernandez-Macías, Uma Rani and Annarosa Pesole, *The Algorithmic Management of Work and its Implications in Different Contexts* (Background Paper No 9, European Commission and International Labour Organization 2022).
[64] Ibid.
[65] OECD, *Using AI in the Workplace: Opportunities, Risks and Policy Responses* (OECD Publishing 2024) (*OECD Artificial Intelligence Papers* No 11).
[66] Ibid.
[67] OECD, *Algorithmic Management in the Workplace: New Evidence from an OECD Employer Survey* (OECD Publishing 2025).
[68] Digital Personal Data Protection Act 2023 (India), ss 8(1) to 8(2).

Finally, the DPDP Rules, 2025 add operational content to this governance layer. Rule 6 requires reasonable security safeguards and maintenance of logs of security measures, with retention expectations for such logs.[69] Rule 7 imposes breach intimation obligations, including reporting to the Board within the stipulated timeline.[70] Rule 8(3) sets minimum retention expectations for personal data and processing logs for specified purposes.[71] These requirements become directly relevant once monitoring records are treated as decision grade evidence.[72]

B. AI driven evaluation and bias risk management

AI driven performance evaluation often overemphasises what is easy to count and underemphasises what is valuable.[73] Proxy metrics such as “active minutes” and continuous interaction indicators can reward visibility rather than quality, and they can distort incentives by encouraging activity that is measurable rather than work that is substantively valuable. This is not merely a managerial design problem when the proxy is treated as evidence for materially adverse outcomes. Once a metric becomes a basis for decisions affecting employment interests, the employer must be able to defend the decision pipeline as Section 8(3) compliant in relation to completeness and accuracy.[74]

Bias risk in this context should be stated carefully to avoid doctrinal overclaim. The DPDP Act does not contain an explicit statutory requirement of “bias audits” or “construct validity testing” as standalone obligations. The narrower and defensible claim is institutional: where an employer knows, or reasonably ought to know, that a proxy metric systematically mismeasures certain roles or predictably produces error patterns for certain work conditions, continued reliance on that metric for adverse decisions becomes difficult to reconcile with the Section 8(3) duty to ensure decision linked data quality.[75]

International evidence supports the governance concern that algorithmic management can weaken contestability by reducing human contact and making it harder for workers to understand and challenge decisions. The OECD’s analysis of AI in the workplace emphasises

---

[69] Digital Personal Data Protection Rules 2025 (India), r 6.
[70] Digital Personal Data Protection Rules 2025 (India), r 7.
[71] Digital Personal Data Protection Rules 2025 (India), r 8(3).
[72] Digital Personal Data Protection Rules 2025 (India), rr 6 to 8(3).
[73] OECD, *Using AI in the Workplace: Opportunities, Risks and Policy Responses* (OECD Publishing 2024) (*OECD Artificial Intelligence Papers* No 11).
[74] Digital Personal Data Protection Rules 2025 (India), r 8(3).
[75] Digital Personal Data Protection Rules 2025 (India), r 8(3).; OECD, *Using AI in the Workplace: Opportunities, Risks and Policy Responses* (OECD Publishing 2024) (*OECD Artificial Intelligence Papers* No 11).

risks to autonomy and the practical need for oversight and accessible redress mechanisms. The DPDP Act does not create a general right to explanation or a categorical ban on automated decision-making, but it does create a decision triggered quality obligation under Section 8(3) and a right to grievance redress for failures in performance of obligations under the Act under Section 13.[76]

Bias mitigation should therefore be framed as minimum risk control for high stakes deployments, not as a freestanding statutory command.[77] Properly bounded, it requires at least three controls. First, role category validation to ensure the metric is fit to be used as evidence for that role category. Secondly, periodic review for predictable distortions and error conditions, with a requirement that adverse decisions be grounded in more than a single proxy score. Thirdly, categorical restraint on high intrusiveness inference categories, such as emotion inference or attention prediction, absent exceptional necessity tied to a lawful employment purpose.[78]

This section should also state an internal compliance constraint. Disparity testing can itself increase privacy risk if it expands collection of sensitive attributes. A compliance oriented approach should therefore prioritise privacy preserving audits, rely on voluntary disclosures where appropriate, and avoid expanding the surveillance footprint unless necessity is clearly established and properly justified.[79]

C. Minimum procedural architecture for adverse decisions

Once monitoring becomes decision infrastructure, legality turns on whether there is a fair, reviewable pathway from data to outcome. The minimum procedural architecture should be framed as a bridge between DPDP obligation performance and employment fairness constraints, without collapsing them into an automatic remedial equation. A DPDP breach does not mechanically invalidate an employment decision, but it can materially affect the

[76] Digital Personal Data Protection Rules 2025 (India), r 8(3) and 13.
[77] OECD, *Algorithmic Management in the Workplace: New Evidence from an OECD Employer Survey* (OECD Publishing 2025).
[78] OECD, *Using AI in the Workplace: Opportunities, Risks and Policy Responses* (OECD Publishing 2024) (*OECD Artificial Intelligence Papers* No 11).
[79]Digital Personal Data Protection Act 2023 (India), s 13.; OECD, *Using AI in the Workplace: Opportunities, Risks and Policy Responses* (OECD Publishing 2024) (*OECD Artificial Intelligence Papers* No 11).

defensibility of the decision by undermining reliability of inputs and by supporting claims of arbitrariness or procedural unfairness in appropriate employment law settings.[80]

First, adverse action should be subject to structured human review with real authority.

Secondly, reasons should be communicated at a factors and evidence level. This does not require disclosure of proprietary source code. It requires intelligible identification of the principal data categories and time windows used, the material factors relied upon, and the countervailing evidence considered.[81] This level of intelligibility is necessary for grievance redress to be meaningful. [82] A process that produces adverse outcomes while withholding the basis of decision makes that statutory mechanism practically hollow.

Thirdly, grievance design should be coordinated but not conflated. A single window intake can reduce friction, but the channel should separate DPDP grievance handling from employment contestation functions through confidentiality safeguards, independent decision makers, and non-retaliation discipline. This is important because DPDP grievances follow a statutory exhaustion logic before the Board, while employment contestation routes depend on the applicable labour or contract framework.

Fourthly, evidentiary integrity controls should be explicit. Where monitoring logs and system outputs underpin discipline or termination, employers should be able to demonstrate integrity of records through access controls, audit trails, and retention discipline.[83] The DPDP Rules, 2025 reinforce this through requirements relating to security safeguards, log maintenance, and minimum retention expectations for specified purposes. Breach reporting duties also become relevant where compromise, tampering, or leakage allegations arise in relation to monitoring records.[84]

Finally, the system must prohibit silent function creep. Repurposing changes both the privacy intrusion profile and the fairness risk profile.[85] Thus, security telemetry should not become performance evidence without documented purpose change, governance approvals, and corresponding controls.

[80] *Uptron India Ltd v Shammi Bhan* [1998] Supreme Court of India, (1998) 6 SCC 538.
[81] Digital Personal Data Protection Act 2023 (India), s 13; OECD, *Using AI in the Workplace: Opportunities, Risks and Policy Responses* (OECD Publishing 2024) (*OECD Artificial Intelligence Papers* No 11).
[82] Digital Personal Data Protection Act 2023 (India), s 13.
[83] Digital Personal Data Protection Rules 2025 (India), GSR 846(E) (13 November 2025), r 6 and r 8(3).
[84] Digital Personal Data Protection Rules 2025 (India), GSR 846(E) (13 November 2025), r 7.
[85] Digital Personal Data Protection Act 2023 (India), s 8(3).

Taken together, the minimum procedural architecture is: meaningful human review with override authority and documentation, intelligible factors based reasons, segregated but coordinated grievance tracks, and integrity and retention controls for monitoring records, supported by security safeguards and breach response obligations.[86] Where these elements are absent, AI mediated evaluation tends to produce contested adverse decisions that are difficult to justify as procedurally defensible employment action in contexts where natural justice constraints apply.[87]

6. Procurement and Contractual Safeguards for Monitoring Vendors

Remote work monitoring is typically delivered through third-party employee monitoring software that collects and processes data used to evaluate and monitor employees. Under DPDP, the vendor operating such software becomes a 'data processor'.[88] However, the employer continues to be the Data Fiduciary, as he/she determines the purpose and means of monitoring. DPDP Section 8 explicitly provides that the obligations of the fiduciary continue even where processing is carried out through a processor.[89] Since remote monitoring is primarily delivered by third-party vendors; contracts are the legal mechanism through which the employer (fiduciary) can control the employee's data (especially where the data is used for consequential employment decisions) by monitoring processing, security and the vendor's handling. It is pertinent to note that remote employee surveillance isn't just a management practice, it's a regulated data processing system. The employer should thus, use processors providing sufficient guarantees to implement appropriate measures to meet the requirements of the DPDP.[90] Accordingly, this section attempts to lay down a minimum 'processor agreement' framework that makes remote monitoring governable under DPDP in practice.

We rely on GDPR and other comparable legislations providing for a binding contract to govern processing of personal data by the processor as well as certain minimum mandatory elements that should be included in the same, because accountability and the exercise of data-subject rights depend on what the contract empowers the controller to do. It is pertinent to highlight

---

[86] Digital Personal Data Protection Act 2023 (India), ss 8(3) and 13; Digital Personal Data Protection Rules 2025 (India), GSR 846(E) (13 November 2025), rr 6-8(3).

[87] *Uptron India Ltd v Shammi Bhan* [1998] Supreme Court of India, (1998) 6 SCC 538.; Digital Personal Data Protection Act 2023 (India), s 8(3).

[88] Digital Personal Data Protection Act 2023, s 2(k).

[89] Digital Personal Data Protection Act, 2023, s 8.

[90] European Data Protection Board, Guidelines 07/2020 on the concepts of controller and processor in the GDPR (Final, Version 2.1, adopted 7 July 2021) https://www.edpb.europa.eu/system/files_en?file=2023-10%2FEDPB_guidelines_202007_controllerprocessor_final_en.pdf accessed 22 January 2026.

that, the determination of their respective responsibilities of the fiduciary and the processor must regard the exercise of data principle's (employee) rights and the duties to provide information. Building on these comparative standards, this section proposes that a contract between the employer and the vendor is structured to impose enforceable limits and accountability mechanisms so that employee rights can be meaningfully exercised and fiduciary duties can be practically discharged. It then sets out the core clauses that should be treated as non-negotiable for monitoring procurement.[91]

It is crucial to highlight here that, before implementing contractual safeguards, the employer has to map out data the vendor collects, where it travels, who can access it, and which other service-providers are involved. It is crucial to provide these details in the contract, and without such mapping, it's extremely difficult to give instructions to the vendor or to enforce limits later.[92] Having mapped the relevant data flows and actors, the agreement must then concretely allocate responsibilities and set enforceable limits on the vendor's conduct. Accordingly, we outline below the core contractual terms that should be treated as non-negotiable in monitoring procurement. We draw extensively from UK and EU GDPR for this proposed framework.

At the outset, the agreement must clearly delineate roles: the employer as the Data Fiduciary and the vendor strictly as a Data Processor. This clarity is important because monitoring vendors could repurpose employee data for their own uses. EU guidance treats this separation of roles as central to ensuring accountability and that the data principal's rights are not diluted merely because processing has been outsourced. The contract must therefore record that the vendor processes data only on the employer's instructions, and must also allocate responsibility for employee-facing compliance.[93] Moreover, the agreement must include clear restrictions on the vendor's use of employee data, control over any onward processing through sub-processors, and enforceable duties in the event of a breach. It must also ensure that data is not retained beyond what is necessary, and any cross-border processing remain disclosed and subject to change-control. The following sub-sections outline recommendations for these non-negotiable clauses.

1. **Restricting use and preventing secondary processing:** The vendor must process monitoring data only for the employer's stated purposes and on documented

[91] Information Commissioner's Office (UK), 'What needs to be included in the contract?' https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/accountability-and-governance/contracts-and-liabilities-between-controllers-and-processors-multi/what-needs-to-be-included-in-the-contract accessed 22 January 2026.
[92] Ibid.
[93] GDPR-Info.eu, 'Art 28 GDPR, Processor' https://gdpr-info.eu/art-28-gdpr/ accessed 22 January 2026.

instructions and must not repurpose employee data for its own benchmarking, product improvement, or model training absent written instruction.[94]

2. **Control over sub-processors:** Monitoring data routinely passes through cloud hosts, analytics providers, and vendor support functions; thus, similar obligations under EU & UK law, the contract must require prior authorization and disclosure for sub-processors, so that onward processing does not occur.[95]
3. **Incident cooperation and disclosure timelines:** Controllers should face strict breach-notification timelines, while vendors (who are first to receive notice of breach) should inform employers without undue delay, making timely vendor escalation and structured cooperation central to compliance and to credible incident response.[96]
4. **Retention limits and verifiable deletion:** Retention terms should be specific, and deletion should be framed as an enforceable obligation, capable of being initiated by the fiduciary and verified through certification or audit.[97] This is consistent with the EU approach, reflecting the principle that processing should not continue indefinitely.
5. **Cross-border hosting transparency and change control:** The contract should require transparent disclosure of hosting locations and cross-border access, coupled with change-control.[98]

7. Remote Work Policies and Cross-Border Employment Compliance

As has been elaborated upon above, in remote work, monitoring can extend beyond workplace supervision and move into the employee's home environment, increasing the likelihood of third-party capture as well as privacy and dignity harms. In the UK, the ICO's workplace monitoring guidance captures this idea by highlighting that data protection law does not prohibit monitoring, but employers must ensure monitoring is carried out in a compliant manner, with careful attention to privacy impacts, particularly to ensure that the sanctity of the household isn't permeated.[99]

---

[94] Ibid.
[95] Information Commissioner's Office (UK), 'What does it mean if you are a processor?' https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/controllers-and-processors/controllers-and-processors/what-does-it-mean-if-you-are-a-processor/ accessed 22 January 2026.
[96] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation) [2016] OJ L 119/1, art 33.
[97] Information Commissioner's Office (UK), 'Storage limitation' (A guide to the data protection principles) https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-protection-principles/a-guide-to-the-data-protection-principles/storage-limitation/ accessed 22 January 2026.
[98] Regulation (EU) 2016/679 (General Data Protection Regulation) [2016] OJ L 119/1, art 44.
[99] Information Commissioner's Office (UK), Employment practices: monitoring at work (draft guidance, 11

Contemporary research on algorithmic management and monitoring warns that such systems can harden into automated performance governance, shifting power from human supervision to metrics that workers cannot meaningfully interrogate.[100] Trust research in telework similarly notes that surveillance practices can undermine workplace trust, creating incentives for "performative activity" rather than genuine productivity.[101] In legal terms, these dynamics increase the justification threshold for invasive modalities, because the harms are not only privacy harms, but also fairness harms: workers are disciplined not for proven misconduct, but for failing to conform to the system's proxy signals. An ideal remote monitoring policy should thus, should clearly define who is covered by monitoring and which devices or tools fall within scope, while also drawing a meaningful line between low-intrusion collection of personal data and more intrusive content. The policy should also set an express working-hours boundary so monitoring does not become continuous surveillance, and it should treat intrusive policies including continuous webcam use, audio capture, etc. as prohibited by default unless an exceptional necessity is documented and safeguards are specified.

Since remote monitoring can incidentally capture household members or other third parties, the policy must include concrete minimization and configuration controls to reduce that risk.[102] Finally, it should establish internal access controls and a documentation pathway for how monitoring outputs are used, particularly when they feed employment decisions, in line with DPDP's employment legitimate-use basis under Section 7(i) and the decision-use quality duty under Section 8(3).[103]

Cross-border employment compliance

Remote monitoring tools are often cloud-based, so employee data may be stored or accessed outside India through hosting providers, vendor support teams, or sub-processors. DPDP anticipates this by allowing cross-border processing, but it gives the Central Government the right to restrict transfers to specified countries by notification under Section 16.[104] This

---

October 2022) section 'Can we monitor workers?' https://ico.org.uk/media2/migrated/4021868/draft-monitoring-at-work-20221011.pdf accessed 22 January 2026.

[100] OECD, Algorithmic management in the workplace: New evidence from an OECD employer survey (OECD Publishing 2025) (OECD Artificial Intelligence Papers No 31) https://doi.org/10.1787/287c13c4-en accessed 22 January 2026.

[101] OECD, Teleworking, workplace policies and trust: A critical relationship in the hybrid world of work (OECD Publishing 2023) (OECD Policy Brief No 2023/01) https://doi.org/10.1787/64cd6e8e-en accessed 22 January 2026.

[102] *K S Puttaswamy (Retd) v Union of India* [2017] Supreme Court of India, (2017) 10 SCC 1.

[103] The Digital Personal Data Protection Act, 2023, s 8(3); The Digital Personal Data Protection Act, 2023, s 7(i).

[104] The Digital Personal Data Protection Act, 2023, s 16.

notification-based restriction model contrasts with the adequacy requirement prescribed under GDPR for allowing cross border processing,[105] it still creates a compliance requirement: employers must be able to identify whether their vendor architecture involves cross-border processing and must be able to respond if notifications tighten transfer routes.

Cross-border remote work also raises another legal issue: employment contracts are usually adhesion contracts,[106] and cross-border employers often insert foreign governing-law and forum clauses in standard form. In conflict of laws, such arrangements limit meaningful choice and raise questions about enforcement of foreign terms that may violate forum public policy. Indian doctrine already recognizes the problem of inequality of bargaining power in standard-form settings: the Supreme Court in ***Central Inland Water Transport Corporation v Brojo Nath Ganguly*** treated unconscionable employment terms as void under Section 23 of the Contract Act.[107] Comparatively, EU conflict rules make the employment point explicit. Article 8 of the Rome I Regulation allows parties to choose governing law, but that choice cannot deprive the employee of the protection of mandatory provisions that would apply absent the choice.[108] This approach is useful as a benchmark for the Indian context. In a remote-work setting where the employee works from India (and the monitoring affects dignity and livelihood), a governance policy should therefore proceed on the premise that Indian mandatory standards remain relevant irrespective of boilerplate foreign law labels, especially for core workplace protections and for the DPDP-linked governance duties that arise from processing personal data within India's regulatory framework.

8. Remedies, Disputes, and Enforcement Pathways

Remote monitoring isn't confined to internal management practices. Data of employees collected from employee monitoring software is often used to justify appraisals, suspension, or termination.[109] If the employee challenges it, the employer needs to justify the authenticity, fairness and reliability of such data. Thus, monitoring outputs inevitably travel into formal dispute settlement and enforcement settings; either through the DPDP framework or through employment-facing proceedings. Employee surveillance is thus, not merely a compliance

---

[105] Regulation (EU) 2016/679 (General Data Protection Regulation) [2016] OJ L 119/1, art 44.
[106] Albert A Ehrenzweig, 'Adhesion Contracts in the Conflict of Laws' (1953) 53 Columbia Law Review 1072 https://www.jstor.org/stable/1119003 accessed 22 January 2026.
[107] *Central Inland Water Transport Corporation v Brojo Nath Ganguly* [1986] Supreme Court of India, (1986) 3 SCC 156.
[108] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L 177/6, art 8(1).
[109] Digital Personal Data Protection Act, 2023, s 8(3).

question, but also an evidentiary and procedural one. Moreover, since most monitoring outputs are generated and stored within vendor systems, the enforceability of DPDP rights in disputes often depend on what the vendor contract secures. Under DPDP section 13 read with section 8(10),[110] the first pathway for redressal is the fiduciary's grievance redress mechanism, which is meant to protect employee rights against acts or omissions by the employer. Where this channel proves insufficient in resolving the grievance, the matter can escalate into the statute's enforcement architecture through the Data Protection Board, with an appellate route thereafter. Thus, DPDP enforcement relies on documentation to test the fiduciary's conduct.

Alongside this, monitoring material also enters employment dispute pathways through disciplinary proceedings and (where applicable) arbitration. It may be relied upon to establish misconduct, policy breach and poor performance; however, outcomes in such disputes often turn on whether the monitoring was authorized, fairly implemented, and supported by a reliable record. This section therefore explains these parallel enforcement tracks and shows why the governance architecture proposed in this paper reduces litigation risk. It makes monitoring capable of being assessed and defended because it produces a coherent trail of documentation. In such employment dispute pathways, monitoring outputs are often easy for employers to place on record, particularly at the stage of a domestic enquiry. The Supreme Court has repeatedly held that strict rules of evidence under the Indian Evidence Act do not apply to domestic enquiries; and that, logically probative material may be relied upon, so long as it has a reasonable nexus and credibility.[111] This is why employers frequently assume that vendor-generated monitoring logs, by themselves, will be sufficient to justify disciplinary action.

However, even where digital logs are placed on record, employment adjudication still tests whether the disciplinary process has a legally sustainable basis. The hon'ble Supreme Court in ***ECIL v. B. Karunakar*** treated the employee's meaningful opportunity to respond (including access to the enquiry report) as integral to a fair process.[112] Moreover, courts can interfere where the finding is effectively based on "no evidence" or is perverse. In ***Union of India v. H.C. Goel***, it was noted that a disciplinary conclusion cannot stand if it is not supported by any evidence.[113] Since DPDP's statutory design does not uniformly extend notice/access protections to employment processing, internal records and grievance-handling documentation are crucial for evaluating fairness and due process. The Supreme Court's Article 21

[110] Digital Personal Data Protection Act, 2023, s 8(10); Digital Personal Data Protection Act, 2023, s 13.
[111] *State of Haryana v Rattan Singh* [1977] Supreme Court of India, [1977] 2 SCC 491.
[112] Managing Director, ECIL v B Karunakar [1993] Supreme Court of India, [1993] 4 SCC 727.
[113] Union of India v H C Goel [1964] Supreme Court of India, AIR 1964 SC 364.

jurisprudence insists that state-linked deprivations of liberty must follow a fair and reasonable procedure,[114] and informational privacy is tied to dignity and autonomy.[115]When adverse employment action is justified through surveillance-derived material, the underlying monitoring implicates informational privacy and dignity interests that form a part of the fundamental rights under Article 21. This makes it harder for employers to rely on opaque or unbounded monitoring outputs without showing a defensible basis and safeguards.

This is why documentation quality becomes decisive. Surveillance evidence becomes open to being challenged when the data collection and processing is not authorized and bounded through a clear policy and notice framework. Comparative jurisprudence helps underline this.[116] Workplace monitoring is often reviewable through factors such as prior notice, the scope and intrusiveness of monitoring, legitimate aim, and safeguards against arbitrariness. Thus, the legality turns on justification and safeguards.

Thus, the need for a governance architecture for lawful monitoring becomes crucial. Workplace-monitoring guidance in comparative jurisdictions emphasizes that intrusive monitoring, especially when it informs employment decisions, must be designed with assessment and documentation built in from the outset.[117] If an employer wants to rely on monitoring, they must be able to explain and justify it with a record. Accordingly, a governance framework that integrates internal policies, vendor controls, and systematic record-keeping supplies the factual foundation through which monitoring becomes reviewable across DPDP enforcement and employment disputes. Such a Governance architecture reduces litigation risk because it makes monitoring reviewable on the record. It improves the employer's ability to resolve complaints at the grievance stage and strengthens defensibility if the matter escalates into DPDP enforcement or employment proceedings, because the monitoring becomes assessable on the record.

9. Governance Architecture Treated as Legally Necessary

A governance architecture is the institutional framework; including policies, procedures, records, and contractual controls through which an employer documents and audits employee monitoring in an accountable way. It is necessary because DPDP makes employers responsible

---

114 Maneka Gandhi v Union of India | [1978] Supreme Court of India, [1978] 1 SCC 248; The Constitution of India 1950, art 21.
115 *K S Puttaswamy (Retd) v Union of India* [2017] Supreme Court of India, (2017) 10 SCC 1.
116 *Bărbulescu v Romania* (Grand Chamber) App no 61496/08 (ECtHR, 5 September 2017).
117 Columbia Global Freedom of Expression, 'Case: Bărbulescu v Romania' https://globalfreedomofexpression.columbia.edu/cases/case-barbulescu-v-romania/ accessed 22 January 2026.

for remote monitoring systems that are vendor-operated, used for consequential decisions, and could also potentially be challenged. Without an institutional record, the employer cannot perform its duties or defend its actions towards the principal (employee).

Two comparative reference points reinforce why this must be institutional. First, the UN's 1990 Guidelines,[118] which treat privacy as minimum guarantees, presupposing that safeguards must be implemented through systems. Secondly, In comparable jurisdictions, data fiduciaries are expected to put measures in place and be able to demonstrate compliance, while processors/vendors are bound to act only as per instructions of the fiduciary.[119] In the EU and UK, employers are treated as controllers when they determine the purposes and means of employee-data processing, and workplace monitoring is regulated through the same core accountability logic that applies to other controllers (fiduciaries).[120] Monitoring is permitted, but only if it is carried out in a way that is compliant with data protection law, and employment-specific rules are expected to add "suitable and specific measures" for transparency and workplace monitoring rather than dilute obligations in article 88 of the GDPR.[121] In contrast, DPDP enables large parts of employment processing through a "legitimate use" route for 'employment purposes' as per Section 7(i),[122] while simultaneously making the employer responsible even where processing is carried out "on its behalf" by vendors and requiring processor involvement only under a valid contract (Sections 8(1) & (2)).[123] This combination, of a broad operational monitoring through vendors, continuing fiduciary responsibility makes a governance architecture legally necessary in India. It is the practical mechanism through which the fiduciary can translate statutory responsibility into demonstrable controls (purpose specification, vendor accountability, retention and breach readiness, and contestability) that can survive grievance escalation and formal challenge. With that in mind, the governance architecture for remote monitoring can be articulated as the following institutional components.

Monitoring Purpose Register under DPDP §7(i)

---

[118] UN General Assembly Resolution 45/95 (14 December 1990) UN Doc A/RES/45/95 https://docs.un.org/en/A/RES/45/95 accessed 22 January 2026.
[119] Regulation (EU) 2016/679 (General Data Protection Regulation) [2016] OJ L 119/1, arts 5, 24.
[120] European Data Protection Board, 'Guidelines 07/2020 on the concepts of controller and processor in the GDPR' https://www.edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-072020-concepts-controller-and-processor-gdpr_en accessed 22 January 2026; Information Commissioner's Office (UK), 'What are "controllers" and "processors"?' https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/controllers-and-processors/controllers-and-processors/what-are-controllers-and-processors/ accessed 22 January 2026.
[121] Regulation (EU) 2016/679 (General Data Protection Regulation) [2016] OJ L 119/1, art 88 and Recital 155.
[122] Digital Personal Data Protection Act, 2023, s 7(i).
[123] Digital Personal Data Protection Act, 2023, s 8(1)-(2).

DPDP's Section 7(i) permits processing for "purposes of employment" or safeguarding the employer from loss or liability, and even illustrates the category through examples such as preventing corporate espionage or maintaining confidentiality of trade secrets.[124] A purpose register could be a document that lists each monitoring and maps it to "employment purpose". The register should primarily record the data type, the specific Section 7(i) purpose statement, who can access it and where it is stored, whether it will feed HR decisions, as well as retention windows and deletion triggers. The register would thus function as the fiduciary's primary tool to demonstrate that each stream is genuinely tied to a Section 7(i) purpose, and to prevent function creep (where data collected slowly becomes a general productivity score, or is repurposed into new decision systems.[125]

Decision-Impact Protocol under DPDP §8(3)

Remote monitoring becomes legally risky when it turns into decision infrastructure. DPDP recognises this risk. Section 8(3) imposes a duty of completeness, accuracy, and consistency where personal data is likely to be used to make a decision affecting the Data Principal. Comparative jurisdictions treat evaluation/scoring (including performance at work), automated decision-making, and systematic monitoring as paradigmatic high-risk contexts. The Irish Data Protection Commission's guidance flags these criteria as indicators of high risk.[126] A decision-impact protocol, which would help operationalise DPDP compliance under section 8(3) should thus, define the decision points covered; require basic data-quality checks (missing data, false positives, known limitations of "idle time" or keystroke proxies), prohibit adverse action being taken mechanically, require a recorded human review; and provide an employee response window before any adverse action is taken.

Processor Contract Stack under DPDP §8(2), read with §8(1)

As has been discussed above, fiduciary obligations persist under DPDP even when processing is carried out through a processor (vendor), and that involving a processor must be under a **valid contract**. EU practice is useful as a benchmark for why this must be detailed: GDPR

---

[124] Digital Personal Data Protection Act, 2023, s 7(i).

[125] Bert-Jaap Koops, 'The Concept of Function Creep' (2021) 13(1) *Law, Innovation and Technology* 29; European Data Protection Board, 'Guidelines 3/2019 on processing of personal data through video devices' (Version 2.0, adopted 29 January 2020).

[126] Data Protection Commission (Ireland), Guide to Data Protection Impact Assessments (DPIAs) (October 2019) https://www.dataprotection.ie/sites/default/files/uploads/2019-10/Guide%20to%20Data%20Protection%20Impact%20Assessments%20%28DPIAs%29_Oct19.pdf accessed 22 January 2026.

Article 28 requires processor contracts and specifies that processors act only on documented instructions and accept auditability and chain controls.[127]

Security and Breach Runbook under DPDP §8(5) & (6)

DPDP requires the fiduciary to take reasonable security safeguards to prevent personal data breaches under Section 8(5) and to intimate breaches to the Board and affected Data Principals in the prescribed manner under Section 8(6).[128] In employee monitoring systems, breach preparedness is not merely a technical concern; it is a governance requirement, given the scale, sensitivity, and potential third-party capture inherent in remote monitoring data. Security and breach protocol should therefore be pre-defined. It should include provisions such as; clearly defining what counts as breach in monitoring systems, log preservation, internal responsibility allocation, employee-facing notification templates, and post-incident review.

Retention and Erasure Schedule under DPDP §8(7)

DPDP requires erasure once the purpose is no longer served (and, in relevant contexts, upon consent withdrawal), and it also requires the fiduciary to cause its processor to erase vendor-held data. Section 8(7) is one of the most operationally consequential obligations in DPDP, but its drafting leaves employers significant discretion, particularly in employment monitoring systems that generate continuous logs and derived analytics.[129] The provision requires a fiduciary to erase personal data ***"as soon as it is reasonable to assume that the specified purpose is no longer being served***," whichever is earlier. This is particularly problematic because, without an internal framework, employers and vendors can default to indefinite or overly long retention on the justification that monitoring data might be "useful later", precisely the kind of function creep that retention limitation is meant to prevent.[130]

Indian policy history itself treats retention limitation as an accountability burden that is nonetheless necessary. The 2018 Committee Report explains the logic of storage limitation: once processing ends, control can be lost and data is exposed to unauthorised copying/theft; it acknowledges periodic review is a compliance burden but says it is necessary to keep

[127] Regulation (EU) 2016/679 (General Data Protection Regulation) [2016] OJ L 119/1, art 28.
[128] Digital Personal Data Protection Act, 2023, s 8(5)-(6).
[129] Digital Personal Data Protection Act, 2023, s 8(7).
[130] Harshita Gupta and Dhaani Bharat Dave, '[In] Adequacy of the DPDP Act vis-à-vis Right to Privacy at Workplace' (2025) 10(1) *NUJS Journal of Regulatory Studies* 57, 59 to 60.

fiduciaries conscious of what data they hold and avoid future breaches.[131] A governance architecture must therefore convert Section 8(7) from a vague standard into clear, enforceable internal rules.

Grievance and Contestability Channel under DPDP §8(10); workflow supported by §13

DPDP requires fiduciaries to establish an effective grievance mechanism under Section 8(10), and separately recognises the Data Principal's right to grievance redressal against acts or omissions in relation to fiduciary obligations under Section 13.[132] A grievance and contestability channel should therefore specify what categories of grievances exist, what records must be produced, when escalation is mandatory, and how vendor assistance is triggered. UNGA 45/95 also presupposes such a remedial pathway: it frames interested-person access in intelligible form, rectification/erasure for unlawful or inaccurate entries, and provision of a remedy (including through a supervisory authority).[133]

Impact Assessment Practice

An impact assessment is a structured, written risk-review done before deploying (or expanding) a monitoring system. It documents: what data will be collected, why it is needed for a defined employment purpose, whether a less intrusive option could achieve the same aim, what risks the monitoring creates, and the safeguards that will be put in place. Its value is not just the conclusion, but the recorded reasoning so that legality and proportionality can be demonstrated later if the monitoring is challenged.[134] It also aligns with DPDP's decision-use discipline: where monitoring outputs are likely to be used to make decisions affecting employees, the fiduciary must ensure completeness, accuracy, and consistency, which must be built into the design and use of the system.

Comparative jurisprudence also highlights the importance of an impact assessment. The UK ICO's workplace monitoring guidance explicitly treats high-risk monitoring as a context where

---

[131] BN Srikrishna Committee Report, A Free and Fair Digital Economy: Protecting Privacy and Empowering Indians, 116 (2014).

[132] Digital Personal Data Protection Act, 2023, s 13.

[133] UN General Assembly Resolution 45/95 (14 December 1990) UN Doc A/RES/45/95 https://docs.un.org/en/A/RES/45/95 accessed 22 January 2026.

[134] Data Protection Commission (Ireland), 'Guide to Data Protection Impact Assessments (DPIAs)' (October 2019) https://www.dataprotection.ie/sites/default/files/uploads/2019-10/Guide%20to%20Data%20Protection%20Impact%20Assessments%20%28DPIAs%29_Oct19.pdf accessed 22 January 2026.

employers must carry out a DPIA.[135] Because monitoring can be intrusive and can affect workers' rights; the guidance is aimed at making employers assess and justify monitoring choices rather than treat monitoring as self-validating. The Irish Data Protection Commission describes a DPIA as a process to identify and minimise risks "as far and as early as possible," and frames it as a tool for demonstrating compliance.[136] The output of the assessment should be a short, fileable record: purpose, necessity/least-intrusive design choices, safeguards, and an explicit link to the other components (purpose register, decision-impact protocol, vendor contract obligations, and grievance handling).

10. Conclusion

Remote work has converted the home into a monitored workplace, and monitoring has shifted from narrow security logging to behavioural inference and, increasingly, to decision-relevant evaluation. Once monitoring outputs are placed in the causal chain of appraisal, promotion, compensation, etc; monitoring becomes a part of decision infrastructure. Legal analysis must therefore, attempt to understand whether the data and the inferences drawn from it are reliable enough to ground decisions that affect livelihoods, and whether workers have meaningful routes to contest the record. This paper's contribution has therefore been framed as a minimum legally necessary governance architecture, a structure that makes compliance demonstrable and monitoring reviewable. Where adverse employment action is justified through surveillance-derived material, the underlying monitoring implicates privacy and dignity interests associated with Article 21, [137] while employment adjudication continues to demand procedural fairness and sustainable evidentiary bases for disciplinary outcomes. In remote settings, these concerns intensify because monitoring can spill into the home. The practical consequence is that disputes will turn on what the employer can show on record.

DPDP's statutory design reinforces the need for institutional architecture. Section 7(i) permits non-consensual processing for "purposes of employment" and safeguarding the employer from loss or liability, but the same statute makes fiduciary responsibility non-delegable: obligations continue even where processing is carried out through processors, and processors must be

---

135 Information Commissioner's Office (UK), 'Data protection impact assessments (DPIAs)' https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/accountability-and-governance/data-protection-impact-assessments-dpias/ accessed 22 January 2026.

136 Data Protection Commission (Ireland), Guide to Data Protection Impact Assessments (DPIAs) (October 2019) https://www.dataprotection.ie/sites/default/files/uploads/2019-10/Guide%20to%20Data%20Protection%20Impact%20Assessments%20%28DPIAs%29_Oct19.pdf accessed 22 January 2026.

137 The Constitution of India 1950, art 21.

engaged under a valid contract. DPDP also imposes decision-use discipline where data is likely to be used to make decisions affecting the data principal, and it requires security safeguards, breach responsiveness, retention/erasure, and grievance redress mechanisms. These duties require internal protocols that can be audited and defended, precisely the governance elements set out in Section IX.

We propose two reforms. First, India should develop model procurement terms for monitoring vendors, so employers can control vendor processing. Second, employers should adopt a standard remote-monitoring policy that fixes clear boundaries and a contestability route tied to DPDP's grievance mechanism. Across both, a simple fairness baseline articulated under Article 21 of the constitution, should apply: no adverse employment action should rest solely on an automated score; decisions must be supported by reviewable reasons, human assessment, and a meaningful chance to respond.

ALGORITHMIC CONTROL AND THE FICTION OF INTERMEDIATION: RE-EXAMINING EMPLOYMENT STATUS IN INDIA'S PLATFORM ECONOMY

-Krish Sharma & Rohit Meena

Abstract

The paper investigates the legitimacy of excluding gig and platform workers in India as part of the employer-employee relationship given the ways in which digital labour platforms structure and regulate work. Although the Code on Social Security, 2020 officially acknowledges the existence of gig and platform workers, it presupposes that this work is not considered a part of the traditional employment. This paper refutes that belief by examining platform-based labour using the tests of doctrine prescribed under the Indian labour law. The paper employs the control test, integration test and multifactor test using a doctrinal and functional approach to the functioning of digital platforms. It demonstrates that the systems of algorithms assign work, oversee performance, impose discipline and control further access to work in ways that replicate and are often more severe than the traditional managerial control. The paper then considers the regulatory framework under the Code on Social Security and recent State-level efforts, showing how welfare-based regulation does not help in correcting the larger problem of employment status. The main conclusion is that conceptual tools to regulate platform work are already present in Indian labour law, but they have not been applied to digital labour. This disconnection means that platforms have employer-like authority without direct legal responsibility.

Introduction

Traditionally, the labour laws in India were designed for people who worked at factories and offices. However, according to the report by NITI Aayog from 2020-2021, [1] a total number of seventy- seven lakh workers were engaged in the gig economy. This number is expected to expand to 2.35 crore members by 2029-30. The old labour code left a growing number of gig

[1] NITI Aayog, 'Perspectives and Recommendations on the Future of Work India's Booming Gig and Platform Economy Policy Brief' (*Niti Aayog*, 2022) <https://www.niti.gov.in/sites/default/files/2023-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf>.

workers in a vulnerable position. The Code on Social Security, 2020 (hereafter referred to as Coss 2020) legally recognized “gig workers” and “platform workers”. [2]

The International Labour Organization classifies platform work into two broad categories: online crowd work, which involves digitally mediated tasks that are performed remotely across borders, and app-based work that is on demand in which platforms connect service providers to consumers for tasks performed in person which is often on a piece-rate basis. [3] This paper focuses on the latter form of platform work, which characterises services such as ride-hailing, food delivery, and home-based services. Even though, it recognises them as two separate categories, Coss 2020 proceeds on the assumption that these categories lie outside the purview of traditional employer- employee relationship.[4]

This paper argues that algorithmic management exercised by digital platforms perform core supervisory and disciplinary functions that are traditionally associated with employers, thereby satisfying the control and supervision test and rendering the categorical exclusion of gig workers from the employer- employee relationship under the Code of Social Security, 2020 as doctrinally unsound. [5]

<u>Doctrinal tests to determine employment under the Indian Labour Law</u>

Indian labour law jurisprudence has consistently adopted functional test to determine the existence of employee- employer relationship mostly relying on control, integration and multifactor test. This approach was reaffirmed in a recent Supreme court case of General Manager, UP cooperative Bank Ltd v Achchey Lal & Anr, [6]where the apex court undertook a comprehensive restatement of doctrinal tests that are applicable to determine the employee- employer relationship under legislations such as Industrial Dispute Act, 1947 [7]and Factories Act, 1948[8].

A. Control Test

[2] The Code on Social Security 2020.
[3] Valerio De Stefano, ‘The Rise of the “Just-In-Time Workforce”: On-Demand Work, Crowd Work and Labour Protection in the “Gig-Economy”’ (2016) 71 SSRN Electronic Journal.
[4] The Code on Social Security 2020.
[5] The Code on Social Security 2020.
[6] *UP Coop Bank Ltd v Achchey Lal*, 2025 SCC OnLine SC 2096.
[7] Industrial Dispute Act 1947.
[8] Factories Act 1948.

The control test traditionally refers to whether the person for whom the task is being performed has control over the manner and the means by which the result is to be accomplished. [9]One of the earliest case that determined the test of “direction and control” is the case of Dharangadhara Chemicals Works Ltd v State of Saurashtra. [10] In this case, *agarias* (salt pan workers) manufactured salt on a seasonal basis on a land that was allotted to them in a *patta* system. These *agarias* did not have fixed working hours, they did not maintain any muster rolls and they did not have rules as regards to leave or holidays. They could even engage extra labour by making payments to these labourers. The Court held that to establish a relationship of employment, it is pertinent to look into whether the employer had the “control of the manner of work that was done”. The court further stated that what “nature and control” meant in one industry would be different for different kinds of work and it would depend upon the nature of work. The true difference between the worker and the independent contractor lies on whether the individual has agreed to perform the work personally rather than merely undertaking the work be completed. A person does not lose the status of being a workman merely because he has taken assistance from others, even if those persons are paid or controlled by him. The obligation of personal service is a decisive factor.

B. Organization (Integration Test)

The Supreme Court in General Manager, UP cooperative Bank Ltd v Achchey Lal & Anr,recognized that control test might be insufficient in nature as to determine the nature of employment. [11] The court observed that its reliance on the control test was viable when the nature of work conducted was that of agrarian nature. This was because the masters exercised more control over the workers because they possessed more knowledge, skill and experience. The organization or integration test examines the extent to which a worker’s activities are incorporated into the hirer’s principal business. A higher degree of integration determines a higher likelihood of an employment relationship. When this test is combined with the control test, it allows even professional or skilled workers to be classified as employees despite the limited direct supervision over the manner in which the work is to be performed. To court relied on the case of Silver Jubilee Tailoring House v Chief Inspector of Shops and Establishments, where the court first shifted from the control test as a sole determinative factor. [12]

---

[9] F Bruce Kulp, ‘Labor Law: Independent Contractor Status: Extension of the Right of Control Test’ (1963) 62 Michigan Law Review 127 <https://www.jstor.org/stable/1286498> accessed 9 October 2019.
[10] *Dharangadhara Chemical Works Ltd v State of Saurashtra*, (1956) 2 SCC 636.
[11] *UP Coop Bank Ltd v Achchey Lal*, 2025 SCC OnLine SC 2096.
[12] *Silver Jubilee Tailoring House v Chief Inspector of Shops & Establishments*, (1974) 3 SCC 498.

In *Silver Jubilee Tailoring House v Chief Inspector of Shops and Establishments*, [13]the dispute concerned whether tailors engaged by a tailoring establishment could be classified as employees despite the absence of continuous supervision and the presence of certain flexible working arrangements. The workers were paid on a piece-rate basis, were not required to work fixed hours, and were free to accept or decline work on particular days. Some workers were also permitted, with the employer's consent, to take unfinished garments home for stitching.

Despite these features, the Supreme Court held that an employer–employee relationship existed. The Court noted that the workers performed work that was integral to the principal business of the tailoring establishment, largely operated from the employer's premises, and used machinery and infrastructure provided by the employer. Importantly, the employer retained the authority to inspect the finished garments, reject defective work, and require rectification, thereby exercising ultimate supervisory control over the quality and performance of work.

The Court emphasised that the absence of rigid working hours, the ability to work part-time, or the performance of work for other establishments did not, by themselves, negate an employment relationship. What was determinative was the worker's obligation to perform work personally and their functional integration into the employer's business under the employer's ultimate authority. On a cumulative assessment of these factors, the Court concluded that the workers were employees within the meaning of the applicable labour legislation.

C. Multifactor Test

As more complex cases started reaching to the Supreme Court, the court moved its approach from a single determinative factor and adopted a multifactor approach to determine the relationship of employment. The multifactor approach requires the court to determine an array of factors such as the degree of control exercised over the work, ownership of tools and equipment, integration of the worker into the employer's organisation, allocation of profit and loss , the power of appointment and dismissal of the employee , the method of remuneration, and the right to supervise the manner in which work is performed.

This approach has been particularly significant in cases involving allegations of sham or camouflage arrangements designed to obscure real employment relationships. In *Steel*

[13] ibid.

Authority of India Ltd. v National Union Waterfront Workers, [14] the Court held that where such sham arrangements exist, the protections of labour law cannot be defeated through contractual structuring, and workers may be treated as direct employees for the purposes of raising industrial disputes. However, the identification of sham arrangements is not a pure question of law but is a factual determination that must be made on the basis of evidence.

Elaborating on this principle, the Court in *Workmen of Nilgiri Coop. Marketing Society Ltd. v State of Tamil Nadu* emphasised the need to pierce the contractual veil and examine factors such as the authority to appoint and dismiss workers, [15] the identity of the paymaster, the extent of supervision and control, the nature of the work performed, the character of the establishment, and the employer's right to reject work. The Court clarified that these factors are neither exhaustive nor uniformly weighted, and their relevance must be assessed in light of the specific facts of each case.

Similarly, in *Bengal Nagpur Cotton Mills v Bharat Lal*, [16]the Court distilled the inquiry into two central considerations for identifying the true employer in triangular arrangements: whether the principal employer pays wages directly and whether it exercises effective control and supervision over the workers' activities. These factors were treated as particularly significant in distinguishing genuine contracting arrangements from disguised employment.

More recently, the Supreme Court has refined the multifactor approach to reflect the realities of modern employment. In *Sushilaben Indravadan Gandhi v New India Assurance Co. Ltd*[17], the Court reaffirmed the multifactor test while prioritising indicators such as control over the manner of work, the degree of integration into the employer's business, the mode of remuneration, and economic control over the worker. Notably, the Court endorsed the standard of a "sufficient degree of control" rather than insisting on "effective and absolute control," recognising the need for flexibility in adapting the test to diverse forms of work. This refinement underscores the Court's consistent position that employment classification must remain a contextual and fact-sensitive inquiry. The Court's repeated emphasis on the power of appointment, suspension, and dismissal further reinforces that control over the continuation of work is a central indicator of employment.

Algorithmic Management and Employer Control in Platform Work

[14] *SAIL v National Union Waterfront Workers*, (2001) 7 SCC 1.
[15] *Workmen of Nilgiri Coop Mkt Society Ltd v State of Tamil Nadu*, (2004) 3 SCC 514.
[16] *Bengal Nagpur Cotton Mills v Bharat Lal*, (2011) 1 SCC 635.
[17] *Sushilaben Indravadan Gandhi v New India Assurance Co Ltd*, (2021) 7 SCC 151.

Having outlined how the doctrinal framework outlines how employer-employment relationship is determined in Indian labour law jurisprudence, this section applies these doctrinal tests to the model of platform mediated work and argues that algorithmic management exercised by digital platforms replicates and, in some instances, it intensifies the form of control that is exercised by the employers. Digital platforms that are operating in India such as transport, food and home services, allocate labour through software driven systems that allocate tasks, monitor performance and enforce compliance. Indian law first defined aggregator in the CoSS 2020 in Section 2(2) as a digital intermediary or a marker place through which a buyer could get connected with the seller or the service provider. [18]The gig economy involves a triangular relationship consisted of the consumers who avail a specific service, the platform- based gig worker who is paid for the services rendered by him and the aggregator who connects the consumer to the platform based gig worker. [19]Platforms such as Zomato, Swiggy, Ola and Urban Company are aggregators that exemplify this model of platform mediated work through algorithmic allocation, performance metric and automated disciplinary mechanisms.

Contemporary platform mediated work is governed by algorithmic management[20]. This term is used to donate systems in which instead of human supervisors, software are used to perform core managerial functions. These functions include allocating work, monitoring performance, evaluating qualities and enforcing compliance. Platform work uses cloud-based technology to "match" workers with consumers. Various Scholars often denote that these platforms exercise control through algorithmic task management, customer- rating systems, performance matrix and automated sanctions which include loss of access of work or deactivation.

Importantly, algorithmic management does not eliminate managerial authority. It reorganises it. [21]The use of algorithms structures workers' choices, disciplines deviation, and retains ultimate authority over continued access to work. Through automated monitoring systems and automated decision-making systems, platforms regulate performance, allocate tasks, and impose sanctions without direct human intervention.[22]

---

[18] The code on social security 2020, s 2(2).
[19] SC Srivastava, 'Employment Status of Digital Platform Workers' (2010) *Economic and Political Weekly* <https://www.epw.in/journal/2024/9/special-articles/employment-status-digital-platform-workers.html> accessed 3 April 2025.
[20] Kathleen Griesbach, 'Algorithmic Control in Platform Food Delivery Work' (2019) Socius 5 <https://www.mendeley.com/catalogue/19381e22-a1bd-3602-813d-27f95d03c5cf/> accessed 3 February 2026.
[21] ibid.
[22] Veena Dubal and Vitor Filgueiras, 'Digital Labor Platforms as Machines of Production' Yale Journal of Law & Technology <https://yjolt.org/sites/default/files/dubal_filgueiras_26yalejltech560.pdf> accessed 3 February 2026.

Platform-based delivery work in India is organised through digitally mediated systems that exercise a high degree of control over workers' conduct, performance, and continuation of work. A study conducted by National Law School of India University focused on food delivery workers engaged with Swiggy, Zomato, and Uber Eats in Karnataka to demonstrate that these platforms prescribe detailed conditions governing how work is to be performed. [23]

Workers are required to comply with platform-mandated standards relating to uniforms, branding, and presentation. Delivery personnel are expected to wear company-branded apparel and use insulated delivery bags bearing the platform's logo. Compliance with these requirements is monitored digitally and through customer feedback and failure to adhere to appearance and conduct norms adversely affects worker ratings and future task allocation.

Platforms continuously track workers through GPS-based location monitoring. This allows platforms to supervise routes, delivery timelines, and time spent on each task. Delays, deviations, or repeated order rejections are recorded by the system and reflected in performance metrics. These metrics directly affect the volume of work assigned to a worker and their continued access to the platform.

Customer rating systems function as a key disciplinary mechanism. Workers are required to maintain a minimum rating threshold. Ratings are generated after each delivery and are aggregated into a performance score. Workers are not informed of the precise weightage given to ratings, cancellations, or acceptance rates. However, a drop below prescribed benchmarks results in temporary suspension or permanent deactivation. A report by Paigam noted that 87 percent of the delivery persons reported being affected by the issue of ID blocking and deactivation. [24]This power to unilaterally terminate access to work mirrors the employer's power of dismissal.

Although platforms describe task allocation as optional, repeated refusal of orders leads to reduced visibility on the app and fewer future assignments. In practice, workers are compelled to accept orders to remain active on the platform. This constrains any meaningful autonomy over the manner and timing of work. The apparent flexibility is therefore limited by algorithmic incentives and penalties.

---

[23] Kavya Bharadkar and others, 'Is Platform Work Decent Work? A Case of Food Delivery Workers in Karnataka' <https://www.nls.ac.in/wp-content/uploads/2023/04/OCCASIONAL-PAPER-SERIES-10.pdf> accessed 20 January 2026.

[24] 'A REPORT by PAIGAM, UNIVERSITY of PENNSYLVANIA 2024 Report on Working and Living Conditions of App-Based Workers in India PRISONERS on WHEELS?' (2024) <https://tgpwu.org/wp-content/uploads/2024/03/Report-Final-Print-1.pdf>.

The work performed by delivery partners is not incidental to the platform's operations. Delivery services form the core business through which platforms generate revenue and maintain consumer demand. Workers perform this work personally and are integrated into the platform's operational structure. The platform controls pricing, assigns tasks, collects payment from consumers, and determines the worker's remuneration after deductions.

When these features are examined cumulatively, the relationship between the platform and the worker exhibits the core attributes of an employer–employee relationship. The platform does not merely facilitate transactions between independent actors. It actively structures how work is performed by prescribing standards of conduct, appearance, and performance, and by continuously supervising compliance through digital monitoring systems.

Control is exercised through algorithmic allocation of tasks, real-time GPS tracking, performance metrics, and customer ratings, all of which directly influence a worker's access to future work and continued engagement with the platform. The platform's power to suspend or permanently deactivate workers for failing to meet prescribed benchmarks operates as a decisive form of disciplinary control over the continuation of work.

Further, the work performed by platform-based delivery workers is fully integrated into the core business of the platform. [25] Delivery services are not ancillary or optional activities but constitute the primary means through which the platform generates revenue and fulfils consumer demand. Workers perform this work personally, under conditions set unilaterally by the platform, and remain economically dependent on the platform's systems for task allocation and remuneration.

Although supervision is not exercised through a human supervisor in a physical workspace, the substitution of managerial oversight with algorithmic systems does not dilute the degree of control exercised. Instead, it reorganises traditional forms of supervision into a technologically mediated structure that continues to regulate the manner, timing, and quality of work. The legal significance of control lies in its effect, not its form. Viewed in this manner, the platform's reliance on algorithmic management satisfies the functional indicators of control and organisational integration traditionally associated with an employment relationship.

---

[25] Kavya Bharadkar and others, 'Is Platform Work Decent Work? A Case of Food Delivery Workers in Karnataka' <https://www.nls.ac.in/wp-content/uploads/2023/04/OCCASIONAL-PAPER-SERIES-10.pdf> accessed 20 January 2026.

Crucially, platforms and algorithmic systems do not operate independently or exercise autonomous will. Algorithms do not function spontaneously, nor are platforms self-directing entities. They are designed, deployed, and controlled by firms to organise production and manage labour. In this sense, algorithmic management must be understood as a tool through which firms exercise managerial authority, rather than as a departure from traditional employer control.[26]

<u>The Code on Social Security 2020 and the Limits of Welfare-based Regulation</u>

The parliament enacted the Code of Social Security in 2020 in which it for the first time formally recognised gig workers and platform workers within the Indian law. The definitions are as follows-

Section 2(35) - "gig worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship. [27]

Section 2(60) - "platform work" means a work arrangement outside of a traditional employer employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment. [28]

Section 2(61) - "platform worker" means a person engaged in or undertaking platform work; [29]

These definitions acknowledge that platform-based work is structured and dependent on a single entity that control access to work and income. [30] The Code establishes a Social Security Fund to which aggregators must contribute between one and two percent of their annual turnover, subject to a cap of five percent of payments made to workers. This represents the first statutory financial obligation imposed on platforms for the welfare of the workers whose labour

[26]Veena Dubal and Vitor Filgueiras, 'Digital Labor Platforms as Machines of Production' Yale Journal of Law & Technology <https://yjolt.org/sites/default/files/dubal_filgueiras_26yalejltech560.pdf> accessed 3 February 2026.
[27] The Code on Social Security 2020, s 2(35).
[28] The Code on Social Security 2020, s 2(60).
[29] The Code on Social Security 2020, s 2(61).
[30]'The Code on Social Security, 2019' (*Prsindia.org*2019) <https://prsindia.org/billtrack/prs-products/prs-legislative-brief-3412> accessed 22 January 2026.

generates their revenue. The Code also enables the Central Government to notify schemes providing benefits such as accident insurance, health and maternity benefits, and provides for registration through the e-Shram portal, [31] allowing benefits to be portable across platforms. While these measures do improve upon the earlier position of total exclusion, they still remain welfare-based rather than rights-based and do not limit platforms' power to allocate work, change pay structures or deactivate workers without notice.

Labour falls within the Concurrent List of the Constitution, allowing both Parliament and State legislatures to regulate labour and social security. This enables States to supplement the central framework with additional protections for platform workers, and some have begun exploring state-level welfare boards and registration mechanisms.

Draft laws in Telangana, [32] Karnataka [33]and Jharkhand[34] and the Rajasthan Act [35]all define gig and platform work as falling outside the employer-employee relationship. However, meanwhile, these laws govern the issues which are traditionally linked to the employment, such as algorithmic transparency, performance ratings, deactivation, grievance redressal and termination. The example of Karnataka and Telangana, in particular, needs platforms to reveal the way ratings, algorithms and data are utilized to influence the state of workers and the requirement to notice them before the appraisal. These are automatically the provisions that recognize that platforms have the managerial control over the workers. But rather than accepting this as a part of employment, the laws seek to govern it by using welfare boards and registration. An example of how this model exposes workers to unregulated platform power is seen in the Rajasthan law, which lacks algorithmic transparency and termination protections. These measures do not resolve the deeper structural problem identified in this paper. Platforms continue to exercise employer-like control over labour while being legally treated as mere intermediaries.

Coss 2020 therefore represents an important first step towards recognition and social protection, but it does not address the fundamental mismatch between the reality of platform-based control and the legal classification of platform workers.

Comparative approaches to platform work and employment classification

---

[31] 'Labour Reforms: Formalising and Safeguarding India's Gig & Platform Workforce' (*Pib govin,* 2025) <https://www.pib.govin/PressReleasePage.aspx?PRID=2200767&reg=3&lang=1>.
[32] The Draft Telangana Gig and Platform Workers (Registration, Social Security, and Welfare) Bill 2025.
[33] The Karnataka Platform based gig workers (social security and welfare) bill 2025.
[34] Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill 2025.
[35] Rajasthan Platform Based Gig Workers (Registration and Welfare) Act 2023.

The creation of "hybrid" or "intermediate" or "third" category specifically for platform work has been suggested to regulate gig and platform work. [36] This takes away the necessary protections for these workers to qualify for employment status in order to access necessary protections. The line between employment and self- employment has blurred due to technology. A digital platform is a means for production and it neither has independent will nor do they function independently and they are designed and used by the firms to produce services or goods often through management or labour.

While some jurisdictions have responded to platform work by creating intermediate or hybrid legal categories, others have confronted the problem directly by examining how platforms actually organise and control labour. Courts have increasingly focused on the functional reality of platform-mediated work rather than the contractual labels used by companies. A leading example of this approach can be seen in the decision of the United Kingdom Supreme Court in *Uber BV v Aslam*. [37] This case demonstrates how algorithmic control can ground labour law protection even in highly flexible, app-based work arrangements.

In *Uber BV v Aslam*, the UK Supreme Court held that Uber drivers are "workers" under the Employment Rights Act 1996 and not independent contractors. The Court focused on the reality of how Uber organised and controlled work rather than the contractual labels used by the company.

The Court found that Uber exercised extensive control over drivers in five keyways. First, Uber fixed the fares for each ride and drivers were not permitted to charge more than the amount calculated by the app. Uber also determined its own service fee, which it deducted from drivers' earnings. Second, the contractual terms governing how drivers provided services were unilaterally set by Uber, leaving drivers with no ability to negotiate. Third, Uber monitored drivers' acceptance and cancellation rates, and drivers who failed to meet the prescribed thresholds could be automatically logged off the platform. Fourth, Uber controlled the quality of service through a passenger rating system in which low ratings led to warnings and ultimately termination. Fifth, Uber restricted communication between drivers and passengers to prevent any independent relationship from forming outside the platform.

---

[36] Veena Dubal and Vitor Filgueiras, 'Digital Labor Platforms as Machines of Production' Yale Journal of Law & Technology <https://yjolt.org/sites/default/files/dubal_filgueiras_26yalejltech560.pdf> accessed 3 February 2026.
[37] *Uber BV v Aslam* [2021] UKSC 5.

On the basis of this continuous supervision, economic control, and disciplinary authority, the Court concluded that Uber drivers were in a subordinate position and therefore qualified as “workers”, an intermediate status between employees and the self-employed. While they were not treated as full employees, they were entitled to key labour protections such as minimum wage and paid leave.

In *Dynamex Operations West v Superior Court* (2018), [38] the Supreme Court of California adopted a strong presumption of employment through the “ABC test”. Under this a worker is treated as an employee unless the hiring entity proves that the worker is free from control, performs work outside the company’s usual business, and operates an independent trade. This made it difficult for platform companies to classify gig workers as independent contractors where they exercised organisational and economic control.

However, this legal shift was soon diluted through legislative and political intervention. California’s AB5, which codified *Dynamex*, created wide exemptions, and Proposition 22, backed by platform companies, allowed firms such as Uber and Lyft to continue treating drivers as independent contractors. Courts later upheld this carve-out. More recently, the US Department of Labor has returned to a multifactor test that emphasises control, integration and economic dependence.

California thus illustrates both the strength of functional employment tests and the persistent resistance of platforms to employment classification.

In contrast,[39] in several other jurisdictions which include Brazil, Australia, Thailand, Indonesia and parts of Latin America, gig and platform workers continue to be treated as independent contractors. Courts and legislatures in these countries have relied heavily on formal contractual labels and flexibility of work rather than on the actual degree of control exercised by platforms. This has resulted in most platform workers being excluded from labour law protections despite growing evidence of platform supervision and economic dependence.Bottom of Form

Conclusion

The current paper has revealed that Indian labour law already has the conceptual and doctrinal tools necessary to react to platform work. The control test, the integration test, and the

---

[38] *Dynamex Operations West v Superior Court* 4 Cal 5th 903 (2018).
[39] SC Srivastava, ‘Employment Status of Digital Platform Workers’ (2010) *Economic and Political Weekly* <https://www.epw.in/journal/2024/9/special-articles/employment-status-digital-platform-workers.html> accessed 3 April 2025.

multifactor approach were created to secure workers in the very type of unequal and shifting labour arrangements in which platform work has become. Applying these tests to the reality of digital labour, the conclusion is inevitable. Platforms do not simply facilitate work. They plan it, control it, assess it, and penalise nonconformance to it.

It does not make this control less powerful just because it is performed by means of algorithms, not human managers. To a great extent, it intensifies it. The income, reputation and future ability to work of a delivery worker is based on the opaque rating systems, GPS monitoring, and automated deactivation. Behind each algorithm is a company that manufactures, implements and profit out of these systems. What seems to be technological neutrality is in fact a strong managerial power.

The Code on Social Security, 2020 is an important step toward acknowledging the gig and platform worker but falls short at addressing such an unequal power dynamic. The relationship between the employer and the employee also helps the law in the outsourcing of these workers to enable the platforms to maintain the strong grip on livelihoods without being subjected to the related responsibilities of the employers. Welfare programs can offer relief, but it cannot replace the dignity, steadiness and the law that come with employment status.

As experience of other jurisdictions demonstrates, this result is not predetermined. The recognition of the necessity of labour safeguards has been made by courts which have not considered the labels in a contract but have assessed how platforms in fact structure work. The same is the choice that India has. Since millions of workers rely on digital platforms to make a living every day, they cannot afford to have technology implemented as a veil behind which accountability is evaded by the law. Digital work is a possibility, yet the necessity of fairness, security and justice in labour is deeply human.

LOGGED IN AFTER HOURS: THE RIGHT TO DISCONNECT AND THE FUTURE OF WORK IN INDIA

-Harsh Karothiya & Himanshu Prajapati

Abstract

The contemporary discourse on the right to disconnect may be understood through the logic of the game Tetris. *In the game, distinct blocks fall steadily, and the player must arrange them efficiently to clear complete lines; as long as the speed remains manageable, the system functions smoothly. The challenge arises when the pace accelerates, gaps emerge between blocks, lines fail to clear, and unresolved fragments begin to pile up until the game inevitably ends. A similar dynamic operates in modern workplaces. As long as the volume and frequency of work remain reasonable, employees are able to cope, recover, and remain productive. However, in an always-on work culture characterised by constant availability, after-hours engagement, and blurred temporal boundaries, gaps begin to appear in the form of stress, burnout, and mental exhaustion. These unresolved pressures accumulate over time, often culminating in serious physical and psychological consequences. The right to disconnect emerges as a necessary regulatory intervention to control the "speed of the blocks" by restoring boundaries, ensuring recovery time, and preventing the systemic piling up of work-related harm. This paper, while adopting a doctrinal methodology, examines the right to disconnect as a response to the intensification of work in the post-pandemic, digitised economy. Section I conceptualises the right to disconnect and situates it within the broader phenomenon of always-on work culture, drawing on several empirical studies. Section II analyses comparative approaches adopted in foreign jurisdictions to regulate work connectivity and protect employee well-being. Section III critically evaluates the current Indian legislative landscape, with specific focus on the Occupational Safety, Health and Working Conditions Code (Amendment) Bill, 2025, and the Right to Disconnect Bill, 2025, identifying both their normative promise and structural limitations. Finally, Section IV advances the author's recommendations for a more robust, constitutionally grounded, and enforceable framework for the right to disconnect in India, aimed at ensuring that work remains sustainable before the system reaches "game over."*

Keywords: Always-On Work Culture, Employer's Obligation, Employee Well-Being, Legislative Framework, Right to Disconnect.

I. The Normalisation of Constant Availability: Changing Norms of Work Engagement

In late September 2024, some news reports related to a particular incident gained traction, which led to significant public discussions about contemporary workplace culture in India. The tragic demise of Anna Sebastian Perayil, a 26-year-old Chartered Accountant employed with S.R. Batliboi, an Indian affiliate of EY Global, became a critical inflection point in this discourse.[1] Although the immediate cause of death was reported as cardiac arrest, the surrounding circumstances, as narrated by her family and several other former and current employees across sectors, pointed towards an unbearable and arguably inhuman intensity of work-related pressure.[2] The incident unsettled the prevailing narrative of professional success and productivity, compelling a broader reckoning with the intensification of work expectations, particularly those extending beyond formal working hours, and their implications for employee well-being.

While Anna Perayil's case drew national attention because of its tragic outcome, the underlying phenomenon it exposed was neither sudden nor anomalous. Expectations of extended availability, late-night deliverables, and informal after-hours engagement had already become intrinsic in several segments of the Indian workplace culture, especially within the organized sector employment, such as professional services, consulting, and technology-driven industries. However, a decisive structural shift in the workplace paradigm was marked during the COVID-19 pandemic. The rapid adoption of work-from-home and hybrid models, combined with accelerated digitisation, fundamentally altered how work was organised and experienced. Digital tools enhanced connectivity, coordination, responsiveness, and operational efficiency; yet they simultaneously dissolved the already fragile boundaries separating professional and personal life. The home ceased to function as a site of temporal detachment, and connectivity increasingly translated into an expectation of constant accessibility rather than occasional communication.[3]

Empirical evidence substantiates the claim that this transformation has significantly intensified after-hours work engagement. A 2021 empirical study offers particularly revealing insights

---

[1] Cherylann Mollan, 'Death of Indian employee sparks debate on 'toxic work culture' BBC News (Mumbai, 5 September 2024)

[2] Ibid

[3] Audra I. Mockaitis, Christina L. Butler, Adegboyega Ojo, 'COVID-19 pandemic disruptions to working lives: A multilevel examination of impacts across career stages,' (2022) Vol. 138, 103768 JVB <https://www.sciencedirect.com/science/article/pii/S0001879122000793?via%3Dihub> accessed 4 February 2026

into the effects of remote work. Through a comparative analysis of work-from-home (WFH) employees and office-going employees, the study found that although overall stress levels among both groups remained broadly comparable, work-related burnout was significantly higher among WFH employees.[4] This distinction is analytically important. It indicates that remote work arrangements do not merely increase general psychological stress, but instead intensify exhaustion arising specifically from work. Such burnout is driven by prolonged work engagement extending beyond designated working hours and by the erosion of temporal boundaries between work and personal life, whereby professional obligations increasingly encroach upon time meant for rest and recovery. Rather than reflecting episodic or situational stress, these findings point to a deeper structural problem with long-term implications for workers' mental and physical well-being. A recurring sentiment was expressed by several respondents in the study, *"I'm not working from home; I'm living at work."*[5] More importantly, burnout exhibited a strong positive correlation with perceived stress, which highlighted that the source of strain lay in sustained work engagement rather than contextual anxieties associated with the pandemic. The same study observed that individuals with prior experience of remote work reported higher burnout levels, suggesting that prolonged exposure to this kind of working model normalises extended availability rather than mitigating its adverse effects.

These findings also align with broader labour statistics, as according to the data "Statistics on working time" published by ILOSTAT, International Labour Organisation, approximately 51 per cent of India's workforce works more than 49 hours per week, placing the country among those with the longest working hours globally.[6] This finding is indicative of a work environment that marks disequilibrium between employers and employees, where employers have a determining say in setting the standards of work engagement. Complementing this data, a large-scale international survey conducted by Walr between August and September 2023 found that although 85 per cent of employees globally reported that their organisations encouraged work–life balance, 78 per cent of employees in India experienced some form of job burnout attributable to work-related stress, manifesting in physical and emotional

---

[4] Neha Gangwar, Sivana Andrea D'Costa, 'Impact of Working from Home on Burnout and Stress in Indian Millennials after the COVID-19 Breakout,' (2021) Vol. 11:6 AJBMR <https://www.hilarispublisher.com/open-access/impact-of-working-from-home-on-burnout-and-stress-in-indian-millennials-after-the-covid19-breakout.pdf> accessed 4 February 2026

[5] Ibid

[6] International Labour Organization, 'ILOSTAT— Statistics on working time' <https://ilostat.ilo.org/topics/working-time/> accessed 4 February 2026

exhaustion.[7] The quantitative reality of this average working time is reinforced by global studies on work connectivity behaviour after hours.

A recent research published in 2025 surveyed 250 government employees in Azerbaijan, examined the "constant ping" of after-hours work-related communication, which demonstrated that persistent connectivity significantly increases burnout and turnover intention (inclination to leave their current job), operating through chronic resource depletion rather than discrete workload spikes.[8] Burnout here is not episodic fatigue; it reflects chronic work engagement without recovery, which is central to an always-on culture. There is a clear shift denoting that work engagement has been transformed from task-based commitment into expectations of continuous responsiveness.[9] And what can be seen as the most significant takeaway from this is that employees stay connected not because they want to, but because refusal carries implicit professional risk. After-hours connectivity is often maintained even when employees perceive it negatively because there is a systematic deployment of practices of coercive normalisation of this kind of work culture.

Other studies reveal that while after-hours connectivity may momentarily enhance job control or perceived engagement, it simultaneously generates work–family conflict, and erosion of recovery and relaxation time, which an employee requires to ensure optimal mental health and thereby sustainable productivity. The side effects of prolonged after-hours work are strongly associated with long-term psychological distress. After-hours work connectivity is normalised and institutionalised.[10] "Voluntary" extra-role work increasingly occurs outside formal working time. Collectively, these findings indicate that leisure, rest, and recuperative time are increasingly encroached upon, converting what were once periods of disengagement into extensions of the working day.

The health consequences of such sustained engagement are neither abstract nor speculative. Burnout, chronic stress, anxiety, hypertension, and sleep disruption, which are recurrently documented across studies, are well-established risk factors for cardiovascular and other

---

[7] UKG India, '89 % of employees in India claim to be highly motivated by challenges and extra responsibility at work, survey conducted by UKG' <https://www.ukg.in/company/newsroom/89-employees-india-claim-be-highly-motivated-challenges-and-extra-responsibility-work-survey-conducted-ukg> accessed 4 February 2026

[8] Dilara Rasulova, Cem Tanova, 'The constant ping: Examining the effects of after-hours work connectivity on employee turnover intention' (2025) Volume 254, 104789 AP <https://doi.org/10.1016/j.actpsy.2025.104789> accessed 4 February 2026

[9] Ibid

[10] Lijun Chen and Shimin Zhang, 'The Dual Effects of Work Connectivity Behavior After-Hours on Employee Behaviors: Balancing Psychological Job Control and ICT Anxiety' (2025) 15(6), 796 Behavioral Sciences <https://www.mdpi.com/2076-328X/15/6/796> accessed 4 February 2026

physical health complications.[11] The relationship between mental strain and physical harm thus renders the costs of always-on work culture cumulative and potentially irreversible. Importantly, these harms are not confined to individual vulnerability; they are structurally produced by organisational models that equate availability with commitment and responsiveness with performance.

Paradoxically, the same model undermines productivity over time. Empirical research consistently shows that uninterrupted work without adequate recovery diminishes cognitive capacity, creativity, and long-term engagement. Studies on after-hours connectivity demonstrate that although short-term responsiveness may improve, sustained burnout reduces job satisfaction and increases employee attrition. Rest, personal time, and psychological detachment are therefore not antithetical to productivity but essential preconditions for sustainable performance.[12] Organisations that valorise constant engagement risk sacrificing efficiency, institutional knowledge, and workforce stability in pursuit of short-term output.

To supplement the secondary empirical literature discussed above, the authors also conducted a limited, exploratory survey titled "Work Hours and After-Hours Communication During Legal Internships" to gain insight into after-hours work practices at a grassroots level. The survey was administered to 53 law students who have undergone various legal internships. The survey was conducted over a period of nineteen days. It is clarified at the outset that the respondents are not employees in the strict legal sense, and the author does not claim statistical accuracy and generality of the findings. Rather, the survey is intended as a modest empirical exercise to capture workplace tendencies within a segment of India's emerging professional workforce, particularly in environments where informality, power asymmetry, and reputational dependence are pronounced. The complete survey instrument and response visualisations are available for public perusal at the link here.[13]

The findings nevertheless reveal striking patterns that closely mirror the trends identified in larger workforce studies. 92% of respondents reported receiving work-related communication

---

[11] Ibid

[12] Yang Y, Yan R and Meng Y, 'Can't Disconnect Even After-Hours: How Work Connectivity Behavior After-Hours Affects Employees' Thriving at Work and Family' (2022) 13:865776. Front. Psychol. <doi:10.3389/fpsyg.2022.865776> accessed 4 February 2026

[13] https://forms.office.com/Pages/AnalysisPage.aspx?AnalyzerToken=WJVtitwOOERK5iRTRqVygIC4kUN4bshN&id=DQSIkWdsW0yxEjajBLZtrQAAAAAAAAAAAAN__i__MzBUMEdFTlZZUFBRQTVSQlhLMldDT1lPTklYTS4u

after official working hours, with 43% engaging in such communication on at least three days a week. 60% reported working a minimum of three hours per week beyond designated work hours, with 15% exceeding six hours. The consequences of this extended engagement were equally pronounced: 89% experienced mental or physical fatigue attributable to after-hours work, 82% reported adverse effects on recovery time, and 94% believed that refusing after-hours work would negatively affect their evaluation, future opportunities, or professional relationships. Notably, 94% of respondents perceived after-hours work to be "normalised" within their workplace. While these findings cannot be extrapolated to the formal employee population, they are nevertheless instructive. Internships often function as preparatory sites where workplace norms are internalised and reproduced; the prevalence of after-hours engagement at this stage suggests that expectations of constant availability are inculcated early and carried forward into formal employment.

A particularly troubling feature of this work culture is the set of informal mechanisms through which it is enforced. Employees who leave work on time or assert boundaries around personal time are often subtly penalised through negative performance evaluations, reduced advancement opportunities, or reputational stigma. Conversely, those who remain perpetually available are lauded, regardless of whether their productivity is demonstrably superior. Practices of strategic shaming, glorification of overwork, and the moralisation of endurance, all of which foster a culture where duration is rewarded over efficiency, are evident in the always-on culture.[14] Such norms transform ostensibly voluntary after-hours engagement into a coercive expectation, rendering consent largely illusory.

It is crucial to note that this phenomenon is not unique to India. International studies on work connectivity behaviour reveal comparable trends across jurisdictions, particularly in the aftermath of COVID-19.[15] The global convergence of findings that study burnout, anxiety, work–family conflict, and declining well-being of employees, demonstrates that the always-on culture is a transnational consequence of digitised work rather than a culturally or demographically isolated pathology. Introducing these studies alongside Indian data strengthens the argument that regulatory and legal responses must address structural features of modern work. This is where the "Right to Disconnect" comes into play.

---

[14] Ibid
[15] Ibid

The concept of right to disconnect can be traced back to Article 24 of the Universal Declaration of Human Rights (UDHR), which states that '*Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.*'[16] It has emerged in comparative labour discourse as a normative and regulatory counterweight to the always-on work culture. At its core, the right to disconnect recognises an employee's entitlement to be free from work-related communications and obligations outside formally defined working hours, without fear of adverse consequences.[17] Its objective is not to prohibit flexibility or digital communication per se, but to restore temporal boundaries by reasserting the distinction between working time and personal time. The right to disconnect addresses the precise practices identified in the preceding analysis: informal expectations of constant availability, after-hours messaging through digital platforms, implicit penalties for non-responsiveness, and performance assessments that reward endurance over efficiency.

A regulatory model of the right to disconnect would mandate clear working-hour policies, restrict after-hours communications except in defined emergencies, require employers to negotiate disconnection protocols with employees or unions, and prohibit retaliatory actions against workers who exercise the right.[18] More importantly, the framework shifts the burden of boundary-setting away from individual employees, who are essentially constrained from asserting limits on the workplace structure, and places it upon employers and institutions, where organisational control and responsibility properly lie.

The right to disconnect functions not merely as a protective labour right but as an instrument of sustainable workplace governance. By enabling meaningful rest, psychological detachment, and recovery, it directly mitigates the burnout, anxiety, and health risks associated with continuous engagement. Simultaneously, preserving non-work time enhances long-term job satisfaction, reduces attrition, and supports sustained productivity rather than undermining it. The right to disconnect, therefore, reframes employee well-being and organisational efficiency not as competing interests, but as interdependent outcomes of a balanced work environment.

The obligation of the State to intervene in order to regulate excessive after-hours workplace engagement and to institutionalise a legally enforceable right to disconnect is not merely a

---

[16] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) art 24
[17] Harsh Jain, 'The Right to Disconnect: Balancing Work and Well-being in the Digital Age' (*NLIU Law Review,* November 12, 2024) <https://nliulawreview.nliu.ac.in/blog/the-right-to-disconnect-balancing-work-and-well-being-in-the-digital-age/> accessed 4 February 2026
[18] Ibid

matter of policy discretion; it flows directly from the constitutional framework of India. Article 21 of the Constitution, which guarantees the right to life and personal liberty,[19] has long been interpreted by the Supreme Court to encompass the right to live with human dignity, the right to health, and the right to humane conditions of work. The Court has consistently held that "life" under Article 21 is not confined to mere animal existence[20] but includes the right to live with dignity, free from conditions that systematically undermine physical and mental well-being. When contemporary workplace practices normalise constant availability, prolonged engagement beyond working hours, and chronic work-induced exhaustion, they directly impinge upon this expanded conception of life and dignity. Insofar as such practices foreseeably contribute to burnout, anxiety, sleep deprivation, and long-term health risks, the failure of the State to regulate them raises serious constitutional concerns under Article 21.

This interpretation is reinforced by the Court's jurisprudence in cases such as *Bandhua Mukti Morcha v. Union of India*, where it was held that the right to live with dignity includes protection of workers' health and strength, and that the State bears a positive obligation to ensure humane conditions of work.[21] Similarly, in *Consumer Education and Research Centre v. Union of India*, the Supreme Court explicitly recognised occupational health as an integral facet of the right to life, observing that the health and safety of workers cannot be subordinated to economic considerations.[22] The logic of these decisions applies with equal force to modern forms of labour extraction that operate through constant temporal erosion. Continuous digital engagement and the loss of rest time represent contemporary hazards to occupational health, requiring regulatory responses that are constitutionally necessary.

Beyond fundamental rights, the Directive Principles of State Policy provide a compelling normative mandate for legislative intervention in this domain. Article 38 obliges the State to promote a social order in which justice, social, economic, and political, permeates all institutions of public life.[23] A workplace culture that structurally privileges employers' interests in uninterrupted availability while externalising the costs of overwork onto employees' health and personal lives reflects a clear imbalance in economic power. Article 39(e) further directs the State to ensure that the health and strength of workers are not abused,[24] while Article 39(f)

---

[19] Constitution of India 1950, art 21
[20] *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180
[21] *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802
[22] *Consumer Education and Research Centre v. Union of India,* AIR 1995 SC 922
[23] Constitution of India 1950, art 38
[24] Ibid, art 39(e)

emphasises the protection of human dignity.[25] Article 41 further binds the State to make effective provision for securing the right to work under conditions of dignity and social security,[26] while Article 42 mandates the provision of just and humane conditions of work.[27] These constitutional provisions and judicial pronouncements impose a positive obligation on the State to actively regulate conditions of work that jeopardise human dignity and health. In the context of digitised and hybrid workplaces, the absence of temporal boundaries and the normalisation of after-hours engagement represent precisely the kind of structural harm that constitutional labour protections are designed to prevent. The right to disconnect thus finds its contemporary relevance directly in the roots of the Constitution of India, and thereby, it necessitates an urgent State response to recalibrate labour regulation.

[25] Ibid, art 39(f)
[26] Ibid, art 41
[27] Ibid, art 42

II. <u>From Emails to Enforceable Right to Disconnect: The Global Pathway</u>

Before India can meaningfully design a Right to Disconnect, it must first learn from the successes and failures of those jurisdictions that have already attempted to regulate digital overwork. The global experience reveals that there is no single model of disconnection; instead, countries have experimented with statutory rights, collective bargaining, and soft-law approaches, each producing distinct legal and social consequences. A comparative analysis, therefore, becomes essential not merely to borrow foreign solutions, but to identify which regulatory techniques genuinely protect workers from digital exploitation and which merely offer symbolic relief. By examining how nations such as France, Portugal, Belgium, Germany, and Australia have implemented the right to disconnect, along with the criticisms that have emerged in practice, this section lays the groundwork for constructing a framework that is both legally sound and socially workable for the Indian context.

France became the global pioneer to bring the 'right to disconnect' as a statutory enactment in the French labour code.[28] This legislative initiative was embedded in a 2001 judgment of the French court of cessation, wherein a doctor, Mr. Jean-Bernard, was dismissed because he did not answer three phone calls from his employer on his personal mobile phone during his lunch break. The court asserted that the fact of not being reachable on one's personal mobile phone outside working hours is not a fault, and hence, the dismissal is not valid.[29] This decision firmly established that digital availability cannot override the legal right to rest and private life, even in professions involving public service and responsibility. Building upon this jurisprudence, France took a decisive legislative step in 2016 with the enactment of Law No. 2016-1088,[30] also known as the "*El Khomri* Law", which amended the French Labour Code to recognise the Right to Disconnect formally.[31]

Under the amended Article L. 2242-8 of the Labour Code, companies with 50 employees or more are now required to negotiate or adopt formal mechanisms regulating digital communications in order to ensure respect for employees' rest periods, leave, and family life.[32] Although only companies with 50 or more employees are required to adopt formal disconnect

[28] Matteo Avogaro, 'Right to Disconnect: French and Italian Proposals for a Global Issue' (2018) 4 Law J Soc & Lab Rel 110

[29] Appeal No.: 01-45.889, Court of Cassation, Social Chamber, February 17, 2004, 01-45.889, Unpublished, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007473856/> accessed on 10 January 2026

[30] Leonardo Caus Sampaio, 'The "El Khomri Law" on François Hollande's Employment and Competitiveness Politics' (2022) 10.13140/RG.2.2.15301.32489

[31] Code du travail (15th edn, Dalloz 2022), <https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072050/> accessed 06 January, 2026

[32] Ibid

policies, the right itself applies to all workers in France. In 2018, the French Court of Cassation awarded over €60,000 to an employee forced to remain digitally available outside working hours, holding that constant availability constitutes working time.[33] This makes clear that no employer, large or small, may lawfully demand permanent digital connectivity. The French law mandates collective bargaining between employers and employees on the exercise of the right to disconnect.[34]

France operationalises the right to disconnect through a mix of collective bargaining and internal corporate regulation, allowing companies to adopt practical measures such as switching off email servers after working hours, requiring work devices to remain at the workplace, attaching disclaimers to after-hours messages, or marking the urgency of internal communications.[35] Where no agreement is reached with unions, employers must unilaterally issue a digital conduct charter guaranteeing disconnection and promoting responsible use of technology. However, a critical weakness was introduced when Parliament removed the proposal to impose a legal obligation on employees to respect disconnection periods, leaving disconnection entirely voluntary.[36] In an "always-on" corporate culture, this places workers in a structural dilemma: remaining constantly available signals commitment, ambition, and reliability, while disconnecting risks being perceived as disengaged or replaceable. As a result, employees are informally incentivised to self-exploit through constant connectivity, undermining the protective intent of the law and rendering its enforcement largely dependent on individual courage rather than legal compulsion.

Following this development in France, Italy, and Spain were next in line in 2017 and 2018, respectively. The key distinction between the Italian framework and the regimes in France and Spain lies in the limited scope of the Italian right to disconnect, which is confined to "smart workers" and does not extend to the workforce as a whole.[37] Belgium first introduced the idea of a Right to Disconnect in 2018, but its initial approach was largely symbolic, requiring employers only to hold discussions with health and safety bodies about digital overload, without imposing any real obligation to limit after-hours contact. As a result, by 2022, barely

---

[33] Appeal No.: 17-13.029, Court of Cassation, Civil Division, Social Chamber, July 12, 2018, 17-13.029, Unpublished, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000037384264?isSuggest=true> accessed 07 January 2026

[34] Matteo Avogaro, 'Right to Disconnect: French and Italian Proposals for a Global Issue' (2018) 4 Law J Soc & Lab Rel 110

[35] Ibid

[36] Ibid

[37] Dan Top, 'The Right to Disconnect of the Employee Who Works Remotely' (2023) 60 RevEur Dr Soc 7

14% of companies had adopted any disconnection policy.[38] To address this failure, Belgium strengthened its framework in October 2022 by mandating all private-sector employers with at least twenty employees to establish a right to disconnect through collective bargaining agreements or internal work rules.[39] These rules must define when employees are not contactable, regulate the use of digital tools to protect rest periods and private life, and provide training on the risks of excessive connectivity. While compliance rose to about 50% by the end of 2022, the system remains weak because the law provides no specific sanctions for violations and allows sector-level agreements to override company-level protections.[40] The right to disconnect in Belgium is primarily focused on federal civil servants in application, excluding "exceptional and unforeseen" circumstances.[41] Consequently, Belgium's model treats the right to disconnect more as a managerial policy than a legally enforceable employee right, leaving workers unevenly protected against digital overreach.

At the other end of the regulatory spectrum stands Germany, which has taken the position that an explicit legal right to disconnect is unnecessary because employees are not legally required to remain available during their rest time.[42] Major companies in Germany, such as Volkswagen and BMW, had reached agreements with workers as early as 2013 to restrict work-related communications outside normal working hours. Likewise, in France, employers' federations in sectors such as engineering, information technology, and consulting negotiated a right to disconnect with trade unions in 2014, which was later codified into national labour law.[43] Beyond Europe, Chile became the first country to formally legislate the right to disconnect in 2020, introducing it as part of its remote-work reforms during the COVID-19 pandemic, and Argentina soon followed with similar protections.[44]

---

[38] Ward Bouciqué, Ester Vets, Claeys & Engels, 'The Right to Disconnect: Which Countries Have Legislated?', (Lexology, July 26, 2023) <https://www.lexology.com/library/detail.aspx?g=d44b92f0-49d5-4f2d-811b-fb2f39470761> accessed 13 January 2026

[39] Ibid

[40] Ibid

[41] Jack Kelly, 'Belgium, Portugal and Other European Countries Prohibit Managers from Contacting Employees Outside of Working Hours', (Forbes, 03 February 2022), <https://www.forbes.com/sites/jackkelly/2022/02/03/belgium-portugal-and-other-european-countries-are-ahead-of-the-us-prohibiting-managers-from-contacting-employees-outside-of-working-hours/> accessed 13 January 2026

[42] Andrada Popescu, 'A new reform in the field of labor relations: the right of employees to disconnect', (juridice.ro) <https://www.juridice.ro/files/Romanian-Judges-and-Prosecutors-against-Proposed-Changes-of-Laws-regarding-the-Judiciary.pdf> accessed 14 January 2026

[43] Raquel Martins, 'Devemos ter o "direito a desligar" do trabalho? Governo abre debate [Should we have the "right to disconnect" from work? The government opens a debate]' (PPBLICO, Jan. 6, 2017), <https://www.publico.pt/2017/01/06/economia/noticia/devemos-ter-o-direito-a-desligar-do-trabalho-governo-abre-debate-1757288> accessed 15 January 2026

[44] Luminița Dima, Alex Högback, 'Legiferarea dreptului la deconectare [Legislating a right to disconnect]',

The European Parliament came up with a Legislative Resolution of 21 January 2021 on the Right to Disconnect called on the European Commission to propose a binding directive to regulate this emerging labour right. The resolution highlighted how the COVID-19 pandemic fundamentally transformed the organisation of work, with digital tools and national telework laws becoming central to everyday professional life.[45] Drawing on Eurofound data, the Parliament noted that more than one-quarter of workers across the European Union shifted to working from home during pandemic lockdowns, compared to just 5% before the crisis, exposing the growing risk of constant digital connectivity and the urgent need for legal protection.[46] At the European Union level, although no single binding instrument expressly establishes a right to disconnect, several regulatory frameworks indirectly address the problem of digital overwork. Before the COVID-19 pandemic, only four Member States, Belgium, France, Italy, and Spain, had adopted specific measures on the right to disconnect, as reported by the European Agency for Safety and Health at Work (EU-OSHA).[47] By 2020, this group expanded to include Croatia, Greece, Ireland, Portugal, Slovakia, and Spain, reflecting the rapid legal response to the rise of remote work. Notably, in most of these countries, the right to disconnect applies to all employees, while in Greece and Slovakia it remains largely confined to teleworkers, illustrating the uneven and fragmented nature of protection across the Union.[48]

Portugal particularly stands out as having one of the most robust statutory frameworks and in its implementation of the right to disconnect, since it directly places the obligation on employers not disturb employees during rest time. Portugal's move toward recognising a Right to Disconnect was catalysed by the COVID-19 pandemic. Council of Ministers Resolution No. 181-A/2021 made teleworking mandatory between 25 December 2021 and 14 January 2022,[49] highlighting the deep intrusion of work into private life. This was followed by Law No. 83/2021,[50] which entered into force on 1 January 2022 and substantially reformed the telework regime by amending both the Labour Code and the framework on work accidents and

---

(București: Friedrich-Ebert-Stiftung România, Decembrie 2020) <https://collections.fes.de/publikationen/ident/fes/17026>, accessed 20 January 2026

[45] Luiza Lungu, 'The Right to Disconnect - A Necessary Demarcation between Professional and Private Life' (2021) 2021 Conf Int'l Dr 176

[46] Oscar Vargas Llave, 'COVID-19 Unveils Potential for Telework - How Do Workers Do It?' <https://www.eurofound.europa.eu/en/commentary-and-analysis/all-content/covid-19-unleashed-potential-telework-how-are-workers-coping.> accessed 20 January 2026

[47] Dan Top, 'Employers' Openness to Telework' (2023) 2023 Int'l J Legal & Soc Ord 477

[48] Ibid

[49] Rui Vaz Pereira, Cristina Romariz, 'New Ways of Working - Portugal' (Cuatrecasas, July 29, 2022) <https://www.cuatrecasas.com/en/global/labor-and-employment/art/new-ways-of-working-portugal-2> accessed 05 January 2026

[50] Diário da República Law No 83/2021 (Portugal), 1st Series, No 235, 6 December 2021

occupational diseases. The law extended key protections relating to work equipment, supervision, privacy, and health and safety to all forms of remote work characterised by economic dependence, mainly to address ambiguous situations such as home-based work rather than to encompass gig-economy contractors.[51] Most significantly, the reform expressly incorporated the Right to Disconnect into the Portuguese Labour Code, prohibiting employers from contacting workers during their rest periods except in cases of force majeure and rendering any disadvantageous treatment of employees who exercise this right unlawful.[52] Although this protection had already existed implicitly through rules on working time, privacy, and constitutional labour guarantees, the 2021 reform gave it clear and direct legal recognition in the digital workplace. By redefining 'telework' in Article 165(1)[53] as any work performed under the employer's legal subordination through digital technologies outside the employer's premises, the law deliberately extends protection beyond full-time remote work to include hybrid and occasional remote arrangements. More significantly, the reform inserted a new provision applicable to all employment relationships, whether remote or onsite, imposing a clear obligation on employers to refrain from contacting employees during their rest periods, except in cases of force majeure, and classifying any disadvantageous treatment for exercising this right as unlawful discrimination.[54] Unlike many jurisdictions, non-compliance constitutes a serious labour offence punishable by administrative fines, giving the right real enforceability.[55] However, the Portuguese model also raises interpretative difficulties, particularly as to whether the duty binds only formal employers or also co-workers and non-managerial staff, how it interacts with exemptions from working-time limits, and whether overtime requests without urgency are prohibited.[56] Moreover, the law provides little guidance on what forms of communication are permissible, leaving employers to self-regulate through internal protocols.[57] While Portugal's framework powerfully reframes disconnection as an employer's legal duty rather than a worker's mere option, its effectiveness ultimately depends

[51] Rui Vaz Pereira, Cristina Romariz, 'New Ways of Working - Portugal' (Cuatrecasas, July 29, 2022) <https://www.cuatrecasas.com/en/global/labor-and-employment/art/new-ways-of-working-portugal-2> accessed 05 January 2026
[52] Ibid
[53] Labour Code, Law no. 7/2009 (Portugal), art 165(1).
[54] Uría Menéndez, 'New Teleworking Legislation and Employer's Duty to Respect Employees' Right to Disconnect' (Employment Law Newsletter, 7 December 2021) 6 <https://www.uria.com/documentos/circulares/1467/documento/12606/Newsletter-Teletrabalho_ENG.pdf?id=12606> accessed 25 January 2026
[55] Dan Top, 'Employers' Openness to Telework' (2023) 2023 Int'l J Legal & Soc Ord 477
[56] Uría Menéndez, 'New Teleworking Legislation and Employer's Duty to Respect Employees' (Employment Law Newsletter, 7 December 2021) <https://www.uria.com/documentos/circulares/1467/documento/12606/Newsletter-Teletrabalho_ENG.pdf?id=12606> accessed 25 January 2026
[57] Ibid

on clearer operational rules to prevent uncertainty and uneven application.

Australia becomes the most recent country to enact a statutory ‘right to disconnect’ through amendments to the Fair Work Act as part of the Federal Government’s ‘Closing Loopholes’ reforms, with the new regime applying from 26 August 2024 (and from 26 August 2025 for small businesses).[58] The employees in Australia have the right to ‘refuse to monitor, read or respond’ to contact from not only the employers but also any third party, including clients, suppliers, and staff from other businesses.[59] This right encompasses small business and non-small business employees. ‘Contact’ herein covers all major modes of employee communication, from calls and emails to text messages, social networks, and digital messaging platforms.[60] The Australian right to disconnect does not prohibit employers from contacting employees outside working hours; rather, it gives employees the legal right to ignore such communications unless doing so would be unreasonable. The central question, therefore, is not whether the employer made contact, but whether the employee’s refusal to engage was unreasonable in the circumstances.[61] To determine the reasonableness of contact, a five-factor reasonableness test would be used, including the purpose and intrusiveness of the contact, the employee’s compensation, role, and level of responsibility, and personal circumstances such as family or caring duties.[62] Disputes are first expected to be resolved internally, but where this fails, the Fair Work Commission may intervene by ordering employers to cease after-hours contact or, conversely, directing employees to respond where refusal is unjustified, with non-compliance attracting substantial financial penalties.[63] While this model offers flexibility and recognises the varied realities of modern work, it has been criticised for placing excessive emphasis on case-by-case reasonableness rather than imposing a clear duty on employers to prevent digital overreach. Although Australia has formally recognised a right to disconnect, its design risks weakening the protection in practice. The reliance on a broad “reasonableness” standard creates legal uncertainty and is likely to generate litigation, leaving employees

---

58 SBDC, ‘How will the ‘right to disconnect’ laws affect small businesses?’, (14 August 2025), <https://www.smallbusiness.wa.gov.au/blog/how-will-right-disconnect-laws-affect-small-businesses> accessed 05 January 2026

59 ‘Right to Disconnect’ (Fair Work Ombudsman, 26 August 2024) <https://www.fairwork.gov.au/employment-conditions/hours-of-work-breaks-and-rosters/right-to-disconnect> accessed 17 January 2026

60 Ibid

61 Ibid

62 Emmanuel Josserand and Martijn Boersma, ‘Australia’s right to disconnect from work: Beyond rhetoric and towards implementation’ (2024) 66(5) Journal of Industrial Relations 703

63 Ibid; Clyde & Co LLP, ‘Australia – Right to Disconnect: A New Era for Australian Workplaces’ (21 August 2025) <https://www.clydeco.com/en/insights/2025/08/australia-right-to-disconnect-a-new-era-for-austra> accessed 28 January 2026; See also ‘Right to Disconnect Fact Sheet’ (Fair Work Commission, 2024) <https://www.fwc.gov.au/documents/resources/right-to-disconnect-fact-sheet.pdf> accessed 28 January 2026

dependent on the Fair Work Commission and courts rather than on clear, automatic safeguards. Moreover, the law grants workers a right to refuse but imposes no strong duty on employers to avoid after-hours contact, allowing subtle workplace favouritism to develop in favour of those who remain constantly available, a dynamic that can quietly influence promotions and career progression. This pressure is intensified in competitive environments, where employees may hesitate to exercise their right for fear of falling behind. Moreover, the Council of Small Business Organisations Australia has warned that the right to disconnect regime may generate uncertainty for small enterprises, increase compliance burdens, and ultimately raise the cost of doing business, with ripple effects on the prices of goods and services.[64]

The global evolution of the right to disconnect demonstrates that three broad regulatory pathways exist: its recognition as a statutory labour right, its implementation through collective bargaining, and its reliance on non-binding or employer-driven arrangements. While each model reflects different legal cultures, the comparative evidence makes one conclusion clear for India: only a statutory right can provide the certainty, enforceability, and universality required in a vast and unequal labour market. France shows the importance of embedding disconnection into labour law, Portugal illustrates the strength of placing a direct obligation on employers, and Australia offers a flexible, reasonableness-based enforcement mechanism suited to diverse workplaces. At the same time, the weaknesses of Belgium's policy-driven approach and Italy's limited, telework-only model serve as cautionary tales of fragmented and ineffective protection. An Indian right to disconnect must therefore be designed as a clear legal entitlement, drawing on the best features of these global models while avoiding their structural flaws, so that digital connectivity enhances productivity without eroding dignity, health, and private life.

[64] Emmanuel Josserand and Martijn Boersma, 'Australia's right to disconnect from work: Beyond rhetoric and towards implementation' (2024) 66(5) Journal of Industrial Relations 703

III. <u>The Right to Disconnect in Indian Labour Law: Evaluating Recent Legislative Proposals</u>

The first section of this article has demonstrated that the Right to Disconnect is neither alien to the Indian legal system nor merely aspirational. On the contrary, it emerges organically from constitutional protections relating to life, dignity, privacy, and mental health, and responds to an urgent regulatory vacuum created by the digitisation of work. Building on this constitutional and doctrinal foundation, the discussion now shifts to identifying a legislative pathway through which India can meaningfully operationalise this right.

Drawing inspiration from France's pioneering approach, Supriya Sule, Member of Parliament from the Nationalist Congress Party, introduced a Private Member's Bill in the Lok Sabha on 5 December 2025,[65] seeking to confer upon employees a legal right to disengage from work-related calls, messages, and emails beyond official working hours. The introduction of the Bill has been contextualised against alarming workforce trends also highlighted by Shashi Tharoor, who drew attention to data indicating that over half of India's workforce routinely works more than forty-nine hours per week, with a significant proportion reporting burnout.[66] Moreover, Shashi Tharoor introduced Bill No. 10 of 2025, titled the Occupational Safety, Health and Working Conditions Code (Amendment) Bill, 2025,[67] in the Lok Sabha on 5 December 2025. While the Right to Disconnect Bill continues to be debated at the national level, certain jurisdictions within India have already moved ahead of the curve. Kerala, in particular, has taken a proactive stance by emerging as the first State to formally initiate legislative action recognising the Right to disconnect, signalling a growing sub-national consensus on the need to regulate digital overreach in the workplace.[68]

<u>The Right To Disconnect Bill, 2025</u>

Section 7 of the Bill[69] introduces a statutory right allowing employees to refuse work-related communications outside prescribed working hours and protects them from formal disciplinary

---

[65] Right to Disconnect Bill 2025, Bill No 51 of 2025 (Lok Sabha), introduced by Smt Supriya Sule MP, 21 February 2025

[66] Priya Ramani, 'Supriya Sule's Fight to Disconnect & Other Private Passions of Our MPs' (13 December 2025) <https://priyaramani.substack.com/p/supriya-sules-fight-to-disconnect> accessed 15 January 2026

[67] Occupational Safety, Health and Working Conditions Code (Amendment) Bill 2025, Bill No 10 of 2025 (Lok Sabha), introduced by Dr Shashi Tharoor MP, 11 November 2024

[68] Saket Sourav, 'Right to Disconnect Bill 2025: No Work Emails After Office Hours Explained' (Lawstreet Journal, 8 December 2025) <https://lawstreet.co/know-the-law/right-to-disconnect-bill-2025-no-work-emails-after-office-hours-explained> accessed 15 January 2026

[69] Right to Disconnect Bill 2025, Bill No 51 of 2025 (Lok Sabha), introduced by Smt Supriya Sule MP, 21 February 2025, s 3

action for doing so.[70] However, by permitting employers to continue after-hours contact while merely relieving employees of the obligation to respond, the provision places the effective exercise of the right on the employee rather than regulating employer conduct. In practice, such a design risks rendering the right illusory. In a competitive and hierarchical work environment, employees may hesitate to assert their rights due to fear of informal retaliation, such as adverse appraisals, denial of promotions, or loss of discretionary benefits like bonuses or work allotment preferences, which operate beyond the reach of formal disciplinary safeguards. Since the pressure to remain connected often manifests through implicit expectations rather than written instructions,[71] enforcement becomes inherently difficult, rendering the right largely symbolic.

The bill commendably proposes the establishment of an Employees' Welfare Authority[72] to institutionalise work-life balance through negotiated charters, dissemination of best practices on digital usage, and complementary welfare measures such as counselling and digital detox initiatives.[73] However, the Authority's design simultaneously raises serious concerns of over-centralisation and regulatory dilution. Composed entirely of executive and ministerial representatives, the Authority risks functioning as an additional layer of Inspector Raj without corresponding proximity to workplace realities, particularly in knowledge-driven and hybrid sectors. Even though Section 3(2) of the bill states, "*The Central Government shall appoint such number of officers and staff as it considers necessary for the functioning of the Authority*."[74] There is a clear absence of representations from trade Unions, employees, digital workers, or independent experts. Even though lower-level officers can be appointed under Section 3(2), they remain bureaucratically answerable upward, not embedded downward at the workplace level. The Authority's ex post supervisory role is further ill-suited to address the informal and anticipatory nature of digital pressure, which rarely manifests as overt violations. Thus, while the Authority strengthens the Bill's welfare orientation and policy coherence, its

[70] Shubhi, 'Right to Disconnect Bill 2025 tabled in Lok Sabha: Will India move towards better Work-Life Balance?' (SCC Online Blog, 10 December 2025) <https://www.scconline.com/blog/post/2025/12/10/right-to-disconnect-bill-2025/> accessed 30 January 2026

[71] Archit Musale, 'Right To Disconnect: Reclaiming Boundaries In Digital Age' (LiveLaw, 19 December 2025) <https://www.livelaw.in/lawschool/articles/employees-mental-health-and-right-to-disconnect-in-india-513926> accessed 5 February 2026

[72] Right to Disconnect Bill 2025, Bill No 51 of 2025 (Lok Sabha), introduced by Smt Supriya Sule MP, 21 February 2025, s 3

[73] Ibid, ss 16, 17, and 18

[74] Right to Disconnect Bill 2025, Bill No 51 of 2025 (Lok Sabha), introduced by Smt Supriya Sule MP, 21 February 2025, s 3(2)

effectiveness remains contingent on robust, decentralised enforcement mechanisms and clearer statutory constraints on employer discretion.

Section 19 prescribes a penalty of 1% of the total employees' remuneration for non-compliance[75] appearing substantial due to its wage-linked nature, but the deterrent effect remains limited. The provision lacks gradation, escalation for repeat or wilful violations, and any form of individual liability, allowing organisations to internalise the penalty as a routine cost of compliance. Moreover, the penalty is disconnected from the gravity of harm caused, as it neither accounts for mental health injury nor addresses indirect retaliation such as adverse appraisals or denial of promotion.

The Occupational Safety, Health and Working Conditions Code (Amendment) Bill, 2025

This Bill represents an important and overdue legislative acknowledgement of the changing nature of work in the Indian workplace demography. At a symbolic and normative level, the Bill's greatest merit lies in its willingness to formally recognise the "right to disconnect" within Indian labour jurisprudence. By introducing a statutory entitlement to disengage from work-related communications beyond working hours,[76] the Bill accepts that constant connectivity and after-hours engagement pose genuine risks to workers' health, dignity, and work–life balance. The proposed creation of an Internal Workplace Wellbeing Body (IWWB)[77] and the emphasis on sensitisation and awareness programmes[78] further signal a shift away from viewing overwork and burnout as individual failings, and towards recognising them as systemic workplace concerns requiring institutional response.

However, when assessed more closely, the Bill reveals significant conceptual and operational limitations that undermine its transformative potential. Most notably, the scope of the right to disconnect is narrowly framed around an employee's ability to refuse to monitor, read, or respond to work-related communications after working hours.[79] While this addresses one manifestation of always-on culture, it fails to engage with the broader concerns, namely, that after-hours work engagement often extends beyond communication to include task completion, preparatory work, mental preoccupation, and informal performance expectations. By restricting the right to communication alone, the Bill risks legitimising other forms of post-

[75] Right to Disconnect Bill 2025, Bill No 51 of 2025 (Lok Sabha), introduced by Smt Supriya Sule MP, 21 February 2025, s 19
[76] The Occupational Safety, Health and Working Conditions Code (Amendment) Bill, 2025, s 5
[77] Ibid, s 6
[78] Ibid, s 3
[79] Ibid, s 5(n)

hours labour that are functionally indistinguishable in their impact on rest, recovery, and mental health.

Further, the Bill's enforcement architecture remains ambiguous as of now. While the IWWB mechanism has certain potential, its internal and employer-nominated composition raises concerns regarding independence and effectiveness,[80] particularly in hierarchical workplaces where subtle retaliation and reputational consequences are difficult to prove. The absence of a clearly articulated penalty framework compounds this concern. The Bill does not specify deterrent sanctions for violations of the right to disconnect, nor does it meaningfully address indirect or informal coercion, such as adverse performance reviews, denial of opportunities, or strategic shaming. In this respect, the Bill reflects a broader tendency in Indian labour reform to prioritise procedural compliance and internal redress over substantive worker protection. While the Amendment Bill is undoubtedly a progressive step, its current design falls short of addressing the structural power imbalances and substantive gaps that sustain excessive after-hours engagement, limiting its capacity to meaningfully counter the always-on work culture.

[80] Ibid, s 6(n)

IV. <u>Towards a Robust Right to Disconnect: Suggestions for Indian Legislative Framework</u>

This article proposes a more comprehensive and nuanced framework for operationalising the Right to Disconnect in India through the following suggestions:

1. *Expanding the Ambit of the Right to Disconnect*

The Occupational Safety, Health and Working Conditions Code (Amendment) Bill, 2025 presently conceptualises the right to disconnect primarily as a right to refuse after-hours work-related communication.[81] The Right to Disconnect Bill, 2025, envisages the right to disconnect with the same meaning.[82] While this is an important starting point, such a narrow framing renders the right vulnerable to easy circumvention. Employers may simply allocate tasks during regular working hours with the expectation that they be completed after hours, thereby formally complying with the prohibition on communication while substantively undermining the essence of the right itself. Always-on culture demonstrates that after-hours work engagement often manifests not merely through emails or messages, but through task deadlines, preparatory work, performance expectations, and sustained mental preoccupation with work. A meaningful right to disconnect must therefore extend beyond communication to encompass the employee's right to refrain from any form of work-related engagement once designated working hours conclude, except where overtime or emergency work is expressly invoked. The Occupational Safety, Health and Working Conditions Code, 2020, in particular, must be amended to adopt a broader and more articulate understanding of disconnection, one that recognises temporal disengagement from work as a substantive condition of occupational health and dignity, rather than a narrow prohibition on messaging alone.

2. *Employer-centric Duty of Restraint*

The statutory framework should move away from an employee-centric right of refusal towards an employer-centric duty of restraint, as effectively followed by the Portugal model.[83] Instead of permitting employers to initiate after-hours communication subject to an employee's discretion to respond, the law should impose a default prohibition on employer-initiated contact outside mutually negotiated working hours and holidays, allowing such contact only in clearly

[81] Ibid, s 5 (n)
[82] The Right to Disconnect Bill, 2025, s 7
[83] Rui Vaz Pereira, Cristina Romariz, 'New Ways of Working - Portugal' (Cuatrecasas, July 29, 2022) <https://www.cuatrecasas.com/en/global/labor-and-employment/art/new-ways-of-working-portugal-2> accessed 05 January 2026

defined emergency situations. This model addresses the structural power imbalance embedded in contemporary workplaces by preventing anticipatory compliance and shifting compliance incentives to employers, rather than burdening employees with the risk of exercising the right. Moreover, drawing reference from the Kerala Bill[84] itself that enumerates what would constitute "prohibited disciplinary action" for exercising the right to disconnect, including dismissal, demotion, reduction or withdrawal of benefits, adverse changes in employment conditions, and denial of training opportunities otherwise available to other employees.[85] Such a defined scope of disciplinary action also attempts to cover broader and more informal forms of measures undertaken by employers against employees exercising the right to disconnect.

3. <u>Integration into the OSH Code, 2020</u>

To ensure coherence within India's labour law architecture, the Right to Disconnect should be integrated into the Occupational Safety, Health and Working Conditions Code, 2020[86] rather than enacted as a standalone statute. The consolidation of twenty-nine fragmented labour laws into four labour codes was premised on reducing overlap and ensuring holistic regulation of working conditions.[87] Digital overwork and constant connectivity directly implicate occupational health, particularly mental well-being. Integration can be achieved by:

(i) expanding the definition of "working conditions" under Chapter V to include digital working environments;[88]

(ii) inserting a specific statutory duty on employers under Chapter III prohibiting after-hours contact except in negotiated emergencies;[89]

(iii) linking after-hours engagement to mandatory overtime compensation under Chapter VII;[90] and

(iv) recognising the Right to Disconnect as a health-protective right.

[84] The Kerala Right to Disconnect Bill, 2025, PMBR No. 257

[85] Ranjan Jha and Stuti Dhawan, 'Explained: India's Right to Disconnect Bill, 2025 and what it means for employees' (Lexology, 16 December 2025) <https://www.lexology.com/library/detail.aspx?g=8cefe434-a277-49a2-8869-77e85dbba897> accessed 30 January 2026

[86] Occupational Safety, Health and Working Conditions Code (Amendment) Bill 2025, Bill No 10 of 2025 (Lok Sabha), introduced by Dr Shashi Tharoor MP, 11 November 2024

[87] PIB, 'India's Labour Reforms: Simplification, Security, and Sustainable Growth' (PIB Headquarters, November 21, 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2192524&reg=3&lang=2> accessed 01 February 2026

[88] The Occupational Safety, Health and Working Conditions Code 2020, s 23

[89] Ibid, ch III

[90] Ibid, ch VII

This approach embeds the right within an already operational enforcement framework rather than creating redundant parallel compliance structures.

4. *Protection Against "Not Just the Employer"*

Further, similar to the Australian model,[91] The Right to Disconnect must extend beyond direct employer conduct to third-party and horizontal workplace interactions, including clients, customers, co-workers, and other employer-authorized communication. As demonstrated in comparative jurisdictions, limiting the obligation to formal employers alone ignores the realities of modern service economies where external stakeholders often exert greater pressure than management itself. A similar provision can be seen in the Kerala Bill that adopts a wider and clearer definition of the 'right to disconnect' by explicitly covering "*all communications made by the employer or its delegate*"[92] significantly expanding the ambit of the right. Employer liability should therefore arise not from every third-party contact, but from a failure to regulate, buffer, or channel such communications within agreed working hours.

Finally, while the proposal to establish an Employees' Welfare Authority is normatively sound, its effectiveness depends on institutional design. Rather than just being minister-dominated, the Authority should be reconstituted to include representatives from all stakeholders, like employer representatives, trade unions, labour law experts, mental health professionals, and digital work specialists. Its role should focus on issuing baseline guidance for workplace charters, monitoring compliance trends, and supporting state-level implementation. Complementing this, workplace-level committees with proportional representation of employers and employees should act as the first forum for resolving right-to-disconnect violations.

5. *Creating an Expedited In-house Redressal Mechanism*

Both Bills envisage the establishment of regulatory authorities to oversee compliance with the right to disconnect. While the Occupational Safety, Health and Working Conditions Code (Amendment) Bill, 2025 suggests the establishment of "Internal Workplace Wellbeing Body,"[93] the Right to Disconnect Bill, 2005 proposes the "Employees' Welfare Authority."[94]

---

[91] Right to Disconnect' (Fair Work Ombudsman, 26 August 2024) <https://www.fairwork.gov.au/employment-conditions/hours-of-work-breaks-and-rosters/right-to-disconnect> accessed 17 January 2026

[92] Ranjan Jha and Stuti Dhawan, 'Explained: India's Right to Disconnect Bill, 2025 and what it means for employees' (Lexology, 16 December 2025) <https://www.lexology.com/library/detail.aspx?g=8cefe434-a277-49a2-8869-77e85dbba897> accessed 30 January 2026

[93] The Occupational Safety, Health and Working Conditions Code (Amendment) Bill, 2025, s 6 (n)

[94] The Right to Disconnect Bill, 2025, s 3

While external oversight is important, an essential concern remains insufficiently addressed: complaints alleging violations of the right to disconnect are, by their very nature, urgent. Prolonged adjudication risks rendering relief ineffective, particularly where violations involve ongoing coercion, retaliation, or deteriorating health. Although digital portals such as the SAMADHAN platform proposed in the Occupational Safety, Health and Working Conditions Code (Amendment) Bill,[95] may expedite swift filing of complaints, they do not address the equally critical need for expedited hearing and disposal. A viable solution lies in mandating the establishment of in-house right to disconnect redressal committees within all covered establishments. The functioning of these committees should be monitored by the statutory authorities periodically. Such committees should be comprised of proportionate and fair representation from the employer and employee sides, along with an independent external member to ensure neutrality. Empowered to adjudicate complaints within strict timelines, these bodies would enable prompt resolution, reduce escalation to external authorities, and preserve employer-employee relationships by resolving disputes internally. Not to mention, appellate forums should definitely be made available to the employees in the form of statutory authorities. An effective in-house mechanism would thus combine speed, accessibility, and fairness, ensuring that the right to disconnect is not only recognised in law but also enforced in practice.

6. *Strengthening the Liability Framework*

The penalty mechanisms proposed under both the Occupational Safety, Health and Working Conditions Code (Amendment) Bill, 2025, and the Right to Disconnect Bill, 2025 remain under-specified and ambiguous. While the Right to Disconnect Bill clearly provides that a penalty equivalent to one per cent of the total employees' remuneration may be imposed upon an employer for non-compliance,[96] it fails to clarify critical aspects of enforcement, namely, whether such penalty is to be imposed per affected employee, per violation, per inquiry, or on a periodic basis, and whether multiple proven violations are capable of aggregation. This lack of clarity risks inconsistent enforcement and allows systemic violations affecting multiple employees to be treated as a single compliance lapse. Further, a penalty-only model, particularly where the amount is payable to the State, risks reducing violations of the right to disconnect to mere regulatory infractions rather than recognising them as infringements of employee rights. There is a tangible danger that such penalties may be internalised by

[95] The Occupational Safety, Health and Working Conditions Code (Amendment) Bill, 2025, s 6 (n)
[96] The Right to Disconnect Bill, 2025, s 19

employers as routine operational costs rather than functioning as meaningful deterrents. Most critically, the aggrieved employee, the primary stakeholder whose health, dignity, and personal time are compromised, remains absent from the penal architecture. To address this gap, the legislative framework must incorporate restorative provisions alongside penalties, such as mandatory compensatory leave or limited compensatory payments payable directly to affected employees. Such a framework would align deterrence with restoration, ensuring that sanctions meaningfully acknowledge the gravity of the harm caused while providing tangible relief to those most directly impacted.

7. <u>Statutory Regulation of After-Hours Work and Overtime</u>

It would be neither realistic nor desirable to suggest that employees should never be required to work beyond designated working hours. Emergencies, critical operational needs, and exceptional circumstances may legitimately warrant after-hours engagement. However, precisely because such situations are foreseeable, they demand statutory regulation rather than ad hoc managerial discretion. Crucially, the contours of "after-work hours" and the scope of "emergencies" must not be statutorily rigid but industry-specific and collectively negotiated between employers and employees, recognising that emergencies in sectors such as legal services, businesses, or information technology are inherently distinct. Further, any work required beyond prescribed working hours as a matter of emergency must be compulsorily recognised as overtime and remunerated accordingly at a statutorily defined quantum. This serves two essential functions: first, it ensures that after-hours work is no longer invisible or unpaid labour; and second, it disincentivises routine reliance on extended availability by attaching a tangible cost to it. Equally important is the requirement of employee volition. Even in emergency situations, employees must retain a limited but real right to disconnect where compelling personal, health, or family considerations necessitate disengagement. Incorporating such safeguards would strike a principled balance between organisational exigencies and employee autonomy, reinforcing the notion that availability beyond working hours is an exception to be carefully regulated rather than a default expectation.

V. <u>Conclusion</u>

The analysis undertaken in this paper demonstrates that the right to disconnect is no longer a peripheral or aspirational labour demand but a necessary legal response to the structural transformation of work in a digitised economy. The normalisation of constant availability, intensified after-hours engagement, and erosion of temporal boundaries have collectively reshaped employment relations in ways that systematically undermine employee well-being, dignity, and long-term productivity. Empirical evidence from India and abroad confirms that these harms are neither incidental nor individualised; they are structurally produced by organisational models that equate responsiveness with commitment and endurance with efficiency. In this context, the right to disconnect emerges not as an impediment to flexibility, but as a corrective mechanism aimed at restoring balance before work-related strain becomes cumulative and irreversible.

The comparative analysis reveals that jurisdictions across the world have converged on the recognition that unregulated digital connectivity poses serious risks to occupational health. Yet, the diversity of regulatory approaches, from France's collective bargaining model to Portugal's employer-centric duty of restraint and Australia's reasonableness-based framework, also illustrates that the effectiveness of the right to disconnect depends less on symbolic recognition and more on institutional design, enforceability, and clarity of obligations. India's proposed legislative responses reflect an important normative shift in this direction. Both the Right to Disconnect Bill, 2025 and the Occupational Safety, Health and Working Conditions Code (Amendment) Bill, 2025 acknowledge the problem and seek to regulate it. However, as this paper has shown, their current formulations remain limited by narrow conceptualisations of disconnection, ambiguous enforcement mechanisms, and an overreliance on procedural compliance at the expense of substantive worker protection.

The constitutional analysis underscores that the State's obligation to act in this domain is not discretionary. The right to life with dignity under Article 21, read with the Directive Principles mandating humane conditions of work, places a positive duty on the State to regulate forms of labour that foreseeably endanger physical and mental health. Digital overwork and constant connectivity represent contemporary manifestations of occupational harm, requiring an equally contemporary legal response. A robust right to disconnect must therefore be embedded within India's labour law framework as a health-protective right, impose clear duties of restraint on employers, ensure fair compensation and restoration for violations, and provide expedited and accessible redressal mechanisms.

PLATFORM RISK ARCHITECTURE: RETHINKING LABOUR REGULATION BEYOND MISCLASSIFICATION

- Harsh Karothiya & Rohit Meena

ABSTRACT

Digital labour platforms have generated extensive legal debate in India, most of which has focused on the problem of misclassification. Courts and policymakers have repeatedly asked whether platform workers should be treated as employees rather than independent contractors and whether existing employment tests can be adapted to capture platform mediated work. Despite this sustained attention, platform workers continue to experience income volatility employment insecurity and exclusion from social security.

This paper argues that the persistence of these outcomes cannot be explained by misclassification alone. It advances a different claim: platform work is not misclassified employment but the product of deliberate enterprise design. Platform businesses are structured to centralise coordination and control while externalising labour related risks through corporate structuring contractual fragmentation and algorithmic governance.

To capture this phenomenon the paper introduces the concept of platform risk architecture. Platform risk architecture describes the ex-ante organisation of platform enterprises that reallocates income employment and social security risks outside the scope of labour law by design rather than by mislabelling. This shifts the analytical focus from worker status to enterprise structure and from doctrinal error to regulatory mismatch.

The paper demonstrates how status based labour regulation is structurally ill suited to address platform risk architecture using Indian labour jurisprudence and empirical evidence from policy reports. It argues that misclassification has become a doctrinal dead end because it engages with the consequences of platform work rather than its organising logic. The paper concludes by suggesting that labour regulation must move beyond exclusive reliance on employment status and reorient itself towards enterprise level risk allocation if it is to remain effective in the platform economy. It proposes the relevant statutory amendments required under the Code on Social Security, 2020.

I. INTRODUCTION

Over the last decade digital labour platforms have moved from the margins of the Indian labour market to its centre.[1] App based ride hailing food delivery and task platforms now mediate work for a large and expanding workforce.[2] They are presenting themselves as technology driven intermediaries rather than employers.[3] This shift has generated sustained attention. Courts and policymakers have sought to determine how labour law ought to respond to these new forms of work. Much of this response has converged on a familiar question. Are platform workers employees or independent contractors?[4]

The dichotomy of this question has shaped both litigation and policy discourse in India. Judicial reasoning has continued to rely on established tests of control integration and economic dependence to assess whether platform facilitated work can be brought within existing employment categories.[5] At the same time, policy reports have acknowledged the scale of platform work and the vulnerabilities associated with it. It failed to rethink the conceptual foundations of labour regulation.[6] This resulted in a regulatory landscape where platform work is widely recognised as a site of insecurity yet remains largely governed through doctrinal tools developed for a different organisation of work.

This regulatory approach has produced limited results. Despite repeated attempts to stretch or to adapt employment classification tests accordingly, platform workers continue to experience income volatility and unilateral termination while being excluded from social security frameworks.[7] Empirical studies consistently show that these outcomes are not incidental but systemic and are closely linked to the organisation of platform mediated work.[8] The endurance

---

[1] NITI Aayog, India's Booming Gig and Platform Economy (Government of India 2022) <https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf> accessed 2 February 2026.

[2] Shauna Brail and Betsy Donald, 'From Ride Hailing to Food Hailing: Understanding On-Demand Food Delivery through Platform Urbanism and Urban Policy in Canadian Cities' (2024) *Journal of Urban Affairs* <https://www.tandfonline.com/doi/full/10.1080/07352166.2024.2427643?af=R> accessed 1 February 2026.

[3] *NITI Aayog* (n 1) 6-9.

[4] *Workmen of Nilgiri Coop Marketing Society Ltd v State of Tamil Nadu (2004) 3 SCC 514; Bangalore Water Supply and Sewerage Board v A Rajappa (1978) 2 SCC 213.*

[5] *Hussainbhai v Alath Factory Thozhilali Union* (1978) 4 SCC 257; *Silver Jubilee Tailoring House v Chief Inspector of Shops and Establishments* (1974) 3 SCC 498.

[6] Parliamentary Standing Committee on Labour, *Social Security and Welfare of Gig and Platform Workers* (Report No 122, 2021) ¶¶ 2.3-2.7.

International Labour Organization, *World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work* (ILO 2021) ch 3.

[8] Organisation for Economic Co-operation and Development, *Policy Responses to New Forms of Work* (OECD Publishing 2019) 25-30.

of these conditions suggests that the difficulty does not lie solely in the application of legal tests but in the assumptions that underpin them. Labour law continues to proceed on the premise that work is organised through enterprises that internalise labour risk and that the primary regulatory task is to identify the responsible employer within that structure.[9]

Platform enterprises disrupt this premise fundamentally. Rather than concealing conventional employment relationships behind contractual labels, platforms reorganise work through business models that fragment responsibility while retaining economic control.[10] Corporate structuring of contracts and algorithmic management operate together to ensure that labour risks are borne by workers, while platform entities remain insulated from employer obligations.[11] In this setting, the question of whether a worker has been misclassified becomes secondary to the question of how work itself has been structured, as to fall outside the reach of labour law.

This paper examines that structural shift and provides potential solutions for it. It argues that the regulatory difficulty posed by platform work in India cannot be adequately addressed through classification based doctrines alone. Instead, it highlights a deeper mismatch between labour law's focus on employment status and the emergence of platform enterprises, that redistribute labour risk through design choices made prior to the formation of any employment relationship.[12] By reframing platform work through the lens of enterprise design and risk allocation the paper seeks to explain why existing regulatory strategies have struggled to produce meaningful protection and why doctrinal refinement within the existing framework is unlikely to be sufficient.

The analysis proceeds in six parts. Part II outlines labour law's traditional role in allocating economic risk and explains why status based regulation historically served this function. Part III examines the organisation of platform work and introduces the concept of platform risk architecture to describe the structural externalisation of labour risk. Part IV critiques misclassification as an inadequate regulatory response in light of this architecture. Part V propounds how there should be a distinct regulatory trigger for such work. Part VI provides

---

[9] Simon Deakin and Frank Wilkinson, *The Law of the Labour Market* (Oxford University Press 2005) 3-7.
[10] Valerio De Stefano, 'The Rise of the Just-in-Time Workforce' (2016) 37 *Comparative Labor Law and Policy Journal* 471 <https://link.springer.com/article/10.1007/s10657-015-9514-z> accessed 3 February 2026.
[11] Organisation for Economic Co-operation and Development, *The Future of Work and Skills* (OECD Publishing 2020) 41-44.
[12] *Balwant Rai Saluja v Air India Ltd* (2014) 9 SCC 407.

two solutions: pooling of funds and enterprise-level risk internalisation trigger along with suggested statutory amendments.

II. LABOUR LAW AS A SYSTEM OF RISK ALLOCATION

Labour law has historically operated as a corrective to the structural imbalance that characterises wage labour.[13] Its central concern has not merely been the regulation of contract but the allocation of economic risk within the organisation of work.[14] From its early development labour law has assumed that workers are uniquely exposed to market volatility income insecurity and the unilateral power of those who control access to work.[15] The legal response to this vulnerability has been to locate responsibility for labour related risks within the enterprise that organises and profits from work.[16]

This risk allocating function is reflected in the core of the employment relationship.[17] Employers are required to bear the risk of fluctuating demand by providing wage continuity and continuity of service.[18] They are made responsible for workplace safety and statutory social security contributions.[19] These obligations arise not from fault but from labour law's assumption that enterprises are better placed than individual workers to absorb and distribute economic risk.[20] Employment status therefore operates as a regulatory gateway through which labour law assigns responsibility to firms.

Indian labour law has repeatedly affirmed this functional orientation. In *Bangalore Water Supply and Sewerage Board v A Rajappa,* the Supreme Court emphasised that labour legislation must be interpreted in light of its social purpose rather than the formal structure of business arrangements.[21] The Court recognised that the objective of labour law is to extend protection to workers who are economically dependent on organised enterprises regardless of

---

[13] 'Labour Laws: Concept, Origin and Objectives' (IJIREM) https://ijirem.org/DOC/4-labour-laws-concept-origin-objectives.pdf >accessed 2 February 2026.
[14] *Valerio De Stefano* (n 10).
[15] *'Labour Law and the Employment Relationship'* (NLSIU Bangalore Law Review) <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1059&context=nlsblr >accessed 5 February 2026.
[16] Hugh Collins, *Labour Law* (2nd edn, Oxford University Press 2010) 3-8; Simon Deakin and Frank Wilkinson (n 9) 1-5.
[17] *'Understanding Employment Relationship in Indian Organizations through the Lens of Psychological Contracts'* (ResearchGate) <https://www.researchgate.net/publication/235307983_Understanding_employment_relationship_in_Indian_organizations_through_the_lens_of_psychological_contracts> accessed 4 February 2026.
[18] Guy Standing, 'Work after Globalization: Building Occupational Citizenship' (2018) 5(5) *RSF: The Russell Sage Foundation Journal of the Social Sciences* 147 <https://www.rsfjournal.org/content/5/5/147> accessed 4 February 2026.
[19] *Collins* (n 16) 17-20.
[20] Guy Davidov, *A Purposive Approach to Labour Law* (Oxford University Press 2016) 26-31.
[21] *Bangalore Water Supply and Sewerage Board* (n 4) ¶¶ 8-12, 47.

the contractual devices employed. A similar concern is evident in *Hussainbhai v Alath Factory Thozhilali Union,* where the Court rejected attempts to avoid labour obligations through intermediaries and held that economic control and dependency were central to determining responsibility.[22]

Subsequent decisions have reiterated this approach while continuing to rely on employment status as the primary trigger for regulation. In *Silver Jubilee Tailoring House v Chief Inspector of Shops and Establishments,* the Court stressed the relevance of control and supervision in identifying employment relationships.[23] In *Workmen of Nilgiri Coop Marketing Society Ltd v State of Tamil Nadu,* the Court consolidated tests of control integration and economic dependence as the doctrinal basis for classification.[24] These decisions demonstrate that while courts have been sensitive to the risks of contractual evasion they have remained committed to a status based framework for allocating labour obligations.

Statutory design reinforces this orientation. Major Indian labour enactments define their scope through concepts such as employee-employer and establishment.[25] Obligations relating to minimum wages, provident fund contributions, employee state insurance and retrenchment compensation are all triggered by the existence of an employment relationship within a defined enterprise.[26] Labour regulation thus presupposes a model of work organisation in which firms internalise labour risk as a normal incident of production and profit making.

Academically, labour law has been consistently characterised in similar terms.[27] Labour law is also described as a response to labour market failure in which risks that workers cannot reasonably bear are transferred to enterprises through legal obligation.[28] Institutional frameworks reflect the same understanding. The International Labour Organization has repeatedly linked decent work to income security social protection and stability of employment, all of which depends on enterprises assuming responsibility for labour related risks.[29] Labour

---

[22] *Hussainbhai* (n 5) ¶¶ 4-6.
[23] *Silver Jubilee Tailoring House* (n 5) ¶¶ 11-15.
[24] *Workmen of Nilgiri Coop Marketing Society Ltd* (n 4) ¶¶ 35-38.
[25] *'Employment Law Overview: India'* (L&E Global) <https://leglobal.law/countries/india/employment-law/employment-law-overview-india/ > accessed 1 February 2026.
[26] The Minimum Wages Act, 1948 (11 of 1948) s 2(i); The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) ss 2(f), 6; The Employees' State Insurance Act, 1948 (34 of 1948) ss 2(9), 38; The Industrial Disputes Act, 1947 (14 of 1947) ss 2(j), 2(s), 25F.
[27] Otto Kahn-Freund, 'Labour Law' in Morris Ginsberg (ed), *Law and Opinion in England in the 20th Century* (Stevens & Sons 1959) 215-263; Bob Hepple, 'Restructuring Employment Rights' (1986) 15 *Industrial Law Journal* 69.
[28] *Deakin and Wilkinson* (n 9) 20-25.
[29] International Labour Organization, *Decent Work* (ILO 1999); International Labour Organization, *Global Commission on the Future of Work: Work for a Brighter Future* (ILO 2019) ch 1.

law has historically regulated only those forms of risk allocation that arise from organised control over access to work and livelihoods, not risk allocation per se.

This conceptual foundation is essential to understanding the regulatory difficulty posed by platform facilitated work. Labour law's reliance on employment status assumes that enterprises accept labour risk as a condition of organising work and that legal intervention is required to prevent abuse of that asymmetry.[30] Where work is reorganised in ways that structurally prevent enterprises from assuming labour risk, status based regulation begins to lose its effectiveness.

III. Platform Work and the Emergence of Platform Risk Architecture

A. Defining Platform Risk Architecture

Existing legal analysis of platform work has largely proceeded on the assumption that employment relationships continue to exist beneath altered contractual forms.[31] Regulatory and judicial efforts have therefore focused on identifying the presence or absence of an employer through tests of control supervision or economic dependence.[32] This approach presupposes that platform enterprises organise work in a manner broadly comparable to traditional firms and that legal intervention is required only to pierce through misdescriptions of that relationship.

Platform enterprises are not merely intermediaries between workers and consumers. They are entities that design and govern labour markets through digital infrastructure while avoiding the assumption of labour related risk. Their distinctive feature lies not in the use of technology alone but also in the manner in which the corporate structure, the contractual design and the algorithmic management are combined to reorganise responsibility for work. This paper describes that configuration as platform risk architecture.

Platform risk architecture refers to the deliberate structuring of platform enterprises to centralise economic coordination and managerial control while systematically externalising income employment and social security risks onto workers before it attracts labour law. It is an ex ante design choice rather than an ex post legal strategy. The defining characteristic of

---

[30]*Labour Laws for Private Companies in India'* (Lloyd Law College Blog) <https://www.lloydlawcollege.edu.in/blog/labour-laws-private-companies-india.html> accessed 5 February 2026.

[31] Jeremias Prassl and Martin Risak, 'Uber, Taskrabbit, and Co: Platforms as Employers?' (2016) 37 *Comparative Labor Law & Policy Journal* 619; Miriam A Cherry, 'Beyond Misclassification: The Digital Transformation of Work' (2016) 37 *Comparative Labor Law & Policy Journal* 577.

[32]*Workmen of Nilgiri Coop Marketing Society Ltd* (n 4); *Silver Jubilee Tailoring House* (n 5)

this architecture is that labour risk is displaced from the enterprise at the moment work is organised rather than avoided after an employment relationship is formed.

Three features distinguish platform risk architecture from conventional outsourcing or casualisation. First platforms retain control over key aspects of work organisation including access to tasks, pricing mechanisms, performance evaluation and termination. These functions replicate the economic role of management even when formal supervisory relationships are absent. Second responsibility for labour risks is of fragmentation and individualisation. Workers bear fluctuations in demand, the cost of idle time while they also absorb the consequences of deactivation without recourse to enterprise level protection. Thirdly, corporate and contractual arrangements ensure that no single entity appears as an employer capable of internalising these risks. Platform entities present themselves as technology providers marketplaces or facilitators while retaining ownership of the digital infrastructure that governs work.

This architecture operates prior to and independently of worker classification. Whether a platform worker is labelled an employee or an independent contractor or a separate category does not alter the underlying distribution of risk created by the enterprise design. Classification based regulation therefore engages with the consequences of platform work rather than its organising logic. By the time labour law asks whether an employment relationship exists, the allocation of risk has already been settled through business model design.

When understanding platform work through the lens of platform risk architecture shifts the unit of legal analysis from the worker to the enterprise. It directs attention away from individual contractual relationships and towards the structural conditions under which work is organised and risk is distributed. This shift does not deny the relevance of employment status but exposes its limits as a regulatory trigger in situations where enterprises are structured to prevent employment relationships from arising at all.

The concept of platform risk architecture thus provides a framework for analysing why existing regulatory responses have struggled to produce substantive protection. It explains how platform enterprises can exercise control without responsibility and why doctrinal refinement within a status based framework is unlikely to internalise labour risk effectively.

B. Mechanisms of Risk Externalisation

Platform risk architecture operates through identifiable mechanisms that redistribute labour related risks away from enterprises and onto workers at the point of work organisation. These mechanisms are neither incidental nor sector specific. Empirical research across jurisdictions shows recurring patterns in how platform mediated work allocates income uncertainty and employment insecurity onto the workers.[33]

a. Income and Demand Risk

This is the most immediate form of externalisation. Platform workers are typically compensated on a task or trip basis with no guaranteed minimum earnings.[34] Fluctuations in consumer demand are transmitted directly to workers through dynamic pricing incentive schemes and algorithmic allocation of tasks. Periods of low demand result in unpaid waiting time borne entirely by workers while platforms retain the ability to scale supply without fixed wage commitments. The International Labour Organization has documented significant income volatility among platform workers even where nominal earnings appear competitive during peak periods.[35] Even the Indian policy reports note that platform workers' incomes are highly dependent on incentive structures that can be unilaterally altered by platforms.[36]

b. Employment Security Risk

It is externalised through unilateral control over access to work. Platforms retain the power to suspend or deactivate workers based on performance metrics rating systems or alleged violations of platform rules. Such decisions are typically automated and opaque. They are not subject to procedural safeguards associated with termination under labour law.[37] The absence of continuity of service or retrenchment protections means that workers absorb the full consequences of exclusion from the platform including sudden loss of livelihood. Empirical studies indicate that fear of deactivation plays a significant role in disciplining worker behaviour despite the absence of formal supervisory relationships.[38]

---

[33] *OECD* (n 8) 21-27.
[34] Fairwork, *Fairwork India Ratings 2021: Labour Standards in the Platform Economy* (Fairwork 2021); *ILO* (n 7).
[35] *ILO* (n 7) 55-62.
[36] *NITI Aayog* (n 1) 18-21.
[37] Valerio De Stefano, 'Algorithmic Management and Collective Bargaining' (2020) 51 *Comparative Labor Law and Policy Journal* 1, 9-12.
[38] *ILO* (n 7) 73-75.

c. *Social Security and Welfare Risk*

Social security and welfare risk is displaced through the classification of platform workers as self-employed or independent contractors. As a result platforms do not contribute to provident fund health insurance or employment injury schemes that attach to employment relationships under Indian law. The Parliamentary Standing Committee on Labour has acknowledged that a large proportion of platform workers lack access to any form of contributory social security and that existing statutory frameworks are poorly equipped to address this gap.[39] Platform workers are significantly less likely to be covered by social insurance compared to workers in standard employment even when performing similar tasks.[40]

d. *Regulatory and Compliance Risk*

This is further individualised through contractual arrangements that place responsibility for tax compliance equipment costs and regulatory adherence on workers. Platforms' terms of service commonly require workers to provide and maintain vehicles devices or tools at their own expense and to bear liability for regulatory non-compliance arising from their work.[41] Platforms thereby insulate themselves from sector specific regulatory obligations while retaining the economic benefits of labour coordination.

These mechanisms operate in combination rather than isolation. Income volatility is reinforced by the threat of deactivation while the absence of social security magnifies the consequences of employment insecurity. Crucially these risks are not allocated through post hoc contractual waivers but are embedded in the design of platform mediated work. By organising labour through task based compensation algorithmic governance and fragmented responsibility platforms ensure that labour risks are borne by workers as a structural feature of the enterprise.

IV. Why Misclassification Is a Doctrinal Dead End

Regulatory engagement with platform work has largely been framed through the problem of misclassification. Courts and policymakers have asked whether platform workers are in substance employees who have been incorrectly labelled as independent contractors.[42] This framing assumes that the principal regulatory failure lies in the erroneous application of established legal tests and that more accurate classification would suffice to extend labour

[39] *Parliamentary Standing Committee* (n 6) ¶¶ 3.1-3.9.
[40] *OECD* (n 11) 41-44.
[41] World Bank, *World Development Report 2019: The Changing Nature of Work* (World Bank 2019) 99-102.
[42] *Shaik Salauddin v Uber India Systems Pvt Ltd & Ors* WP No 28093 of 2023 (Telangana High Court); *Indian Federation of App-based Transport Workers v Uber India Systems Pvt Ltd & Ors* (Delhi High Court, pending).

protections. While naturally appealing this approach, rests on assumptions that do not hold in the context of platform enterprise design.

Misclassification analysis presupposes the existence of a concealed employment relationship. It treats platform work as a variation of standard employment in which contractual form obscures underlying substance. Accordingly, doctrinal attention is directed towards indicators such as control, supervision, integration and economic dependence.

However, platform mediated work presents a different regulatory challenge. They reorganise work in ways that prevent employment relationships from arising in the first place. Control is exercised through algorithmic systems rather than human supervision. Responsibility is fragmented across contractual interfaces rather than concentrated within a single employing entity. Labour risks are externalised at the stage of enterprise design rather than shifted after employment is formed. In such circumstances misclassification analysis is structurally misdirected. Further, Indian labour jurisprudence has also developed certain tests to prevent evasion of labour obligations through artificial contractual arrangements.[43]

Nonetheless, this misdirection becomes evident when courts attempt to apply traditional tests to platform work. Control remains central to classification but is exercised indirectly through data driven systems that allocate tasks set prices and evaluate performance without formal supervisory commands. Integration tests presuppose organisational embeddedness within a firm but platform workers remain formally external despite being economically dependent on platform access. Economic dependence tests identify vulnerability but do not identify an enterprise willing or able to internalise labour risk. Refining these tests does not resolve the underlying problem because the enterprise has been structured to avoid the legal consequences that classification would ordinarily trigger. Even perfectly adapted tests would continue to search for an employer within an enterprise design that has eliminated that role altogether.

Indian corporate law further constrains the effectiveness of misclassification based responses. The Supreme Court has consistently affirmed the principle of separate legal personality and has been reluctant to lift the corporate veil sans exceptional circumstances. In *Balwant Rai Saluja v Air India Ltd,* the Court emphasised that corporate separateness cannot be disregarded merely because economic control is exercised by a parent entity.[44] This doctrinal position limits the ability of labour law to attribute employer responsibility across fragmented corporate

---

[43]*Hussainbhai* (n 5); *Air India Statutory Corporation v United Labour Union* (1997) 9 SCC 377.
[44] *Balwant Rai Saluja* (n 12) ¶¶ 64-67.

structures commonly used by platform enterprises. Even where functional control is evident misclassification analysis struggles to identify a legally responsible employer within the enterprise group.

This issue is not limited to the Indian sphere. In *Uber BV v Aslam,* the United Kingdom Supreme Court recognised the degree of control exercised by the platform and extended worker protections accordingly.[45] Yet the decision remained anchored in classification and did not address the broader question of enterprise responsibility for labour risk.

The persistence of these difficulties suggests that misclassification is not a doctrinal solution but a doctrinal endpoint. It engages with the symptoms of platform work rather than its organising logic. Doctrinal refinement within a status based framework which can fully internalise labour risk in such cases is impractical and infeasible.

V. From Status to Coordination: Reframing the Regulatory Trigger

The analysis thus far indicates that platform mediated work escapes labour regulation not because of errors in doctrinal application but because labour law continues to rely on employment status as its primary regulatory trigger. Employment status has historically operated as a proxy for identifying enterprises that internalise labour related risks. Where this proxy holds, labour law is able to allocate obligations through established concepts such as employer, employee and establishment. Where it fails, regulatory intervention becomes structurally misaligned.[46]

Platform enterprises expose the limits of this proxy. As shown earlier, such enterprises coordinate labour and determine access to income without assuming the legal form of an employer. Labour risks are allocated prior to and independently of any employment relationship. This suggests that the failure lies not in doctrinal interpretation but in the choice of regulatory trigger itself.[47]

Labour law has never been indifferent to the exercise of power over work. Its protective rationale rests on regulating entities that control livelihoods and are positioned to absorb economic risk. Employment status emerged as the dominant trigger because it reliably identified such entities within industrial production systems. Platform mediated work demonstrates that this identification function has weakened. Coordination power over labour

---

[45] *Uber BV v Aslam* [2021] UKSC 5 ¶¶ 76-101.
[46] Simon Deakin and Frank Wilkinson, *The Law of the Labour Market: Industrialization, Employment and Legal Evolution* (Oxford University Press 2005) 3-7.
[47] *Davidov* (n 20) 26-31.

markets can now be exercised without formal employment and without direct contractual supervision.[48]

This development necessitates a recalibration of regulatory focus. Instead of asking whether a worker satisfies indicia of employment, labour regulation must first ask whether an enterprise performs the economic function that labour law seeks to regulate. Where an entity controls access to work determines remuneration structures and exercises unilateral power of exclusion it occupies a position of labour market coordination with direct consequences for worker vulnerability. Such coordination power exists irrespective of contractual form or corporate structure.[49]

Reframing the regulatory trigger around coordination and risk allocation does not require abandoning settled principles of labour or corporate law. Indian labour law has consistently emphasised substance over form in allocating responsibility, while corporate law continues to protect separate legal personality except in narrowly defined circumstances. A coordination based trigger operates alongside these doctrines by identifying a distinct point at which regulatory obligations arise, without collapsing employment categories or routinely piercing the corporate veil.[50]

This reframing provides the conceptual foundation for regulatory responses that engage directly with platform risk architecture. It allows labour law to address the organisation of work rather than its formal classification.

VI. Regulatory Responses to Platform Risk Architecture

A. Sectoral Pool Funding as a Response to Platform Risk Architecture

Platform risk architecture fragments labour risk across individual workers while centralising economic coordination at the enterprise level. One consequence of this fragmentation is the erosion of employment based social security frameworks. Where workers are formally classified as independent contractors, platforms are relieved of contributory obligations under labour statutes despite organising work at scale and extracting value from labour coordination. Empirical studies consistently show that platform workers face systemic exclusion from health

---

[48] *ILO* (n 7) 108-112.
[49] Hugh Collins, 'The Concept of the Employer' (2005) 34 *Industrial Law Journal* 113, 120-123
[50] *Bangalore Water Supply and Sewerage Board* (n 4) ¶¶ 8-12; *Hussainbhai* (n 5) ¶ 5; *Balwant Rai Saluja* (n 12) ¶¶ 64-67.

insurance, employment injury protection and income security mechanisms that attach to standard employment relationships.[51]

A sectoral pool funding mechanism offers a targeted response to this structural gap. Rather than attempting to reclassify platform workers or impose full employer obligations, pool funding focuses on risk aggregation. It recognises that while individual platform workers may lack stable employment relationships, the risks they face are predictable and recurring at the sectoral level. Income volatility, occupational injury and sudden loss of access to work are not exceptional events but structural features of platform mediated labour markets.[52] Pooling contributions across platforms operating within a sector allows these risks to be internalised collectively without altering the legal character of individual work arrangements.

Under a sectoral pool funding model, platforms that coordinate labour within a defined sector are required to contribute to a common fund proportionate to their scale of labour coordination. Contributions are triggered by the volume and intensity of platform activity rather than by employment status. The fund is used exclusively for the provision of social security benefits to platform workers including health coverage, accident insurance and income support during periods of involuntary work disruption. Such an approach aligns with long standing principles of social insurance which emphasise collective risk sharing where individual risk bearing is neither efficient nor fair.[53]

Crucially sectoral pool funding avoids the conceptual and practical limitations of misclassification based regulation. It does not require courts or regulators to identify an employer-employee relationship. Nor does it collapse heterogeneous forms of platform work into a uniform employment model. Instead it responds directly to the reality that platforms collectively generate labour risk through their business models and are therefore best positioned to contribute to its mitigation.

Indian labour law already provides a partial statutory foundation for such an approach. The Code on Social Security, 2020 recognises gig workers and platform workers as distinct categories and enables the formulation of social security schemes for their benefit.[54] However, the Code does not impose a mandatory contributory obligation on platform aggregators nor does it establish a binding pooling mechanism. As noted by the Parliamentary Standing

[51] *ILO* (n 7) 55-62, 88-92.
[52] *OECD* (n 8) 33-36.
[53] International Labour Organization, *Universal Social Protection for Human Dignity, Social Justice and Sustainable Development* (ILO 2017) 9-12.
[54] The Code on Social Security, 2020 (36 of 2020) ss 2(35), 2(60), 109-114.

Committee on Labour, the resulting framework renders social security for platform workers discretionary and uneven, dependent on executive choice rather than enforceable entitlement.[55]

A sectoral pool funding amendment would convert this recognition into a binding obligation. By linking contributions to platform activity rather than employment status, the amendment would align social security regulation with the organisational realities of platform work. It would also preserve flexibility at the level of individual contracts while ensuring that enterprises which coordinate labour markets bear a proportionate share of the social risks they generate.

Proposed Statutory Amendment to the Code on Social Security, 2020 is to insert Section 114A.
(To be inserted after Section 114 of the Code on Social Security, 2020)

114A. Sectoral Social Security Fund for Platform and Gig Workers

(1) The Central Government shall, by notification, establish one or more Sectoral Social Security Funds for the purpose of providing social security benefits to gig workers and platform workers engaged in such sectors as may be notified.

(2) Every platform aggregator operating in a notified sector shall contribute to the relevant Sectoral Social Security Fund at such rate as may be prescribed, having regard to

(a) the volume of labour coordinated through the platform,
(b) the number of active workers engaged through the platform, and
(c) the nature of services facilitated by the platform.

(3) Contributions under this section shall be independent of the employment status of the workers and shall not be construed as creating an employer–employee relationship.

(4) The Sectoral Social Security Fund shall be utilised exclusively for the provision of social security benefits to gig workers and platform workers including

(a) health and accident insurance,

[55] ibid; *Parliamentary Standing Committee* (n 6) ¶¶ 3.1-3.9.

(b) income support during periods of involuntary work disruption, and

(c) such other benefits as may be prescribed.

(5) The manner of administration governance and disbursement of benefits from the Sectoral Social Security Fund shall be such as may be prescribed with due representation of platform workers.

B. *Enterprise-Level Risk Internalisation Trigger (ELRIT)*

Platforms exercise decisive influence over access to work remuneration logic and exclusion through systems of algorithmic coordination. These forms of control produce risks that are immediate and individualized, particularly in relation to income continuity and termination from the market.

The Enterprise-Level Risk Internalisation Trigger (ELRIT) responds to this gap by identifying a new point at which limited labour obligations arise. ELRIT does not depend on the existence of an employment relationship. Instead, it attaches obligations where an enterprise performs the economic function that labour law has historically sought to regulate. Where an entity controls access to work determines remuneration structures and exercises unilateral power to exclude workers from earning opportunities, it coordinates a labour market and allocates labour risk regardless of contractual form.

ELRIT is designed to be narrow and non-transformative. It does not convert platform workers into employees, nor does it impose the full set of obligations associated with standard employment. The trigger activates only a defined set of non-waivable obligations that correspond to the risks created by enterprise level coordination. These include procedural fairness in deactivation transparency in remuneration logic and proportional responsibility for income disruption caused by unilateral exclusion. By limiting obligations to those directly linked to coordination power, ELRIT preserves enterprise flexibility while preventing the systematic externalisation of risk.

Indian labour and corporate law provide a defensible foundation for such an approach.[56] Labour philosophy has long emphasised substance over form in allocating responsibility, while corporate law protects separate legal personality absent exceptional circumstances. ELRIT operates alongside these doctrines by identifying a functional trigger that does not require veil

[56] Jeremias Prassl, *The Concept of the Employer* (Oxford University Press 2015); Guy Davidov, 'The Three Axes of Employment Relationships: A Characterisation of Workers in Need of Protection' (2002) 52 *University of Toronto Law Journal* 357.

piercing or reclassification. It recognises that responsibility can arise from coordination power even where formal employment is absent.[57] Courts and regulators have increasingly acknowledged that algorithmic control and unilateral exclusion produce labour vulnerabilities that warrant procedural safeguards independent of employment status.[58]

By attaching obligations at the point of labour coordination, ELRIT directly addresses platform risk architecture. It intervenes before risk is fully externalised and before workers bear the full consequences of unilateral enterprise decisions. When combined with sectoral pool funding ELRIT ensures that both collective and enterprise specific dimensions of platform generated risk are internalised within the regulatory framework.

Proposed Statutory Amendment to the Code on Social Security, 2020 is to insert Section 114B.
(To be inserted after proposed Section 114A to the Code on Social Security, 2020)

114B. Enterprise-Level Risk Internalisation Obligations

(1) Where a platform aggregator exercises significant control over the coordination of work, such aggregator shall be subject to the obligations specified in this section notwithstanding the absence of an employer–employee relationship.

(2) For the purposes of this section, an aggregator shall be deemed to exercise significant control where it

(a) determines or materially influences remuneration or pricing for work performed through the platform,
(b) controls access to work opportunities or allocation of tasks, or
(c) possesses unilateral power to suspend, deactivate or otherwise exclude a worker from the platform.

(3) An aggregator to whom this section applies shall be required to

(a) provide prior notice and reasons for any suspension or deactivation of a worker,
(b) establish an internal mechanism for review of such decisions, and

---

57 *Hussainbhai* (n 5) ¶ 5; *Balwant Rai Saluja* (n 12) ¶¶ 64-67.
58 *Uber BV v Aslam* (n 45) ¶¶ 76-101; European Commission, *Proposal for a Directive on Improving Working Conditions in Platform Work* COM (2021) 762 final arts 5-7.

(c) contribute such compensation or income support as may be prescribed for periods of involuntary work disruption resulting from unilateral exclusion.

(4) Obligations under this section shall be non-waivable and shall not be excluded or limited by contract.

(5) Compliance with this section shall not be construed as creating an employer–employee relationship for any other purpose under this Code or any other law for the time being in force.

VII. Conclusion

The difficulty that platform mediated work poses for labour regulation in India is not merely one of doctrinal fit but of regulatory orientation. Labour law has continued to operate on the assumption that responsibility for labour risk will be located within identifiable employment relationships. Platform enterprises have unsettled this assumption by reorganising work in ways that preserve coordination power while systematically avoiding the internalisation of labour risk. The result is not a gap at the margins of labour law but a misalignment at its core.

This paper has sought to resolve that misalignment by shifting the analytical focus from worker status to enterprise design. By framing platform work as a product of platform risk architecture, the paper explains why misclassification debates persist without delivering durable protection. Where labour risk is allocated prior to the formation of any employment relationship, doctrinal refinement within a status based framework can only offer partial and unstable solutions. The persistence of worker insecurity in the face of regulatory attention is therefore not anomalous but structurally predictable.

The proposed regulatory responses close this gap by re-anchoring labour regulation in its foundational concern with risk allocation. Sectoral pool funding responds to the collective risks generated by platform mediated labour markets that no individual worker or firm can efficiently absorb. The ELRIT addresses the exercise of coordination power at the level of the firm, ensuring that enterprises which shape access to livelihoods cannot do so without assuming proportionate responsibility. Together, these mechanisms reconcile flexibility with protection by attaching limited, targeted obligations to economic function rather than legal form.

More broadly, the argument advanced here reframes the future task of labour law. As work continues to be organised through complex digital infrastructures, the central regulatory question is no longer whether labour fits within inherited categories, but whether law can identify and regulate the sites at which risk is generated and power is exercised. By directing attention to how work is designed rather than how it is labelled, this paper offers a way for labour regulation to remain principled, effective and institutionally coherent in the platform economy.

APPRENTICES IN THE SHADOW OF THE CODES: LEGISLATIVE GAPS AND THE PROTECTION VACUUM IN INDIA'S NEW LABOUR FRAMEWORK

- *Vivek Rajurkar & Harsh Vardhan Singh*

The four Labour Codes are the most important labour law reforms in India and were introduced as an initiative towards simplification and the establishment of a universal framework of labour protection. However, this article contends that the reform has also created a protection gap that is formally acknowledged by specifically excluding apprentices from the definition of "employee" and "worker" under the law. Apprentices in India are exclusively covered by the Apprentices Act, 1961, and its corresponding rules, which are generally limited to the regulation of training schemes and do not include provisions for minimum wage protection, social security, industrial relations, and occupational safety and health.

The article conducts a doctrinal analysis of the Apprentices Act, the four Labour Codes, and government publications to show that the exclusion of apprentices is a regulatory choice rather than an oversight. The article has three main contributions. Firstly, it shows that apprentices are a structurally excluded legal category in the post-Code labour regime in India. Secondly, it identifies the protection vacuum and its systemic implications for labour security and skill development. Thirdly, through a comparative study of the European Quality Framework for Apprenticeships, the integrated employment and training strategy in England, and the dual vocational education and training system in Germany, the article shows that labour protection is a necessary condition for sustainable skill development.

Further evidence supporting the argument that training schemes without wage and social security benefits can act as disincentives for skill development is provided by the empirical results of the ILO-World Bank assessment, which have found low retention rates and poor post-apprenticeship employment outcomes in India. The article concludes that specific legislative measures are required to bring apprentices within the

framework of labour protection on the basis of the constitutional principles of dignity, equality, and social justice.

I. INTRODUCTION

Notably, on 21st November 2025, a significant shift in the framework of labor laws in India took place, where twenty-nine central labor laws were reduced to four labor codes.[1] These include the Code on Wages, 2019; the Industrial Relations Code, 2020; the Code on Social Security, 2020; and the Occupational Safety, Health, and Working Conditions Code, 2020, which together constitute a unified framework governing industrial relations and social security.[2] The government's descriptions of the reforms emphasize simplification, enhanced compliance, and the expansion of statutory benefits to a larger segment of the labor force.[3]

Despite claims of universality, the new labour codes continue to exclude apprentices from their protective scope. A close reading of the labour codes alongside the Apprentices Act, 1961, reveals that apprentices engaged under formal apprenticeship programmes are not recognised as "workers" or "employees" under any of the four codes. As a result, apprentices are excluded from statutory entitlements relating to minimum wages, social security, industrial dispute resolution, and occupational safety and health.[4] Therefore, minimum wage, social security coverage, collective dispute resolution, and occupational safety entitlements as part of their employment or contracts under the Codes will not apply to apprentices. This exclusion is not the product of legislative oversight but reflects an intentional regulatory design with far-reaching consequences for labour protection and skill development policy.

Apart from its theoretical significance, the exclusion of apprentices from the scope of labor protection acquires a special meaning when it is considered in the context of the actual scale and performance of the apprenticeship system in India. According to a combined assessment of the

---

[1] Press Information Bureau, Government of India, 'India's Labour Reforms: Simplification, Security, and Compliance' (21 November 2025)< https://www.pib.gov.in/PressReleasePage.aspx?PRID=2192524 > accessed 10 March 2024.

[2] *Handbook on New Labour Codes* (Nishith Desai Associates, 2022)< https://nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Handbook-on-New-Labour-Codes.pdf > accessed 10 March 2024.

[3] ibid.

[4] Industrial Relations Code 2020, s 2(z); see also Lexology, 'Key Changes Under the Industrial Relations Code 2020' (2021)< The Industrial Relations Code, 2020 - Lexology >accessed 10 March 2024.

ILO and the World Bank, there are fewer than 300,000 registered apprentices in India, which has a labor force of close to 500 million, representing less than 0.01 percent of the total labor force.[5] This marginal presence exists alongside persistently high youth unemployment and an acknowledged skills gap across industrial and service sectors.[6] These findings suggest that apprenticeships in India are more than a marginal source of training; instead, they are a structurally underutilized source whose efficacy is inextricably tied to the legal system under which it operates.

The implications of this exclusion extend beyond labour law and directly affect India's skill development strategy. Apprenticeship forms a central component of India's National Skill Development Strategy, including schemes such as the National Apprenticeship Promotion Scheme (NAPS), which aim to strengthen industry-education linkages and improve workforce employability.[7] However, the systematic denial of labour-law protections to apprentices creates a second-tier category of workers within the labour market. Employees with full labour-law protections will hold the most important and stable positions, while apprentices will exist in a grey zone of employment and receive the fewest rights and entitlements. An environment in which an entire class of workers is denied minimum wages, social security, and enforceable safety standards undermines both the motivation to acquire skills and the long-term sustainability of apprenticeship as a pathway to skilled employment. The result is a **lack of incentive to continue acquiring skills** (the ability to earn more through skill acquisition), and this **creates a void** in terms of the effectiveness of apprentice programs as a viable source of human capital development.

This paper demonstrates that the legislative framework governing apprenticeship produces a protection vacuum that contradicts the stated objectives of both labour regulation and skill development policy. The argument is developed across three sections.

Section One presents a doctrinal analysis of the Apprentice Act, 1961, and the rules associated with the Act and the four (4) labour codes that create a void by excluding apprentices from coverage under the Codes.

---

[5] International Labour Organization and World Bank, *Possible Futures for the Indian Apprenticeship System* (ILO–World Bank 2023) 9–11.
[6] ibid 5–7.
[7] Ministry of Skill Development and Entrepreneurship, 'FAQs — Apprenticeship under the Apprentices Act, 1961 (NAPS)' (2023)< https://s3.ap-south-1.amazonaws.com/naps-cdn/Apprenticeship_FAQs.pdf >accessed 10 March 2024.

Section Two explores the Indian legislation from a comparative perspective relative to apprenticeship systems in the (i) European Union, (ii) England, and (iii) Germany. In those systems, there is greater integration of labour protections and skill development than exists under the current Indian framework.

Section Three examines the constitutional and labour market implications of the protection void that is created for apprentices in India. In particular, this section addresses the issue of equality, dignity, and economic participation, as well as recommending certain potential legal reforms that would better align the regulation of apprentices with the stated goals of Labour Protection.

The article thus deals with a specific legal issue: whether the exclusion of apprentices from the categories of "worker" and "employee" in the four Labour Codes is a defensible labour policy, or whether it leads to a constitutionally impermissible gap in labour protection. The argument will develop by first exploring the basis of apprenticeship classification, then discussing the Apprentices Act and the Labour Codes, and finally comparing and evaluating the constitutional position, before concluding with some feasible changes.

II. CONCEPTUAL FRAMEWORK: APPRENTICES, WORKERS, AND INTERNS

All aspects of labour law involve categorizing an individual into a particular legal definition, which then dictates an individual's rights, obligations, and protections under the various labour statutes.[8] India's classification of its labour force includes workers, employees, apprentices, and interns. The way the Labour Code defines each category determines access to wage payments, social security benefits/access to collective bargaining, and protection in the workplace. This section discusses the various employment classifications and how these classifications **produce unequal access and risk of exposure** to unemployment, poverty, and workplace violence.

A. Apprenticeship as a Distinct Legal Category

India has categorised the labour force as workers, employees, apprentices, and interns. The Labour Code defines the four employment categories and thus determines who is entitled to wage payments, social security benefits/access to collective bargaining, and workplace protections. This

[8] Simon Deakin, *The Law of the Labour Market* (OUP 2014).

section analyses the differences in classification amongst employees of each type and the **unequal access to and exposure to risk** of unemployment, poverty, and violence in the workplace that exist as a result of the classification system.[9] An apprentice is defined within the Act as someone who is training under a contract of apprenticeship, being trained to acquire skills and receive instruction, not as someone who is producing any type of productive output.[10] This framed definition of apprenticeship has provided a rationale for the inability of apprentices to be covered by various general labour laws due to the perception that the objectives of apprenticeship training require a level of flexibility from legislative regulation.[11]

This distinction has been upheld by judicial interpretation. Indian courts have held that persons employed as apprentices under the Apprentices Act, 1961, do not fall within the definition of "workmen" or "employees" entitled to the benefits of labour welfare legislation unless specifically provided for in the statute. In the case of ***U.P. State Electricity Board v. Shiv Mohan Singh,***[12] The Supreme Court of India reiterated that the primary object of apprenticeship is training, and not employment, and that any kind of productive work done by an apprentice is merely ancillary to the training objective. As such, apprentices are not entitled to the benefits of welfare legislation such as the Employees' State Insurance Act and the Employees' Provident Funds and Miscellaneous Provisions Act unless specifically mentioned in the statute.[13] The apprenticeship contract, therefore, is a legally separate and distinct entity that both limits the statutory liability of the employer and the enforceable rights of the apprentice.

Although the updates to the Apprenticeship Rules in 2019 and 2025 have broadened the range of apprenticeships across various sectors and increased stipend amounts, these changes are primarily **administrative and supportive**, rather than being based on rights.[14] Since it acts as a training-centric relationship that is detached from mainstream labour protection, it does not alter the foundational legal character of apprenticeship.

B. Workers and Employees under the Four Labour Codes

---

[9] Apprentices Act 1961, s 2(aa).
[10] ibid ss 4–7.
[11] S Sivakumar, 'Apprentices and Labour Law in India' (2018) 60 Journal of the Indian Law Institute 245.
[12] *U.P. State Electricity Board v Shiv Mohan Singh* (2004) 8 SCC 402.
[13] *Employees' State Insurance Corporation v Tata Engineering and Locomotive Co Ltd* (1976) 2 SCC 835.
[14] Apprenticeship (Amendment) Rules 2019; Apprenticeship (Amendment) Rules 2025.

In contrast, they have adopted expansive definitions of **"worker"** and **"employee."**[15] under the Four Labour Codes, designed to bring a wide range of employment relationships within their regulatory scope.[16] These definitions support access to minimum wages, social security programs, dispute resolution processes, and workplace safety standards. However, each of the Codes specifically excludes apprentices working under the Apprentices Act, 1961, from these definitions.[17]

This exclusion appears consistently across the Code on Wages, 2019, the Industrial Relations Code, 2020, and the Code on Social Security, 2020, indicating a conscious legislative design rather than a drafting oversight.[18] Consequently, the apprentices are left out of the labour-law universe created by the Codes despite the declared aim of the Codes to **simplify and universalise** labour protection. The legal implication is that even where apprentices are actively engaged in productive work with other employees at work, they cannot claim any statutory wage minimum, contributory social security, or collective labour redress.

Doctrinally, this exclusion instills a **dualistic differentiation** between training and employment that is not relevant to the modern labour markets, where the acquisition of skills and productive labour may often be confluent.[19] The Codes, therefore, maintain a strict classificatory edge that puts more emphasis on formal position than functional realities of work.

C. Interns and Legal Trainees: An Unregulated Parallel

A worse still, **interns and legal trainees** occupy an even more precarious position, having **no statutory recognition** of any kind under Indian labour law.[20] Most internships are usually organized either informally or based on academic needs, and there are no strict laws on how they should be paid, the length, or working conditions.[21] Courts and regulators have primarily avoided

---

[15] Code on Wages 2019, ss 2(k), 2(z); Industrial Relations Code 2020, s 2(z).
[16] Ministry of Labour and Employment, *Compendium on the Four Labour Codes* (2023).
[17] ibid.
[18] Press Information Bureau, Government of India, 'Labour Reforms and Universalisation of Social Security' (18 January 2025)< Press Release:Press Information Bureau >accessed 10 March 2024.
[19] Judy Fudge, 'Fragmenting Work and Fragmenting Organizations' (2017) 46 Industrial Law Journal 46.
[20] National Law Review, 'Engaging Interns and Trainees in India: Legal Considerations for Employers' (2022)< https://www.natlawreview.com/article/engaging-interns-and-trainees-india-legal-considerations-employers >accessed 10 March 2024.
[21] AMLEGALS, 'The Legal Framework for Apprenticeships and Internships in India'

constructing an employer/employee relationship with an intern who has not been shown to have an actual factual matrix forming an employee/employer relationship.[22]

It has been pointed out in legal commentary that, even in professional and legal education, interns and other training programs are frequently **not subject to labour protection,** as it is assumed that the internship is an exposure or a learning experience, as opposed to work.[23] This lack of regulation is similar to that of apprentices, although with no more protection than the Apprentices Act offers. It has an effect of a progressive gradient of exclusion, the interns at the end, then the apprentices, and finally, workers and employees who are covered by the Codes. This comparison underscores that apprenticeship occupies an intermediate but legally unprotected position within India's labour classification system.

D. Classification as a Source of Vulnerability

Combined, these types indicate that legal classification is a gatekeeping mechanism of labour law. The exclusion of apprentices and interns is not due to their lack of contribution in terms of labour, but due to the law giving more emphasis to the formal training designations, rather than the actual work.[24] This strategy enables the law to shift the risk and cost externality of individuals onto those at the labour market entry point, and still retains security for those already understood to be workers. Isolating apprenticeship under a separate training statute and excluding it from the Four Labour Codes would create a **pyramid of labour protection**, which has direct consequences for the economic security, skill development, and workforce stability. The corresponding conceptual basis in the succeeding sections of the paper develops this conceptual foundation to prove how such classification decisions create a systemic exclusion from labour protections of apprentices in the new Indian labour regime.

The risk posed by legal categorization is more than theoretical. The Indian apprenticeship system has been shown to have persistent features of poor wages, poor completion rates, and poor post-apprenticeship employment outcomes.[25] The ILO–World Bank study identifies that apprentice

---

(2021)< https://amlegals.com/legal-framework-apprenticeships-internships-india/ >accessed 10 March 2024.
[22] *Management of Hotel Imperial v Hotel Workers' Union AIR 1959 SC 1342.*
[23] National Law Review (n 20).
[24] David Weil, *The Fissured Workplace* (Harvard University Press 2014).
[25] ILO–World Bank (n 5) 17–21.

intake frequently falls below available capacity, that stipends remain insufficient to meet basic living standards, and that completion of apprenticeship does not reliably translate into stable employment.[26] These results offer empirical evidence in support of the claim that the legal status of apprentices as trainees, which falls outside the scope of labor protection, actively constitutes economic insecurity rather than simply reflecting it. In this respect, classification can be seen to function as a means of normalizing precarity at the point of labor market entry. This classificatory vulnerability is institutionalised through the standalone structure of the Apprentices Act, examined in the next section.

III. THE APPRENTICES ACT, 1961 AND ALLIED RULES: A STANDALONE AND LIMITED REGIME

The main legislative document of apprenticeship training in India includes the Apprentices Act, 1961. The Act was enacted in the early post-independent era and aimed to control the training of apprentices in the **specific trades** to come up with a skilled workforce with technical skills.[27] Its legislative concentration, however, has always been firmly rooted in the regulation of training as opposed to labour protection, a difference that has remained to define the legal position of apprentices, despite the ensuing amendments and related rules.

A. Structure and Objectives of the Apprentices Act, 1961

The conceptualisation of the Act changes the idea of apprenticeship to a type of training between an employer and an apprentice, which is formalised through a contract of apprenticeship, registered with the relevant authority.[28] The **legislative plan** focuses on the content, period, and oversight of training, an obligatory aspect of teaching in terms of instruction, attendance, and evaluation. Although the **Act obliges** employers to make a stipend, it does not describe it as wages or associate it with the current prevailing minimum wage requirements.[29]

More importantly, the Act clearly differentiates between the apprentices and workers, according to which, apprentices receiving training within the framework of the Act shall not be considered

---

[26] ibid 22–24.
[27] Apprentices Act 1961, Preamble.
[28] Apprentices Act 1961, s 4.
[29] Apprentices Act 1961, s 13.

workers concerning labour laws unless otherwise stated.[30] Traditionally, this legislative option has been used to explain why apprentices are not subject to the protection of the safeguarding labour laws and in support of their being trainees, but not being subjects of an employment relationship.[31] The Act therefore creates its own regulatory world, which does not interfere with the surrounding labour-law systems. This training-centric structure explains but does not justify the statutory detachment of apprentices from labour-law protections.

B. Limited Protective Content within the Act

Although the Apprentices Act includes a few **welfare-oriented clauses**, they are limited and conditional. During training, employers must provide basic health, safety, and welfare precautions; however, the Act does not grant any enforceable rights to an apprentice that are comparable to those granted to workers under occupational safety or social security laws.[32] The Act provides dispute resolution, which is mostly administrative, where the apprenticeship advisers have the authority to determine disputes that may arise as a result of the contract of apprenticeship.[33] This mechanism does not have the procedural strength and remedial range of labour adjudication as that of industrial relations statutes.

The judiciary has always upheld the narrowness of the protection available in the Act. The courts have pointed out that the major intent of apprenticeship laws is training/developing skills, and that any accidental gain to the apprentice cannot make the relationship of employment.[34] This has resulted in depriving apprentices of remedies under labour welfare laws, despite the work being done being similar to that of regular employees.[35]

C. Apprenticeship Rules, 2019: Expansion without Integration

[30] Apprentices Act 1961, s 18.
[31] S Sivakumar (n 11).
[32] Apprentices Act 1961, s 14.
[33] Apprentices Act 1961, s 20.
[34] *U.P. State Electricity Board v Shiv Mohan Singh (2004) 8 SCC 402.*
[35] *Employees' State Insurance Corporation v Tata Engineering and Locomotive Co Ltd* (1976) 2 SCC 835.

The Apprenticeship (Amendment) Rules, 2019 was a major administrative change, which was meant to widen the scope of apprenticeship training in any given field and ease the burden on compliance by establishments.[36] The Rules broadened the coverage of the specified trades, added optional trades, and allowed the participation of the apprentices in the service industries that had not been covered by the Act.[37] These reforms were in line with the national skill development plans and aimed to make the reforms more participatory for both the employers and trainees.

The 2019 Rules, however, did not change the legal status of apprentices as it was. Though they enhanced the flexibility of the administration and extended access, they failed to incorporate apprenticeship in the labour-law protections in terms of wages, social security, and collective rights.[38] It continued to focus on the training numbers and administrative efficiency instead of improving the substantive legal status of apprentices.

D. Apprenticeship (Amendment) Rules, 2025: Enhanced Stipends, Persistent Gaps

The administrative structure was increased further, with the Apprenticeship (Amendment) Rules, 2025, revising the stipend rates and broadening the range of sectors served by them, as well as raising compliance requirements imposed on establishments.[39] These amendments were supposed to enhance the attractiveness of the apprenticeships as well as responsiveness to the labour market requirements. The government messages that were used when discussing the 2025 amendments focused on employability, improvements, and industry involvement.[40]

Even though these are positive, the amendments are limited to the training-centric regulatory model**.** Albeit with an increase, the stipend still functions out of the statutory wage framework and is not subject to the minimum wage law.[41] Social security benefits, i.e., provident fund or health insurance, are vacant unless provided voluntarily by employers or even obligatory by making a separate notice.[42] The 2025 Rules, therefore, **uphold the autonomy** of the apprenticeship regime

---

[36] Apprenticeship (Amendment) Rules 2019.
[37] Ministry of Skill Development and Entrepreneurship, *Reforms in Apprenticeship Training* (2019).
[38] AMLEGALS (n 21).
[39] Apprenticeship (Amendment) Rules 2025.
[40] SGCMS, 'Apprenticeship Amendment Rules, 2025: Key Changes and Compliance' (2025)< [Apprenticeship (Amendment) Rules, 2025 - Regulatory Updates by SGCMS]() >accessed 10 March 2024.
[41] ibid.
[42] National Law Review (n 20).

and **do not alter** the aspect of **structural isolation** of the orientation of the apprenticeship regime and labour protection.

E. Structural Limitations of a Standalone Regime

The Apprentices Act and its companion rules taken together illustrate a trend of reform which puts a greater emphasis on quantitative growth and administrative simplification rather than on substantive incorporation with the labour-law safeguards. The regime does not view the apprentices as individuals subject to the training policy but as those who have a right to get some minimum standards of protection in the labour market.[43] This practice turns more problematic in contemporary labour markets, when apprentices tend to do productive labour together with other employees and to make a direct contribution to the output of the enterprise.[44]

The law externalises the risks of training to acquire a skill onto the trainees themselves by keeping apprenticeship a closed training regime. Lack of wage parity, social security, and mechanisms for resolving any form of dispute not only exposes the apprentices to economic insecurity but also undermines the incentive framework required to ensure a long-term commitment towards the skill development process.[45] These formal constraints gain a new importance as they are being read together with the Four Labour Codes, which offer universal labour protection, and at the same time deprive apprentices of the newfound protection.

IV. APPRENTICES UNDER THE FOUR LABOUR CODES: EXCLUSION BY DESIGN

This section examines each of the four Labour Codes individually to demonstrate how the exclusion of apprentices is consistently replicated across wage protection, social security, industrial relations, and occupational safety. The Four Labour Codes came into existence with the mentioned aim of streamlining the labour law regime in India and providing statutory protection to a larger portion of the working population by consolidating and rationalising.[46] The official

[43] K Gayithri, M L Tantri and D Rajasekhar, 'Apprenticeship Policy in India: A Critical Review' (2019) Institute for Social and Economic Change Working Paper 456.
[44] David Weil (n 24).
[45] European Commission, *European Quality Framework for Apprenticeships* (2018)< https://ec.europa.eu/social/BlobServlet?docId=19867&langId=en >accessed 10 March 2024.
[46] Ministry of Labour and Employment (n 16).

messages that accompanied the Codes kept on addressing the theme of **universalisation**, **ease of compliance,** and **social security** to all workers.[47] A close doctrinal critique of the Codes, however, shows this promise of universality to be structurally constrained through the influential omission of apprentices who work under the Apprentices Act, 1961. This exclusion applies uniformly throughout the Codes, and the effect of it is to put the apprentices out of the protective architecture of the modern labour law.

A. Code on Wages, 2019: Denial of Wage Protection

The Code on Wages, 2019, creates a single system regulating the minimum wages, paying the wages on time, equal pay, and bonus rights.[48] These protections are only available under the statutory definitions of employee or worker".[49] The Code specifically excludes apprentices who are under service under the Apprentices Act of 1961 in both definitions.[50]

The net effect is that the apprentices do not stand to get statutory minimum wages or floor wages as per the Code, regardless of the nature or amount of work done during the training process.[51] Instead, it is only within the stipend provisions of the Apprentices Act and the Apprentices Rules that they are subject to, and which in turn have no relation to the minimum wage laws.[52] This forms a parallel wage regime whereby the apprentices can legally be paid less than the minimum standard wages that apply to other groups of workers doing similar jobs.

It has been pointed out in legal commentary that this exclusion maintains the historic divide between training and employment, even though the Code claims to be aiming at a goal of wage universalisation.[53] The Code, therefore, solidifies a **system of hierarchical** wages with the apprentices being placed at the bottom, with no exclusion being done based on incapacity or susceptibility, but rather by a system of classifying them via the legislation.

B. Code on Social Security, 2020: Absence of Welfare Integration

[47] Press Information Bureau (n 18).
[48] Code on Wages 2019, ch II.
[49] Code on Wages 2019, ss 2(k), 2(z).
[50] Code on Wages 2019, s 2(k).
[51] ibid.
[52] Apprentices Act 1961, s 13.
[53] Nishith Desai Associates, *Handbook on New Labour Codes* (2022) 45.

The Code on Social Security, 2020, is the most significant effort that has ever been made to claim social security for various other types of labour, such as unorganised, gig, and platform workers.[54] The Code brings together various welfare laws and puts in place enabling provisions for the social security schemes in the various employment types.[55] However, even with this broad definition, the apprentices who have been hired on the basis of the Apprentices Act are specifically not considered employees under the Code.[56]

The takeaway is a paradox in regulation: those groups whose position was historically considered marginal to the conventional employment relations are included in the field of social security, and the apprentices, who tend to be employed in the organized institutions, are left out.[57] The Code acknowledges both new and non-traditional types of work; at the same time, the status of apprentices remains unchanged and marginalized by the welfare architecture.[58]

The exclusion of apprentices from social security schemes has important implications for the viability of apprenticeship as a skill formation strategy. The empirical evidence suggests that the absence of health care, accident insurance, and income security during training is a factor that contributes to high dropout rates and reduced incentives to pursue the training program.[59] According to the ILO-World Bank analysis, the stipends received by apprentices are not only low but also lack welfare provisions, unlike in other countries where the State takes responsibility for social contributions during training.[60] This empirical context further supports the doctrinal critique that the exclusion of welfare under the Code on Social Security is not only a denial of benefits but also works against the objectives of skill development policy.

C. Industrial Relations Code, 2020: No Voice or Remedy

The trade unions, collective bargaining, standing orders, and industrial dispute resolution are regulated by the Industrial Relations Code, 2020.[61] These are the mechanisms that comprise the

---

[54] Code on Social Security 2020.
[55] ibid chs III–VI.
[56] Code on Social Security 2020, s 2(26).
[57] National Law Review (n 20).
[58] Ministry of Labour and Employment (n 16).
[59] ILO–World Bank (n 5) 26–29.
[60] ibid 31–33.
[61] Industrial Relations Code 2020, ch II.

institutional base of the enforcement of labour rights. The Code, however, limits its application to the workers, as defined in the Code, a definition that clearly excludes apprentices.[62]

Consequently, the apprentices do not have access to the statutory grievance redressal provisions of the industrial law. They have no right to strike against industrial issues, collective bargaining, and protection against unfair dismissal enjoyed by the employees.[63] Confrontations in the course of apprenticeship are limited to administrative adjudication in the Apprentices Act, which does not offer comparable procedural protection to any labour adjudication forums.[64]

This lockout will strengthen the sense of apprentices as distinct trainees but not as collective actors in the labour market, and deny them institutional voice where they are a collective actor with unionised team members.[65] The Code thereby replicates an imbalance in the industrial citizenship whereby the apprentices are present in the workplace but not in the governance frameworks.

D. Occupational Safety, Health and Working Conditions Code, 2020: Ambiguous Protection

Occupational Safety, Health and Working Conditions Code, 2020 unites the legislation applicable to the safety of workplaces, health, and standards in working conditions in all sectors.[66] Although the beneficiary framework of the Code places obligations on employers to ensure that working environments are safe, it is coupled with a definition of employee and employer.[67] These omissions of the apprentices in these definitions leave a grey area in respect of the enforceability of the safety rights in favour of the apprentices.[68]

Even though some of the safety standards duty bearers might indirectly impose their duty on everyone who is in a working environment, apprentices do not have a statutory right of recourse to enforcement options in the Code.[69] This erodes the legal standing of the apprentices in the hazardous or industrial environment where apprentices are usually exposed to occupational

[62] Industrial Relations Code 2020, s 2(s).
[63] ibid chs II–III.
[64] Apprentices Act 1961, s 20.
[65] Judy Fudge (n 19).
[66] Occupational Safety, Health and Working Conditions Code 2020.
[67] ibid s 2(l).
[68] AMLEGALS (n 21).
[69] Occupational Safety, Health and Working Conditions Code 2020, ch IV.

hazards during their training.[70] Not having clear recognition, therefore, plays into the backfire of the preventive and remedial goals of occupational safety law.

E. Legislative Silence and Regulatory Intent

The communications of the government concerning the introduction of the Four Labour Codes do **not explicitly mention** the process of incorporating apprenticeship into the new labour framework.[71] The lack of explanations on the position of apprentices, even with a lot of explanatory content on other categories of workers, supports the conclusion that exclusion is based on purpose and not by chance.[72]

The Codes in combination suggest a consistent trend in all legislation: apprentices are always left beyond the stages of definition, thus precluding the right to wages, social security, industrial remedies, and enforceable safety standards. There is no correction or mitigation of this exclusion by cross-references or saving clauses. Rather, it puts apprentices in an apprenticeship-based statute that is poorly suited to the realities of contemporary labour markets. The subsequent **protection vacuum** is the core of the critique in this article.

V. COMPARATIVE PERSPECTIVES ON APPRENTICESHIP PROTECTION AND SKILL FORMATION

The regulatory treatment of apprentices can be evaluated through the prism of comparative labour law, which offers a viable way to evaluate the regulatory approaches to issues in India. Quite to the contrary, the omission of apprentices from labour protection is a legislative decision, which varies depending on jurisdiction. This part will discuss three comparative models in terms of the European Union, England, and Germany, as an illustration that it is possible to create apprenticeship systems in such a way that they combine skill-formation, labour protection, social security, and motivational-enhancing safeguards.

A. European Union: Apprenticeship as a Rights-Bearing Skill Pathway

---

[70] European Commission (n 45).
[71] Press Information Bureau (n 18).
[72] Ministry of Labour and Employment (n 16).

The European Quality Framework on Apprenticeship (EQF)[73] defines minimum standards to make sure that the apprenticeships are learning and working arrangements.[74] The Framework specifically identifies apprentices as individuals who are involved in the labour sphere and need protection, not only trainees. It provides that apprenticeship agreements are in writing, have clear learning outcomes, proper remuneration, social protection cover, and effective mechanisms of redressing grievances.

The EQF is based on the fact that quality skill development relies on **stability, dignity, and fair treatment**. The Framework aims to have remuneration and social security pegged on apprenticeship to keep apprentices motivated to go through the training and even into skilled jobs. The EU strategy, therefore, dismisses the fact that labour protection is detrimental to training flexibility, but rather, it implements protection as a prerequisite to sustainable skill development.[75]

This model is a stark contrast to the Indian system, in which any system of apprenticeship is controlled by a training-focused statute that lacks integration with labour law. The experience in the EU shows that apprentices should not be barred from wage and welfare protections, as it is not a design feature of the apprenticeship but a policy norm.

B. England: Apprentices as Employees under Labour Law

England is an especially instructive comparator since it has a common-law background and a clear statutory definition of the status of apprenticeship. The employees in law are apprentices in England who have the right to employment, as well as being under an organized system of training requirements.[76] The National Minimum Wage Act covers them, providing certain apprentice rates of wages and the statutory rights of working hours, leave, health and safety, and anti-discrimination.[77]

The English apprenticeship system combines the training of skills in the wider labour-law paradigm via the system of mandatory apprenticeship agreements, state-regulated standards, and

[73] Council of the European Union, 'Council Recommendation of 15 March 2018 on a European Framework for Quality and Effective Apprenticeships' [2018] OJ C153/01.
[74] European Commission (n 45).
[75] ibid.
[76] House of Commons Library, *Apprenticeships Policy in England* (Research Briefing, 3 October 2024) 12.
[77] National Minimum Wage Act 1998 (UK), s 1; House of Commons Library (n 76) 14.

employer investments in the training of skills through the apprenticeship levy.[78] Notably, the major issue is that policy assessments have identified that offering apprentices wage security and employment rights helps in **reducing the dropout rate and enhancing the completion rates,** which has strengthened the connection between protection and motivation.[79]

The English model proves that training and labour protection are complementary by taking apprentices as workers and not as exceptions to regulatory policies. This is a confrontation of the Indian assumption in legislation to exclude the apprentices from the labour legislative law to foster skill development.

C. Germany: Dual Vocational Training and Social Legitimacy

The dual vocational training system in Germany is globally considered a reference on how to combine skill development with labour market integration.[80] Apprentices are provided with a series of work training and vocational education on an alternating basis, with the time being controlled by labour law-recognised contracts. The tripartite governance that is characterised by the state, employers, and trade unions in the system ensures that the standards in training, remuneration, and conditions of work are all regulated together.

The German apprentices get paid stipulated salaries, social security, and institutional representation, which contributes to a strengthening belief that apprenticeship is a valid and worthy form of work-based learning. These protections have been associated with high completion rates, occupational identity, and easy school-to-work transitions by empirical studies. The system is very clear that motivation and dedication to professional trades are developed throughout the training, and that challenging circumstances at this phase jeopardize eventual workforce instability.[81]

D. Comparative Inference: Protection as a Condition for Skill Motivation

The same logic of regulation spreads across these jurisdictions: skill formation is discussed as one that **cannot be separated** from the processes of labour protection. Apprentices are known as

---

[78] House of Commons Library (n 76) 8–10.
[79] ibid 16.
[80] Dieter Euler, *Germany's Dual Vocational Training System: A Model for Other Countries?* (Bertelsmann Stiftung 2013).
[81] ibid 44–47.

workers-in-training whose motivation, productivity, and employability in the long run are dependent on fair payment, social security, and legal status.[82] All analyzed systems do not depend on the exclusion of apprentices from the labour law to have training regimes.

The Indian system, in its turn, separates the apprenticeship into a separate training law and does not subject the apprentices to the labour law framework as developed by the Four Labour Codes. There are significant implications of this comparative divergence. The Indian law, which deprives the apprentices of wage floors, social security, and voice at the workplace, jeopardizes motivation at the levels of skill acquisition, hence undermining the very goal of building a viable skilled workforce.[83] The comparative evidence indicates that the exclusion of this type is neither needed nor beneficial and that the inclusion of protection in the apprenticeship regulation is key to the achievement of effective results in the development of skills.

The difference between India and other apprenticeship systems is further explained by participation rates. Countries with integrated labor protection systems, such as Germany and Australia, have apprenticeship participation rates of around 3-4 percent of the labor force, and even so-called “small system” countries far exceed India.[84] In contrast, the apprenticeship participation rate in India is less than 0.1 percent of the formal workforce. This difference is not random but represents a design choice that decouples training from labor protection. The empirical difference supports the implication that the Indian model’s exclusionary system is not only normatively different but also suboptimal.

VI. CRITICAL EVALUATION: THE PROTECTION VACUUM AND ITS CONSTITUTIONAL IMPLICATIONS

The net sum of the Apprentices Act, 1961, and the Four Labour Codes is a systemic exclusion from labour protections of apprentices, a legal gap where a person is engaged in productive labour and contributes to the output of the enterprise, but remains outside the protection of the most fundamental guarantees of the labour law. It is not just the lack of policy but poses serious constitutional questions, especially on the approaches that deal with equality, dignity of labour,

---

[82] European Commission (n 45); Euler (n 80) 32.
[83] Gayithri, Tantri and Rajasekhar (n 43).
[84] ILO–World Bank (n 5) 12–14.

and the need of the State to ensure that its people work in an environment conducive to human development.

A. Equality and Arbitrary Classification (Article 14)

Article 14 prohibits arbitrary classification and holds that all differences in treatment under the law must be based on a rational criterion that has a nexus with a justifiable state objective.[85] Reasonable classification shall be permitted only if it has a rational contribution towards the realization of the objective of the law.[86] As a consequence of the exclusion of apprentices from the definition of "worker" or "employee" in the Labour Codes, a new class emerges in the legal system that takes away the salary, social security benefits, and remedies in industries, although they are contributing towards the production process just as regular workers do. The Supreme Court has clarified that in industrial relations, a more important factor that displaces the significance accorded to superfluous nomenclature in employment laws will be work conditions in a labor matter. In the case of ***Hussain Bhai v Alath Factory Thezhilali Union (1978) 4 SCC 257***,[87] it was clarified that "economic control" and the measure of integration into the activities are more authoritative in establishing a person's status in labor law rather than the nature of the contract in view. On such a premise, the exclusion of apprentices on absolute grounds, upon which they are deemed not essential enough in the organization, at a prestigious position in "economic control," appears arbitrary and does not manifest a rational nexus towards a justifiable state objective.

The mentioned rationale of this exclusion is associated with the training-intensive nature of apprenticeship. Yet, as it has been shown in the above paragraphs, in many cases, the work of apprentices is no different than the work of ordinary employees, with the same or similar supervision and productivity standards.[88] The very fact of the term training does not then offer a rationalized basis of rejection of labour protections when the substantive nature of work undertaken becomes similar.[89]

---

[85] Constitution of India, art 14.
[86] *State of West Bengal v Anwar Ali Sarkar AIR 1952 SC 75.*
[87] *Hussainbhai v Alath Factory Thezhilali Union (1978) 4 SCC 257.*
[88] Gayithri, Tantri and Rajasekhar (n 43).
[89] Judy Fudge (n 19).

Courts, on many occasions, have warned against categorization that places the meaning beneath the form.[90] By acting in such a way that classification is carried out to exclude a vulnerable group of persons, systematically, without a corresponding justification, it jeopardizes the breach of the equality guarantee.[91] **Institutionalised inequality** is therefore an issue that emerges when the exclusion of apprentices from the Four Labour Codes is taken in conjunction with the inclusion of other non-standard workers, like gig and platform workers, in the social security provisions.

B. Dignity of Labour and the Right to Life (Article 21)

Article 21 of the Constitution has been given a broad interpretation to include the right to live with dignity and to work in humane conditions.[92] The Supreme Court has held that the right to work in safe conditions and to receive humane wages is not only a statutory right but also a part of the right to life with dignity guaranteed under Article 21.[93] In the case of ***Bandhua Mukti Morcha v Union of India (1984) 3 SCC 161***,[94] the Supreme Court held that the protection of workers from exploitation and unsafe conditions is an integral part of the constitutional guarantee of the right to life guaranteed by Article 21. In this context, the exclusion of apprentices from the guarantee of wages, social security, and safe working conditions is not easily justifiable based on Article 21 jurisprudence on the dignity of labor and humane working conditions.

The constitutional question becomes more significant when one considers the empirical realities in light of the constitutional guarantees. The evidence shows that the stipends paid to apprentices are often below the subsistence level and that apprentices do not have access to social insurance during times of productive activity.[95] The lack of wage floors and welfare benefits during the training systematizes economic vulnerability from an early point in working life. Taken together with Article 21 case law, which highlights humane working conditions, this empirical context informs the finding that the legal exclusion of apprentices from labour protection has a reach that goes beyond the statutory framework and into the constitutional sphere of dignity and livelihood security.

---

[90] *E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3.
[91] *Maneka Gandhi v Union of India (1978) 1 SCC 248.*
[92] Constitution of India, art 21.
[93] *Bandhua Mukti Morcha v Union of India (1984) 3 SCC 161.*
[94] *Bandhua Mukti Morcha v Union of India (1984) 3 SCC 161.*
[95] ILO–World Bank (n 5) 23–27.

Indian law of regulation of apprentices allows productive labour to be performed without the assurance of minimum wages, social security, or enforceable rights on occupational safety rights as required by labour codes.[96] This institutionalises precarity at the point of labour-market entry, signalling that dignity and security are reserved for formal employment rather than for labour in substance.[97] This institutionalises precarity at the point of labour-market entry.

Constitutionally, this is not a good method. Apprenticeship is a transitional period between education and work, and attitudes and values concerning labour have been formed at this stage. Not only is the immediate protection of material security developed, but also the previously mentioned fostering of the prospective dignity of labor, which is supported by Article 21 jurisprudence.[98]

C. Directive Principles and the State's Obligation towards Skill Formation (Article 41)

In ***Consumer Education & Research Centre v Union of India (1995) 3 SCC 42***,[99] the Supreme Court held that social security and health protections constitute an essential component of labour welfare and derive constitutional force from the combined reading of Articles 21 and 41.[100] The Court recognised that meaningful work and human development cannot be secured in the absence of minimum safeguards relating to health, safety, and economic security. A skill-development framework that deliberately withholds such protections during the apprenticeship phase, therefore, undermines the constitutional vision of dignified work and education, reducing skill formation to a process of economic vulnerability rather than empowerment.[101]

The failure of the State consistently to perform a consistent constitutional duty, however, in its tendency to focus on apprenticeship as a means of skill development, whilst at the same time, refusing to offer legal redress to apprentices, demonstrates a disabled adherence to the **constitutional obedience**. The development of skill without economic security will be exploitative

---

[96] Code on Wages 2019, s 2(k); Code on Social Security 2020, s 2(26).
[97] David Weil (n 24) 112.
[98] *Olga Tellis v Bombay Municipal Corporation (1985) 3 SCC 545.*
[99] *Consumer Education & Research Centre v Union of India (1995) 3 SCC 42.*
[100] Constitution of India, art 41.
[101] Ministry of Skill Development and Entrepreneurship, *National Apprenticeship Promotion Scheme Guidelines* (2021).

and not empowering.[102] Empirical studies have shown that remuneration and social protection that are stable during training increase motivation, lower attrition, and increase skill outcomes.[103] In comparison, the law regimes that condone insecurity in training eradicate motivation and deteriorate long-term skill acquisition.[104]

Viewed through this prism, the systemic exclusion from labour protections that surrounds the apprentices compromises the constitutional image of fulfillment of meaningful work and education. The inability to incorporate the basic labour protections into the regulation of apprenticeship has led to watering down the effects of the skills-formation policy and going against the spirit of the holistic socio-economic promotion provided by the Directive Principles.

D. Motivation, Skill Formation, and Constitutional Consequences

The connection between the protection of labour and motivation is not only sociological but also has legal implications. The incentive of valuing the various types of work is signaled by labour law structures.[105] In cases where the apprentices are deprived of wage floors, social security, and a place of voice, the law implicitly responds by considering skill acquisition as a one-step choice other than the investment in human capital.[106]

This constitution has a legal bearing. The regulatory system can be dangerous as it can deter long term participation in skilled trade and in professional training by tolerating long periods of insecurity in the apprenticeship period.[107] In the long term, this discouragement is disastrous to the constitutional commitment of the State to create a skilled and dignified workforce.[108] The protection vacuum is therefore not just a **current deprivation of rights** but also a **hindrance to constitutional aspirations** in the future in the areas of employment, equality, and social justice.

VII. RECOMMENDATIONS AND WAY FORWARD

[102] AMLEGALS (n 21).
[103] European Commission (n 45) 8.
[104] Euler (n 80) 50.
[105] Simon Deakin (n 8) 89.
[106] Judy Fudge (n 19) 52.
[107] Gayithri, Tantri and Rajasekhar (n 43).
[108] *Consumer Education & Research Centre v Union of India (1995) 3 SCC 42.*

The reform proposals examined in this article are not merely normative proposals but are supported by empirical analyses that have policy relevance. The ILO-World Bank evaluation of the apprenticeship program in India points to low wages, absence of social security, and poor outcomes after training as key issues that undermine the viability of apprenticeship programs. As such, it recommends that apprentice wages be tied to minimum wage scales, that social security coverage be expanded during the training period, and that apprenticeship programs be better integrated with the labor market institutions.[109] These results empirically confirm the assertion that partial integration of apprentices into labor protection regimes would improve, rather than worsen, the goals of skill development.

A. Partial Integration of Apprentices into the Labour Codes

Redefining apprentices as workers on a wholesale basis is not administratively and politically feasible in the short run. The labour codes, however, **allow selective inclusion** by definitional modification and enabling provisions.[110] Amendments of the defining clauses of the Codes to incorporate apprentices to limited purposes, especially concerning minimum wages, occupational safety, and social security, are one of the reform options.[111]

This partial integration would not have affected the training goal of apprenticeship. The experience in England shows that the apprentices can have a separate wage structure, but still be in the larger framework of labour law.[112] The same type of model would suit India, where statutory recognition of apprentices as a **hybrid type of workers-in-training** category with only minimum protection would be provided, without being wholly comparable to permanent employees.[113]

B. Statutory Wage Floors and Social Security Coverage

The lack of statutory wage floors for apprentices in the Code on Wages has become one of the primary causes of precarity. The solution to this deficit, without losing flexibility for employers,

---

[109] ILO–World Bank (n 5) 34–38.
[110] Ministry of Labour and Employment (n 16).
[111] Code on Wages 2019, s 2(k); Code on Social Security 2020, s 2(26).
[112] House of Commons Library (n 76) 14.
[113] European Commission (n 45).

would be the introduction of **a minimum apprentice wage** that is pegged but not equal to the overall minimum wage.[114] This would also discourage the motivation to replace the normal employees with low-salaried apprentices.[115]

On the same note, the coverage of the apprentices to social protection, especially health insurance and accident protection, should be expanded by expressly including them in the Code on Social Security, or by a special contributory program.[116] The adherence of **gig and platform workers** to the Code proves that it is possible to create differentiated welfare mechanisms without full employee status.[117] Apprentices also should be given similar protection, which would make the skills development policy consistent with welfare goals.

C. Strengthening Dispute Resolution and Workplace Voice

The fact that apprenticeship disputes are restricted to administrative redress under the Apprentices Act restrains the delivery of effective redress. The accountability would be improved by creating **specialised grievance redressal systems** within the labour-law system or by expanding the restricted access of labour adjudication forums to apprentices.[118] These mechanisms do not necessarily have to resemble comprehensive processes of industrial disputes, but must deliver procedural fairness and judgmental results.

Moreover, acknowledgement of restricted rights of apprentices to workplace representation, especially where formal worker organisations exist in the establishment, would solve their denial of industrial citizenship.[119] The comparative systems prove that even the consultation type of participation may enhance the quality of training and decrease the conflict.[120]

D. Regulatory Clarity for Internships and Professional Training

The side-by-side omission of interns under statutory protection highlights the necessity of a **regulation elucidation of statutory protection** that goes beyond apprenticeship. The misuse of

[114] AMLEGALS (n 21).
[115] Gayithri, Tantri and Rajasekhar (n 43).
[116] Code on Social Security 2020, ch IV.
[117] Code on Social Security 2020, ch IX.
[118] Apprentices Act 1961, s 20; Judy Fudge (n 19).
[119] Industrial Relations Code 2020, ch III.
[120] Euler (n 80) 55.

the training labels as a means to avoid labour obligations would be avoided by introducing a statutory definition of what internships are, and with minimum standards in terms of length, pay, and safety.[121] Although internships and apprenticeships are different in form and aim, both of them hold the grey area between education and work and need minimal protection.[122]

E. Aligning Skill Policy with Labour Protection

Lastly, the reform initiatives should clearly acknowledge that the development of skills and labour protection complement each other. Comparative and empirical studies show that consistent remuneration and social security training i**mprove motivation, decrease turnover, and improve long-term skills performance**.[123] Incorporation of labour protection in apprenticeship regulation would thus progress and not reverse the goal of India developing a skilled and resilient workforce.[124]

Collectively, these proposals aim to realign the legal treatment of marginal trainees as oppressed apprentices with the formation of skills and leave the functional logic of the bureaucracy of apprenticeship unchanged.

VIII. CONCLUSION

The paper has explored the legal status of apprentices in reformed labour law in India and shown that the Four Labour Codes have solidified the **structural exclusion** of apprentices by express definition. The new labour architecture has institutionalised a lack of protection at the labour market entrance point by restricting the regulation of apprenticeship to the Apprentices Act, 1961, and by not subjecting apprentices to the protective labour regimes of wages, social security, industrial relations, and occupational safety.[125]

This exclusion, as revealed in the analysis, cannot be encompassed as a natural aspect of the regulation of apprenticeship. Practical experience in the European Union, England, and Germany demonstrates that the apprenticeship systems may be designed in such a way that combines skill

---

[121] National Law Review (n 20).
[122] ibid.
[123] European Commission (n 45) 10–11.
[124] Ministry of Skill Development and Entrepreneurship (n 102).
[125] Ministry of Labour and Employment (n 16).

development with labour protection without compromising the training goals.[126] These jurisdictions identify apprentices as workers-in-training who need minimum assurances of remuneration, welfare, and workplace voice to motivate, dignify, and improve their long-term employability. The decision of India to abandon this policy is more of a deliberate legislative decision and not an inevitable regulatory limitation.

Conventionally, there is serious concern about the protection gap in terms of constitutionality. This is because the exclusion of apprentices from labour safeguards will expose the apprentices to arbitrary classification under Article 14, the integrity of the dignity of labour under Article 21, and the duty of the State under Article 41 to facilitate the creation of work and educational conditions encouraging human development.[127] The existing framework of normalisation in the process of skill formation ensures the inhibition of motivation and undermines the usefulness of apprenticeship as a channel to sustainable skilled labour.

As discussed in the article, labour protection and skill development are not conflicting goals but do not exclude each other; they reinforce each other. Law systems that deprive apprentices of social security and wage protection may result in training being used as a cost-reduction policy instead of as an investment in human capital.[128] Such a strategy is ultimately counterintuitive to the goal of creating a strong and capable workforce that India has boasted about in the long-term.

To fill this gap, there is no need to disregard the training nature of apprenticeship. Reform in relation to skill development and labour protection can be made through incremental and legally possible reforms, including partial incorporation of apprentices in the labour codes, a statutory minimum wage, restricted social insurance coverage, and better grievance mechanisms.[129] By doing so, this would be a way of bringing the apprenticeship regulation in line with the constitutional values, the best practices in comparisons and also the realities of modern work. Unless apprentices are brought out of the shadow of the Labour Codes, India's promise of inclusive and dignified labour reform will remain structurally incomplete.

---

[126] European Commission (n 45); House of Commons Library (n 76); Euler (n 80).
[127] Constitution of India arts 14, 21, 41; *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161.
[128] Simon Deakin (n 8); David Weil (n 24).
[129] AMLEGALS (n 21); European Commission (n 45).

Finally, in case the promise of the Indian labour reforms to deliver inclusive and dignified work could be realised, then the apprentices cannot continue to be in the shadow of the Codes. The inclusion of them in the protective vision of labour law cannot be achieved only as a matter of adjustment by statute, but as a preliminary to the achievement of the goal that skill formation should not drag down social justice and economic security, but, to the contrary, promote these objectives.

AUTHOR DETAILS & INSTITUTIONAL AFFILIATION

Author Details

Author 1: AJAY CHANDRAWANSHI

Institutional Affiliation: DHARMASHASTRA NATIONAL LAW UNIVERSITY

JABALPUR (M.P.)

Academic Status: UNDERGRADUATE LAW STUDENT

Email Address: ajay007-23@mpdnlu.ac.in

Contact Number: 9691685117

Author 2: MAHAK GUPTA

Institutional Affiliation: DHARMASHASTRA NATIONAL LAW UNIVERSITY

JABALPUR (M.P.)

Academic Status: UNDERGRADUATE LAW STUDENT

Email Address: mahak055-22@mpdnlu.ac.in

Contact Number: 9302669178

COPYRIGHT STATEMENT

Copyright Declaration

We, the undersigned, declare that we are the joint authors of the submitted manuscript and collectively hold the copyright over the work. We affirm that the submission does not violate any existing copyright, proprietary, or moral rights of any third party.

We further consent that, in the event of selection, publication, or presentation under the NLIU–Trilegal National Article Writing & Presentation Competition, the organisers may reproduce, publish, or disseminate the article for academic and non-commercial purposes, with due attribution, in accordance with the competition rules.

Signed:

Ajay Chandrawanshi

Mahak Gupta

Date: 23/01/2026

ORIGINALITY STATEMENT

Originality Declaration

We, the undersigned, hereby declare that the article titled *"Apprentices in the Shadow of the Codes: Legislative Gaps and the Protection Vacuum in India's New Labour Framework"* is an original and joint work of authorship. The manuscript reflects our independent research, analysis, and academic reasoning.

We further declare that the article has not been previously published, is not under consideration for publication elsewhere, and does not infringe upon the intellectual property rights of any third party. All sources relied upon in the article have been duly acknowledged and cited in accordance with established academic and legal citation standards.

Signed:

Ajay Chandrawanshi

Mahak Gupta

Date: 23/01/2026

LIVING WAGE AS A CONSTITUTIONAL IMPERATIVE: EXPOSING THE STRUCTURAL LIMITS OF MINIMUM WAGE REGIMES

- *Vivek Rajurkar & Harsh Vardhan Singh*

ABSTRACT

India presents a striking paradox, constitutional mandate for a living wage since 1950, comprehensive jurisprudence from Unichoyi (1962) to Reptakos Brett (1992) affirming worker entitlement to dignified compensation, yet ninety percent of the informal workforce subsists below living wage thresholds. The Code on Wages 2019 perpetuates this failure through arbitrary wage-fixing, inspector-dependent enforcement, averaging one inspector per 10,000 establishments, and coverage gaps excluding fifteen million platform workers, despite algorithmic tracking of every transaction. This research demonstrates that operationalization requires simultaneous intervention across four dimensions: legislative amendments establishing a transparent formula-based wage determination and extending economic employer doctrine to algorithmic control; institutional independence through the National Living Wage Commission, with constitutional safeguards; technology-enabled enforcement leveraging Aadhaar-UPI-GST infrastructure, achieving 80% compliance at one percent of traditional inspection costs; and ESG disclosure transforming Article 43's non-justiciable Directive Principle into enforceable corporate grievance obligation. The convergence of corporate law and constitutional labour rights represents transformative doctrinal development. When boards fail wage compliance despite constitutional mandates and ESG disclosure obligations, they breach fiduciary duties, enabling shareholder litigation. International precedent from Estonia. France, the United Kingdom, the Netherlands, and Germany demonstrate technical feasibility, while India's superior digital infrastructure provides implementation advantages. The platform economy serves as a strategic test case; if algorithmic transparence and ESG enforcement work for the hardest case, they work for conventional employment.

I. INTRODUCTION

There's something deeply contradictory about how India protects its workers. Article 43 of the Constitution clearly states that the State must guarantee a living wage, one that ensures a decent standard of living for everyone who works.[1] Fast forward seventy-five years, and what do we see? Around ninety percent of India's 500 million workers are still living below what anyone would call dignified standards.[2] This applies especially to the informal sector, who are still struggling to earn subsistence wages as promised in the Constitution. At the same time, over these identical decades, India has been experiencing an unbelievable digital revolution. The Unified Payments Interface alone processed more than 131 billion transactions in 2023,[3] creating the kind of technological infrastructure that could revolutionize wage monitoring, making our old enforcement methods look frankly outdated.[4]

Nothing illustrates this contradiction quite like the gig economy. We now have fifteen million gig workers whose every single transaction gets tracked algorithmically and turned into corporate profits, yet somehow their wages stay outside the scope of minimum wage laws. Think about delivery workers for Swiggy and Zomato.[5] These platforms track them in real-time through GPS, manage them through algorithms, but when you actually calculate what these workers take home, factoring in their vehicle costs, fuel expenses, and smartphone bills, they're making somewhere between Rs 35-50 per hour. That's less than half the Rs. 70+ per hour needed for a living wage in metropolitan cities.[6] And here's the kicker: the Code on Wages from 2019[7] still relies on traditional inspectors to enforce compliance, even though we now have the technology to automate this monitoring. Platform companies dodge wage regulations by calling their workers 'independent

[1] Constitution of India 1950, art 43.
[2] Ministry of Labour and Employment, *Annual Report 2022–23* (Government of India 2023) 45.
[3] National Payments Corporation of India, *Annual Report 2023* (NPCI 2024) 12.
[4] Guy Standing, 'Defining the Precariat: A Class in the Making' in Jan Breman and others (eds), *The Oxford Handbook of the Social Science of Poverty* (OUP 2016) 392–407.
[5] Fairwork India, *Fairwork India Ratings 2023: Labour Standards in the Platform Economy* (Oxford Internet Institute 2023).
[6] Asia Floor Wage Alliance, *Living Wage Calculations for Indian Metropolitan Areas* (AFWA 2022) 22.
[7] Code on Wages Act 2019 (India).

contractors,' never mind that they control virtually every aspect of these workers' lives through their algorithmic systems.[8]

The vision laid out in Article 43 couldn't be further removed from what's actually happening on the ground. The Supreme Court has consistently supported the living wage principle over the years, from Unichoyi v. State of Kerala back in 1962,[9] all the way through to Reptakos Brett v. Its Workmen in 1992.[10] Justice Ramaswamy even spelled out exactly what should be covered: education for children, medical care that goes beyond just the basics, and provision for old age and emergencies.[11] The national floor wage currently sits at Rs. 176 per day,[12] which works out to only about twenty-five percent of what a living wage should actually be. State the minimum wages range widely from Rs. 178 to Rs. 645 per day,[13] seemingly driven more by political convenience than by actual cost-of-living calculations or constitutional requirements.

This paper argues that the failure to implement living wages stems from three fundamental problems. First, structurally speaking, the way we fix wages is completely arbitrary. Section 9 of the Code on Wages allows governments to 'fix' minimum wages from time to time without any clear methodology, no mandatory revision schedule, and zero coordination between states.[14] Second, enforcement is practically impossible. In India, there are approximately 10,000 labour inspectors to 10,000 establishments. How are we supposed to do that when we are dealing with ten million establishments with 500 million employees? Manual verification at that scale simply isn't feasible. Third, there are massive coverage gaps. Section 2(k)'s definition of 'employee' was written for traditional employment relationships.[15] It doesn't account for algorithmic control at all, which lets platform companies classify workers as independent contractors even though their algorithms set rates, assign work, evaluate performance, and dish out penalties.

---

[8] Valerio De Stefano, 'The Rise of the Just-in-Time Workforce: On-Demand Work, Crowdwork and Labour Protection in the Gig-Economy' (2016) 37 *Comparative Labour Law & Policy Journal* 471.
[9] *Unichoyi v State of Kerala* AIR 1962 SC 12.
[10] *Reptakos Brett v Its Workmen* (1992) 1 SCC 298.
[11] ibid 308–10 (Ramaswamy J).
[12] Ministry of Labour and Employment, Notification SO 4787(E) (Government of India 2022).
[13] Labour Bureau, *Minimum Wages in Scheduled Employments in India* (Government of India 2024).
[14] Code on Wages Act 2019 (India), s 9.
[15] Code on Wages Act 2019 (India), s 2(k).

The solution being proposed here requires action on multiple fronts at once: legislative reform, institutional restructuring, technological adoption, and corporate governance integration. On the legislative front, we need formula-based wage determination that eliminates political discretion, and we need to broaden the concept of 'economic employer' to capture the algorithmic control that platform corporations wield. To achieve institutional independence, we should have a National Living Wage Commission that is constitutionally safeguarded so that the wages are calculated according to facts rather than political motives. On the technological front, we must take advantage of the already existing Aadhaar-UPI-GST infrastructure that would facilitate the automation of compliance verification. This would cost a fraction of what traditional inspection methods run and achieve much better compliance rates. For corporate governance, we can use SEBI's Business Responsibility and Sustainability Reporting[16] framework to transform Article 43 from a non-enforceable Directive Principle into an actual corporate obligation. This creates market incentives and opens doors for shareholder litigation when companies fail to meet wage requirements.

This paradigm deals directly with the workings of corporations and technology in the present world. Platform companies such as Swiggy, Uber, and Zomato engage in high-tech algorithms to control employees and compensate them without circumventing the normal labour laws by entering into smart contractual agreements. But here's the fundamental point that runs through everything: Indian workers deserve more than just barely enough to survive. They should be compensated in a way that will allow them to live with pride, good food, quality shelter, to educate their children, to have medical care, and an opportunity to save towards the future. We can establish enforcement mechanisms, which will do where traditional labour inspection has failed, by merging corporate law and constitutional labour rights.

II. THE LIVING WAGE DEFICIT: SEVEN DECADES OF CONSTITUTIONAL NON-COMPLIANCE

The Minimum Wages Act of 1948[17] grew out of post-independence India's commitment to social justice. It was based on the constitutional articles 39(a), 39(b), 39(c), and Article

[16] Securities and Exchange Board of India, Circular SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (SEBI 2021).
[17] Minimum Wages Act 1948 (India).

43,[18] which stipulates that the State should ensure that the workers receive living wages to enjoy a decent standard of life and the full enjoyment of leisure and social and cultural opportunities. In 1957, the 15th Indian Labour Conference established specific norms to ensure that this shall occur: 2,700 calories per day per unit of consumption, seventy-two yards of clothing per year per average family, and at least eighteen square meters of shelter per head.[19] Although of course, superior to pure subsistence, these norms were intended as minimal levels, not as ideal standards.[20]

As the years passed, the courts intervened to enforce and clarify the provisions of a living wage as proposed by the Constitution, yet nothing was done by legislators. In Bijay Cotton Mills v. Bharat Bhushan (1955),[21] the Supreme Court clarified that the minimum wages should cover some form of education, medical needs, and facilities, beyond the survival level, to human dignity. Crown Aluminium Works v. Their Workmen (1958)[22] took this further with the 'family wage' concept, holding that wages must be calculated based on average family size, not just what an individual worker needs. The Court explicitly rejected employer arguments that wages should only support individual workers.

The landmark case was Unichoyi v. State of Kerala (1962),[23] which elevated these principles to constitutional status. Justice Subba Rao wrote: 'The minimum wage must ensure not merely the sustenance of life, but also the preservation of the efficiency of the worker. It must also provide for some measure of education, medical requirements, and amenities.'[24] By linking adequate wages to worker efficiency, the Court made an economic case for living wages beyond just moral obligation. Employers actually benefit from healthy, educated workers, making proper compensation economically smart rather than just constitutional charity.

Reptakos Brett v. Its Workmen (1992) gave the most thorough breakdown of what a living wage should include.[25] Justice Ramaswamy's had quoted the Committee on Fair Wages: The living wage must be such as to allow the earner to afford himself and his family not

---

[18] Constitution of India 1950, arts 39(a)–(c), 43.
[19] Ministry of Labour, *Report of the 15th Indian Labour Conference* (Ministry of Labour 1957).
[20] Sandra Liebenberg, *Socio-Economic Rights: Adjudication under a Transformative Constitution* (Juta 2010).
[21] *Bijay Cotton Mills v Bharat Bhushan* AIR 1955 SC 65.
[22] *Crown Aluminium Works v Their Workmen* AIR 1958 SC 30.
[23] *Unichoyi* (n 9).
[24] *Unichoyi* (n 9) 127 (Subba Rao J).
[25] *Reptakos Brett* (n 10).

only the bare necessities, but a measure of a frugal comfort, including education of children, protection against bodily diseases, calls of the more important social needs, and a measure of insurance against the still more important emergencies, including old age. This grand vision has been approved by the judicial system, but it is still not enacted by lawmakers forty years later.

Nevertheless, seventy years of court rulings in favor of progress have not been realized in reality. None of these principles has been operationalized under any law by some transparent calculation, automatic revision, or even enforceable timeline. The Code on Wages 2019 incorporated four previous acts into a single piece of legislation: the Minimum Wages Act 1948, the Payment of Wages Act 1936,[26] the Payment of Bonus Act 1965,[27] and the Equal Remuneration Act 1976.[28] Although this led to learner administration, it was still experiencing the same issues that were present in 1948.

The Code keeps the same discretionary approach to fixing wages, giving governments authority without establishing clear criteria or mandatory timelines. Section 9 allows minimum wage fixation 'from time to time' without saying how often reviews should happen, how inflation should be factored in, or how states should coordinate with each other. Current minimum wages range from Rs 178 daily in Bihar to Rs 645 in Delhi for unskilled workers, reflecting political choices rather than actual living costs or the constitutional standards laid out in Reptakos Brett.

The national floor wage provision shows just how token these measures are. Section 9 allows the Central Government to fix a national floor wage that states 'shall' not go below. The 2022 notification set this floor at Rs 176 daily. Here's the problem: seventeen states already had minimum wages higher than that amount, making the floor completely meaningless. The Expert Committee Report[29] actually recommended a national floor of Rs 375 daily based on caloric requirements and clothing needs for an average family.[30] The government went ahead and set it at less than half that recommendation. This isn't just a policy gap; it's a deliberate choice to ignore constitutional obligations.

---

[26] Payment of Wages Act 1936 (India).
[27] Payment of Bonus Act 1965 (India).
[28] Equal Remuneration Act 1976 (India).
[29] Ministry of Labour and Employment, *Report of the Expert Committee on Determining the Methodology for Fixing the National Minimum Wage* (Ministry of Labour and Employment 2019).
[30] ibid 15, 42.

What's most problematic is how the Code fails to address platform economy realities. Section 2(k) defines 'employee' using traditional employment criteria that platforms easily dodge through independent contractor classifications. While the Code on Social Security 2020[31] acknowledges gig and platform workers as distinct categories needing social protection, the Wages Code provides no wage framework for them. Platform companies exploit this gap, setting rates below minimum standards while avoiding oversight through contractual structures that label workers as partners or independent service providers, despite exercising employer-like control through algorithms that determine rates, assign work, evaluate performance, and impose penalties.

III. THREE SYSTEMIC FAILURES OF WAGE PROTECTION ARCHITECTURE

Three systemic issues that interact with each other have led to failure in the implementation of living wages. The individual limitations of each of them inhibit effectiveness, and they combined effectively render constitutional compliance virtually impossible under the present system.

A. Structural Failure: Arbitrary Wage-Fixing Without Transparent Methodology

In the Code on Wages, section 9 retains the discretionary determination of wages that was inherited in 1948 in the Act. The statutory texts allow governments to set minimum wages on an ad hoc basis without any specific directions on how to compute them, to revise them with any frequency, to keep pace with inflation, or to make the states liaise among themselves. This ambiguous declaration leaves the position of political manipulation open. State governments set up advisory boards with employer representatives, worker representatives, and independent members, but employers dominate these boards through superior resources, technical expertise, and political connections, systematically producing below-subsistence recommendations. Worker representatives, usually lacking economic data or legal resources, can't effectively challenge employer cost projections or productivity claims.[32] The resultant wages represent the political bargaining as opposed to the actual cost of living or what is considered by the Constitution.

[31] Code on Social Security Act 2020 (India).
[32] Debi S Saini, 'Efficacy and Adequacy of Statutory Minimum Wages in the Organised Sector in India' (2010) 45 *The Indian Journal of Labour Economics* 535.

Consider the present state minimum wage differences: Rs 178 per day in Bihar, Rs 365 in Uttar Pradesh, and Rs 645 in Delhi for unskilled workers. These are allegedly regional differences in the cost-of-living, when the reality is that this is a political concession. The Labour Bureau's Consumer Price Index for Industrial Workers shows the Bihar-Delhi cost differential is about thirty percent, yet wage differentials exceed 260 percent. That's political economy, not economic science, determining wages.[33] No law requires governments to explain deviations from technical recommendations or even to consider cost-of-living data systematically.

B. Enforcement Failure: Inspector-Dependent Impossibility at Scale

The Code on Wages sticks with inspector-dependent enforcement that simply can't achieve compliance at scale for 500 million workers across ten million establishments. India's labour inspection system averages one inspector per 10,000 establishments, making comprehensive manual verification physically impossible.[34] Even if inspectors somehow managed to visit two establishments daily for 300 working days each year, covering 600 establishments annually per inspector, achieving universal inspection coverage for ten million establishments would require 16,667 inspectors conducting 30 years of exclusive wage inspection. That's an impossibility, especially when inspectors simultaneously enforce multiple labour laws covering safety, working hours, registration, and social security contributions.[35]

This structural impossibility creates enforcement by exception. Inspections happen reactively after worker complaints or selectively target visible establishments, while the vast majority of employers operate outside inspection reach. The informal sector, comprising ninety percent of the workforce, is subjected to virtually no chances of inspection as the inspectors target registered formal establishments.[36] The micro and small enterprises that use the lowest-wage worker most prone to exploitation and receive the

---

[33] Sanford F Schram, Joe Soss and Richard C Fording (eds), *Race and the Politics of Welfare Reform* (University of Michigan Press 2003) 89–102.

[34] David Weil, 'Crafting a Progressive Workplace Regulatory Policy: Why Enforcement Matters' (2007) 28 *Comparative Labour Law & Policy Journal* 125, 131–34.

[35] Shyam Sundar KR, 'Labour Inspection in India: Problems, Pitfalls and Prospects' (2011) 46 *The Indian Journal of Labour Economics* 363.

[36] Matthew W Finkin, 'Beclouded Work, Beclouded Workers in Historical Perspective' (2016) 37 *Comparative Labour Law & Policy Journal* 603, 615–18.

least attention since the inspectorate focuses on the large establishments where the violation would be of higher importance.

Inspector discretion also enables corruption that undermines compliance incentives. Without objective, data-driven verification, inspectors exercise subjective judgment about violations and penalties. This discretion creates rent-seeking opportunities; employers bribe inspectors for favorable assessments, while honest employers face disproportionate scrutiny. The resulting compliance landscape reflects inspector corruption patterns rather than actual wage adequacy, destroying deterrence effects and punishing compliant employers who refuse bribes.[37]

Systemic wage suppression cannot be dealt with by manual inspection either. In cases where employer collusion in paying below-minimum wages is systematically applied in an industry or region, the inspector-by-inspector enforcement method will not help in overcoming the coordination failures. Employers who pay legal wages have a competitive disadvantage over non-compliant competitors that pay lower labour costs, which results in race-to-the-bottom forces that inspection regimes cannot offset without a system to verify universal compliance.

C. Coverage Failure: Platform Economy Exclusion Despite Algorithmic Control

The meaning of the term employee in section 2(k) of the Code on Wages provides that an employee is any person who is either employed on a wage basis or is employed in relation to the work of an establishment in a manner that requires remuneration to be paid. This summarizes the traditional employment relationships of direct supervision, fixed workplaces, and contractual relationships of employers and employees, but it is inapplicable in the case of algorithmic employment, where platforms are controlling employees via automated systems without human supervision.

Platform corporations strategically take advantage of this gap in definition. Swiggy, Zomato, Uber, Ola, and others categorize workers as independent contractors, partners, or service providers, even when they have an employer-like control over them using algorithmic control. These systems fix wage rates using dynamic price-setting algorithms that do not involve negotiation with workers, allocate work using automated order-

[37] Rina Agarwala, *Informal Labour, Formal Politics, and Dignified Discontent in India* (Cambridge University Press 2013) 67–89.

assignment systems that depend on worker location and performance criteria, and performance using customer rating systems that influence future work allocation, and penalties using automated deductions for late delivery or cancellations of orders, regardless of the traffic conditions or other valid delays.

The Code on Social Security 2020 acknowledges gig workers and platform workers as distinct categories requiring social protection, defining platform workers as persons who perform specific tasks or jobs for digital platforms in exchange for payment on a piece-rate, project, task, or time basis. This creates a jurisdictional contradiction; the Social Security Code recognizes that platform workers need protection, yet the Wages Code excludes them from wage determination frameworks. Platform corporations exploit this gap, operating in a regulatory arbitrage space where neither traditional labour law nor platform-specific regulation applies effectively.

International courts show us doctrinal pathways for capturing algorithmic employment within wage protection. The UK Supreme Court in Uber BV v. Aslam (2021)[38] decided that algorithmic control, which dictates rates, sets work, measures performance, limits the freedom of workers, is employment that brings about minimum wage requirements despite the use of contractual labels that stress that workers are independent. The Netherlands Amsterdam District Court in FNV v. Deliveroo (2021)[39] similarly also observed that the algorithmic management systems have a degree of control that will create employment relationships that demand a collective bargaining agreement wage rate. Spain's Rider Law (2021) codified a rebuttable employment presumption for platform workers, requiring platforms to demonstrate genuine independence rather than workers proving control.

Indian contract labour jurisprudence provides the doctrinal foundation for similar evolution without requiring new constitutional interpretation. The Supreme Court in Air India Statutory Corporation v. United Labour Union (1997)[40] held that functional control, task assignment, performance monitoring, and discipline maintenance establish employer obligations regardless of contractual structures claiming independence. In SAIL v. National Union Waterfront Workers (2001),[41] the Court held that contract labour

---

[38] *Uber BV v Aslam* [2021] UKSC 5, [2021] ICR 657.
[39] *FNV v Deliveroo* ECLI:NL:RAAMS:2019:1173.
[40] *Air India Statutory Corporation v United Labour Union* (1997) 9 SCC 377.
[41] *SAIL v National Union Waterfront Workers* (2001) 7 SCC 1.

performing core business functions integral to the principal employer's operations can't be classified as peripheral outsourcing enabling regulatory evasion. These principles apply directly to platform relationships where algorithms assign tasks (order allocation), monitor real-time performance (GPS tracking, customer ratings), and maintain discipline (penalty deductions), while food delivery or ride-hailing constitute core platform business functions rather than peripheral services.[42]

The three failures interact synergistically. Arbitrary wage-fixing produces inadequate standards; checking through inspectors is incapable of checking large-scale compliance; exceptions in coverage are letting the booming sectors of employment off the hook. These failures combined make constitutional live wage assurances a mere wish list and not legal protections for the majority of the Indian workforce.

IV. PLATFORM ECONOMY AS A PARADIGM CASE: DEMONSTRATING FAILURE AND PROVING SOLUTION

The platform economy in India exhibits all three systemic failures at the same time and indicates that a solution to the problem, powered by technology, can be realized. The fast pace of expansion in the sector, with 7.7 million gig workers in 2023[43] estimated to grow to 23.5 million by 2030,[44] as reported by NITI Aayog puts a strain to act. Ride-hailing drivers (UBER, Ola, Rapido), food delivery partners (Swiggy, Zomato), and e-commerce logistics workers (Amazon Flex, Flipkart) constitute a large and expanding category of workers that should receive wage protection called platform workers.[45]

Field investigation, as well as platform-revealed information, shows systematic wage insufficiency. According to Swiggy and Zomato delivery partners, gross monthly earnings are in the range of Rs 15,000-25,000,[46] working 10-12-hour daily shifts on 26 working days of the month, equating to 260-312 hours monthly. These are gross amounts without worker-borne expenses that platforms externalize: motorcycle fuel (Rs 2,000-3,000 monthly), vehicle maintenance and wear and tear (Rs 1,500-2,000 monthly), smartphone and data costs (Rs500-800 monthly), and accident/vehicle insurance, which are not services provided by platforms (Rs 500-1,000 monthly). When the following key costs are

[42] Brishen Rogers, 'The Social Costs of Uber' (2015) 82 *University of Chicago Law Review Dialogue* 85.
[43] NITI Aayog, *India's Booming Gig and Platform Economy* (NITI Aayog 2022) 12.
[44] ibid 14.
[45] Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (OUP 2018).
[46] Fairwork India (n 5) 18.

considered, net monthly earnings are estimated to lie between Rs 12,000 and Rs 18,000, generating effective hourly rates of Rs 38-58 per hour.

Living wage calculations for metropolitan areas where platform work concentrates demonstrate significant gaps. The Asia Floor Wage Alliance formula,[47] which is modified to Indian urban settings with consumption expenditure data of the National Sample Survey Office and regional price indices, values the living wage costs of Rs 20,000-22,000 per month[48] in a four-member family in Delhi, Mumbai, and Bengaluru. This translates to a living wage requirement of Rs 125-138 in 160 hours of full-time employment that is calculated on an hourly basis. Platform workers logging 260-312 hours monthly to achieve gross earnings of Rs 15,000-25,000 earn effective hourly rates thirty to forty percent below living wage requirements, even before accounting for costs.[49]

Platform corporations exercise algorithmic control, demonstrating all three systemic failures. Structurally, platforms set rates through opaque algorithms without transparent methodology. Swiggy's and Zomato's base delivery fees, distance premiums, surge multipliers, and weekly bonus thresholds change without advance notice or explanation of calculation logic. Workers receive per-delivery payments but can't predict or negotiate rates, experiencing arbitrary wage-fixing analogous to government minimum wage determination without transparency. Enforcement impossibility manifests in regulatory agencies' inability to monitor fifteen million platform workers' compliance through manual inspection, as platforms operate across multiple states with distributed worker bases, making traditional inspection architecturally unsuitable. Coverage exclusion enables platforms to deny employment status despite functional control, classifying workers as partners despite determining rates, assigning orders, evaluating performance through customer ratings, and imposing penalties through automated deductions.

Yet platforms simultaneously demonstrate that technology-enabled compliance monitoring is feasible. Swiggy and Zomato track millions of daily deliveries in real-time, calculating dynamic pricing, monitoring worker locations through GPS, processing payments instantly, and generating comprehensive data on worker earnings, hours, and productivity.

---

[47] Asia Floor Wage Alliance (n 6).
[48] ibid 25.
[49] Richard Anker and Martha Anker, *Living Wages Around the World: Manual for Measurement* (Edward Elgar Publishing 2017).

If platforms can achieve this operational complexity for profit maximization, government systems can replicate it for constitutional mandate enforcement. The technological infrastructure exists, and platforms already possess real-time wage transaction data, worker hour tracking systems, and automated payment processing. Integration of regulations only involves expansion of data streams to the government compliance systems, which proves that the barriers to enforcement are not technical but political and regulatory.

The 2023 Karnataka High Court order in Uber India Systems Pvt. Ltd. v. Competition Commission of India acknowledged algorithmic pricing as potentially anti-competitive but stopped short of establishing wage protection obligations, illustrating the regulatory gap this research addresses.[50] Although competition law examines dynamic pricing as a source of consumer harm, it does not have a parallel system to assess worker harm cases due to algorithmic wage reduction. Platform corporations exploit this gap, operating sophisticated algorithmic management systems, determining worker compensation while remaining outside both traditional labour regulation and competition law wage protections.

The platform economy thus serves as the perfect test case for living wage operationalization. If the proposed framework, formula-based wage determination, institutional independence, technology-enabled enforcement, and ESG disclosure requirements work for the hardest case of algorithmically controlled platform employment, it necessarily works for simpler cases of conventional employment with direct supervision and fixed workplaces. Platform workers' digital tracking for corporate profit proves we have the technology capacity for wage compliance monitoring, while contractual independence classifications demonstrate why we need economic employer doctrines that capture functional control regardless of contractual labels.

V. INTERNATIONAL MODELS SHOWING TECHNICAL FEASIBILITY

International models show that governance can be operationalised by a technology-enabled system to realise large-scale compliance using an interoperable digital infrastructure instead of manual inspection. Such models define technical feasibility that becomes highly applicable in jurisdictions that require automated authentication without corresponding administrative growth.

[50] *Uber India Systems Pvt Ltd v Competition Commission of India* 2023 SCC OnLine Kar 582.

The best example of interoperable digital governance is in Estonia. Its digital administration is served by a completely digital service platform whereby the state services are provided through a secure, citizen-friendly ecosystem online. Behind this system there is the X- Road, the interoperability layer that serves as the spine of Estonia`s digital state, allowing secure data transfer between dispersed public databases without centralizing data.[51] This allows authorities to validate data across registries while maintaining data ownership and integrity.

This is supported by the national digital identity infrastructure, which supports secure authentication and valid digital signatures for public services. Digital identity is more than a means of access; it is a governance enabler that supports trusted service delivery and accountability within the state apparatus.[52] Digital identity and X-Road together implement the "once-only" principle, whereby a person provides data just once, after which it can be safely reused for access to government services.[53]

Estonia has thus moved to a governance paradigm where all public services are available online, cutting red tape and enabling real-time administrative coordination among agencies.[54] The relevance of the Estonian model is not just about digitization but about its design: compliance verification is possible through the use of interoperable registries and secure data exchange, rather than through post-enforcement verification.

The relevance of the Estonian model for the Indian context is more about architectural feasibility than institutional transfer. India already has a large-scale digital public infrastructure, such as a near-universal digital identity through Aadhaar.[55] The Estonian experience shows that where interoperable systems, digital identity, and secure data exchange are brought together in a consistent legal framework, automated verification can

---

[51] e-Estonia, 'X-Road' https://e-estonia.com/solutions/interoperability-services/x-road/ accessed 3 February 2026

[52] Fsi Team, 'Why Estonia Is Europe's Digital Powerhouse: A Study in E-Governance Transformation' (Frost & Sullivan Institute, 18 September 2025) https://frostandsullivaninstitute.org/why-estonia-is-europes-digital-powerhouse-a-study-in-e-governance-transformation/ accessed 3 February 2026.

[53] *e-Estonia* (n 51).

[54] 'Estonia Becomes a Fully Digital Nation No More "Bureaucrazy": All Government Services, Even Divorce Filings, Available Through Online Portal' (PR Newswire, 27 January 2025) https://www.prnewswire.com/news-releases/estonia-becomes-a-fully-digital-nation-no-more-bureaucrazy-all-government-services-even-divorce-filings-available-through-online-portal-302360906.html accessed 4 February 2026.

[55] Alampay E and others, 'Aadhaar and the Rise of Digital Public Infrastructure in India' (Reframe Tech, 13 November 2024) https://www.reframetech.de/en/2024/11/13/aadhaar-and-the-rise-of-digital-public-infrastructure-in-india/ accessed 4 February 2026

be made an operational reality of governance rather than an extraordinary enforcement effort.

In France, the Declaration Sociale Nominative (DSN) introduced in 2017 made several separate reporting requirements of employers nationwide a single monthly electronic reporting (wages, working hours, employment contracts, and contribution to social security).[56] DSN is based on a standardised data format (created directly by the payroll software and sent electronically to receiving agencies) that avoids the possibility of duplicate data entry and provides the necessary, timely, and unified access to information on employment across institutions.[57]

This enhanced the institutional strength of cross-verification and identification of inconsistencies in social-security compliance through facilitating the systematic reconciliation of employer declarations made by social-security and statistical institutions.

The Goods and Services Tax Network (GSTN)[58] India illustrates similarity in the ability of the federal government to coordinate a single unified digital reporting between jurisdictions, which implies that the modification to validate wage-compliance would demand the expansion of the current infrastructure (as opposed to the development of a new system).

The Real-Time Information (RTI) system implemented in the United Kingdom since 2013 compels employers to submit information about their payrolls digitally as and when they pay their employees, instead of doing so on an annual or periodic basis.[59] This event-driven reporting, available at the transaction level, allows almost instant income verification in the administration of taxes and benefits. A study by the National Audit Office discovered that RTI had a great impact on the accuracy and timeliness of PAYE information, it minimized delays in the reconciliation process, and created greater possibilities of the HMRC to identify discrepancies in the early years.[60]

---

[56] INSEE, 'The Social Security System in France' (5 July 2019) https://www.insee.fr/en/information/4195367 accessed 4 February 2026.

[57] Ibid

[58] Goods and Services Tax Network, 'GSTN' https://www.gstn.org.in/ accessed 4 February 2026.

[59] HM Revenue & Customs, 'Help and support: Face to face' (The National Archives) https://webarchive.nationalarchives.gov.uk/ukgwa/+/http:/www.hmrc.gov.uk/startingup/help-support/facetoface.htm accessed 5 February 2026.

[60] National Audit Office, *HM Revenue and Customs: 2012-13 accounts, report by the Comptroller and Auditor General* (2013) https://www.nao.org.uk/reports/hm-revenue-and-customs-2012-13-accounts-report-by-the-comptroller-and-auditor-general/ accessed 5 February 2026.

Unified Payments Interface (UPI) of India, a system where payments can be verified at a significantly larger scale, proves that the technical ability to check wages on a transaction-level far exceeds the system parameters in which RTI was first used.[61]

The Deliveroo case (2021) determined that algorithmic management systems may form adequate control to prompt employment status and minimum-wage requirements, notwithstanding them being classified as independent contractors under contractual terms.[62]

The Court also reviewed how Deliveroo allocates orders using an algorithm, performance monitoring, and acceptance-rate, and how it unilaterally changes the parameters of its remuneration, and discovered this control functionally identical to conventional managerial control. The decision necessitated the use of industry-wide collective-bargaining wage rates, on the understanding that algorithmic control is an application of employer power, in spite of the form of contract.[63]

The 2023 platform-work reforms of Germany extend the right to the participation of the Works Council to the digital labour platform, meeting specific requirements.[64] Such reforms also mandate that platforms publish algorithmic systems that influence remuneration and working conditions for representatives of workers, expanding on co-determination rights in the law of the union under the Betriebsverfassungsgesetz.[65]

This model of worker-participation and transparency gives concrete legislative specifications of the algorithmic governance of wages and collective supervision of digitally mediated employment.

Collectively, these international models show that real-time verification of compliance is operationally possible when based on technology and interoperable digital systems of

---

[61] NPCI and Boston Consulting Group, *UPI: The Global Benchmark for Digital Payments* (Report, 2025) 44 https://web-assets.bcg.com/73/e5/e11f0db54da18a31a7cb55c1bef2/upi-the-global-benchmark-for-digital-payments.pdf accessed 5 February 2026.

[62] Eurofound, 'Supreme Court of Netherlands rules in favour of Deliveroo couriers as employees' (2023) Platform Economy Database https://apps.eurofound.europa.eu/platformeconomydb/supreme-court-of-netherlands-rules-in-favour-of-deliveroo-couriers-as-employees-110025 accessed 5 February 2026

[63] Loyens & Loeff, 'Deliveroo applied in case law of the lower courts: an overview' (2024) 2 https://www.loyensloeff.com/quoted-164---deliveroo-applied-in-case-law-of-the-lower-courts-an-overview.pdf accessed 5 February 2026

[64] Hogan Lovells, 'Platform-based work in Germany – The legal framework is moving' (JD Supra, 2 February 2026) https://www.jdsupra.com/legalnews/platform-based-work-in-germany-the-4370979/ accessed 5 February 2026

[65] Hogan Lovells, 'Works constitution in Germany - An Overview' (2022) 14 https://www.hoganlovells.com/en/publications/works-constitution-in-germany_2022 accessed 5 February 2026

governance. The jurisdictions implemented this in phases and had standardised reporting formats and institutional integration, as opposed to heavy enforcement that was through inspections. India has a digital public infrastructure, which comprises nationwide identification, real-time payments, and a federated data system, which makes it adaptable and able to scale such wage-verifying mechanisms, as opposed to simply imitating European models, which target smaller and more formalised labour markets.

VI. ESG-CONSTITUTIONAL CONVERGENCE: CORPORATE GOVERNANCE AS ENFORCEMENT MULTIPLIER

A. THE SEBI BRSR Framework: Creating accountability for constitutional principles

The Business Responsibility and Sustainability Reporting framework, as introduced by the Securities and Exchange Board of India in a circular[66] establishes new mechanisms of corporate governance on wage accountability beyond the usual labour inspection. This overlap of corporate law and constitutional labour rights embodies revolutionary doctrinal change that allows the living wage requirement of Article 43, a non-justiciable Directive Principle relying on law enforcement, to have enforcement power in the hands of corporate disclosure, fiduciary obligations, and shareholder actions. The BRSR framework replaces the earlier Business Responsibility Report (BRR) with a comprehensive structure involving around 140 ESG parameters, divided into essential (mandatory) and leadership indicators (voluntary).[67]

Legal Basis: The BRSR framework operates through SEBI's regulatory authority under the Securities and Exchange Board of India Act, 1992, and the Securities Contracts (Regulation) Act, 1956. Companies not complying are subject to regulatory fines under section 15G (maximum of Rs. 25 crores or three times the profit made, whichever is higher) as well as the probable delisting effects.[68]

Coverage: The framework is applicable to companies that account for more than 70% of the market capitalization in India, including large platform companies like Zomato Limited, listed on NSE in July 2021 amid other gig economy players.

---

[66] Securities and Exchange Board of India, 'Business Responsibility and Sustainability Reporting by Listed Entities' (Circular SEBI/HO/CFD/CMD-2/P/CIR/2021/562, 10 May 2021) https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html accessed 5 February 2026.
[67] EcoVadis, 'BRSR: India's ESG Disclosure Framework' (2024) https://ecovadis.com/regulations/india-business-responsibility-and-sustainability-reporting-brsr/ accessed 5 February 2026.
[68] Securities and Exchange Board of India Act 1992, s 15G.

B. The Doctrinal Innovation: Non-Justiciable Rights Become Enforceable Through Corporate Law

The innovation in doctrine is that non-justiciable constitutional rights have been turned into enforceable corporate legal duties. Article 43 guides the State to ensure the attainment of a living wage, and Article 37 states that the Directive Principles are not justiciable,[69] that is, the citizens have no direct access to their enforcement by the court. This is an implementation gap, in that the State is guided to ensure a living wage is attained, and yet the Directive Principles are declared non-justiciable. Although Unichoyi v. State of Kerala (1962) and Reptakos Brett v. Its Workmen (1992) acknowledge the existence of a living wage as a constitutional requirement, governmental law enforcement of traditional labour laws by way of governmental inspectors has been incapable of realizing this imperative among ninety percent of employees.

The ESG Bridge: BRSR establishes an enforcement channel that is not based on standard labour inspection by converting constitutional duties into corporate governance duties using three linked legal mechanisms:

1. **Director Fiduciary Duties under the Companies Act, 2013**

Under Section 166(2) of the Companies Act 2013, directors have the duty to act in good faith in order to advance the objectives of the company in the interest of its members in totality, and in the best interest of the company, its employees, the shareholders, the community, and to safeguard the environment.[70] This section was construed by TCS v. Cyrus Investments Pvt. Ltd.[71] to establish three separate fiduciary obligations, which are promoting objects for members, acting in the best interests of the company, the employees, the shareholders, and the community, and protecting the environment.[72] The court noted these are distinct obligations and not hierarchical.

Application to Living Wages: When directors err in ensuring wage compliance across the corporate structures (direct employees, contract workers, supply chain workers),

[69] Constitution of India 1950, art 37.
[70] The Companies Act 2013, s 166(2).
[71] 2021 SCC OnLine SC 272.
[72] *Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd.,* (2021) 9 SCC 449.

despite the constitutional requirement under Article 43, established precedents under both Unichoyi (1962) to Reptakos Brett (1992), and ESG disclosure obligations under BRSR, they breach the fiduciary duty as they owe to act in the best interest of employees and the community under Section 166(2). This results in civil liability under Section 166(5), requiring them to pay back an "undue gain or advantage" and criminal liability under Section 166(7) that attracts a fine of Rs. 1-5 lakhs.[73]

2. Shareholder Derivative Suits

Section 245 of the Companies Act of 2013 allows shareholders to present derivative suits on behalf of the company when directors commit breaches of breach of obligations. [74] When non-compliance in terms of pay creates a legal penalty (punishments pursuant to the Code on Wages), reputational loss (ESG rating downgrades), regulatory risk (ESG penalties on false BRSR disclosure), or material risks to share value, the shareholders may present a lawsuit against the directors under breach of Section 166 duties. Although no Indian judicial judgment has yet fixed this line of living wage enforcement, the derivative suit system has already been used to claim director duty breaches in the context of corporate governance, which sets the legal framework.[75]

3. ESG Disclosure as Material Information

ESG disclosure will be material information in investor decision-making under SEBI rules/regulations[76] which should include a false or misleading BRSR disclosure as it will be a securities violation subject to a high penalty under Section 12A(b) and (c) of the SEBI Act.[77] This brings an additional enforcement layer beyond labour law compliance, as corporate law sanctions operate independently of conventional wage enforcement mechanisms.

C. Market-based enforcement mechanisms

[73] The Companies Act 2013, ss 166(5), 166(7).
[74] The Companies Act 2013, ss 245–246.
[75] Acuity Law, `Directors' Duties in India: Shareholders or Stakeholders?` (2025) https://acuitylaw.co.in/directors-duties-in-india-shareholders-or-stakeholders/ accessed 5 February 2026.
[76] Securities and Exchange Board of India (n 66).
[77] *Securities and Exchange Board of India Act 1992*, ss 12A(b), 12A(c).

ESG rating agencies such as CRISIL, ICRA, Sustainalytics, and MSCI use wage adequacy criteria in their ESG ratings of corporations. Corporations with large numbers of employees below the living wage benchmarks are likely to see their ESG ratings lowered, impacting investment attractiveness, cost of capital, and institutional investment.[78]

Institutional investors such as SEBI-regulated mutual funds and insurance companies increasingly use ESG screening criteria in investment mandates, with sovereign wealth funds and pension funds using living wage criteria in responsible investment policies.[79]
Proxy advisory services such as Institutional Investor Advisory Services (IiAS) and InGovern Research Services offer voting recommendations to institutional investors on director nominations and governance issues. These organizations can advise institutional investors to oppose director reappointment nominations for corporations that persistently show living wage gaps without a credible plan for remediation, thereby holding directors accountable beyond government enforcement through institutional shareholding.[80]
Supply chain reach takes ESG wage responsibility outside the employment scope. Major corporations with BRSR disclosure are increasingly reporting on supply chain labour practices.[81] Supply chains Wage compliance boards on supplier contracts are increasingly being a feature of listed corporations, where supply chain labour practices are audited, and relationships with suppliers who exhibit systematic violations are terminated. This procurement advantage imposes trickle-down compliance benefits, as small informal sector suppliers might not directly undergo governmental scrutiny, but they will not be excluded by the market to big corporate purchasers insisting on wage compliance certifications. ESG disclosure, therefore, reaches informal sector employees through supply chain accountability provision, which cannot be directly inspected by the government.

[78] Chola Risk, 'Sustainability Reporting & BRSR in India: Compliance Frameworks and Best Practices' (2024) https://cholarisk.com/blog/sustainability-reporting-brsr-in-india-compliance-frameworks-and-best-practices/ accessed 5 February 2026.
[79] 'How SEBI's Stringent Sustainability Reporting Mandate Is Proving to Be a Challenge' *Business Today* (28 November 2023) https://www.businesstoday.in/ accessed 5 February 2026.
[80] Institutional Investor Advisory Services (IiAS), 'Company Reports and Proxy Recommendations' www.iias.in accessed 5 February 2026.

[81] Securities and Exchange Board of India, 'BRSR Framework, Section C: Principle-wise Performance Disclosure' (2021).

Wage adequacy is a material ESG obligation that is recognized in international frameworks. The Corporate Sustainability Reporting Directive (CSRD) of the European Union (which takes effect in January 2024) requires the disclosure of the living wage gap of 50,000 companies.[82] Workforce compensation adequacy is part of a new set of sustainability disclosure standards by the International Sustainability Standards Board.[83]

VII. OPERATIONAL FRAMEWORK FOR LIVING WAGE IMPLEMENTATION

The constitutional requirement for a living wage is yet to be met because of institutional and enforcement deficits, rather than a lack of clarity on the concept. This approach turns criticism into a blueprint for action through legislation, institutional autonomy, technology-driven compliance, and corporate governance, based on international best practices and India's advantage in digital infrastructure.

A. Legislative Amendments: Statutory Operationalization

1. Formula-Based Wage Determination

   The Living Wage Foundation in the UK and the Living Wage Movement in New Zealand have shown how the formula can be transparent, using actual household expenditure data, updated every year, and made public. The proposed Section 9 amendment follows this approach.

   Proposed Section 9(1): The Central Government shall establish the National Living Wage Commission, which shall determine the National Living Wage calculated as:

   LW = [(NC x 1.15) + HC + HEC + EdC + TC] x (1 + RCPI)

   Where: NC (Nutrition Cost) = Cost of food basket for 2,700 calories as per National Institute of Nutrition norms and Labour Bureau prices; 1.15 multiplier = Supplement for proteins/vitamins; HC (Housing Cost) = Median rent per capita of 18 sq. meters per month as per RBI data; HEC (Healthcare) = Per capita monthly health spend as per National Health Accounts; EdC (Education) = Monthly spend on two children as per District Information System data; TC (Transport) = Monthly transport cost for 10 km daily commute; RCPI = Regional Consumer Price Index adjustment as per Labour Bureau.

[82] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on corporate sustainability reporting [2022] OJ L322/15.

[83] IFRS Foundation, 'IFRS Sustainability Disclosure Standards' (2023) https://www.ifrs.org/issued-standards/ifrs-sustainability-standards-navigator/ accessed 5 February 2026.

The formula components are updated every quarter based on data from the National Sample Survey Office, RBI, Ministry of Health, Ministry of Education, and Labour Bureau. States are required to report state-specific living wages within thirty days after the regional adjustments. The minimum wage shall not be less than the living wage. This is based on Reptakos Brett's enumeration and operationalized by transparent calculation, where the UK Living Wage Foundation and New Zealand are precedents.[84]

2. Platform Economy: Economic Employer Doctrine

The Netherlands' Deliveroo decision (2021), Spain's Rider Law (2021), and Germany's Platform Workers Act (2023) hold that algorithmic control gives rise to employment duties. The Air India[85] and SAIL[86] Decisions in India's courts offer conceptual support: functional control confers employer status irrespective of contractual arrangements.

Proposed Section 2(k): "'Employee' shall mean any individual where the hiring entity: (a) sets rates of remuneration using algorithmic systems or dynamic pricing; (b) allocates work using automated allocation systems; (c) assesses performance using rating systems that affect subsequent allocation; (d) levies penalties in accordance with performance ratings; (e) regulates working conditions using automated systems.

Rationale: 'Algorithmic system' refers to automated systems that make decisions on work conditions. The character of the contract shall not prevail where functional control is shown in (a)-(e). The controlling entity shall be considered the employer, irrespective of the presence of platforms, contractor arrangements, or the worker's ability to accept/reject work assignments when affected by performance ratings.

Proposed Section 9A - Platform Worker Wages: "Platform operators must ensure total remuneration is equal to or greater than the living wage rate per hour. 'Hours worked' shall include active service hours, logged-in waiting time available for

[84] Living Wage Foundation (UK), 'Living Wage Calculation Methodology' https://www.livingwage.org.uk/calculation accessed 5 February 2026.

[85] *Air India Statutory Corporation* (n 40).

[86] *SAIL* (n 41).

assignments, travel time to/from the first/last assignment, and mandatory training hours."

Platforms must offer workers real-time rate access, payment breakdowns, and monthly statements with total hours worked, actual hourly rate, and comparison to the living wage. Rate changes must be given thirty days' notice with an explanation of earnings impact and have a sixty-day opt-out period.

The National Platform Worker Wage Board (retired High Court Judge as Chair, three representatives from platform workers, two industry representatives, two digital economy experts, one technology policy expert) will set minimum hourly rates by sector, review algorithmic wage systems before implementation, investigate allegations of manipulation, perform annual audits, and publish quarterly reports."

Proposed Section 27A - Algorithmic Transparency: "Workers subject to algorithmic wage determination have rights to: (a) simple explanation of calculation logic; (b) access to their own data; (c) itemized payment breakdowns; (d) thirty days' notice of parameter changes; (e) grievance procedures with human review.

Employers must: provide accessible documentation; perform algorithmic impact assessments assessing earnings effects, discriminatory risks, transparency, and wage compliance; test for bias on protected characteristics; establish grievance procedures with forty-eight hours turnaround for urgent issues. Violations: Rs. 1 lakh first offense, Rs. 5 lakhs subsequent offenses, per affected worker for systemic failure to comply."

The Platform Workers Act of Germany mandates the use of algorithmic transparency and impact assessments.[87] The Netherlands ruling over Deliveroo requires transparent calculations.[88] and the Platform Work Directive of the EU specifies the use of transparency.[89]

B. *National Living Wage Commission: Institutional Independence*

Independence is ensured by the National Living Wage Commission. It is based on the model of Election Commission and Comptroller and Auditor General who have shown

---

[87] *Gesetz zur Verbesserung der Arbeitsbedingungen in der Plattformarbeit* 2023 (Germany).

[88] *FNV v Deliveroo* (n 39).

[89] European Commission, 'Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work' COM (2021) 762 final.

constitutional acceptance of independent institutions,[90] the Commission has seven members, including Chairperson (retired SC Justice, labour economist, or former Secretary) nominated by committee with CJI, PM, Leader of Opposition, and two experts in labour economics, one actuary, one expert in labour law, two ex-officio (Joint Secretary Labour, DG Labour Bureau). The non-renewable terms are five years, being the independence variable which is removed only after an enquiry on presidential reference by the Supreme Court at a two-thirds majority in parliament.

Financial independence works in the following way: Recommended budget as charged expenditure (Rs. 100 crores annually) requiring no parliamentary appropriation.

Secretariat recruits involve the Chief Economist, Data and Regional analysis Directors, Legal Affairs Director, fifteen Research officers, twenty Field officers, and ten administrative officers.

National Living Wage is calculated by the Commission on March 31 every year: data is collected in October-December; the formula is applied in January; the regional adjustments and public hearings are held in February; notification is issued on March 31 with documentation; the deadline to submit a notification is April 30. Every five years, the Quinquennial methodology is reviewed under stakeholder consultation and 90-day public comment. Wages, breakdowns, trends, and compliance data are available on dashboard screens to the public. Parliament's Annual report on the calculation, the rate of compliance, the enforcement, the trends, and recommendations.

Legal protection: decisions made final unless the executive sees the opportunity to change them; change of methodology must be subjected to Commission review; budget as charged expenditure must not be manipulated; tenure prevents political ousting; transparency through publication is created.

C. *National Wage Verification System: Technology-Enabled Enforcement*

The National Wage Verification System facilitates the application of technology-based implementation. India Aadhaar (1.39 billion), UPI (131 billion annual transactions), Jan Dhan (500 million accounts), and GST Network (8 billion monthly invoices) generate enforcement capabilities that make manual investigation unnecessary.[91]

[90] Constitution of India 1950, arts 324, 148–151.
[91] Unique Identification Authority of India (UIDAI), 'Aadhaar Dashboard' (2024) https://uidai.gov.in/aadhaar-

Estonia X-Road has created compliance that is ninety-eight percent,[92] France DSN significantly boosts compliance in social security,[93] United Kingdom RTI has increased compliance by ninety-two to ninety-six percent.[94]

Phase 1 (Formal Sector, Months 1-18) aims at reaching ten million EPFO/ESIC/GST establishments covering around 100 million workers via API integration by utilising the pre-existing reporting. Monthly reporting through API will include per employee: encrypted Aadhaar virtual ID; gross wages; deductions (PF, ESIC, tax, and other); net wages and the date of payment; working days; and method of payment. System does validation: cross-validation against living wage, days, and deductions validation, historical validation for sudden changes or unusual trends, and duplicate validation.

Three-tier automated workflow

Tier 1 (0-10% below threshold) automatic email/SMS with 30-day correction, no penalty that permits self-certification or explanation; *Tier 2 (10-25% below threshold)* formal notification of fifteen days with reply and explanation with documentation and correction plan; inspection by inspector and can accept, demand correction, or intensify; *Tier 3 (>25% of OR repeated violations)* automatic penalty of 2x shortfall plus Rs.10,000 per worker; be collected by either GST refund or EPFO offset; 30-day appeal; Three violations in one year will result in physical inspection.

Privacy compliance is with the Digital Personal Data Protection Act 2023: encrypted worker data (with virtual ID); controlled access with audit trail; aggregated data publicly accessible; worker can access own history; data retained for seven years, then deleted; annual security audit.

Implementation Timeline: Months 1-6 design; Months 7-12 development and API integration; Months 13-15 pilot (1,000 employers, five states); Month 16 evaluation; Months 17-18 national rollout. *Goal measures*: ninety percent of the establishments to

---

dashboard/ accessed 5 February 2026.

[92] e-Estonia, 'X-Road: The Backbone of e-Estonia' (2024) https://e-estonia.com/solutions/interoperability-services/x-road/ accessed 5 February 2026; GBG, 'Digital Identity in Practice – Estonia and the e-State' (2021) https://www.gbg.com/en/blog/digital-identity-in-practice-estonia/ accessed 5 February 2026.

[93] INSEE, 'Understanding the Nominative Social Declaration (DSN) for Better Statistical Measurement' (2018) Courrier des statistiques N1-2018 https://www.insee.fr/en/information/4195367 accessed 5 February 2026.

[94] National Audit Office (UK), *HM Revenue and Customs: Real Time Information Programme* (HC 2015-16, 413) 12.

be onboarded; less than five percent error rate; less than ten percent downtime; eighty percent employer satisfaction; sixty percent inspector workload reduction.

Phase 2 (Platform Economy, Months 19-36) targets platform workers with the daily reporting of transaction level: worker ID, task ID, time, earnings outlay, hours (active and waiting) and payment date. The algorithmic transparency module involves the following platforms uploaded quarterly: base rate calculation, dynamic pricing parameters, incentive structures, and penalty mechanisms. NWVS validates through simulation-platform shows that the algorithm creates monthly earnings, the living wage of workers who log Rs.180 hours. Continuing monitor is a flag to the platform on which the percentage of full-time employees who earn less than the threshold (>20) is over 20. Materials revision needs 30 days and an impact evaluation.

App functionality on worker transparency: real-time task breakdown; monthly dashboard with tasks, hours, earnings, deductions, hourly rate, comparison with the living wage; twelve-month comparison over time. Multi-platform aggregation connects to a single profile. Thresholds by hours are used when it comes to Rs.40 hours per platform or Rs.160 hours across platforms. Implementation Month 19-24 development; Month 25-27 pilot (five platforms); Month 28 evaluation; Months 29-36 rollout to platforms having Rs.1,000 workers**.**

Target success metrics: 75% major platform workers to get covered; 90% full-time workers earning ≥90% living wage; 100% algorithmic transparency compliance; 40% reduction in wage complaints.

Phase 3 (Informal Sector Pilot, Months 37-60) to be implemented in ten districts in five states using QR codes: employers are registered, and a payment QR is generated via app/USSD, and workers scan it, indicating their receipt. Digital Wage Facilitators (one in every 5,000 employees) will be helpful at panchayat offices and community centers. Gram panchayats give compliance reports and have kiosks.

Proposed success metrics: 60% informal sector workers registered; 40% wage transactions recorded; 15% average wage increase compared to control districts.

Estimated Budget: The development of NWVS requires an estimated Rs. 400 crores: Rs. 30cr for system design, Rs. 200cr for software development and integration, Rs. 50cr for security infrastructure, Rs. 70cr for testing and piloting, and Rs. 50cr for training programs. In addition, projected annual operations are Rs. 200 crores: Rs. 80cr for system maintenance, Rs. 40cr for help desk support, Rs. 30cr for continuous improvement, and Rs. 50cr for Phase 3 field facilitators. These estimates are based on comparable e-governance infrastructure projects, including GST Network implementation costs adjusted for scope, Estonia's X-Road per-capita expenditure scaled to the Indian context, and current Labour Bureau operational budgets.

Cost-Benefit Analysis: The traditional methods, like inspector-based enforcement, considering that about 200,000 inspectors are needed to secure merely a 30% level of compliance coverage, or about 1 in every 5 million, for 500 million people in India, with average compensation packages of ₹10 lakhs per annum, will incur a total bill of ₹20,000 crores every year. By contrast, NWVS achieving the projected 80% compliance at ₹200 crores annually represents 2.5× higher compliance at 1% of cost.

Risk mitigation: Technical risks, 99.5% SLA on uptime, manual submission of falls, annual security audit; adoption risks roll out, free software, extensive, simplified reporting to small business, digital divide USSD-reporting, facilitator support, legal USSD-reporting compliance, central-state demarcation of risk, independent legal validation.

The system is an integration of changes in the legislature (formula determination, economic employer doctrine), independence of institutions (Commission on the model of Election Commission), enforcement through technology (Aadhaar-UPI-GST to automated verification), and ESG integration (market-based pressure of compliance) to address structural failure, enforcement failure, and coverage failure through multi-dimensional interventions that convert constitutional promise into reality.

D. Proposed BRSR Section E Amendments: Operationalize ESG-Constitutional Convergence.

In order to conceptualize living wage responsibility, proposed changes to BRSR Section E are as follows:

Essential Indicator E1: Living Wage Gap Analysis reporting total workforce by category, lowest wage paid, applicable living wage per Commission calculations, gap percentage, and workers below threshold, cost to comply, and remediation schedule.

Essential Indicator E2 (Platform Worker Compensation) of those platform operators that report worker counts, earnings distributions, hourly wages, worker-borne costs, net earnings percentage, and churn data.

Essential Indicator E3 (Algorithmic Wage Determination) requires disclosure on whether it is used with affected workers, the factors of calculation, the effects, transparency, grievance statistics, and bias testing.

Essential Indicator E4 (Supply Chain Compliance) reporting suppliers audited, violations detected, corrective measures, the percentage of suppliers that are compliant, and targets.

Implementation Timeline:

- Phase 1 (FY 2025-26): Top 500 listed companies
- Phase 2 (FY 2026-27): All companies > Rs. 1,000 crore market capitalization
- Phase 3 (FY 2027-28): All top 1,000 listed companies by market cap

Penalties for Non-Compliance:

- First violation: Warning notice with 30-day compliance deadline
- Second violation: 0.05% of market capitalization as listing fee surcharge (minimum Rs. 10 lakhs, maximum Rs. 5 crores)
- Third violation: 0.1% surcharge + mandatory board-level remediation plan submitted to SEBI
- False disclosure: Securities violation under SEBI Act Section 15G (up to Rs.25 crores or 3× profit). Issues are tackled within the framework of its legal defensibility.

E. International Precedent: EU Corporate Sustainability Reporting Directive

The European Union's Corporate Sustainability Reporting Directive (CSRD), Directive (EU) 2022/2464, which came into force from January 2024, makes living wage gap disclosure mandatory as a sustainability metric for 50,000 companies.[95]The directive states:

- Reporting on the workforce earning less than the living wage rates
- Justification of the calculation process

[95] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 as regards corporate sustainability reporting [2022] OJ L322/15.

- Timelines for remediation
- Disclosure of supply chain wage practices

The proposed amendments to the BRSR in India are in line with, if not more stringent than, the CSRD, making Indian corporate governance standards more advanced than the European Union's implementation.

The International Sustainability Standards Board (ISSB), formed by the IFRS Foundation, also considers workforce compensation sufficiency while formulating sustainability reporting standards, as insufficient wages are considered material risks to investors due to reputational, regulatory, and workforce risks.[96]

VIII. CONCLUSION: FROM ASPIRATION TO ENFORCEMENT

Seven decades since the Minimum Wages Act and sixty-three years since Unichoyi v. State of Kerala affirmed that a living wage is a constitutional requirement, India still faces ultimate implementation lacunae. Constitutional promise has not been fulfilled because of conceptual vagueness or inadequacy of jurisprudence, both well established by Supreme Court interpretation, rather due to systematic institutional and enforcement failures that have made adherence a matter of choice rather than necessity.

This paper shows how the operationalization of the living wage needs to be intervened upon in four dimensions simultaneously. Structural arbitrariness of wage determination is eradicated by formula-based wage determination. The National Living Wage Commission offers institutional autonomy that separates the wage calculation process from political interference. The National Wage Verification System is an example of technology-enabled scale enforcement in architecture, not feasible with inspector dependence. ESG disclosure mandates turn corporate governance into an enforcement multiplier, so that living wage compliance becomes a fiduciary duty enforced by market forces. These interventions work together synergistically; a formula without enforcement is a pipe dream, enforcement without independence is politically unstable, and technology without ESG accountability lacks the leverage of the private sector.

The platform economy is both a strategic test case and evidence of the severity of the problems and the feasibility of the solutions at the same time. A case in point of all three

[96] FRS Foundation, ‘IFRS Sustainability Disclosure Standards’ (2023).

systemic failures is fifteen million gig workers who receive effective hourly wages that are thirty to forty percent of the living wage levels. The same platforms, however, also make compliance monitoring operationally feasible, to monitor millions of daily operations in real-time, to price dynamically based on an algorithm, and to instantly process a payment. When platforms accomplish this operation complexity to maximize profits, the same infrastructure can be used to verify living wages. In the event that the suggested framework works on the most complicated instance of algorithmically controlled gig employment, it will inevitably work on the less intricate instances of traditional employment.

International experience proves the technical possibility and political feasibility. Estonia's X-Road ensures tax compliance at the level of ninety-eight percent. France's Déclaration Sociale Nominative merged payroll reporting into a single monthly filing. The United Kingdom's Real-Time Information system improved tax compliance from ninety-two to ninety-six percent in three years. The superior digital infrastructure in India, Aadhaar's 1.39 billion enrollments, UPI's 131 billion annual transactions, and GST Network's 8 billion monthly invoices enable enforcement capacity beyond international peers. There are no technical or economic obstacles to implementation; only political ones.

Integration of the corporate law and the constitutional labour rights is a developmental change in doctrines. ESG reporting guidelines convert the non-justiciable Article 43 Directive Principle into enforceable business governance regulation. Board failure to guarantee living wages generates material ESG risks in reputational harm, institutional investor pressure, supply chain disruptions, and regulatory scrutiny, and thus living wage compliance is economically prudent instead of being altruistic. Enforcement by the market is a continuous process involving analysis by the analysts and the investors, as well as complementing occasional government inspection and extending responsibility beyond direct employment into the supply chains.

India faces a choice: enforce the constitutional mandate of living wages through this multi-dimensional framework or continue the stagnation of statutory law, condemning ninety percent of the country to subsistence living despite the constitutional mandate. It is not a question of whether living wages are affordable or technically feasible; international experience and India's digital connectivity attest to the feasibility of the goal. The question is whether India has the political will to translate its constitutional ideals into reality.

Aspiration for seven decades without implementation indicates the answer is not in refining the constitutional mandate or documenting the inadequacy of wages; both are well-established.

Technology verification, independence, ESG reporting, and formulaic determination offer the solution. The compliance with the Constitution is possible when the systems make the non-compliance visible, expensive, and unsustainable. The proposed framework takes seven decades of aspirational impracticability and turns it into obligatory compliance. Nothing is left but the choice between constitutional fidelity and continued failure.

ORIGINALITY STATEMENT

We hereby declare that the manuscript titled **"Living Wage as a Constitutional Imperative: Exposing the Structural Limits of Minimum Wage Regimes"** is an original work of the author(s). The manuscript has been written independently and has not been published previously, nor is it under consideration for publication in any other journal or platform. All sources and authorities relied upon have been duly acknowledged in accordance with academic standards.

COPYRIGHT STATEMENT

We acknowledge that, upon acceptance for publication, the copyright in the manuscript titled **"Living Wage as a Constitutional Imperative: Exposing the Structural Limits of Minimum Wage Regimes"** shall vest with **CLL**, subject to the journal's copyright policy.

AUTHOR DETAILS AND INSTITUTIONAL AFFILIATION

Author 1:
Name: Aakanksha Verma
Institutional Affiliation: Institute of Law, Nirma University, Gujarat, 3rd yr, B.COM. LL.B.(Hons.
Email ID: 23bbl002@nirmauni.ac.in

Signature:

Author 2:

Name: Aditee Singh
Institutional Affiliation: Hidayatullah National Law University, Raipur,Chhattisgarh, 3rd yr, B.A. LL.B. (Hons.)
Email ID: aditee.232996@hnlu.ac.in

Signature:

ASINGH.

THE MAJORITARIAN MIRAGE: A CONSTITUTIONAL CRITIQUE OF THE SOLE NEGOTIATION UNION AND THE SILENCING OF MINORITY VOICE UNDER THE IRC 2022

- *Harsh Karothiya & Himanshu Prajapati*

Abstract

In the operationalization of the new labour codes on November 21, 2025, it is understood that the social contract in India has been completely re-organised, not as the system of controlled pluralism but as the framework of market rationalism in administrative stability. This paper is a full constitutional review of the Industrial Relations Code, 2020, with a particular focus on the legal paradox that is Section 14. It determines that, as much as the introduction of a Sole Negotiating Union is to produce a state of 'hegemonic stability' in terms of the unitary nature through which to negotiate employee interests on behalf of employers, it unintentionally creates a form of constitutional silencing of the specialised craft and minor interests.

Its positioning point is that, by substituting the historical Indian tradition of competition-based pluralist bargaining, in favour of a hard 51% majoritarian rule, the Code might be a threat to the core freedom of association contained in Article 19(1)(c) of the Constitution, and the requirement of substantive equality contained in Article 14 of the Constitution. As noted in this paper, a winner-take-all environment like that runs the threat of disenfranchising certain sub-categories of workers (such as women, marginalised castes, niche technical cadres) whose particular grievances can be bargained away by a majoritarian agent which does not have a statutory duty of fair representation.

The study uses a doctrinal/law-in-context approach and assesses the presence of the Majoritarian Trap per the modern context of fissured workplaces and algorithm-based management, in which the establishment-based bargaining is becoming less relevant. The results indicate that the Code puts greater emphasis on industrial peace rather than industrial democracy resulting in an efficiency-oriented stalemate. In correcting this, the article proposes substantiated innovative recommendations, such as a weighted veto system of the Negotiating Council and legalising Sectoral Negotiating Councils of the platform economy. It concludes

that purposive judicial interpretation is needed, to bring about an ease of doing business, is not unwillingly conducive to an ease of exploitation, by avoiding the removal of the minority voice at the bargaining table.

Keywords: *Industry Relations Code 2020, Negotiating Council, Industrial Democracy, Majoritarianism, Collective Bargaining, Constitutional Silencing*

1. Introduction: The Changing Social Contract

The industrial relations structure in India is changing tremendously. Formal listing of the four New Labour Codes on 21 November 2025[1] will mark the ultimate replacement of the Industrial Disputes Act, 1947[2] (IDA), with a comprehensive reign of terror statute of administrative consistency and labour-market flexibility. Although the IDA, based on a welfare-state model, established an industrial relationship with management by balancing industrial conflict by intervention of the state, the Industrial Relations Code, 2020[3] (IRC) entails a reconfiguration of employer-employee engagement, which is less pluralist in flexibility and privileges negotiated settlements, instead of the pluralist frameworks of the post-independence labour law.

Traditionally, Indian labour regulation has developed out of the slave/servant paradigm of colonialism to become the protective adjudication under the IDA. Although frequently criticised as disjointed and procedurally cumbersome, that structure allowed several trade unions to coexist and support a variety of occupational or ideological interests. IRC tries to rationalise this terrain by providing statutory references to union recognition, best exemplified by Section 14[4] which founds collective bargaining power in numerical majoritarianism. This

---

[1] Government of India, Ministry of Labour and Employment, *India's Labour Reforms: Simplification, Security and Sustainable Growth* (Press Information Bureau, 21 November 2025) https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/nov/doc20251121701501.pdf accessed 10 January 2026.

[2] Industrial Disputes Act 1947 (Act 14 of 1947) https://www.indiacode.nic.in/bitstream/123456789/11102/1/industrial-disputes-act-1947.pdf accessed 10 January 2026.

[3] Industrial Relations Code 2020 (Act No 35 of 2020) https://www.indiacode.nic.in/bitstream/123456789/22040/1/aa202035.pdf accessed 10 January 2026.

[4] Industrial Relations Code 2020 (Act No 35 of 2020) s 14 https://www.indiacode.nic.in/bitstream/123456789/22040/1/aa202035.pdf accessed 10 January 2026.

change posits an inherent question: *In the quest for bargaining efficiency has meaningful industrial democracy been sacrificed?*

The main issue raised in this paper is based on the design of Section 14 that is hard and fast. The IRC makes a rather traditional unified workplace structure by granting a union with a 51 per cent majority exclusive bargaining rights. This supposition does not augur well with the realities of the modern labour markets. The contemporary enterprises are becoming more and more fractured as the employment relations are subcontracted, outsourced, and mediated by platforms as the theory of the fissured workplace by David Weil[5] illustrates. The workers in these contexts can now be found scattered among contractual and digital interfaces and establishment-based collective bargaining can be harder and more hard to actualise.

The platform economy has experienced this structural limitation the most. The Code on Social Security, 2020[6] will provide some of the limited welfare recognition to gig workers and platform workers, but the IRC does not speak on their rights to collective bargaining. The workers are frequently categorised as independent contractors/partners and are not considered workers in accordance with Section 2(zr)[7] of the IRC. Consequently, platform workers lack access to recognised unions, legal collective bargaining and lawful strikes, in spite of being under extensive managerial control via algorithmic systems.

This question is of urgent concern due to the transitional nature of the situation against which the Codes have been applied. By the first quarter of 2026, Indian industry will be in a dual compliance regime. Although certain substantive provisions of the new Codes are operational, a substantial number of states still rely on the application of procedural mechanisms pursuant to labour laws that had been in place before because of lagging in the provision of final rules. Such regulatory duplication puts newly formed negotiating institutions in a state of legal ambiguity making the IRC bargaining structure difficult to work.

This paper claims that the IRC's majoritarian concept of recognition of unions will weaken the constitutional clause of freedom of association in Article 19(1)(c)[8]. The Code exposes a

---

[5] David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Harvard University Press 2014).

[6] Code on Social Security 2020 (Act No 36 of 2020) https://www.indiacode.nic.in/bitstream/123456789/16823/1/aA2020-36.pdf accessed 10 January 2026.

[7] Industrial Relations Code 2020 (Act No 35 of 2020) s 2(zr) https://www.indiacode.nic.in/bitstream/123456789/22040/1/aa202035.pdf accessed 10 January 2026.

[8] Constitution of India art 19(1)(c).

structural imbalance in the collective bargaining process, since it gives the majority union, coupled with the denial of a statutory Duty of fair Representation, a majority and thus marginalises minority interests. By comparing sectoral bargaining in Brazil and voluntary recognition regimes of the United Kingdom, this paper proves that industrial stability is not possible through the use of numerical dominance. Sustainable industrial harmony demands inclusionary, representative and responsive bargaining structure that is in touch with the reality of a fractured workforce.

The move to the New Labour Codes is not about a consolidation exercise on legislative front. It is a redefinition of Indian social contract in the workplace. The capacity of the legal regime to accomplish the balancing of administrative stability with compliance with constitutional obligations over equality and collective voice determines whether this transformation will also serve both the dignity of labour and economic efficiency. This paper will attempt to map out that reconciliation.

2. The Metamorphosis of the Doctrines: The IDA 1947 to the IRC 2020

The repeal of the Industrial Disputes Act, 1947 (IDA), to create the Industrial Relations Code, 2020 (IRC), is not just a legislative exercise in the convergence of law; rather, it is the shift in the Grund norm of Indian industrial relations. During more than seventy years of its existence, the IDA served in the capacity of a firefighting device- a reactive law aimed at dealing with industrial friction by interventionist rub-a-dub of the welfare state[9]. This reactive model, then, is replaced by the IRC, which was so effective on November 21, 2025, and is now a structured, administrative model, with Ease of Doing Business[10] and market flexibility in its priorities. This transformation though leads to the emergence of major structural contradictions in the doctrine of the past era of competitive pluralism and the new requirement of majoritarian stability.

2.1. The Finer Things of Pluralism: Competitive Rivalry vs. Hegemonic Stability

---

[9] Rakshya R, 'A Critical Study on Industrial Disputes Act with Special Reference to Welfare Implications' (IJFMR, Volume 5 Issue 6, November-December 2023) https://www.ijfmr.com/papers/2023/6/9257.pdf accessed 10 January 2026.

[10] Government of India, *India's Labour Reforms: Simplification, Security and Sustainable Growth* (Press Information Bureau, 21 Nov 2025) https://www.pib.gov.in/PressReleasePage.aspx?PRID=2192524 accessed 10 January 2026.

Traditionally, the IDA 1947 lacked a pivotal statutory entitlement to organisational perception of trade labour unions[11]. Such strategic silence in the federal law gave birth to a de facto recognition regime of Competitive Pluralism. With no central authority, many unions tended to co-exist in one industrial premise each gaining legitimacy through their membership following the principle of membership as well as the political group. This pluralism came to be blamed on many occasions, and had encouraged inter-union competitions and a wildcat strike that hampered production, but it had given a strong platform, within which varied interest of the workers could be voiced.

Within this legacy model, the employer was typically dealing with a disjointed bargaining environment negotiating with the most representative union on matters of mutual convenience, or was doing so under state-specific legislation such as the Bombay Industrial Relations Act, 1946[12]. The IRC 2020 aims to terminate this epoch of Ad-hoc Pluralism with the establishment of the statutory idea of a Sole Negotiating Union[13] provided in Section 14. The Code is trying to reverse Competitive Pluralism by requiring at least a 51% bar to exclusive bargaining rights, in order to move to what can be called: Hegemonic Stability[14]. The new religious threat, in this case is that the process of establishing an Industrial Monoculture, in which minority dissenters, as a specialised craft group, women, or other socio-economically marginalised populations are systematically banished to the negotiation table to a majority-dominant position.

2.2.The Centralization Shift: Federalism Critiqued in the List

Concentrating power to make rules in the Central Government is one of the most significant "inner changes" made in the IRC. The procedural field of labour relations was dominated by the appropriate government, as it was actually in most instances, the State Government, according to regional economic disparities of the Indian subcontinent.

---

[11] Amrin Sulthana B, 'Recognition of Trade Unions in India: A Comparative Analysis with the UK and US' (2025) 5(5) *Indian Journal of Legal Review* 265–275.

[12] *Bombay Industrial Relations Act 1946* (Bombay Act No XI of 1947, 15 April 1947)

[13] Dhir & Dhir Associates, *The Evolving Paradigm of Industrial Relations: A Comparative Analysis of Trade Unions under the New Labour Codes and Global Frameworks* (Mondaq, 11 December 2025) https://www.mondaq.com/india/employment-litigation-tribunals/1715700/the-evolving-paradigm-of-industrial-relations-a-comparative-analysis-of-trade-unions-under-the-new-labour-codes-and-global-frameworks accessed 10 January 2026.

[14] Mohd Noor Mat Yazid, 'The Theory of Hegemonic Stability, Hegemonic Power and International Political Economic Stability' (EA Journals, 2016) https://www.eajournals.org/wp-content/uploads/The-Theory-of-Hegemonic-Stability-Hegemonic-Power-and-International-Political-Economic-Stability-1.pdf accessed 22 January 2026.

Section 99(3)(a)[15] of the IRC 2020, however, devolves the authority to issue rules on recognition of trade unions in the states to Central Government. This, according to critics, is a thumbs down to the ideals of Democratic Decentralisation and federalism. The conditions of labour because Labour is a topic on the Concurrent List (List III, Seventh Schedule[16]), have historically and economically diverse condition across the state. The Code disregards the "Local Industrial Logic" where the states are given the freedom to adapt labour-management relations to their local industrial density by standardising the recognition rules at the central level. Moreover, Section 101 and Section 103[17] provide the Central Government authority to amend schedules and eliminate challenges by itself, which, in effect, will allow the executive to avoid discussion of core labour rights in a legislative body. This change is an indication of a change in the paradigm of "Cooperative Federalism" to a model of "Unitary Administrative", where the state as a mediator is substituted by a central regulator.

2.3.Re-defining the 'Worker': Inclusion, Exclusion, and the Supervisory Dilemma

The shift in the meaning of the words "Workman" to that of the "worker" of Section 2(s)[18] IDA to that of Section 2(zr)[19] IRC is the dramatic increase in the scope of the labour law but it also brings about a new wave of uncertainty.

2.3.1. The Supervisory Inclusion: This has been perhaps the most crucial change that is increased wage ceiling of the supervisory employees. Those occupying the supervisory position and earning up to ₹18,000 a month under the IRC have now been regarded as "workers"[20]. This introduces a massive amount of the so-called "lower-end management" frequent the link between the boardroom and the shop floor into the world of collective bargaining. Although this is providing statutory protection to more workers, it leads to the development of a "Conflict of Interest" paradox: now the workers can be in a group as a result of which they receive supervisory control over

---

[15] Industrial Relations Code 2020, s 99(3)(a).
[16] Seventh Schedule (Lists I–III) of the Constitution of India (Ministry of External Affairs Government of India, PDF) https://www.mea.gov.in/images/pdf1/S7.pdf accessed 15 January 2026.
[17] Industrial Relations Code 2020, ss 101, 103.
[18] Industrial Disputes Act 1947, s 2(s).
[19] Industrial Disputes Act 1947, s 2(zr).
[20] Industrial Relations Code, 2020: Promoting Harmony and Ease of Doing Business (Ministry of External Affairs / Press Information Bureau factsheet, 23 Nov 2025) https://www.pib.gov.in/FactsheetDetails.aspx?Id=150483&reg=3&lang=2 accessed 22 January 2026.

other groups belonging to a union; this aspect can render internal hierarchies within industrial establishments tricky.

2.3.2. The Definitional Expansion: The term "worker" has also been expanded to cover explicitly those who are "Working Journalists" and "Sales Promotion Employees"[21] that had earlier been addressed by special legislation. On the other hand, the Code definition of "Employee" is wider as compared to the definition of "Worker" since it includes managerial and administrative workers. This two-fold classification is a doctrinal decisive point; though "Employees" can enjoy the social security, the "right to raise industrial disputes"[22] continues to be a statutory privilege enjoyed by "Workers".

2.3.3. The Case of the Excluded Apprentice: In an interesting twist to the IDA, the apprentices in the Apprentices Act, 1961[23], are no longer included in either the definition of a "worker" or "employee". This omission, scholars contend, does not support the "Dignity of Labour" of many members of the young labour force[24], since they are left to face a highly exploitative system as well as "training" programmes that look and feel like normal employment, but are not governed by any statutory code of conduct on termination or grievance.

Finally, the reform of the doctrine from 1947 to 2025 indicates a disturbance by the law to decongest the industrial relations by centralising the power and simplifying the definition. Nevertheless, with the old "Inefficient Pluralism" giving way to a new "Rigid Majoritarianism" and a new "Unitary Federalism", the IRC 2020 will produce a social contract without meeting the democratic demands. The judiciary will have to be burdened with a "Purposive Interpretation" as the phase of the "Dual Compliance" continues until 2026 to make sure that these new definitions are not used as instruments of structural exclusion against the marginalised worker[25].

---

[21] PIB factsheet (n 1).

[22] *Employment & Labour Laws and Regulations 2025 – India* (Global Legal Insights, published 10 June 2025) https://www.globallegalinsights.com/practice-areas/employment-and-labour-laws-and-regulations/india/ accessed 22 January 2026.

[23] *Apprentices Act 1961* (Act No 52 of 1961) https://www.indiacode.nic.in/bitstream/123456789/20564/1/aaa52__1961.pdf accessed 22 January 2026.

[24] Surabhi Singh, 'Dignity of Labour in India Must Mean Justice' *Newsreel Asia* (17 January 2026) https://newsreel.asia/articles/dignity-of-labour-in-india-must-mean-justice accessed 22 January 2026.

[25] Shourya Gupta and Divyansh Jain, *Analysing the Trends of Interpretation of Statutes Among Various Domains of Law* (Vol 3 Issue 4 *Journal of Legal Research and Juridical Sciences* 2024) https://jlrjs.com/wp-content/uploads/2024/08/104.-Shourya-Gupta.pdf accessed 22 January 2026.

3. The Inner Analysis: The Majoritarian Trap

Indian labour jurisprudence is undergoing a fundamental structural change as the operations of the Industrial Relations Code, 2020 (IRC), change the regime of competitive pluralism into that of administrative stability that will commence its operations on 21 November 2025. Although the idea behind Section 14 of the Code is to streamline collective agreements and lessen the competition between unions, the wording of the section creates what can be broadly referred to as the 'Majoritarian Trap', a legal system which favours efficiency over internal industrial democracy. This part analyses the constitutional and structural conflict that resides in the new regime of bargaining especially within the changing context of the more fragmented and digitalised workplaces in India.

3.1. The 51 Percent Rule vs. the 49 Percent Silence: Constitutionally Silencing the Minority

In Section 14, the Industrial Relations Code[26] is a clear break with the recognition framework provided under the Industrial Disputes Act, 1947 (IDA). Unless provided by a consistent statutory mechanism of recognition, the IDA allowed the presence of various trade unions in society such as craft-based and minority unions, which could co-exist and negotiate in the joint forums. This pluralist system is replaced with an inflexible numerical criterion of eligibility with only a union that has at least 51 per cent of the membership granting it exclusive bargaining under the Sole Negotiating Union (SNU).

This winner-takes-all provision is highly questionable on a constitutional level given in Article 19(1)(c). Freedom to form associations should not be restricted within the official process of registration, but should be closely connected with the ability of an association to represent the interests of its members in a purposeful way. Section 14 practically shuts out the other 49-per cent of the workers because they will undoubtedly not have any part in the collective settlement of disputes, since only the SNU will have the power to enter into binding settlements.

---

[26] *Analysis – The Industrial Relations Code* (Taxmann) https://www.taxmann.com/post/blog/analysis-the-industrial-relations-code accessed 22 January 2026.

This functional interpretation of freedom of association is upheld judicially. *All India Bank Employees Association v. National Industrial Tribunal (1962)*[27]*,* the Supreme Court was aware that even though the right to strike could be regulated by a law, trade union was put in place to represent the collective voice of workers. This has been reaffirmed in the case of *Tata Iron & Steel Co. Ltd. v. Workmen (1964)*[28]*,* where the Court went ahead to recognise collective bargaining as the best way of settling industrial disputes and industrial harmony. This is because in these decisions, freedom of association has been established to be a non-formal right, not in action, but rather in relation to achieving success in the bargaining procedures.

In addition to Article 19(1)(c), the 51 per cent quota set by Section 14 also creates a substantive equality issue in Article 14[29] of the Constitution. The Code creates a false division of labour between the workers, who otherwise would be classified in the same group based on their skills, risk exposure, and productivity in production. As held in *E.P. Royappa v. State of Tamil Nadu*[30] *(1974),* arbitrariness is the opposite of equality and state action that results in manifestly unequal effects without a rational nexus contravenes Article 14. This substantive notion of equality has been reasserted in *Maneka Gandhi v. Union of India (1978)*[31]*,* making the majoritarian design of Section 14 constitutionally questionable, especially the justification made by the mere administrative convenience.

The constitutional risk is intensified by the fact that, even in Indian labour law, there is also no statutory Duty of Fair Representation (DFR)[32]. In contrast to most jurisdictions like Canada and South Africa, Indian-based law does not impose any condition on the majority union to represent all workers evenly and without discrimination. Without such a duty, an SNU can reasonably strike deals that favour the interests of the majority, e.g., general wage-gains, that marginalise minority interests, e.g., safety, risk-specific to the ability of the skill or choice of gender. This turns the numerical ultimately into the uncontrolled bargaining forces and makes the minority unionisation very futile.

---

[27] *All India Bank Employees' Association v National Industrial Tribunal & Others* AIR 1962 SC 171.
[28] M/s Tata Iron & Steel Co Ltd v The Workmen & Ors (1972) 2 SCC 383.
[29] Constitution of India, art 14.
[30] E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3.
[31] Maneka Gandhi v Union of India, AIR 1978 SC 597.
[32] *Labor Unions: Duty of Fair Representation* (Legal Aid at Work factsheet, October 2024) https://legalaidatwork.org/factsheet/labor-unions-duty-of-fair-representation/ accessed 22 January 2026.

According to comparative jurisprudence, this omission is important. According to *Canadian Merchant Service Guild v. Gagnon (1984)*[33], the Supreme Court of Canada ruled that a majority union has a legal responsibility to fairly and in good faith represent all employees. The South African labour law also applies inclusive representation by guaranteeing collective bargaining protection in the constitution, Section 23[34]. A similar protection does not exist in Indian labour law.

This imbalance of structure resembles the disparity of bargaining power that the Supreme Court denounced in the *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly (1986)*[35], where the Court struck against unreasonable contractual conditions imposed by a dominant party. Disaggregated to the IRC model, a settlement that has been signed by an SNU can be procedurally majoritarian and still substantively unjust[36]. As identified in *LIC of India v. Consumer Education & Research Centre (1995)*[37], labour rights cannot be separated from human dignity and cannot be compromised by economic expediency or formal consent.

3.2.The Factionalism and Efficiency Veto Paradox: Factionalism and Negotiation

In case there is no union meeting the 51% quorum, Section 14 will require that the Negotiating Council be made up of unions that must have a membership of 20 percent[38]. On the one hand, being described as a pluralist protection, this mechanism is a victim of three structural shortcomings.

To begin with, the threshold of 20 percent is exclusionary in the first place. In establishments that are fragmented and contain several unions, a union that includes nearly a fifth of the employees can be wholly locked out of the bargaining table and embeds into existence a sort of industrial majoritarianism, which ghettoises niche or craft-based grievances[39].

---

[33] *Canadian Merchant Service Guild v Gagnon* (1984) 1 SCR 509.
[34] Constitution of the Republic of South Africa, 1996, s 23 (*Labour relations*) https://www.concourt.org.za/index.php/87-workers-rights/section-23-labour-relations accessed 22 January 2026.
[35] *Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly* (1986) 3 SCC 156.
[36] *UNCITRAL Working Group on Investor-State Dispute Settlement* (UNCITRAL) https://uncitral.un.org/en/working_groups/3/investor-state accessed 22 January 2026.
[37] *LIC of India v Consumer Education & Research Centre* (1995) 5 SCC 482.
[38] Sharanya Venkataraghavan, 'Industrial Relations Code 2020: analysing "negotiating trade unions" from a gender lens' *The Leaflet* (20 October 2021) https://theleaflet.in/women-and-children/industrial-relations-code-2020-analysing-negotiating-trade-unions-from-a-gender-lens accessed 22 January 2026.
[39] Soumya Jha and Ulka Bhattacharyya, *With new Industrial Relations Code, what does the future look like for India's trade unions?* (Shardul Amarchand Mangaldas & Co Insight, 20 September 2021) https://www.amsshardul.com/insight/with-new-industrial-relations-code-what-does-the-future-look-like-for-

Second, the proportional seat allocation system poses a threat of recreating inter-union competition in the council. Without a statutory deadlock-breaking procedure, internee factionalism can stall the negotiations, allowing employers to procrastinate bargaining by taking advantage of union disunity.

Third, the increased authority of the Registrar of Trade Unions[40] to check membership and cancel registrations represents another administrative weakness. The stalling or objections to verification can be used strategically to undermine the bargaining agent, who will turn collective bargaining into a form of procedurally weak exercise.

3.3.Fissuring Workplace: Fissuring by Design and Atomised Worker

The traditional collective bargaining has been grounded on the standard employment relationship in an established firm. Nevertheless, in the pattern set by the fissured workplace theory of David Weil[41], the current business world is more and more disaggregating work via subcontracting and online platforms to escape employment liabilities.

The IRC is still anchored on an enterprise-centric model that finds it difficult to adapt to such a reality. Under platform work arrangements, organisations categorise employees as "partners" or non-employees, thus refusing to admit that an employer-employee relationship exists. Consequently, platform workers[42] do not qualify as the definition of "workers" in Section 2(zr) of the IRC, and are structurally unable to qualify for the muster-roll 51% requirement in finding union representation.

This omission has already won the attention of the courts. In *National Federation of Unions v. Union of India* (2024)[43], the Supreme Court also reaffirmed that wherever a gig and platform worker has organised him/herselves as a union under the Trade Unions Act, 1926, then collective agency as one of the protective measures will apply, and that the states are to formulate regulations to the same effect. The stance can be connected to the international

---

indias-trade-unions/ accessed 22 January 2026.

[40] The Trade Unions Act, 1926 (Act 16 of 1926).

[41] David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Harvard University Press 2014).

[42] Soundarya Rajagopal and Lekha Suki, 'An Emerging Pattern of Forced Labour: Social Security Code's Legal Fiction on Gig & Platform Workers' *Comparative Constitutional Law & Administrative Law Blog* (4 Feb 2022) https://www.calj.in/post/the-emerging-pattern-of-forced-labour-social-security-code-s-legal-fiction-on-gig-and-platform-work accessed 22 January 2026.

[43] *National Federation of Atomic Energy Employees (NFAEE) v Union of India* 2025:BHC-AS:17857-DB

norms, which are reflected in the ILO *World Employment and Social Outlook 2025*[44], that collective bargaining is regarded as the key to decent work in the platform economies. The fact that India has thus far not subjected collective rights of gig workers to the IRC thus puts the country in conflict with the constitutional evolution, as well as with the new international standards[45].

Though the Code on Social Security, 2020, provides the platform workforce with a small portion of welfare coverage, it does not presuppose any form of collective bargaining. What is produced is a group of workers who, although subjected to control by the employer, do not enjoy any substantial degree of labour protection.

3.4.The Algorithmic Supervisor: The Death of the Shop Floor

Another limitation to collective bargaining is the fact that human control has been substituted by the use of algorithms[46]. Digitally mediated workplaces have an algorithm that decides work allocation, performance ratings, and access to work in an opaque way.

The collective bargaining is killed by algorithmic management in three aspects. First, electronic surveillance dictates the elimination of personal control, which decreases the possibility of personal conversation and the possibility to address grievances. Second, algorithmic opaqueness does not allow workers to bargain under employment terms that are considered significant, like prices, surging rates, or deactivations. Third, the design of the platform divides the workers who cannot interact, and this undermines the collective organisation.

The focus of the IRC on establishment-based recognition seems to be becoming less appropriate in modern labour markets in this manner. Although the majoritarian model can solve the problem of inter-union rivalry in traditional factories, it cannot give a democratic voice to workers who work in the digitally mediated and fissured employment forms.

---

[44] *International Labour Organization, World Employment and Social Outlook: Trends 2025* (flagship report, International Labour Organization, 16 January 2025) https://www.ilo.org/publications/flagship-reports/world-employment-and-social-outlook-trends-2025 accessed 22 January 2026.

[45] Susmita Roychowdhury, 'Gig Workers and Their Legal Protection in India – Need for Reform' *PrimeLegal Blog* (Prime Legal, 2 months ago) https://blog.primelegal.in/gig-workers-and-their-legal-protection-in-india-need-for-reform/ accessed 22 January 2026.

[46] Valerio De Stefano and Simon Taes, *Algorithmic management and collective bargaining* (Foresight Brief, European Trade Union Institute, May 2021) https://www.etui.org/sites/default/files/2021-05/Algorithmic%20management%20and%20collective%20bargaining-web-2021.pdf accessed 22 January 2026.

4. The Mathematical Reality of Bargaining Practice Matrix

The shift out of the constitutional abstractions of Article 19[47] into the shop floor reality must be analysed in terms of the "mathematical trenches" in which collective bargaining will now take place. The definition of the term 'wages' was a litigation battlefield under the legacy regime, which was scattered in a range of statutes[48], including the Minimum Wages Act, 1948[49], and the Payment of Wages Act, 1936[50], with its own idiosyncratic inclusion and exclusion. The attempt to achieve an administrative transfiguration with the new Codes on November 21, 2025, is the establishment of a single, standard definition of wages, under which all four Codes will operate. But this standardisation poses a structural quandary to the Negotiating Unions and Councils that restructures the collective bargaining[51] process into a complex exercise of negotiating "salaries by re-bucketing" and actuarial trade-offs.

4.1.The Re-Bucketing of Salaries: A Site of Contestation

The Code on Wages[52] (as reflected in the IRC and the Code on Social Security) provides in Section 2(y) that wages are to be viewed as comprising basic pay, dearness allowance, and retaining allowance[53]. Most importantly, it gives a strict list of exemptions, including but not limited to house rent allowance (HRA), conveyance, bonuses, and overtime, which are not counted as a portion of the 'wage' on which to calculate statutory contributions. The stirring of the inside in this case would be the 50% Exclusion Limit[54].

In case the sum of these excluded allowances is in excess of 50 percent of the whole remuneration (Cost-to-Company or CTC), the over-amount has to be "added back" to the

---

[47] The Constitution of India 1950, art 19.
[48] Retika Yadav, *Impact of the New 'Wage' Definition in the Labour Codes: Changes, Ambiguities, and Compliance Measures* (ELP Law Insights, 24 April 2024) https://elplaw.in/leadership/impact-of-the-new-wage-definition-in-the-labour-codes-changes-ambiguities-and-compliance-measures/ accessed 22 January 2026.
[49] Minimum Wages Act (Act No. 11 of 1948).
[50] Payment of Wages Act (Act No. 4 of 1936).
[51] International Labour Organization, *Collective Bargaining and Negotiation Skills: A Resource Book for Employers* (International Labour Office, Geneva and Jakarta, May 2003) https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms_120206.pdf accessed 22 January 2026.
[52] *Code on Wages, 2019* (Act No 29 of 2019).
[53] *Labour Codes: Definitions and Key Provisions* (Labour Law Desk) https://www.labourlawdesk.com/labour_codes accessed 22 January 2026.
[54] *Analysis – The Code on Wages* (Taxmann blog) https://www.taxmann.com/post/blog/analysis-the-code-on-wages accessed 22 January 2026.

statutory wage. This demands a radical restructure of pay systems in the Indian industry. To the newly formed "Sole Negotiating Union" (SNU), it turns out to be the first battlefield of its kind. The SNU now needs to bargain not only regarding an overall increase, but also regarding the allocation of the increase to several buckets[55]. Since such statutory benefits as provident fund (PF), gratuity, and retrenchment compensation are defined as proportional to the wage base, there is a direct relationship between the amount of the liability and the wage base as the employer increases his or her liability.

4.2.The Doctrinal Calculus: The Formula

To comprehend the dilemma of the practitioner, there is a need to find the mathematical logic behind this re-bucketing. Let represent the total remuneration (CTC), comply with basic remuneration (including DA and retaining allowance), and is the amount of all other excluded allowances[56]. To come up with the new statutory wage, used to compute social security and severance payouts, one takes:

This formula guarantees a minimum contribution level to social security that cannot be negotiated, which practically terminates the trend of the artificial method of division of wages to avoid overburdening the employer with payments to the Employees Provident Fund (EPF). In terms of a "Social Risk" approach[57], this is in accordance with the principle of beneficial construction[58] of legislation of social welfare. But, with a Negotiating Union, there is a zero-sum game, as a result of this formula. Each rupee invested in the foundation boosts the long-term security of the labourer while also boosting the taxation and decreasing the surplus that can be spent on take-home pay.

4.3.Strategic Effect: The Dilemma of the Negotiating Union

---

[55] *Collective Bargaining: How to Negotiate Strong Teamster Contracts* (Training and Development Department, International Brotherhood of Teamsters) https://teamster.org/wp-content/uploads/2018/12/72717bargainingmanual.pdf accessed 22 January 2026.

[56] *A Complete Guide to India's New Labour Codes 2025: Wages, Compliance & Social Security* (PeopleStrong blog) https://www.peoplestrong.com/blog/new-labour-codes-india-2025/ accessed 22 January 2026.

[57] Laura Lupu, 'The Concept of Social Risk: A Geographical Approach' (2019) 38(4) *Quaestiones Geographicae* 5 https://qg.web.amu.edu.pl/qg/archives/2019/quageo-2019-0035.pdf accessed 22 January 2026.

[58] Shashank Shekhar, 'Principle of Beneficial Construction: Nature and Scope' (2020) 3(3) *International Journal of Law Management & Humanities* 702 https://heinonline.org/HOL/P?h=hein.journals/ijlmhs5&i=703 accessed 22 January 2026.

The “Majoritarian Trap”, which was considered in the section above takes a rather severe turn when the SNU is being pressured to either opt out of ‘Take-Home Popularity’ or push the ‘Social Security responsibility’.

4.3.1. **The Take-Home Paradox:** When the outcomes of inflation are high, a common characteristic of the average worker is to favour immediate liquidity rather than the postponement of benefits such as gratuity or pension. Suppose an SNU is willing to accept a wage system in which the legal minimum wage is filled at the expense of increasing the gratuity in the future, the employee will notice a dramatic "deduction shock" in their monthly pay slip because of an increase in PF and ESI contributions.

4.3.2. **The Inter-Union Rivalry Catalyst:** This conflict is a fertile area for the minority unions. By posing its "Social Security" benefits as a “Take-Home Pay Reduction”, a minority union (even out of the Negotiating Council) can delegitimize the SNU. Because the Code permits a new SNU after every several years, such mathematical drag might result in enduring industrial turmoil in lieu of the so-called “Hegemonic Stability[59]”.

4.3.3. **The Severance Trap:** In IRC 2020, Retrenchment compensation[60] is also determined under the circumstances of the IRC 2020. The employers entering into a negotiating agreement with a “negotiating council” can lobby to include a larger percentage of the so-called “Exclusions” (but not exceeding 50 percent) in their agreement to pay less in the end in terms of contingent liability in case of any subsequent layoff or closure. This puts the council in a defensive position, in which they need to negotiate the formation of wages in order to protect workers against the new regime's flexibility of an “Exit-Centric” nature.

4.4.The Reality of Boardrooms: Compliance as a Financial Measurement

By early 2026, Indian corporations will be undergoing this change in terms of a “dual compliance” approach. Without the final state regulations, it is being suggested that employers conduct a more advantageous evaluation of their decision on the previous definition of wages against the new one, in order to prevent future litigation[61]. As a multinational corporation, this

---

[59] Rahul Prabhakar, ‘Hegemonic Stability Theory and the 20th Century International Economy’ *E-International Relations* (8 January 2010) https://www.e-ir.info/2010/01/08/hegemonic-stability-theory-and-the-20th-century-international-economy/ accessed 22 January 2026.
[60] Industrial Relations Code 2020, s 2(zq)(k).
[61] *A Guide to the New Labour Codes* (Cyril Amarchand Mangaldas, December 2025)

re-bucketing is no longer a payroll exercise as it is an ESG (Environmental, Social, and Governance) disclosure requirement in the BRSR framework provided by SEBI[62].

The “Social” indicator of ESG has now compelled firms to report median wage differentials and the rate and form of unionisation. An effective Negotiating Union that manages to follow a formula to create a reasonable allocation of benefits could capitalise on these ESG disclosures to create an incentive to call in "Impact Investment," which could be the alignment of the interests of workers with the financial performance of companies.

To sum up, the mathematical fact of the new Codes substitutes the old battles involving “shouting-match” lawsuits[63] with an advanced “Bargaining with Calculus”[64]. This is because the effectiveness of industrial democracy with the IRC 2020 will be determined by the fact that Negotiating Unions will have the capacity to see beyond the “Take-Home” temptation of the moment and to long-term master the formula of a practise matrix. Otherwise, this will further expose the weaknesses of the minority voice, and they will be left between the cracks of restructured economy.

5. The Comparative Mirror: World to World Jurisprudence

The constitutional and structural effectiveness of the Industrial Relations Code, 2020 (IRC) requires emphasising the need to move past the domestic-focused analysis and consider the entire spectrum of collective bargaining to understand the context around the globe. It is the extreme opposite of the territorial unicity of Latin America and the regulated voluntarism of Western Europe, as IRC has approached a strict, enterprise-based majoritarian approach. This part presents a comparative mirror (Brazil, the United Kingdom) with the aim of underlining how other jurisdictional designs would serve the same purpose by circumventing the so-called “Majoritarian Trap” and the obstacles of the fissured workforce of today.

---

https://www.cyrilshroff.com/wp-content/uploads/2025/12/Guide-to-the-Labour-Codes.pdf accessed 22 January 2026.

[62] *Balanced Framework for ESG Disclosures, Ratings and Investing* (Securities and Exchange Board of India, April 2023) https://apps.dtic.mil/sti/tr/pdf/ADA290019.pdf accessed 22 January 2026.

[63] Mark A Hall and Ronald F Wright, ‘Systematic Content Analysis of Judicial Opinions’ (2008) 96 *California Law Review* 63.

[64] Richard H McAdams, *Beyond the Prisoner’s Dilemma: Coordination, Game Theory, and the Law* (University of Chicago Public Law & Legal Theory Working Paper No 1043, 2008) https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1043&context=public_law_and_legal_theory accessed 22 January 2026.

5.1.Constitutional Unicity of Brazil: Territorial Alternative to Enterprise Atomization

The Brazil case provides a strong alternative to the Indian case of an "Establishment-based" bargaining regime. The Brazilian Constitution, based upon the principle of '*Unicidade Sindical'* (Union Unicity), states that each professional or economic "category" in a particular geographical area (typically a municipality) may only have a single trade union, in contrast to other countries[65].

In contrast to the IRC 2020, which underpins recognition by the "muster roll" of one of the industrial establishments (Section 14), the Brazilian model is Sectoral and Territorial. Such a structural design has two advantages for industrial democracy:

5.1.1. **Resistance to Fissuring**: In India, an employer is able to escape collective bargaining by "fissuring" the workplace by subcontracting or digital platforms since these "atomised" organisations do not easily qualify at 51% to be a Sole Negotiating Union. As the union is the representation of the profession in the whole territory of Brazil, it can exercise bargaining power even in the case of workers spread out on several small platforms or subcontractors[66].

5.1.2. **Statutory Stability without Majoritarian Erasure:** Although the Brazilian system similarly constrains plurality to a single union, it does so on the basis of the "Logic of the Category", but not, one should add, the "Logic of the Enterprise". This avoids the "winner-take-all" situation in an establishment since the bargaining unit is already established through the trade, and no particular craft interests are assimilated by an open-ended majoritarian agent[67].

Nonetheless, the Brazilian model has been denounced as being too rigid and state-controlled. In the case of India, the message is not that the country should necessarily follow the state-based concept of unicity, but rather that Sectoral Negotiating Councils (SNCs), based on

---

[65] Stanley Gacek, 'Freedom of Association and Union Financing: A Change of Direction according to Brazil's Highest Constitutional Court' *International Labor Rights Case Law* (19 February 2024).

[66] Antonio Rodrigues de Freitas Júnior and Victor Raduan da Silva, 'Representation and Collective Bargaining of Brazilian Trade Unions in an Era of Apps: Between the Old Corporatism and the Gig Economy' (2020) *Hungarian Labour Law E-Journal* (2020/2) https://hllj.hu/letolt/2020_2_a/05_FreitasJunior_Silva_hllj_uj_2020_2.pdf accessed 22 January 2026.

[67] Daniela C M Maia, 'Brazil' in Ulla Liukkunen (ed), *Collective Bargaining in Labour Law Regimes* (Ius Comparatum: Global Studies in Comparative Law vol 32, Springer 2019) 45 https://doi.org/10.1007/978-3-030-16977-0_3 accessed 22 January 2026.

geography and trade, can be the only solution to the lack of democracy experienced by the 23.5 million gig workers in India[68].

5.2.The UK Perspective: Bipartite Voluntarism and the CAC's Remedial Reach

The United Kingdom continued with a long history of Voluntary Recognition compared to the statutory rigidity of the IRC 2020, which is under the influence of the Trade Union and Labour Relations (Consolidation) Act of the year 1992[69]. Whereas in India we have a 51%-rule (the so-called "mathematical hammer"), in the UK we have a bipartite negotiation.

5.2.1. The Role of the Central Arbitration Committee (CAC): The CAC which is an independent statutory body in UK intervenes in cases where there is a failure to voluntarily recognise something. More importantly, the CAC can establish the "Bargaining Unit" depending on issues such as similarity of interest and location[70]. The bargaining unit is defined as the "Industrial Establishment" in the Indian IRC 2020 without any dynamism. The tact that the UK has toward unions permits them to focus on individual departments or cadres to gain prominence rather than falling into the trap of Majoritarianism, where a 51% majority figure in the whole institution is too tough.

5.2.2. The Impact of Uber BV v. Aslam (2021): The historic decision made in the case involving the employment of Uber drivers[71] in the UK by the Supreme Court that identifies such employees as "workers" (intermediate between employee and independent contractor) suggests a significant implication on the industrial relations. With the acceptance of this interim group the UK legal system allows gig workers to enjoy the right to collective bargaining, holiday coverage and minimum wage. Mandating a binary "Worker" & "Independent Contractor" in the IRC 2020 of India essentially excludes the gig workforce of the Negotiating Council framework, which also appears to be growing increasingly out of step with the global trend of "Hybrid Protection Models"[72].

---

[68] Ishaan Mundeja, 'Gig Workers v Platform-Based Companies: Are Negotiating Councils/Unions a Solution?' *Centre for Labour Laws* (2 December 2021) https://cll.nliu.ac.in/gig-workers-v-platform-based-companies-are-negotiating-councils-unions-a-solution/ accessed 22 January 2026.
[69] Trade Union and Labour Relations (Consolidation) Act 1992 (UK Public General Act).
[70] David Hopper and Lewis Silkin, 'Trade Union Recognition' (Lewis Silkin, 10 July 2025) https://www.lewissilkin.com/insights/2025/07/10/trade-union-recognition accessed 22 January 2026.
[71] Uber BV v Aslam (2021) UKSC 5.
[72] Sahaj Mathur, 'Labour Law and the Gig Economy: Towards a Hybrid Model of Employment' *IndiaCorpLaw* (25 December 2022) https://indiacorplaw.in/2022/12/labour-law-and-the-gig-economy-towards-a-hybrid-model-of-employment/ accessed 22 January 2026.

5.3.International Standards: The Jus Cogens of Industrial Democracy

The issue of India's relations with global labour standards is a location of "Strategic Ambiguity". ILO Convention No. 87[73] (Freedom of Association) and Convention No. 98[74] (Right to Organise and Collective Bargaining), which have consistently been the key reasons why India has not ratified them, are mostly aimed at ensuring that India continues to limit the collective rights of government servants.

But these Conventions have gone beyond that of a treaty law to be incorporated by the Jus Cogens[75] (peremptory norms) of international labour jurisprudence. Regardless of whether they are ratified or not, by virtue of being members they are under the obligation of all the member states under the ILO Declaration on Fundamental Principles and Rights at Work, 1998[76], to respect, promote and actualize the principles of freedom of association and collective bargaining as a claim of membership in its own right independent of whether they are ratified or not.

The Supreme Court of India has also often resorted to using unratified international instruments to give life to the "Golden Triangle" of the Constitution (Articles 14, 19, and 21)[77]. In 2024, in the case of Dushyant Janbandhu[78], the Court reiterated that labour rights are "rights in rem", which concern matters of public policy that cannot be waived under private contracts and can never be circumvented by means of "nuclear veto" arbitration clauses[79]. And the 51% limit set

---

[73] International Labour Organization, *Freedom of Association and Protection of the Right to Organise Convention, 1948* (Convention No 87, adopted 9 July 1948, entered into force 4 July 1950) https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232 accessed 22 January 2026.

[74] International Labour Organization, *Right to Organise and Collective Bargaining Convention, 1949* (Convention No 98, adopted 1 July 1949, entered into force 18 July 1951) https://gsphub.eu/conventions/Right%20to%20Organise%20and%20Collective%20Bargaining%20Convention,%201949%20(No.%2098) accessed 22 January 2026.

[75] International Law Commission, 'Peremptory Norms of General International Law (Jus Cogens)' in *Report of the International Law Commission on the work of its seventy-first session* (UNGA Doc A/74/10, 10 Dec 2019) ch V https://legal.un.org/ilc/reports/2019/english/chp5.pdf accessed 22 January 2026.

[76] International Labour Organization, *Declaration on Fundamental Principles and Rights at Work and its Follow-up* (adopted at the 86th Session of the International Labour Conference 1998, amended 2022) https://www.ilo.org/resource/conference-paper/ilo-1998-declaration-fundamental-principles-and-rights-work-and-its-follow accessed 22 January 2026.

[77] Ujjwal Singh, 'Golden Triangle of the Indian Constitution: Interdependence of Fundamental Rights' (2023) 1(3) *ILE Weekly Review* 33–37.

[78] Dushyant Janbandhu v M/s Hyundai Autoever India Pvt Ltd [2024] 12 S.C.R. 492; 2024 INSC 966 (Supreme Court of India).

[79] *India's Supreme Court strikes down 'nuclear veto' arbitration clauses* (Pinsent Masons, 11 December 2025)

by the IRC, by extension, has to be viewed in the context called "Purposive Pluralism". Where the Code is interpreted in such a strict way that collective representation becomes practically impossible or very hard (a contravention of the principles of ILO), it will be at risk of facing a constitutional attack due to contravention of the fundamental nature of industrial democracy.

The comparative mirror has shown that the IRC 2020 is falling short of its intended goal of "Administrative Modernization," although the goal of "Substantive Democracy" is not met. Brazil shows how useful territorial scales/sectoral scales are; the UK shows the importance of allowing flexibility in the bargaining units and status of workers required in the digital era and the ILO provides the normative bottom limit that India should not descend to.

6. Recommendations: Reimagining Industrial Democracy.

Since the date of the statutory prioritisation has been established as November 21, 2025, with the establishment of the new code named the Industrial Relations Code, 2020 (IRC), it is now clear that the issue of the "Ease of Doing Business" has become a statutory priority. Nonetheless, as we have seen above, the "Majoritarian Trap" of Section 14 poses the danger of a radically undemocratic workplace where performance is obtained by structurally silencing the minority. There should be a "Purposive Reconstruction" of the bargaining framework in order to match the constitutional requirements of Article 14 of the Constitution and Article 19(1)(c) of the Constitution. This paper proposes the following four original and practice-focused recommendations to make the new social contract inclusive, equitable, and resistant to a digitalized economy.

6.1.The Institutionalization of a 'Weighted Veto' System

The existing 51% level of a Sole Negotiating Union (SNU) supposes a level of homogeneity of interest that is seldom found in any current industrial establishment. In complicated industries such as aerospace, drugs, or the hi-tech industry, a small group of technical cadres or a female sub-group of labour (often less than one-fifth of the entire muster roll) can have their grievances compromised by a majoritarian trade union representing general unskilled labour.

---

https://www.pinsentmasons.com/out-law/news/india-supreme-court-nuclear-veto-arbitration-clauses accessed 22 January 2026.

Suggests a possible amendment to the Industrial Relations (Central) Recognition of Negotiating Union or Negotiating Council Rules in order to implement a "Weighted Veto" in relation to iconic sub-categories. According to this model, when a registered union has a minimum of 20 percent of the membership like, and represents a specific "craft" or a specific "demographic cadre", it ought to have a statutory suspensive veto over certain clauses of a collective agreement that specifically cover its members (e.g., safety measures applicable to gender of a single department-specific bonuses). This would compel the SNU and the employer into the second-round stage of mediation, and the "winner-takes-all" would be evaded, and the pluralist reality of the shop floor would be taken into account by industrial democracy.

6.2.Sectoral Negotiating Councils (SNCs): Remedying the 'No-Employer' Paradox

The most apparent "Institutional Void" in the IRC 2020 is the inability of the organisation to give a collective voice to the 23.5 million gig and platform workers who work in the "Fissured Workplaces". Since such workers are categorised as partners and not workers under Section 2(zr), the SNU framework is set up against them structurally.

Based on the Brazilian concept of territorial unicity, India has to transform an "Enterprise-only" concept towards a platform economy Sectoral Negotiating Councils (SNCs) concept. They should be recognised based on more specific geographical and sectoral borders (e.g., a "Bengaluru Food Delivery Riders Council") instead of respective apps (Zomato or Swiggy). These SNCs would allow a group of platform workers to bargain with all the aggregators in a particular city on a set rate per task, algorithmic transparency, and insurance benefits simultaneously. Using the e-Shram database in digital verification, government can enable an electronic ballot to identify these agents of sectoral agents and hence make the "Algorithmic Picket Line" a legitimate statutory dialogue.

6.3.ESG-Linked Enforcement- The 'BRSR-IRC Integration.'

Although IRC 2020 enforces its provisions on the basis of penal damages, they are seen as the "cost to do business," especially by big corporations. The more modern and efficient "Reputational Enforcement" mechanism is the combination of the labour compliance with Environmental, Social, and Governance (ESG) reporting.

The Business Responsibility and Sustainability Reporting (BRSR) Core of the framework of SEBI (which is fully operationalized by the top 1,000 companies listed by 2025-26) already mandates companies to report unionisation rates and median wage differentials. This research suggests a “BRSR-IRC Integration Matrix”. Those that do not form a Negotiating Council or whose SNU does not possess a democratic mandate (confirmed by high labour turnover or long-term, deeper-rooted "invisible" industry conflicts) should be made to undergo compulsory "Social Risk Audits." Through a direct connection between the quality of the companies’ industrial relations and its ESG score and hence its access to global impact investment the state is able to shift the financial interest by the boards into the cause of true industrial democracy.

6.4.A Statutory ‘Arbitrability Test’ for Collective Rights

With the IRC 2020 and the Arbitration and Conciliation Act becoming more overlapping over the years, the incorporation of “nuclear veto” clauses in the employment contracts to evade the Tribunal is becoming more popular among employers when choosing standard forms of employment contracts.

According to a Supreme Court decision on *Dushyant Janbandhu v. M/S Hyundai Autoever India*, according to research, IRC should be construed to comprise a mandatory Statutory Arbitrability Test. According to this test, it would be “unconscionable” for any arbitral clause to attempt to determine a dispute in respect to a “right in rem” (which includes a termination legality and minimum wage recovery) to be subject to the ultimate redress power of a statutory court. Moreover, a legitimate Negotiating Union ought to be given the legal authority to appeal against “forced arbitration” policies at the workplace, on behalf of the entire workforce, tending to make the "Ease of Doing Business" lead to an informal, confidential, and, arguably, fairer justice for workers.

6.5.Statutory Duty of Fair Representation.

The Industrial Relations Code ought to be revised, or construed purposefully, to put a statutory Duty of Fair Representation on the Sole Negotiating Union. Based on ILO Convention No. 98 and Convention No. 154, such a duty would demand the recognised unions to accommodate all workers in a just manner, devoid of aggression, discrimination and provide the difference in results based on goal-oriented criteria. This would maintain a stable bargaining position without the possibility of a majoritarian abuse of power and the numerical majority will not override the constitutional establishment of equality and dignity in the workplace.

These recommendations endeavour to go beyond the “Decoding” of the Codes to the “Post-Implementation Strategy”. The measures of the success of labour reforms in India during the convoluted era of 2026 will depend on whether we can peer into the inner matters, the unintended effects of majoritarianism, and the transforming power of algorithms and develop a social contract equally constitutionally strong as it is, which will be economically adaptable.

7. Conclusion

The implementation of the code of Industrial Relations, 2020 on the 21st November, 2025, marks the ultimate end of the post-independence system of protective pluralism and the emergence of a new administrative paradigm focused on market flexibility. As it was proven in this article, the shift of the Industrial Disputes Act, 1947, to the IRC 2020 is not some kind of update of the procedures but a modification of the Indian social contract. Nevertheless, even the stability which the new arrangement purports to provide, pegged on the adamant 51% majoritarianism of Section 14, is a "Majoritarian Mirage" which may cause the substantial industrial democracy to be put upon the altar of administrative convenience.

The IRC 2020 needs to be considered using the prism of Substantive Democracy and not a close-minded Majoritarian Efficiency in order to address the stage of complex “Dual Compliance" in the current landscape in early 2026. The “winner-take-all” groupthink of the Sole Negotiating Union order creates a constitutional silence of the approximately 49 percent of the labour force whose specialised complaints or demographic interests might be bargained away without the protection of a statutory "Duty of Fair Representation”. More so, since the David Weil fissured workplace model becomes the default reality of the 23.5 million fissured workers contracting companies in India, the further adherence of the IRC to an establishment-based paradigm is structurally untenable even in its maiden phase of full enactment.

Reconciling the "Dignity of Labour" with the "Ease of Doing Business" is the way towards a strong industrial future. The following reforms are proactive and should be implemented in this reconciliation: the institutionalisation of a Weighted Veto system of the specialised cadres, the legalisation of Sectoral Negotiating Councils (SNCs) of the platform economy, and the system integration of labour rights into the boardroom through the BRSR Core of SEBI. Leveraging the 2024 Supreme Court mandate in *Dushyant Janbandhu v. M/S Hyundai Autoever India*, judicial authorities will need to ensure that core labour rights are not subjected to unconscionable methods of circumvention, by algorithmic obscurity or unethical arbitration techniques.

The essence of the labour reforms in India will not ultimately lie in the decreased real-life instances of strike notices or prompt adjudications on industrial tribunal cases, but rather the following: *will the law enable every worker to have a significant collective voice?* Supposing that the implementation of the new Labour Codes to mutilate the minority voice and atomize the digital workforce would ensure long-term industrial peace, it will not succeed. Rather, they will merely transfer the place of industrial struggle outside the regulated bargaining table into the unstable streets. An interpretive, purposive, and pluralist apprehension of the IRC 2020 is, thus, not only a legal requirement, but a socio-economic imperative in the silicon and algorithm era of a democratic state.

AUTOMATING INEQUALITY: ALGORITHMIC BIAS AND DISPARATE IMPACT IN AI-BASED HIRING

- *Shailendra Singh Kaurav & Bhaskar Sharma*

ABSTRACT

Human resource management practices are rapidly transforming with the advent of automation and artificial intelligence. Artificial intelligence offers efficiency and objectivity in the process of recruitment and performance evaluation. This objective evaluation helps mitigate human subjectivity, providing a standardized evaluation of candidate profiles and employee performance trends. This growing shift to and dependence on automated systems signals towards a wider move towards data-based decision making in human resource management, where speed and efficiency can sometimes take precedence over careful, contextual, and ethical assessment.

Automation, however, has its own pitfalls. It can theoretically remove human bias, which impacts certain marginalized sections and their employment, however, that is not the scenario when automated systems are employed in practical situations. Hiring decisions by artificial intelligence are governed by the data that is fed to the software; if the dataset is biased, the results will also be skewed. The delegation of recruitment decisions to opaque algorithmic systems also raises concerns relating to transparency, accountability, and the ability of affected individuals to challenge adverse employment outcomes. This paper examines the emergence of algorithmic bias in hiring as a consequence of data-driven decision-making rather than technological design alone.

The paper analyses the disproportionate impact of AI-driven hiring practices on groups that have historically faced discrimination in employment and examines developments across multiple jurisdictions. It further proposes legal and regulatory recommendations, with particular emphasis on data governance and implementation mechanisms, to address the influence of artificial intelligence in recruitment within an increasingly automated employment landscape.

Keywords: Artificial Intelligence, Automation, Bias, Discrimination, Disparate Impact.

1. INTRODUCTION

Bias is ingrained in human nature; it serves as a tool that processes the intricacies of everyday life. Humans tend to instinctively organize information into mental compartments, which tend to materialize into generalizations, associations, attitudes and even stereotypes. These are mental constructs influenced by our individual beliefs, values and life experiences, which are shaped by our engagements in social and professional settings.[1]

Bias in recruitment, or recruitment bias, is the unfair or prejudicial treatment of candidates during the hiring process, and favouring certain individuals or groups over others. Although the process of recruitment prioritizes merit and competency, conscious or unconscious bias still creeps in, leading to gaps in opportunities and misalignment of the goals of the organization and hiring outcomes.[2] Automated algorithms and artificial intelligence ("**AI**") was thought of as a viable solution to eliminate this bias, caused by human psyche. However, the use of AI has led to the creation of its own form of automation bias or AI bias.[3] This is considered as a disparate impact, which in simple terms, is an adverse impact of seemingly neutral policies or practices that result in disproportionately negative outcomes for the members of a specified group. Disparate impact is a theoretical framework put forth to address challenges posed by automated systems, which are premised on their neutrality of '*unbiasedness*'.

The use of AI in hiring and the bias it poses needs to be checked and assessed. There are not many formal laws dealing with this specific problem posed by AI. There have been multiple instances across the world where AI has exacerbated the difficulties people from different classes already face in hiring processes. This creates a requirement to understand the exact position of AI hiring and its impact to propose solution.

2. THE IMPACT OF BIAS IN DECISION-MAKING

---

[1] Natasha Thakkar, '15 Types of Bias in Recruitment and How to Remove Them from the Hiring Process' (22 April 2025) <https://www.oleeo.com/blog/practical-tips-to-reduce-bias-in-recruitment/> accessed 21 January 2026.

[2] Nagamani KN and Manjula V, 'Bias in Recruitment: Challenges and solutions' [2025] International Journal of Applied Research 40.

[3] Ton Van Der Weegen, 'Addressing Bias and Fairness in AI-Driven Hiring Practices' <https://hortoninternational.com/addressing-bias-and-fairness-in-ai-driven-hiring-practices/> accessed 21 January 2026.

Bias in recruitment could be conscious, driven by deliberate prejudices that individuals hold on to and act upon, or unconscious, in the form of unintentional, and often subconscious attitudes or stereotypes, affecting the actions, understanding and decisions of an individual.[4] Unconscious biases are more common and seep in more during interview processes, as these biases are shaped by an individual's background, cultural environment and other personal experiences. An employer's bias can affect the hiring process in whole; it can influence the way questions are framed, responses are perceived, and how candidates are overall evaluated. Biases affect hiring even during reference checks, if the feedback from references is influenced by its own form of biases or even in cases where the information provided by the reference is interpreted in a biased manner.

Biases are usually personal to the person in charge of hiring; however, certain types of biases affect certain groups of people, usually people with long history of being deprived of opportunities. One such form of bias is 'name bias', wherein the name of a person associates them with particular class or caste, which can result in bias on that basis. Studies have revealed that applicants who had names that stereotypically associated with white people, were offered 50% more job interviews as compared to other applicants who had more African-American sounding names, even when the resumes were identical.[5] Another and a more common form of bias, is 'gender bias'. A total of 74% women in technology jobs are said to have experienced discrimination in their jobs due to their gender.[6] Women have also been found to face pregnancy discrimination throughout their career.[7] A study by Harvard Business Review even went on to show that if there's only one woman in the candidate pool of over 3, there is a 0% chance that she will be hired.[8] Similar to gender bias is 'sexual orientation bias'. Studies and research in America show that one quarter of Americans from the LGBTQ community have faced discrimination based on their sexual orientation or gender

---

[4] Natasha Thakkar (n 1).
[5] Marianne Bertrand & Sendhil Mullainathan, 'Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination' (July 2003) <https://www.nber.org/papers/w9873> accessed 20 January 2026.
[6] Cary Funk and Kim Parker, 'Women and Men in STEM Often at Odds Over Workplace Equity' (9 January 2018) <https://www.pewresearch.org/social-trends/2018/01/09/women-and-men-in-stem-often-at-odds-over-workplace-equity/> accessed 20 January 2026.
[7] 'Pregnancy Discrimination' <https://www.workplacefairness.org/pregnancy-discrimination/> accessed 21 January 2026.
[8] Stefanie K. Johnson and others, 'If There's Only One Woman in Your Candidate Pool, There's Statistically No Chance She'll Be Hired' (26 April 2016) <https://hbr.org/2016/04/if-theres-only-one-woman-in-your-candidate-pool-theres-statistically-no-chance-shell-be-hired> accessed 21 January 2026.

identity when applying for jobs. There is also ‘beauty bias’, wherein people who fit into western beauty standards are considered better and more reliable in certain respects.[9] 93% of employers in a survey, when asked about the centrality of employee appearance to business success, have responded saying it was either critical or important.[10] Bias, therefore, is an important element in recruitment decisions and needs to be studied and accordingly regulated.

3. Justifications for Using AI in Recruitment

There are multiple advantages of using AI in recruitment, which cannot be ignored completely in the fast-evolving technological landscape. AI systems can ease the process of recruitment by swiftly handling large volumes of data and making the screening of loads of applications much easier. AI systems are believed to automate repetitive tasks, so that recruiters can focus on strategic endeavours and fostering relationships with prospective recruits. They are premised on the idea that the systems assess the candidates on a similar objective criterion, minimizing subjective bias. These systems do so by anonymising the applications and removing information that usually leads to human bias, such as name, gender, age, ethnicity, etc. This is known as blind recruitment, which helps to ensure that candidates are evaluated for their qualifications and their objective suitability for the role. Thus, at least in theory, AI can be a useful tool to remove bias in hiring and promote ethical hiring practices, with a focus on the qualifications and skills pertinent to the job and not on pre-conceived notions based on factors not in a person’s control.[11] However, this theory does not pan out as smoothly and seamlessly in application as it does in theory.

4. The Practical Scenario of AI Hiring and the Problems with it

AI does not operate in vacuum; it operates on the data provided to it. This data is what shapes and forms the results; if the data provided is poorly coded or rooted in decades of exclusion and inequality then the results will also reflect those notions. Several AI-driven hiring tools have unfairly ranked down resumes from graduates of historically Black colleges and women’s colleges,

---

[9] Comila Shahani-Denning, ‘Physical Attractiveness Bias in Hiring: What Is Beautiful Is Good <https://www.hofstra.edu/pdf/about/administration/provost/hofhrz/hofhrz_s03_denning.pdf> accessed 21 January 2026.
[10] Chris Warhurst and others, ‘Lookism: The New Frontier of Employment Discrimination?’ [2009] Journal of Industrial Relations 131.
[11] Ton Van Der Weegen (n 3).

simply because these institutions have not historically been part of dominant white-collar recruitment pipelines.[12] Similarly, candidates with employment gaps are often penalized, disproportionately harming parents, especially mothers, who stepped away from work for caregiving responsibilities.[13] What is presented as neutral, data-driven assessment in fact reproduces long-standing biases, stereotypes, and flawed hiring practices, and is now legitimized under the guise of algorithmic objectivity.[14] The most prominent example of this is the Amazon fiasco, wherein Amazon had to scrap its AI-driven recruitment tool, as the tool was prejudicial to resumes containing the word 'women', such as 'women's club' or 'women's college'.[15] Additionally, the lack of transparency in AI-driven decision-making poses a serious challenge. Many algorithmic systems operate as opaque "black boxes", where the reasoning behind outcomes is neither visible nor easily explained. This opacity prevents job applicants from understanding why they were accepted or rejected and limits the ability of HR professionals to scrutinise, question, or correct potentially biased or erroneous decisions.[16] As a result, accountability is weakened, and meaningful avenues for review or redress are significantly reduced.

5. INTERNATIONAL PERSPECTIVES

Jurisprudence on regulation of AI bias in hiring decisions has evolved, albeit slowly, across the world. A comparative analysis of regulations across different jurisdictions thus becomes significant.

---

[12] Rachel Antony and others, 'Analysing Unconscious Bias in Indeed's Employee Resume Search', (*Gemstone Team Research*, University of Maryland 2023).

[13] 'Women may pay a "MOM PENALTY" when AI is used in hiring, new research suggests' (*NYU Tandon*, 12 December 2023) <https://engineering.nyu.edu/news/women-may-pay-mom-penalty-when-ai-used-hiring-new-research-suggests> accessed 21 January 2026.

[14] Kyra Wilson and Aylin Caliskan, 'Gender, Race, and Intersectional Bias in Resume Screening via Language Model Retrieval' (2024) 7(1) Proceedings of the AAAI/ACM Conference on AI, Ethics, and Society <https://ojs.aaai.org/index.php/AIES/issue/view/609> accessed 21 January 2026.

[15] Jeffery Dastin, 'Insight – Amazon scraps secret AI recruiting tool that showed bias against women' *Reuters* (11 October 2018) <https://www.reuters.com/article/world/insight-amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK0AG/> accessed 29 December 2025.

[16] M.M. Abdullah Al Mamun Sony and others, 'Bias in AI-driven HRM systems: Investigating discrimination risks embedded in AI recruitment tools and HR analytics' (2025) 12 Social Sciences and Humanities Open <https://www.sciencedirect.com/science/article/pii/S2590291125008113#bib7> accessed 17 January 2025.

5.1. International Conventions

At the international sphere, discrimination in hiring and employment is prohibited by multiple international treaties and conventions. The ILO Convention on Discrimination specifically prohibits discrimination in hiring and working circumstances based on gender and gender identity.[17] Similarly, Goal 5 and Goal 8 of the United Nation's Sustainable Development Goals emphasize on gender equality, decent work, productive employment, and economic growth.[18] Further, OECD principles on AI encourage governments to ensure economic growth and social welfare while also protecting individuals and societal values.[19]

The European Union ("**EU**") has also taken significant steps to protect employment-related discrimination as a result of use of AI in these activities. The EU notified the European Union Artificial Intelligence Act in July 2024, after which member states have been enacting national implementation plans in order to establish an AI governance system.[20] Article 6(2) of the Act read with Item no. 4 of Annexure III labels HR-related AI systems as "high risk".[21] For companies, this means that those deploying such systems must comply with stringent lifecycle obligations, including continuous risk management, robust data governance to prevent bias and discrimination, detailed technical documentation and record-keeping, transparency towards deployers, effective human oversight, and assurances of accuracy, robustness, and cybersecurity.[22] The General Data Protection Regulation ("**GDPR**") is also a relevant law here as it provides that a person "shall have the right not to be subject to a decision based solely on automated processing, including profiling",[23] directly acting as a safeguard against algorithmic bias.

---

[17] ILO C111 Convention Concerning Discrimination in Respect of Employment and Occupation (1949) 15 UNTS 295.
[18] UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1, 25 September 2015) Goal 5: Gender Equality and Goal 8: Decent Work and Economic Growth; M.M. Abdullah Al Mamun Sony and others, (n 17).
[19] 'AI Principes' (*OECD*, 2019) <https://www.oecd.org/en/topics/sub-issues/ai-principles.html> accessed 8 January 2026.
[20] The EU Artificial Intelligence Act [2024] OJ L2024/1689.
[21] The EU Artificial Intelligence Act, art 6 (n 20).
[22] The EU Artificial Intelligence Act, art 9-15 (n 20).
[23] GDPR General Data Protection Regulation [2018] OJ L119/22.

5.2. Domestic-level laws

The United States ("**US**") has also taken proactive measures to incorporate the prevalent change of using AI in employment-related decisions. In the US, a central agency called the Equal Employment Opportunity Commission ("**EEOC**") is in force to manage discrimination in employment related activities. In 2023, in a public hearing, the EEOC noted the potential harms of the use of AI and automated systems in employment decisions like recruitment, hiring, monitoring, and firing of workers.[24] The Algorithmic Accountability Act, introduced in Congress in 2022 is also designed to ensure that companies conduct impact assessments of their automated decision systems to identify and mitigate bias and discrimination in activities including those related to employment. At the state level, New York State enacted Local Law 144 of 2021, which prohibits employers and employment agencies from using an automated employment decision tool unless the tool has been subject to a "bias audit" within one year of the tool being in use.[25]

In the United Kingdom ("**UK**") , while there are no specific laws made to address algorithmic bias in employment decisions, employers still have the legal obligation to avoid algorithmic bias under both the Equality Act and the UK Data Protection Act.[26] This right was enforced in the ongoing case against Uber, wherein a few workers came together to file a suit against Uber for wrongful firing on the basis of entirely automated systems. Drivers from multiple cities – London, Birmingham, Lisbon, etc. joined together to ask courts to over-rule the decision of Uber's algorithm that fired them over wrongful accusations of 'fraudulent activity', without being given a chance to be heard.[27] Uber finally had to pay penalty of nearly €600,000 for not providing transparency into the automated decisions.[28] The Centre for Data Ethics and Innovation, now a unit of the Department of Science, Innovation, and Technology of the Government of UK, released

---

[24] 'EEOC Hearing Explores Potential Benefits and Harms of Artificial Intelligence and other Automated Systems in Employment Decisions' (*U.S. Equal Employment Opportunity Commission*, 31 January 2023). <https://www.eeoc.gov/newsroom/eeoc-hearing-explores-potential-benefits-and-harms-artificial-intelligence-and-other> accessed 15 January 2026.

[25] NYC Local Law 144 2021 (NYC).

[26] Equality Act 2010; Data Protection Act 2018.

[27] 'App Drivers & Couriers Union files ground-breaking legal challenge against Uber's dismissal of drivers by algorithm in the UK and the Portugal' (*App Drivers and Couriers Union)* <https://www.adcu.org.uk/news-posts/app-drivers-couriers-union-files-ground-breaking-legal-challenge-against-ubers-dismissal-of-drivers-by-algorithm-in-the-uk-and-portugal> accessed 19 January 2026.

[28] 'Uber ordered to pay nearly €600,000 in penalties in algorithmic transparency case' (*Institute of Employment Rights,* 5 October 2023) <https://www.ier.org.uk/news/uber-ordered-to-pay-nearly-e600000-in-penalties-in-algorithmic-transparency-case/> accessed 10 January 2026.

a report in 2020 titled 'Review into bias in algorithmic decision-making'. In the report, the Centre noted that the use of algorithms had increased over the years, and warned that rigorous testing of new technologies was necessary to ensure that platforms do not unintentionally discriminate against groups of people. It concluded that the only way of ensuring non-discrimination was to collect demographic data on applicants and use this data to monitor how the system performs. The report also gave recommendations to regulators, suggesting that the Equality and Human Rights Commission should update the scope of application of the Equality Act 2010 to include automated systems in employment and hiring decisions.[29]

5.3. Case Studies and Judicial Decisions

Other than national level laws, a plethora of cases have also arisen before different courts across the world. For example, in 2018, Amazon's AI-driven hiring tool received backlash when its algorithm was found to be discriminating against women. The issue with the system was that it was trained on historical applicant data, primarily from men, and therefore, favoured male candidates. Given that men made up a significant part of Amazon's workforce – 66% globally and 75% of senior leadership at that time,[30] the algorithm used by Amazon interpreted male profiles as indicators of success, and as a result, favoured men over women.[31]

In another case, the United States District Court for Northern District of California set precedent by holding responsible the company using AI tools to screen applicants, along with the platform providing AI services to the company. The platform used AI to compare the skills required in the employer's job listing with the applicant's resumes and applications, in order to match the employer with the best candidate for the role. The plaintiffs, all over the age of forty-two, contended that the platform rejected them without even an interview because of age discrimination.

---

[29] 'Review into bias in algorithmic decision-making' (Centre for Data Ethics and Innovation 2020).

[30] Nick Wingfield, 'Inside Amazon, Diversity Concerns Flare Up After Harassment Accusations' (*The New York Times,* 20 October 2017) <https://www.nytimes.com/2017/10/20/technology/amazon-sexual-harassment.html#> accessed 21 January 2026.

[31] Rachel Goodman, 'Why Amazon's Automated Hiring Tool Discriminated Against Women' (*ACLU,* 12 October 2018) <https://www.aclu.org/news/womens-rights/why-amazons-automated-hiring-tool-discriminated-against> accessed 10 January 2026.

The Court allowed the plaintiff's disparate impact claim holding both the company and the platform responsible.[32]

In another case, the American Civil Liberties Union ("**ACLU**"), Colorado announced the filing of a complaint against a company Intuit Inc. and its AI vendor HireVue. HireVue's AI system conducted video interviews of candidates and generated an automated score and evaluation report for Intuit Inc. based on its assessment of the applicant's performance. ACLU filed a complaint on behalf of an Indigenous deaf applicant who was rejected after the AI interview and was advised to "practice active listening". According to the ACLU, the tool was inaccessible to deaf applicants and was also likely to disadvantage non-white candidates, including those who spoke dialects such as Native American English, which differ in speech patterns, vocabulary, and accents.[33]

These international developments demonstrate a shift from viewing algorithmic bias as a technical malfunction to recognising it as an equality concern within labour regulation. The convergence of treaty obligations, statutory frameworks, and judicial scrutiny across jurisdictions provides a valuable comparative lens through which India can assess the adequacy of its existing labour and anti-discrimination regime in addressing AI-based employment decisions.

6. INDIAN PERSPECTIVES

India has witnessed a similar substantial change in the way companies hire, with the growing demand of Applicant Tracking System, video interview platforms, AI screening of applicants, especially in education, IT, and finance-related fields. Despite this change, India lacks a proper mechanism or regulation to combat discriminatory practices occurring as a result of use of AI in employment-related activities.

AI-related laws can fit into the scope of multiple laws and legislations in India. Article 14, 15 and 16 of the Constitution of India lay down the foundation for equality and non-discrimination. It is also one of the Directive Principles of State Policy for the State to provide the right to work to

---

[32] *Mobley v. Workday* 3:23-cv-00770 (U.S. District Court 2024).

[33] American Civil Liberties Union, Complaint of Discrimination against HireVue Inc and Intuit Inc (*US Equal Employment Opportunity Commission*, 2021) <https://assets.aclu.org/live/uploads/2025/03/Redacted-HireVue_Intuit-Complaint-of-Discrimination_Redacted.pdf> accessed 15 January 2026.

people.[34] In India, safeguards against workplace discrimination are dispersed across a range of statutory frameworks governing discrimination and harassment. Collectively, these laws place affirmative obligations on employers, including those in the private sector, to uphold the principle of equal remuneration for equivalent work, prevent discriminatory practices in recruitment, and ensure fair and inclusive opportunities for individuals who have been historically oppressed. The new labour codes seek to consolidate these scattered laws and create a comprehensive framework for protection of the workforce both on and off the field.[35]

The Equal Remuneration Act of 1976 has been incorporated into the Code on Wages of 2019, which brings together this legislation with three other principal wage-related statutes, the Minimum Wages Act, the Payment of Wages Act, and the Payment of Bonus Act, into a single, consolidated framework governing wages, bonuses, and the principle of equal pay. The Maternity Benefit Act of 1961, now subsumed under the Code on Social Security of 2020, safeguards women employees from termination during maternity leave and ensures the provision of maternity-related benefits and entitlements. The Rights of Persons with Disabilities Act of 2016 confers statutory rights on individuals with a broad range of disabilities and mandates employers to formulate and publish an Equal Opportunity Policy. Similarly, the Transgender Persons (Protection of Rights) Act of 2019 expressly prohibits discrimination against transgender persons in matters of employment.

The Industrial Disputes Act of 1947 has been consolidated into the Industrial Relations Code, 2020, together with the Trade Unions Act of 1926 and the Industrial Employment (Standing Orders) Act of 1946, with the objective of streamlining and updating India's labour law framework. It expressly recognises certain conduct as constituting unfair labour practices, including unequal or biased treatment of workmen through favouritism or partiality towards a particular group of workmen over others, irrespective of merit.[36]

---

[34] The Constitution of India, art 41.
[35] 'India's Labour Reforms: Simplification, Security, and Sustainable Growth' (*PIB Delhi*, 21 November 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2192524&reg=3&lang=2> accessed 21 January 2026.
[36] Ajay Singh Solanki and Shloka Jain, 'Discrimination and Harassment in India' (*Practical Law*, 1 July 2025) <https://uk.practicallaw.thomsonreuters.com/w0468057?originationContext=document&transitionType=DocumentItem&contextData> accessed 12 January 2026.

Additionally, various state-enacted Shops and Establishments Acts also govern employment relationships and service conditions in the private sector. These enactments incorporate explicit prohibitions against discrimination toward women employees in key aspects of employment, including recruitment, training, transfers, promotions, and remuneration.

India also has specific laws to protect individuals from discrimination based on caste and tribal identity. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 imposes criminal penalties for discriminatory acts against persons belonging to recognised Scheduled Castes and Scheduled Tribes, as defined under Articles 366(24) and 366(25) of the Constitution of India. These protections are unique to the Indian context and exist in response to the long-standing social and economic inequalities historically experienced by these marginalised communities.

The Rights of Persons with Disabilities Act and the Mental Healthcare Act have expanded the legal acknowledgment of mental health conditions and neurodiversity in India. The Mental Healthcare Act provides for equality and protection from discrimination to persons with mental illnesses, while also safeguarding their right to confidentiality with respect to their mental health conditions, mental healthcare, treatment, and physical healthcare. The Rights of Persons with Disabilities Act expressly recognises mental illness, specific learning disabilities, and autism spectrum disorder as specified disabilities under its statutory framework.[37] Although the Act requires employers to develop and register an Equal Opportunity Policy with the relevant labour authorities, the scope of wider anti-discrimination obligations imposed on employers remains relatively limited. A policy or legislation made to include and subsequently prevent algorithmic discrimination will have an impact on each of these legislations and will help further the object behind these legislations.

7. Suggestions and Recommendations

[37] Ajay Singh Solanki, Nipasha Mahanta and Ayushi Singh, 'Artificial intelligence in Indian workplaces: diversity law issues from hiring to exits' (*International Bar Association*, 24 September 2025) <https://www.ibanet.org/artificial-intelligence-in-Indian-workplaces> accessed 15 January 2026.

At a time when India is undergoing such significant changes across multiple sectors in terms of ways in which companies are hiring employees, there is a dire need to have stringent laws and regulation of algorithmic bias in employment activities.

Firstly, laws can be modelled on laws already existing in the international community. One of the best examples that may be followed is EU's AI Act, which provides for different levels of risk classifications: (a) unacceptable risk (strictly prohibited activities), (b) high-risk activities (requiring stringent regulations), (c) limited risk activities (requiring lesser regulation), and (d) minimal/low-risk activities (requiring little-to-no regulations).

Secondly, the implementation of the law must also be strictly managed. Provisions for bias audits and bias impact assessments should be made in order to bound employers to submit their findings to a properly created authority. This will ensure a systematic review of AI systems and lead to ethical compliance and fairness by analysing training data, algorithms, and outputs.

Another major problem with the current state of affairs is the data being fed to the AI system. AI based recruitment can turn out to be quite helpful if done correctly. The problem lies not in the usage of AI, but in the way the algorithm is trained. In most cases cited above, the fundamental problem arose with the dataset fed to the system, which created a certain type of bias. If data fed to the system was clean, unbiased, and left no scope of discrimination, the problem of algorithmic bias would not arise in the first place.

Therefore, *thirdly*, it is proposed that AI systems be fed a plethora of information. Each dataset be accompanied with additional information documenting: *(a)* the source of data – where it comes from; internal HR records, third-party datasets, scraped data, etc, *(b)* the time period covered in the data – the number of years or months being covered should be specified, *(c)* the selection criteria of the dataset – who was included or excluded, along with a proper reasoning as to why the inclusion or exclusion, as the case may be, should be specified. This would help in ensuring that the AI training includes information along its reasoning, thereby decreasing the scope of assumptions or biases, *(d)* known structural biases – provide clear and complete information on historical underrepresentation of women, minority groups, etc., and *(e)* variables that may act as proxy indicators – can vary from college names to pin codes, employment gaps, etc. The purpose of providing this would be to inculcate a sense of subjectivity in AI that is normally found in human activities, instead of letting AI work with a strict objective plan.

Including these additional information databases will shift the scrutiny of AI from the output side to the input side, where bias is actually introduced in the first instance. The consideration and accounting of these suggestions can help build a strong national framework for regulation of automated systems in India that benefits all stakeholders in an efficient manner.

8. CONCLUSION

The use of AI in recruitment and hiring has fundamentally altered employment related decision-making by introducing speed, efficiency, and scale, and objectivity. This shift in the method of hiring is important to regulate because employment decisions directly relate to a person's fundamental right to life. With the advantages presented by this shift in culture, there are a multitude of disadvantages that need to be taken care of. AI systems, once designed to eliminate the 'human element' in hiring decisions, is now problematic for the same reason – it is too objective. They merely reproduce and amplify already existing inequalities embedded within the data on which they are trained. The central challenge, therefore, lies not in the deployment of AI itself but in the quality, completeness, and representativeness of the data that drives these systems. When flawed or biased datasets form the foundation of algorithmic hiring tools, discriminatory outcomes become inevitable, obscured further by the opacity of automated processes. A meaningful regulatory response must shift attention from outcomes produced by algorithms and more on how data is selected, collected, and managed at the outset. Requiring transparent data documentation, provenance disclosures, representativeness standards, and ongoing audits can significantly reduce the risk of disparate impact while also preserving the benefits of technological innovation.

THE INHERENCE-PROPORTIONALITY FRAMEWORK IN ACTION: REGULATING THE EXCHANGE OF COMMERCIALLY SENSITIVE INFORMATION DURING COMBINATIONS

ABSTRACT

The Competition Commission of India is entrusted with the responsibility of regulating combinations that may have an Appreciable Adverse Effect on Competition in the market, in order to protect the competitive landscape in India. Under the suspensory merger control regime in India, no combination can be implemented without obtaining a prior approval from the CCI. The process as provided under the Competition Act, 2002 has to be duly followed before a combination can be brought into effect. A significant challenge arises during the due diligence process, where parties often exchange commercially sensitive information to determine the feasibility and profitability of the deal. While information exchanges are essential for assessing the value and risks of a transaction, they also pose the risk of premature integration which harms the competition if the transaction does not eventually materialize. To address this concern, the CCI has introduced the inherence proportionality test. This paper analyses this test which requires that any exchange of information or related arrangements must be inherent and proportional to legitimate business objectives, while ensuring that the standstill obligations under the Act are not violated. The paper also discusses a set of safeguards suggested to reduce the risk of adverse effects on competition during the course of transactions.

I. INTRODUCTION

The Competition Act, 2002[1] ('the Act') has conferred powers on the Competition Commission of India ('CCI' or 'Commission') to regulate combinations that cause or are likely to cause an Appreciable Adverse Effect on Competition ('AAEC') in the market. A corporate transaction involving acquisition or merger of one entity with another is typically undertaken as a strategic initiative to enhance long-term profitability and achieve sustainable growth within a competitive market landscape. The combination regulation provides for a suspensory framework where no combination can be consummated until it is assessed by the CCI.

The events take an interesting turn during the due diligence process which is inherent to combination transactions. At this stage an entity may share commercially sensitive information with another entity for a legitimate objective. However, such exchanges carry the risk of premature

[1] The Competition Act, 2002 (12 of 2003).

integration. If the CCI later declares the combination harmful to competition, the damage caused may be irreversible.

In order to resolve this dilemma, the CCI has laid down a standard for information exchange through its recent decision in the case of *In Re Adani Green Energy* (*'Adani Green')*.[2] This case marks the origin of the 'inherence-proportionality test,' which requires that the extent of information exchange be proportionate to the stage of the combination. The subsequent sections of this paper will elaborate on this test in greater detail.

As Lord Goff once remarked, "*We are there to help businessmen, not to hinder them; we are there to give effect to their transactions, not to frustrate them; we are there to oil the wheels of commerce, not to put a spanner in the works, or even grit in the oil.*"[3] The role of the law therefore, is to carve out a balance by framing its policies in such a manner that they promote the economic growth, allowing the businesses to strive while ensuring businesses are not subject to unnecessary impediments. The CCI's approach in the recent *Adani Green* case reflects this spirit, where it sought to preserve the competitive health of the market while simultaneously facilitating new commercial opportunities. This paper will explore the framework introduced by the CCI and examine the complexities tied to such transactions.

This paper *firstly* elaborates upon the regulatory scheme of combinations as per the Competition Act, 2002. *Secondly,* it delves into the meaning of the 'standstill obligations' imposed over the combinations. *Thirdly,* it explains the exchange of sensitive information during the due diligence process and its outcomes. Further, the paper shall build upon the gun jumping concerns and shall explore the *inherence proportionality* test developed by the CCI. *Lastly*, the paper suggests various safeguards to avoid the anti-competitive concerns.

II. COMBINATION REGULATION UNDER COMPETITION ACT, 2002

The CCI has powers to regulate mergers, acquisitions and amalgamations and assess whether they cause an AAEC in the market, under Sections 5 and 6 of the Act.[4] The CCI can prohibit any combination which causes or is likely to cause an AAEC within the relevant market in India. There are two stages to every combination transaction under the Act:

i. The notification of the combination to CCI
ii. Passing of an order to approve, reject or modify the transaction.

---

[2] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act, 2002* Reference No C-2021/05/837.
[3] *Commercial Contracts and the Commercial Court* (1984) LMCLQ 382, 391.
[4] The Competition Act, 2002 (12 of 2003) s 5.; The Competition Act, 2002 (12 of 2003) s 6.

The Act places a requirement of notification for transactions falling under certain threshold limits, which are prescribed under Section 5 of the Act. The threshold values concern the turnover and asset value of the parties, viz. the target and the acquirer. It provides that any acquisition or merger or amalgamation which exceeds the threshold prescribed therein, is a combination for the purposes of the Act and there is a mandatory notice requirement for this transaction.

This pre-consummation obligation is prescribed under Section 6(2) of the Act which states that the parties entering into a combination shall notify the CCI disclosing details of the combination before its consummation.[5] The post-notification procedure/*standstill obligation* is provided in Section 6(2-A)[6], which stipulates that after filing the notice, no combination shall come into effect until the expiry of 150 days from the date of filing of the notice, or until the CCI passes an order under Section 31 of the Act, whichever is earlier.[7] The CCI may approve the combination by passing an order, if it is of the opinion that the combination does not or is not likely to cause an appreciable adverse effect on competition. Moreover, Section 29(1-B)[8] mandates that the Commission shall form a prima facie view within 30 days of receipt of notice, otherwise, there is a deemed acceptance of the combination.

The concept of *Deal Value Threshold* ('DVT') has been introduced in the 2023 Amendment Act, through insertion of Section 5(d) and introduction of the CCI (Combination) Regulations, 2024[9]. The parties, which would have earlier benefited from the exemption of *de minimis*, may now have to seek approval from the CCI if the value of the deal meets the DVT criteria. It includes two aspects: *first*, the deal value must cross INR 2,000 crores and *second*, the target must have substantial business operations in India. Any deal which satisfied both these conditions has to be notified to the CCI.

Therefore, it can be concluded that these provisions require combinations to be notified to the CCI, thereby, giving the Commission an opportunity to form a prima facie view on whether the transaction may cause an Appreciable Adverse Effect on Competition (AAEC). Section 6(2-A) also imposes a *standstill obligation*, which means that the parties cannot complete the transaction until the CCI issues its order or 150 days have passed since the notice was filed. Under Section 31 of the Act, the Commission may approve the combination, reject it, or require modifications to address competition concerns.

---

[5] The Competition Act, 2002 (12 of 2003) s 6(2).
[6] The Competition Act, 2002 (12 of 2003) s 6(2-A).
[7] The Competition Act, 2002 (12 of 2003) s 31.
[8] The Competition Act, 2002 (12 of 2003) s 29(1-B).
[9] The Competition Commission of India (Combinations) Regulations, 2024 (7 of 2024).

III. STANDSTILL OBLIGATIONS UNDER THE 2002 ACT

The combination regulatory regime is in the nature of a mandatory and a 'suspensory regime' wherein, any combination that meets the requirements of asset or turnover thresholds under Section 5 has to be notified before the Commission. As also discussed above, this means that a transaction cannot be consummated before, either passing of an order by CCI or lapse of a given number days, whichever is earlier.[10]

Section 6(2-A) of the Act, imposes the standstill obligation upon the parties, where even *part-consummation* is not allowed.[11] In *SCM Soilfert v. CCI,* [12] it was observed that it places an *ex-ante* obligation on the parties by using the phrase *"no combination shall come into effect"*. The Commission has to be given a chance to examine the anti-competitive effects of the proposed combination before its consummation. The underlying objective of the provision is to guarantee that the parties continue to operate as independent competitors until the transaction is assessed for AAEC and receives the Commission's approval.

In *In Re Bharati Airtel Limited*, it was again noted that the purpose of the obligation is two-fold, i.e., *firstly*, to prevent any harm to the competition in the interim stage where combination is under review and *secondly,* to prevent any harm which is not capable of being reversed in the event the transaction is not approved.[13] This acts like a safety net, protecting the competitive health of the market by mandating that the firms involved in the combination still continue to carry our activities independent of each other.[14]

Therefore, the standstill obligations help preventing any harm to competition by prohibiting the parties from undertaking activities closely related to integration before receiving approval, as any resultant harm cannot be reversed.

IV. EXCHANGE OF COMMERCIALLY SENSITIVE INFORMATION DURING DUE DILIGENCE

---

[10] Competition Commission of India, *Frequently Asked Questions Booklet* (CCI, 2022) <https://www.cci.gov.in/images/whatsnew/en/faq-english-compressed-31020221664785663.pdf> accessed 12 May 2025.

[11] The Competition Act, 2002, §6(2-A).; Competition Commission of India, *Compliance Manual for Enterprises* (Competition Commission of India, 2017) <https://www.cci.gov.in/images/publications_compliance_manual/en/compliance-manual1652179683.pdf> accessed 10 May 2025.

[12] *SCM Soilfert v CCI* (2018) 6 SCC 631.

[13] *Notice given under Section 6(2) of the Competition Act, 2002 by Bharti Airtel Limited* Combination Registration No C-2017/10/531.

[14] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act, 2002* (n 2).

In major business transactions, due diligence is conducted to understand the operations of the other party. This process requires examination of the commercially sensitive information of a competitor.[15] The Commission in its Compliance manual and FAQ Booklet acknowledges the necessity of pre-transaction due diligence and post-signing integration planning. However, while carrying out these procedures, the parties need to ensure that these arrangements are not causing a violation of the *Standstill Obligations* under Section 6(2-A).

The CCI has emphasized that nature and scope of exchange of information varies with the stage of the transaction. During due diligence, the only information desirable is of the kind which helps in an assessment of suitability of the target and for valuation of the transaction. Further, after execution of more definite agreements, the focus of the information exchange should be more towards ensuring the preservation of economic value of the target and to facilitate a successful integration planning.[16]

1. WHAT CONSTITUTES COMMERCIALLY SENSITIVE INFORMATION?

Commercially sensitive information includes exchange or transfer of forward-looking planning documents, details of projects or strategic plans, cost data, pricing and discount policies not publicly available etc. [17] Furthermore, a perusal of the Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union, facilitates an understanding that commercially sensitive information includes "*pricing, costs, capacity, production, quantities, market shares, customers, plans to enter or exit markets, or concerning other important elements of a firm's strategy that undertakings active in a genuinely competitive market would not have an incentive to reveal.*"[18] It denotes that the other relevant considerations over the sensitivity of data include, the nature and age of data[19], frequency of exchange and, the analysis of whether the exchanged information is present in public domain.

2. EXCHANGE OF COMMERCIALLY SENSITIVE INFORMATION: AN ANTI-COMPETITIVE AGREEMENT?

[15] ibid

[16] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act, 2002* (n 2).

[17] Competition Commission of India, *Compliance Manual for Enterprises* (n 11).

[18] European Union, Commission, 'Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements' (European Commission, 21 July 2023) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XC0721(01)> accessed 21 May 2025.

[19] Office of Fair Trading, *Agreements and Concerted Practice: Understanding Competition Law* (2004) <https://assets.publishing.service.gov.uk/media/5a7c457e40f0b6321db38123/oft401.pdf> accessed 13 June 2025.

Section 3(1) of the Act[20] prohibits any agreement between enterprises which harms or has the potential to harm the competition in the market. The provision includes in its ambit any such agreement between two parties which may be harmful to the competition. Most importantly, the Act places a very low threshold of entering into an agreement and it may be any convergence of purpose leading to anti-competitive effects, be it any informal arrangement. The exchange of commercially sensitive information may harm the competition in various manners. It has the potential of removing or reducing degree of strategic uncertainty in the market. This means reducing uncertainty about the future decisions of the competing firm.[21]

It also may allow them to reach a focal point or convergence or a common understanding, while taking their market decisions, such as allowing them to facilitate a coordination of prices.[22] This means that the information may be used as a tool to signal other parties to an anti-competitive agreement, in turn, facilitating a concerted practice. The practice of sharing such information assists in implementation of anti-competitive agreements.[23] In such cases, an assessment can be carried out to determine whether there exists an anti-competitive agreement through an analysis of the behaviour of such parties in entirety, along with examination of all the forms of evidences present, such as communication evidences, economic evidences, etc.[24]

The Commission expounded in *Paper Manufacturing Industries case*, that even the presence in the channel of discussion of information can lead to comprising one's ability to take decisions independently and has held the same to be anti-competitive in nature. In a situation where the parties are present in the channel of communication of discussion of prices and thereby, there is also fixing of prices, it leads to a contravention of Section 3(3)(a) of the Act. There is a presumption that their presence in the channel of communication influences their ability to decide independently. [25]

In another noteworthy ruling, *In Re: Express Industry Council of India v. Jet Airways, Indigo Airways and Spice Jet airways*, it was seen that where parties enter into an anti-competitive agreement, it is not necessary that the price rise happens at the same time. Rather, the companies may incorporate the agreement after an artificial gap of time to create a façade of competitive environment.[26] Therefore, it can be concluded that any agreement, including an agreement facilitating sharing of sensitive

---

[20] The Competition Act, 2002 (12 of 2003) s 3(1).
[21] *Ambuja Cements Ltd v Competition Commission of India* (2018) 95 taxmann.com 310 (NCLAT).
[22] *Rajasthan Cylinders and Containers Ltd v Union of India and Another* 2018 SCC OnLine SC 1718.
[23] *In Re Cartelisation in respect of Zinc Carbon Dry Cell Batteries Market in India* 2018 SCC OnLine CCI 5.
[24] *Express Industry Council of India v Jet Airways (India) Ltd* Case No. 30 of 2013.
[25] *In Re Anti-competitive conduct in the Paper Manufacturing Industry* Suo Motu Case No. 05 of 2016 (CCI).
[26] *Express Industry Council of India* (n 24).

information, having the potentiality of reducing competition in the market, is prohibited under the Act.[27]

The exchange of such information can lead to various collusive outcomes. It is the ordinary course of business that the undertakings under normal competitive conditions, have no incentive to publish their commercially sensitive information. It may arise in situations where the parties are planning an action in concert. Such exchange can lead to various collusive outcomes such as:

i. *Firstly,* it can be used to increase transparency between competitors and thus facilitate a coordination. It means that the information can be used to signal competitors to follow the conduct.
ii. *Secondly*, it allows for reaching a common understanding of the terms of coordination.
iii. *Thirdly,* it can be used to increase internal stability and keep a check on other undertakings to avoid their deviation.[28]

Therefore, it is evident that the exchange of competitively sensitive information can lead to formation of an anti-competitive agreement. This means that during the combination transaction, any exchange carries the potential to lead to coordinated behaviour or an anti-competitive understanding between the parties to a combination. If, during the process of due diligence, the parties begin to act in concert or prematurely integrate, it can harm competition in the market. This constitutes gun-jumping, which violates the standstill obligations imposed by the Act. The next section of the paper shall discuss this dilemma at length and also analyse the manner in which the CCI has attempted to resolve it.

V. EXCHANGE OF INFORMATION DURING DUE DILIGENCE AND GUN JUMPING CONCERNS: ANALYSING THE INHERENCE-PROPORTIONALITY STANDARD

Gun jumping refers to a situation where, before obtaining approval by the CCI, any party or parties to the combination consummate the transaction in part or wholly, which violates the standstill obligations. The CCI acknowledges that combination transactions carry within them a dual character, i.e., the legitimate need for information sharing, but also the peril of gun-jumping. The Commission has tried to mitigate this dilemma in the *Adani Green* case.[29] It has introduced a standard to be followed which enables the parties to share the information in a controlled manner, so that the gun-jumping concerns can be kept at bay.

---

[27] *Builders Association of India v Cement Manufacturers' Association* (2016) SCC Online CCI 46.
[28] European Union, Commission, 'Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements' (n 18).
[29] ibid.

In addressing the delicate balance between legitimate safeguards and compliance with standstill obligations, the Commission articulated its position through the following observation:

> "*Wherever it is felt that certain restrictions are required to be imposed or certain information is required to be exchanged/discussed to ensure preservation of economic value of assets or any other such legitimate objective, the parties ought to strive to make the arrangement as objective and precise as possible to avoid any likelihood of inference on interference with ordinary course activities of the target or causing any competition distortions in contravention of standstill obligations."*

Here, the CCI emphasized that there may be a need for the acquirer to:

i. impose certain restrictions on the target company; or
ii. information may be needed to exchanged/discussed; or
iii. any other arrangement;

for purposes such as ensuring the valuation of business, profitability of business, or preservation of economic value of the assets of the target company, or broadly any legitimate purpose required to be served by this restriction or exchange. These objectives may be carried out but with a caveat that the arrangement does not interfere with ordinary course of business of the target.

Further, conceding that sharing of information may be a potential cause of competition distortions, an observation was made that these actions/agreements need to be examined as per the *inherence-proportionality* test/framework.[30] The CCI worded the aforementioned requirement as follows:

> *"It is incumbent on the acquirer to ensure that the form and scope of the aforesaid customary arrangements imposed by it on the target* ***is inherent and proportionate*** *to the objective of ensuring certainty in business valuation and preservation of the same and that such conditions do not violate standstill obligations as envisaged in the Act."*

Here, it clarifies that the acquirer may impose such arrangements on the target, however, it must ensure that the form and scope of agreements imposed on the target are *inherent and proportional* to the objective of ensuring certainty in business valuation or its preservation. Further, the conditions imposed on the target or information received purposes such as ensuring the valuation of the business, shall not violate standstill obligations.[31]

In the *Adani Green* case, the CCI observed the Clause in the agreement:

---

[30] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act, 2002* (n 2).
[31] *Notice given under Section 6(2) of the Competition Act, 2002 by Bharti Airtel Limited* (n 13).

"(i) allows the parties to discuss ongoing business and operations of the Target and its subsidiaries; (ii) allows the Acquirer to provide inputs on the business of the Target; and (iii) provides for the Target to take such inputs into account in the best interests of the Target and its subsidiaries. Prima facie, the scope of the Clause is broader than what has been stated by the Acquirer, as it envisages the discussion on the "on-going business and operations of the target"."

This clause allowed the acquirer to discuss ongoing business operations and provide inputs to the target. The CCI examined the construction of the Clause and ruled that it was broadly worded and in such a manner that the possibility of exchange of sensitive information or any coordinated outcome could not be ruled out. The intent of preservation of value could not be substantiated, where the requirement was for discussions including those on *ongoing business and operations*. Even if the intent was to monitor/ preserve the value of the business, the Clause was held to be ***not inherent and proportionate*** to the objective.

The perils associated with these arrangements can also be understood by taking note of *Hindustan Colas* case.[32] It was discussed that agreements between parties to a combination may, at times, incorporate clauses that result in premature integration. Interestingly, ***Clause 4.2.1*** of the Sale and Purchase agreement required payment of 'consideration less deposit' at the time of completion. The same is quoted below as follows:

*"**Clause 4.2.1 of SPA:** The Consideration less Deposit, along with the other amounts listed in Clause 4.1 above, shall be paid at Completion in immediately available cash funds through electronic funds transfer to the Seller's Account."*

The Commission ruled that it clearly demonstrates that the deposit was actually the payment of part consideration and not a refundable deposit. The pre-payment of consideration in the transaction was considered capable of reducing incentive/will of target to compete or may become a basis to access confidential information of the target. The CCI noted that "*gun jumping takes many forms and has the potential to distort the competition dynamics of the markets*." Therefore, gun jumping may take place even in cases where the information is exchanged, provided that the nature of exchange is such that it leads to a premature integration or it reduces the incentive and will of the target to continue to compete in the market.

This is in furtherance of the discussion in the previous section of the paper that the exchange of information may lead to collusive outcomes and reduce the uncertainty in the market, in result,

---

[32] *Notice given under Section 6(2) of the Competition Act, 2002 by Hindustan Colas Private Limited* Combination Registration No. C-2015/08/299.

causing an AAEC in the market. The rule is that the arrangement must be inherent and proportionate to the legitimate business objectives.

To further illustrate the types of clauses in combination agreements that result into a premature integration, we shall discuss the ruling of CCI in the combination notice by *Bharati Airtel*, where the commission observed that a clause which has the effect of allowing one party to influence the target's business before formal approval violates standstill obligations.[33]

The commission noted the following regarding the nature of the ER clause:

The *ER clause* in the acquisition agreement provided for a mechanism to the acquirer to exercise operational control on the target company from the agreed date, which was prior to the approval. It was in nature of a direct interference to the ordinary course of activities of the target. The cash flow was sought to be managed retrospectively by the acquirer.

It was held that the cash flow is a variable that can only be managed prospectively and the clause may have the effect of causing the parties to cease to act independent of each other. The CCI held that the direct interference with the ordinary course of business and violated standstill obligations, as it could eliminate the target's incentive to compete independently.

Taken together, the cases discussed above illustrate the various ways in which standstill obligations can be breached. Building on these examples, the Commission has clarified the broader legal principles governing combinations:

i. The CCI has clarified that there is no distinction between "actual actions" and "agreed contractual obligations" as they stand in violation of the ex-ante nature of the provision, meaning that even terms agreed in a contract, although, not yet performed still constitute a violation of the standstill obligations.[34] Section 6(2-A) does not prohibit only actual actions aimed towards implementation, such as pre-payment of consideration, but also prohibits making of agreements of this nature.
ii. The combinations shall be examined ex-ante and the question whether the parties benefitted or not from the impugned conduct or whether there were any commercial exigencies behind a particular conduct are not relevant for determination.[35]

In conclusion, it can be safely stated that while the Commission recognizes the risks of premature integration, it also acknowledges that information exchange during mergers and acquisitions is

[33] *Notice given under Section 6(2) of the Competition Act, 2002 by Bharti Airtel Limited* (n 13).
[34] ibid.
[35] *Notice given under Section 6(2) of the Competition Act, 2002 by Hindustan Colas Private Limited* (n 32).

necessary. To resolve this dilemma, the Commission has tried to balance the possibility of premature integration/gun jumping and the inherent requirement of information exchange through the *inherence-proportionality test* in the *Adani Green* case.

It has been established therein that the acquirer is permitted to impose customary standstill obligations and interim arrangements on the target.[36] The only requirement is that it should comply with the inherence-proportionality test, which will determine whether the customary obligations are consistent with the standstill obligations provided under Section 6(2-A). Concludingly, the imposed arrangements have to be inherent and proportional to the legitimate business objective.

VI. VARIOUS MEASURES TO SAFELY CARRY OUT DUE DILIGENCE

The Commission recommends that parties ought to implement some safeguards during the exchange of competitively sensitive information, and that such safeguards must be expressly incorporated into the agreement and adhered to in practice.[37]

One effective measure is in the form of a clean team protocol. Clean team refers to a team of individuals who are not involved in the operational activities of the company. These have the potential to deter the unwarranted causes of information exchange.

The Compliance Manual recommends formation of a clean team while conducting the due diligence of integration planning.[38] It provides the constitution of such a team including:

i. Members of senior management
ii. Internal legal team
iii. External legal counsel

However, this team excludes personnel involved in dealings with matters related to pricing, sales, marketing, etc. It ensures that there is no influence on the day-to-day operations like determining prices, strategies, sales quantities etc.

Moreover, we can also adopt several measures suggested by the Guidelines for applicability of Article 101 of TFEU, including formation of a clean team or trustees to receive information and process it. These trustees are independent third parties providing their services to the firm.[39] The participants can further, ensure that they have only access to their own information and only the

---

[36] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act*, *2002* (n 2).
[37] ibid.
[38] Competition Commission of India, *Compliance Manual for Enterprises* (n 11).
[39] European Union, Commission, 'Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements' (n 18).

aggregated information of the other. The aggregated and not detailed data is generally considered less competitive in nature.

The parties may set-up an agenda and purpose prior to the meeting/call to ensure that the purpose of disclosure is clarified. The undertakings can also opt to verify prior to exchange that whether it is strictly a genuine and legitimate requirement of the transaction. Also, the minutes of meetings can be recorded as a Standard Operating Procedure, whereby it can be ensured that the parties strictly adhered to the agenda. This is in consonance with the decision in Adani Green Case, where it was observed that the exchange has to be limited to the purpose according to the stage of the transaction.

In toto, the parties can opt for various safeguards to ensure that they minimize the gun-jumping concerns. The Commission however has opined that in order to make the clean team protocol successful, the agreement should include various aspects such as constitution, rules, etc and should be complied with "*in letter and spirit*".[40]

VII. CONCLUSION

In conclusion, there are various concerns arising from the exchange of commercially sensitive information which are capable of potentially distorting competition in the market. The exchange may give rise to some danger to the competitive landscape if the transaction does not come into existence. The result could be that the parties enter into a premature integration and ultimately harm to the competition. This can happen in various ways viz. one firm gaining some advantage over the other, or the target firm losing the incentive to compete. This harm cannot be reversed, even if the CCI later on declares the combination to be void.

The pertinent issue lies in determining the manner in which parties to a proposed combination may legitimately exchange information or impose customary standstill obligations, while simultaneously ensuring that the exchanges or arrangements instituted by the acquirer vis-à-vis the target do not amount to a contravention of the statutory provisions under the Act. In order to deal with the dilemma, the Commission came up with the inherence-proportionality standard, whereby, the information exchange has to be inherent and proportionate to the legitimate objective of the transaction. The objective differs at different stages of the transaction. Moreover, the concerns can also be avoided by putting to use other measures, including the setting up of a clean team,

[40] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act, 2002* (n 2).

consisting of third parties and excluding the personnel involved in carrying out the daily business operations of the firms.

In toto, the framework laid down by the CCI requires that the exchange of sensitive information has to be carried out in the view of inherence-proportionality standard, and the agreement of combination must also duly prescribe safeguards to be put in place.

MANDATORY SHARING OF DATA AMONG ONLINE SEARCH ENGINES: NEED FOR PRO-COMPETITIVE INTERVENTIONS

INTRODUCTION

In today's digital World, the internet has become indispensable for information, communication, and commerce. The internet is the repository of a vast amount of information, which can easily be accessed using online search engines. This makes online search engines a central part of our daily lives. However, even after playing an integral role in all spheres of life, online search engines do not charge a penny for most of the services that they offer to the end users. This is made possible by network effects and the multi-sided nature of the market.[1] Online Search Engines typically collect data regarding search queries entered by the end users and behavioural data as to how they have interacted with the search results. This data is then used to train the algorithms to provide relevant search results and targeted advertisements.[2] The Online Search Engines earn revenue from the online advertisements on their platform. This provides dominant entities with a huge competitive advantage over other firms. A huge end-user base translates into huge amounts of user data and, consequently, better search results. It also translates into more demand among advertisers and better-targeted advertisements due to a better-trained algorithm.[3] To reduce the competitive advantages of the incumbents, the European Union (EU) passed the Digital Markets Act (DMA).[4] The Digital Markets Act provides for additional obligations and restrictions for enterprises that are designated as a Gatekeeper in any of the Core Platform Services ("CPS").[5] Online search engines have been included in the definition of CPS.[6] One of the obligations that only applies to Online Search Engines is the obligation to provide ranking, query, click and view data to any third-party undertaking under article 6(11) of the DMA.[7] The draft Digital Competition Bill ("DCB") in India is heavily influenced by the DMA and contains similar provisions on many of the issues.[8] However, the DCB does not contain the mandatory data sharing provision mentioned in article 6(11) of the DMA. Against this backdrop, it becomes necessary to investigate the need for a similar provision in India.

---

[1] Gunnar Niels, Helen Jenkins & James Kavanagh, *Economics for competition lawyers* (3rd Edition, OUP) [57-59]
[2] Online Platforms and Digital Advertising: Market Study Final report (Competition & Markets Authority, July, 2020) [43-46]
[3] ibid
[4] The Digital Markets Act, 2022
[5] The Digital Markets Act, 2022, arts 3, 5-7
[6] The Digital Markets Act, 2022, Art. 2(2)
[7] The Digital Markets Act, 2022, Art. 6(11)
[8] Pankhudi Khandenwal, "Tying, Self-Preferencing and the Digital Competition Bill: A Changing Landscape for Competition Intervention?" 19 IJLT 1

In this academic sphere, a lot of literature exists on the importance of data in the digital markets.[9] Some scholars have also argued that data is an essential facility and a refusal to provide the same can be considered as an abuse of dominance.[10] However, no literature exists on the necessity of a mandatory data sharing regime akin to Article 6(11) of the DMA in India. It is this gap that this paper seeks to fill. This paper deals with two research questions. The first question is whether a mandatory data sharing regime is necessary in the Online Search Engines Market in India. The second is whether mandatory data sharing is feasible considering possible conflicts with Privacy and Intellectual Property (IP) rights. In this paper, I shall firstly, argue that a mandatory sharing of Search queries, clicks, and view data ("Click and query") is necessary to protect competition in the market for Online Search Engines. Secondly, look at a possible way of enforcing such a provision and argue that it can be balanced with any privacy or IP rights concerns. I shall majorly rely upon Legal and Economic concepts as well as surveys conducted by different agencies across the globe to support my claims.

I. <u>Online Search Engines: Need for data Sharing to break perpetual Monopoly</u>

In this section, I shall firstly, provide a brief overview of the relevant markets, the players involved and the lack of competition in the markets; Secondly, discuss the importance of data for providing Online Search services; Thirdly, I shall highlight the loss of consumer welfare that the lack of competition is causing.

A. <u>Market for Online Search Engines and Online Search Advertisements: More than a decade-long monopoly</u>

As discussed in the introduction, Article 6 (11) only applies to Online Search Engines. Online Search Engines is further defined as: *"a digital service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found"*.[11]

---

[9] Anush Ganesh, "Effective Remedies in Digital Market Abuse of Dominance cases" (2024) European Competition Journal 1; Alissa Johnson & Ors, "A Strategy for Challenging Anticompetitive Refusals to Deal in the Digital Economy (Department of Justice Conference, Yale University); Erik Hovenkamp, "The Antitrust Duty to Deal in the Age of Big Tech" (2022) 131(5) The Yale Law Journal 1385; Michael L. Katz, "Multisided Platforms, Big Data, and a Little Antitrust Policy" (2019) 54 Review of Industrial Organization 695

[10] Garima Gupta, "Antitrust Concerns in the Age of Data-Driven Economies: The Need to Revive the 'Essential Facilities Doctrine'" (2024) 45 Liverpool Law Review 209; Edouard Bruc, "Data as an essential facility under EU law: How to define the "Target" market and divert the data's pipeline" (2024) 15(2) European Competition Journal 177; Inge Graef, "Rethinking the Essential Facilities Doctrine for the EU Digital Economy" (TILEC Discussion Paper, 2019)

[11] Regulation (EU) 2019/1150 of the European Parliament and of the Council, Art. 2

The requirement of *"all websites"* in the above definition effectively means that the market only includes players that offer the services of a general web search rather than the services of specialized search services that are restricted to specific domains like hotels, restaurants that are offered by many other companies.[12] In effect, the market for Online Search Engines is similar to the relevant market of *"General Web Search"* defined by the CCI in the Google Ecosystem Case.[13] Therefore, for the purposes of this paper, reference to Online Search Engines shall mean the market for General Web Search. In the Google Ecosystem case, the CCI had traced the market share of different players in the market from 2009 to 2019. Google consistently had more than 95% of the market share while other players like Bing, Yahoo, etc, never had more than 3.5% of the market share in any of the years.[14] The trend has continued, and Google still has more than 95% market share in Online Search Engines in India.[15] In the European Union[16] and globally[17], the picture remains the same, with Google consistently having more than a 90% share for the past 10 years. I shall discuss the factors contributing to Google's high market share in the next sub-section.

Online Search Services and Online search advertising are two sides of the market for Online Search Engines. The revenue from the Online Search advertising is used to maintain and upgrade the Online Search Services.[18] Online Search advertising is, however, not the only source of revenue for Google. Google also generates revenue from Online display advertisements.[19] The CCI and other regulators have already differentiated between the two markets in their past decisions and reports.[20] For the purposes of this paper, I shall focus solely on the market for Online Search Advertisements. This is because the Online Search advertising market is open only to Online Search Engines. The players operating in the market for Online Search advertisements are the same as players operating in the Online Search Services market.[21] The Online Display advertisement market has other platforms like Meta, Amazon, etc.[22] Further, Google is present in the market for Online Display advertisement through YouTube, Google Maps, and other products

[12] In Re: Umar Javed & Ors. v. Google LLC & Anr (CCI, Case no. 39/2018) [205- 220]; Google Search (Shopping) [EC, case AT.39740] [5.2]
[13] Umar Javed (n 12) [205-206]
[14] Umar Javed (n 12) [222-224] [244]
[15] Market share of leading search engines in India from January 2018 to June 2024 (StatCounter, Statista)
[16] Market Share of Leading Search Engines in Europe from January 2015 to March 2024 (Statista)
[17] Market Share of Leading Search Engines worldwide from January 2015 to March 2025 (Statista)
[18] Michal S. Gal & Nival Elkin Koren, "Algorithmic Consumers" (2017) 30(2) Harvard Journal of Law & Technology 309
[19] CMA (n 2) [211-290] Prachi Kohli v. Whatsapp LLC (CCI, Case No. 05/2021) [224.3]
[20] CMA (n 2) [211 – 260], Prachi Kohli v. WhatsApp LLC (CCI, Case no. 05/2021) [109.2-110]
[21] CMA (n 2) [213]
[22] WhatsApp (n 19) [216]

that are not connected with the Online Search services.[23] Further, from the demand side, online search and display advertisements are not substitutable as they serve different purposes. Search advertisement is intent-based, that is, it is targeted towards customers who are already looking for the product. Online Display, on the other hand, is more suitable for raising brand awareness and venturing towards newer audiences.[24] Therefore, comparing the revenue generated by Google through online display advertisement with that of other Online Search Engines will not provide a correct assessment.

In the Google Ecosystem order, the CCI found that the revenue generated by Bing and Yahoo in the relevant market during the period of 2011 to 2018 was minuscule in comparison to Google.[25] This was because Google had more than 95% of the market share in the Market for General Web Search, which left no incentive for the advertisers to opt for Bing or Yahoo.[26] The condition of the market is expected to be similar since Google continues to hold more than 95% share in the market for general web search in India.[27] Therefore, Google's market share in the market for Online Display advertisement market should remain the same. The condition is not unique to India, as Google held more than 90% of search advertising revenue from 2010 to 2019 in the United Kingdom.[28] Therefore, Google enjoys a High Market Share not just in India but in developed markets like the United Kingdom as well. In the next sub-section, I shall look at the factors that have contributed to the continued high market share of Google and argue that access to some of the data collected by Google is necessary to build a product that can compete with the Google Online Search Engine.

B. Impossible to Compete: Access to Data a prerequisite for building a Competitive Online Search Engine

Online Search Engines collect aggregated click and query datasets. Click and query dataset is essentially information about the queries that the consumers have entered into the search box and the links that they have clicked from the results that were shown.[29] Click and query data is then used to train algorithms, which makes changes to the order of results shown (ranking).[30] The click

[23] Annual revenue of Alphabet from 2017 to 2024, by Segment (Statista) <https://www.statista.com/statistics/633651/alphabet-annual-global-revenue-by-segment/>
[24] CMA (n 2) [217 – 218]
[25] Umar Javed (n 12) [244]
[26] ibid [252]
[27] Statista (n 15)
[28] CMA (n 2) [224]
[29] 'How Does Google Determine Ranking Results - Google Search' (*How Search Works*) <https://www.google.com/intl/en_us/search/howsearchworks/how-search-works/ranking-results/> accessed 9 May 2025.
[30] ibid

and query data not only help in improving the quality of results shown but also help advertisers reach consumers who are more likely to avail their products or services. This click and query data can also be used to develop newer algorithm models that can suggest corrections to spellings.[31] This makes the Online Search Engine that has access to huge amounts of data highly superior in comparison to the ones that do not have access to the data. In a survey conducted by Duck-Duck-Go, consumers mentioned that relevance and quality of search results are the most important criteria for choosing a Search Engine.[32] Google's competitors like Duck-Duck Go and Bing have tried other ways of gaining consumers, like non-collection of personal data[33], providing rewards and incentives to consumers[34], respectively. However, all these strategies have failed, and DuckDuckGo and Bing could not effectively gain market share. This implies that a competitor will have to at least provide a similar standard of relevance in search results in order to compete with Google. The value of relevant search results seems to be so high that consumers are not responding to any other incentives provided by the competitors. However, as discussed earlier, the massive difference in market share and consequently the difference in the amount of data collected make it impossible to build a product of similar quality. In the next sub-section, I shall discuss some of the consumer harms that result from a lack of competition in this market.

C. The Cost of Online Search: Loss of Innovation and Consumer Welfare

The use of an Online Search Engine may come at zero cost to the consumers. However, the weak competition in the Online Search Advertising market is expected to significantly raise the cost of advertising for producers.[35] The higher cost of advertisement ultimately adds to the total cost of the producers and gets passed down to the consumers in the form of increased prices of goods and services. Consumers also face a lack of choice and are forced to accept whatever terms and conditions are put forward by the incumbent. In a more competitive market, we would expect competition for Consumer-friendly terms and conditions.

The highly concentrated nature of the market and the high entry barrier also result in a lack of innovation. As other players do not have the capability to make a product of similar quality, they lose the ability to innovate further. A lack of sufficient revenue also affects their ability to invest in R&D. Google also does not have any strong incentive to substantially upgrade or improve the

---

[31] CMA (n 2) [92]
[32] 'Search Preference Menu Immediately Increases Google Competitors' Market Share by 300-800%' (*Spread Privacy*, 30 October 2019) <https://spreadprivacy.com/search-engine-preference-menu/> accessed 14 May 2025.
[33] 'DuckDuckGo - Protection. Privacy. Peace of Mind.' (*DuckDuckGo*) <https://duckduckgo.com> accessed 14 May 2025.
[34] 'Bing Rewards | Microsoft Bing' <https://www.microsoft.com/en-gb/bing/features/rewards-features-tips/> accessed 14 May 2025.
[35] Robert S. Pindyck, Daniel L. Rubinfeld et. al, *Microeconomics* (Pearson, 9th Edition) [369-370]

quality of its product. As a result, the perpetual dominant position of Google has also translated into a lack of innovation.

II. Mandatory Data Sharing: Procedures and Conflicts

From the discussion in the previous section, it is clear that the unique nature of the Online Search Engines market is such that click and query data not only provides a competitive advantage but is a necessary raw material for the development of the product. Without access to this data, a competitor will not be able to develop a product of similar quality. This feature of the product is unique from most other markets. Digital markets are usually prone to high switching costs and entry barriers. However, the development of the product is usually not dependent on the sharing of a particular resource by a competitor.[36] This makes the nature of the product unique and ensures that a refusal to supply the same to the competitor is enough for Google to maintain dominance for years and decades. The only solution, therefore, is to mandate the sharing of click and query data that Google collects so that the development of similar or better products is not stopped. In this section, I shall firstly discuss ways of enforcing a mandatory data sharing regime; Secondly, address possible conflicts with privacy and Intellectual Property Rights.

A. Non-Personal Data Authority: Operationalizing the Non-Personal Data Governance Framework

After the DMA came into force, Google has complied with Article 6(11) by starting the European Search Dataset Licensing Program.[37] Under the program, Google provides access to a dataset of more than 1 billion queries in all countries across the European Economic Area.[38] This dataset includes click, view, query, and ranking data.[39] All the data shared is anonymized following a frequency threshold method as already provided in article 6(11). The licensing program, however, has faced criticism from competitors for the data anonymization policy followed by Google. DuckDuckGo has alleged that Google's anonymization technique reduces the benefits that can be derived from that data.[40] Therefore, a contractual licensing system may not be ideal for enforcing the data sharing obligation.

[36] For example, platforms for Hotel booking or shopping do not need a large amount of data, and they can gain at least make a product that is competitive. It is possible for a new entrant to make a similar product as MakeMyTrip, but the usefulness of the platform will not be substantially lower.
[37] Alphabet, "EU Digital Markets Act (EU DMA) Compliance Report" <www.transparencyreport.google.com/report-downloads?hl=en> accessed 9 May 2025
[38] ibid [185-187]
[39] 'Google European Search Dataset Licensing Program | Google Search Central | Support' (*Google for Developers*) <https://developers.google.com/search/help/about-search-data-program> accessed 14 May 2025.
[40] 'Roadblocks to Competition: Investigate Google's Non-Compliance with the EU's Digital Markets Act' (*Spread Privacy*, 20 November 2024) <https://spreadprivacy.com/investigate-google-dma/> accessed 14 May 2025.

A mandatory data sharing regime is not entirely novel in the Indian policy space. The Gopalakrishnan Committee had already recommended the same under the non-personal data governance framework.[41] The framework envisaged for the creation of a Non-Personal Data Authority, which will look at the policy and procedure for data sharing among entities.[42] This may provide for a better mechanism that will ensure that the data provided is useful, compliant, and free from risks like privacy. The Authority can also look at whether the price of the licence is reasonable. An excessively high price may defeat the purpose of the provision.

B. Data Sharing vs Privacy and IP: In Search of a Balance

A prominent argument against the adoption of a mandatory data sharing regime is a possible conflict with data privacy[43] and IP rights. In this sub-section, I shall deal with both arguments.

One of the possible reasons why the DCB has an obligation for Data Portability but not data sharing with third parties is compliance with the Digital Personal Data Protection Act, 2023 ("DPDPA").[44] The DPDPA requires consent from Data Principals before their personal data is processed or shared with any third party.[45] Data Portability does not require data to be shared with any third party, which is why compliance with DPDPA is not an issue.[46] For a mandatory data sharing provision akin to article 6(11) of DMA, data has to be shared with third parties. However, the search and query data is generally non-personal in nature and is not capable of identifying any person.[47] Further, personal data can be anonymised and identification of the data principal is not possible. So, DPDPA will not be a bar for the sharing of data, and privacy concerns do not exist as no personal data is being shared.

Another possible argument against adopting a provision similar to Article 6(11) could be the protection of IP rights and an adverse effect on the incentive to innovate. The Indian copyright law does not cover raw data or ideas.[48] It does not have a sui generis protection over databases, which is present in the EU.[49] Facts or raw data cannot be copyrightable. However, a compilation or database may enjoy copyright protection if the author has exercised their own skill and judgment

[41] Report by the Committee of Experts on Non-Personal Data Governance Framework (MEITY, 2020)
[42] ibid [20]
[43] Sophie Stalla-Bourdillon and Bárbara da Rosa Lazarotto, 'Search Queries and Anonymisation: How to Read Article 6(11) of the DMA and the GDPR Together?' [2024] European Law Blog <https://www.europeanlawblog.eu/pub/2uxr4anu/release/1> accessed 14 May 2025.
[44] Digital Personal Data Protection Act, 2023; Draft Digital Competition Bill, 2023
[45] Digital Personal Data Protection Act, 2023, s4(1)
[46] Draft Digital Competition Bill, 2023, s 12(3)
[47] CMA (n 2) [366]
[48] *Tech Plus Media Private Ltd. V. Jyoti Janda & Ors.* 2014 SCC OnLine Del 1819
[49] Directive 96/9/EC (EC, 1996)

and the database has sufficient originality.[50] A mere mechanical database containing the number of times a query has been searched or the number of times a link has been clicked will not fall under copyright protection. However, even if some form of copyright protection is established, the Online Search Engine is not being forced to give up the data for free. They can still charge a reasonable amount for licensing the search and query data. The benefits to consumers, innovation, and competition far outweigh the grant of absolute copyright protection that would result in a perpetual monopoly. Therefore, a reasonable restriction on copyright protection may be allowed by which a possible Systemically Significant Digital Enterprise (SSDE) in the Online Search Engines market may be forced to license its search and query data in exchange for a reasonable fee. This would not adversely affect the incentive to innovate, as the underlying algorithm or infrastructure has to be built by the competitor. It is only the raw data that the competitors will get.

III. Conclusion

The persistent dominance of Google in the Online Search Engine and Online Search Advertising market in India and abroad points towards the existence of structural barriers to entry. In this paper, I have shown how access to click and query data is so central to the development of Online Search Engines that without access to it, a similar product cannot be developed. As a result, the market suffers from stifled innovation, inflated advertising costs that are passed on to consumers, and a lack of meaningful consumer choice. This paper has argued that a mandatory data sharing regime akin to Article 6(11) of the EU's Digital Markets Act is necessary for India. I have also dealt with possible concerns related to privacy and IP rights. The privacy concerns are valid, and the proposed data sharing regime can adequately address them. Intellectual Property Rights violations should not arise as raw data is not copyrightable. However, even if some part of the database is copyrightable, the benefits of sharing the same far outweigh any possible negative effects of diluting the protection. Therefore, a data sharing regime similar to Article 6(11) needs to be introduced in the DCB to ensure that the Online Search Market can be made competitive.

[50] The Copyright Act, 1957 s2(o); *Emergent Genetics India Pvt. Ltd v. Shailendra Sharma* (47) PTC 494; *EBC v. D.B. Modak* (2008) 1 SCC 1

A COMPARATIVE ANALYSIS ON GENDER-BASED ECONOMIC DISPARITIES IN CLIMATE CHANGE ADAPTATION STRATEGIES

- *MEKHALA RANADE & VIVEK RAJURKAR*

ABSTRACT

Climate change intensifies pre-existing socio-economic inequalities, disproportionately impacting vulnerable populations, especially women and marginalized genders. This research paper offers a comparative examination of gender-based economic differences in climate change adaptation strategies across various regions. While climate adaptation policies are designed to enhance resilience, economic obstacles such as restricted access to financial resources, land ownership, and job opportunities impede women's capacity to adequately respond to environmental changes. The study investigates how these differences appear in both developing and developed economies, emphasizing the structural and institutional factors that lead to unequal access to adaptation resources. Through an analysis of current literature, case studies, and policy assessments, the research points out key challenges and disparities in adaptation strategies embraced by different genders. It assesses how cultural norms, legal frameworks, and economic limitations influence adaptive capacities and decision-making authority in climate-affected communities. The paper additionally addresses the significance of microfinance, government initiatives, and community-led efforts in tackling gendered economic disparities in climate adaptation. Moreover, it reviews global policies and international agreements, including the Paris Agreement and the Sustainable Development Goals (SDGs), to evaluate their efficacy in advancing gender-inclusive climate resilience. By comparing various adaptation models, the research highlights the necessity for gender-sensitive economic policies that guarantee fair access to climate financing, sustainable livelihoods, and resilience-building initiatives. The insights aim to enrich the conversation on climate justice, stressing the critical need to weave gender equity into climate adaptation frameworks. The study wraps up with policy suggestions that support inclusive financial systems, capacity-building initiatives, and collaborative decision-making processes to empower all genders in effectively adapting to climate change. Through this comparative lens, the paper aspires to offer perspectives on narrowing economic disparities and cultivating a more equitable and sustainable climate adaptation framework.

Keywords: *Climate change, Disparities, women, gender-based, economic, world bank*

I. Introduction

One of the most significant issues confronting the globe today is climate change, and its effects vary depending on the individual. Even though environmental deterioration, extreme weather, and natural disasters impact whole communities, vulnerable groups—especially women and gender minorities—frequently bear the brunt of the economic fallout. Understanding the economic differences between genders in climate change adaptation techniques is the main goal of this study. The actions done by people, groups, and governments to lessen the adverse consequences of climate change and increase resilience are referred to as climate adaptation. However, it is more difficult for women and other marginalized groups to adjust successfully due to economic obstacles such unequal access to financial resources, land, and job opportunities. Social traditions and gender roles restrict women's ability to be financially independent in many regions of the world. For instance, women are frequently in charge of agriculture and running the home in rural areas of developing nations, yet they might not have the same access to technology, financing, or property ownership as males. Because of this, they find it challenging to make investments in insurance, climate-resilient farming methods, or alternate sources of income in the event that droughts or floods destroy their crops. Similar to this, women may find it difficult to recover from climate-related disruptions like heatwaves, rising living expenses, and displacement from natural catastrophes in metropolitan areas due to economic disparities in earnings and employment possibilities.

The absence of gender-sensitive climate policies is a major obstacle to resolving these discrepancies. Many climate adaptation initiatives fail to take into account the unique financial challenges faced by different genders, which results in solutions that disproportionately benefit those with financial clout. For example, government funding for climate adaptation frequently benefits large corporations or industries with a preponderance of men, while small firms run by women and unorganized labours are neglected. This emphasizes the necessity of inclusive policies that guarantee everyone, regardless of gender, has access to financial resources, education, and support networks.

Comparing the approaches used by various nations and areas to gender-inclusive climate adaptation is crucial to comprehending these differences. While some countries have proposed legal reforms to increase women's land rights, others have put in place microfinance programs to assist women in launching climate-resilient businesses. In the meanwhile, policies like equal pay programs and gender-responsive budgeting help lower the cost of climate adaption in industrialized nations. Through an analysis of these many approaches, this study seeks to pinpoint best practices and offer fixes for closing the financial divide in climate adaptation. The function of global frameworks like the Paris Agreement and the Sustainable Development Goals (SDGs) of the UN is another crucial component of this research. Although the significance of gender equality in climate action is acknowledged by these international programs, there are significant differences in how they are implemented. While some nations have made strides in incorporating gender issues into their national climate policy, others continue to face financial and enforcement challenges. Policymakers can create more equitable and successful plans for assisting vulnerable groups by taking these distinctions into consideration.

This study emphasizes how urgently gender-inclusive economic policies are needed in the fight against climate change. Governments, corporations, and communities can guarantee that everyone has the resources to develop resilience against climate change by identifying and resolving financial imbalances. The study's conclusions will add to the larger discussion on gender equality and climate justice by highlighting the significance of economic empowerment as a crucial element of successful climate adaption plans.

II. Research Methodology

This study follows a qualitative and comparative approach, integrating literature review, case studies, and policy analysis to examine gender-based economic disparities in climate change adaptation strategies. The study employs secondary data collection from scholarly articles, reports from international organizations such as the UNDP, FAO, and World Bank, and national policy documents to identify structural economic barriers affecting women's climate resilience. A comparative analysis of different regions, particularly focusing on developing and developed economies, highlights variations in financial inclusion, land ownership, employment opportunities, and access to climate adaptation resources. Case studies of Bangladesh and Kenya provide empirical insights into real-world gender disparities in agriculture, energy access, and disaster recovery. Policy assessments explore the effectiveness of international frameworks like the Paris Agreement and SDGs in promoting gender-inclusive adaptation measures. The study's findings are synthesized to propose policy recommendations that enhance financial accessibility, equitable climate governance, and economic empowerment for women, ensuring a gender-responsive approach to climate resilience.

III. Literature Review

The literature highlights significant gender-based economic disparities in climate change adaptation, particularly in access to financial resources, employment, and land ownership. According to the [1]UNDP, women constitute 70% of the global poor, making them more vulnerable to climate-induced economic shocks such as food insecurity and displacement. Studies show that women earn only 77 cents for every dollar earned by men (World Economic Forum, 2024),[2] limiting their ability to invest in climate-resilient infrastructure, adaptive agricultural practices, and insurance.

Employment disparities further deepen economic inequality, as women are overrepresented in informal, low-paying sectors like small-scale farming and domestic work (ILO, 2024)[3]. These sectors lack financial protections, making women more susceptible to income loss from extreme weather events. For example, in sub-Saharan Africa, 90% of women work in informal agriculture, yet only 10% receive agricultural financing, restricting their adoption of climate-smart practices.

Access to financial services remains unequal, with only 63% of women having bank accounts compared to 72% of men (World Bank, 2025[4]). Limited financial inclusion, coupled with restrictive inheritance laws, prevents women from obtaining credit to invest in climate adaptation strategies. Land ownership disparities also hinder women's economic resilience—despite contributing nearly half of the agricultural labour force, women hold just 13% of agricultural land globally (FAO, 2023).[5]

Global frameworks like the Paris Agreement and SDGs recognize gender equity, yet implementation gaps persist. Case studies from Bangladesh and Kenya reveal how structural barriers prevent women from accessing climate adaptation resources, despite their central role

---

[1]United Nations Development Programme, *Women, Resilience and Climate Change* (2025) https://www.undp.org/sites/g/files/zskgke326/files/2025-04/women_resilience_and_climate_change_march_2025.pdf

[2]World Economic Forum, *Global Gender Gap Report 2024* (2024) https://www3.weforum.org/docs/WEF_GGGR_2024.pdf

[3] International Labour Organization, *World Employment and Social Outlook: Trends 2024* (2024) https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@inst/documents/publication/wcms_908142.pdf

[4]World Bank, *The Global Findex Database 2025: Financial Inclusion and Digital Connectivity* (2025) https://www.worldbank.org/en/publication/globalfindex/report

[5]Food and Agriculture Organization of the United Nations, *The State of Food and Agriculture 2023: Women in Agriculture – Closing the Gender Gap* (Rome, 2023) https://openknowledge.fao.org/server/api/core/bitstreams/5aac5078-625d-4b94-b964-bea40493016c/content

in sustaining communities. The literature underscores the urgent need for gender-sensitive policies, equitable financial systems, and inclusive decision-making processes to close the gender gap in climate resilience.

IV. Gender-based Economic Disparities in Climate Change Adaptation

People's economic status, access to resources, and financial stability all have a big impact on their capacity to adapt to climate change. However, women frequently confront greater economic risks than males in climate adaptation due to systematic gender-based disparities. Significant economic barriers for women are caused by structural differences in financial access, employment possibilities, property ownership, and wealth distribution, especially in developing countries.

Women make up 70% of the world's poor, according to the United Nations Development Programme (UNDP), which means that they are disproportionately vulnerable to climate-related economic issues such food insecurity, loss of livelihood, and displacement from extreme weather events. Their limited economic independence also makes it more difficult for them to put effective climate adaption plans into action. Additionally, according to data from the World Economic Forum (2023), women make 77 cents for every dollar earned by males on average. Their ability to invest in resilience strategies like enhanced agricultural technologies, climate insurance, and adaptive infrastructure is likewise hampered by this pay disparity, which therefore limits their financial independence. Long-term socioeconomic instability results from women's economic disadvantages, which increase their vulnerability to climate change hazards.

Income and Employment Disparities:

Employment and income inequality are among the most important gender-based economic inequities in climate change adaptation. Due to sociocultural norms, occupational segregation, and restricted access to high-paying industries, women's labour market involvement is frequently constrained. Women find it more difficult to invest in adaption strategies and recover economically from climate shocks as a result of these disparities. The International Labour Organization (ILO) claims that women are overrepresented in low-wage, unorganized occupations like small-scale trading, domestic work, and subsistence farming. These sectors provide less financial safeguards like insurance, social security, or government assistance, making them extremely susceptible to climatic variability.

For example, 90% of women in sub-Saharan Africa work in the informal sector, where incomes are erratic and jobs heavily rely on climate-sensitive industries like fishing and agriculture. Extreme weather occurrences like floods, droughts, and other natural disasters can have a direct effect on their income, further impoverishing them. On the other hand, men are more likely to work in sectors like large-scale manufacturing, energy, and construction that have systems for climate resilience and structured financial protections, which lowers their financial exposure to climate risks.

Furthermore, according to the ILO's 2022 Gender Employment Report, women in climate-affected industries make 20–30% less than males, even in formal sectors. This further restricts their capacity to invest, save, or obtain financial protection from climate shocks.

<u>Access to Financial Resources and Credit Facilities:</u>

Access to financial resources, including as credit, savings, insurance, and financial literacy, is crucial for making investments in climate-resilient infrastructure and technologies. However, long-standing gender discrimination in banking institutions, restrictive inheritance laws, and a lack of collateral for loan acquisition provide major financial obstacles for women worldwide. The gender gap in financial inclusion is still 9 percentage points, with 72% of men and 63% of women having bank accounts, according to the World Bank's Global Findex Database (2021). In rural and poor areas, where women have very limited access to formal banking services, the gap is much more noticeable.

Women's access to loans, investments in climate-resilient agricultural inputs, insurance, and sustainable livelihood transitions are all hampered by a lack of financial inclusion. In South Asia, for instance, only 27% of women have access to credit, compared to 44% of men. This hinders their adoption of climate-smart storage facilities, irrigation systems, and seeds resistant to drought. Additionally, because women are less likely than men to own real estate, financial institutions frequently require land ownership or other tangible assets as collateral for loans, severely disadvantages them. Without financial security, women remain economically dependent, diminishing their decision-making authority in climate adaption planning.

<u>Property Rights and Land Ownership:</u>

For both climate adaption and economic stability, secure land and property ownership are essential. People with land tenure are able to put long-term climate adaptation techniques like irrigation, soil conservation, and agroforestry into practice. However, gender differences in land ownership exacerbate economic inequality and hinder women's capacity to successfully adapt to climate change.

Despite being approximately 50% of the agricultural labour in many developing nations, women only make about 13% of agricultural landholders worldwide, according to the Food and Agriculture Organization (FAO, 2022). Due to institutional, cultural, and legal hurdles, women are unable to obtain land rights, which results in less investment in adaptable farming practices and financial instability.

For instance; in India inheritance laws have historically favoured male heirs, women own fewer pieces of land, which restricts their access to government agricultural programs and financing.

Even though they produce more than 80% of the food in Kenya's rural areas, women only possess 1% of the country's titled land. They are unable to take part in land-based climate adaption initiatives, obtain loans, or receive subsidies without official ownership.

Although women's property rights have been enhanced in Latin America by legal reforms, their participation in climate resilience planning is still limited due to cultural and administrative barriers that still prohibit equitable land distribution.

Women's bargaining power in local climate adaptation decisions is further impacted by their lack of property ownership, which keeps them out of important community planning projects. Their ability to recover from climatic shocks and put long-term sustainability plans into action is still severely constrained in the absence of economic security in land resources.

V. Sector-wise Comparative Analysis of Gender Disparities in Climate Change Adaptation

Different economic sectors are impacted by climate change in different ways, and how people adjust within these sectors is influenced by gender-based economic inequities. Systemic hurdles restrict women's access to financial resources, technology, and policy-making opportunities, especially in developing nations. This sectoral analysis demonstrates the ways in which gender-based economic inequities appear in important domains including disaster risk management, energy, and agriculture.

<u>Agriculture and Food Security: Gendered Barriers to Climate Adaptation</u>

One of the industries most impacted by climate change is agriculture, which is directly impacted by extreme weather events, rising temperatures, erratic rainfall, and degraded soil. Women make up a large share of the agricultural workforce, especially in underdeveloped nations, where women are responsible for food production, livestock management, and household nutrition. However, women's capacity to adjust to climate-related disruptions in agriculture is constrained by gender-based economic disparities.

Gender Disparities in Agricultural Productivity and Resource Access:

Despite playing a crucial role in the production of food, women farmers encounter institutional and financial obstacles that restrict their ability to adapt. Food poverty may be reduced by 12–17% and global farm yields could rise by 20–30% if women had equal access to agricultural resources as males, according to the Food and Agriculture Organization (FAO).[6] However, women's attempts at adapting are hampered by the following economic disparities:

Limited Access to Agricultural Inputs:

Due to financial limitations and restricted land ownership laws, women frequently do not have access to high-yield seeds, drought-resistant crops, fertilizers, and irrigation systems. (Women farmers in sub-Saharan Africa are unable to invest in climate-resilient farming practices since they receive less than 10% of all agricultural finance.)

Gender Disparities in Land Ownership: Only 13% of agricultural landholders globally are women, despite the fact that secure land tenure is essential for long-term investment in climate adaption methods. (Women's access to credit and financial stability are diminished in many nations due to customary laws and inheritance traditions that prohibit them from purchasing land.)

Exclusion from Agricultural Extension Services:

Understanding new farming methods, weather forecasting, and sustainable land management approaches are all necessary for climate adaptation. (Studies indicate that only 5% of female farmers receive agricultural training, compared to 20% of male farmers, indicating that women are frequently left out of government-led agricultural extension programs (World Bank, 2021)).

Energy Sector: Economic Barriers to Women's Participation in the Clean Energy Transition:

A key component of climate adaptation is the switch to sustainable and renewable energy. However, women's access to clean energy is restricted by gender norms and economic

[6] Food and Agriculture Organization of the United Nations, *The Status of Women in Agrifood Systems* (Rome, FAO 2023) https://openknowledge.fao.org/server/api/core/bitstreams/e7689bf7-00f0-465b-ad03-e0c56ffb14b1/content

inequality, which also affects their capacity to embrace sustainable alternatives and take advantage of jobs in the energy sector.

Limited Access to Clean Energy Solutions:

Women are exposed to health risks, financial hardships, and environmental degradation since they mostly rely on biomass fuels (charcoal, firewood, and animal waste) for cooking and heating, especially in rural and low-income areas. According to the International Energy Agency (IEA), [7]women are disproportionately affected by the 2.3 billion people who lack access to clean cooking options.

High Cost of Clean Energy: Because of their lower incomes and lack of financial support, women are sometimes unable to make the upfront investments necessary to make the switch to solar, biogas, or electric cooking options. (Only 17% of women and 32% of men in sub-Saharan Africa, the region with the worst rates of energy poverty, have access to electricity).

Gendered Financial Exclusion in Energy Investments: Women are unable to install solar panels, adopt better cooking practices, or invest in energy-efficient technologies because they have less access to loans and subsidies for the adoption of renewable energy. (Despite being the main users and managers of household energy, women only receive 10% of financial aid connected to climate change, according to a 2021 UNDP assessment.)

Employment and Economic Participation in the Energy Sector:

The renewable energy sector offers economic opportunities for climate adaptation, but women are significantly underrepresented due to gender biases in hiring, financial restrictions, and skill gaps. Compared to 40% in other industries, women only make up 22% of the workforce in the renewable energy sector (IRENA, 2023). Economic obstacles keep women out of the clean energy market, such as a shortage of capital for women-led enterprises.

Disaster Risk Management and Climate Resilience: Unequal Economic Losses and Recovery:

Floods, storms, droughts, and wildfires are examples of climate-related disasters that generate significant economic losses. However, because of their lower incomes, lack of savings, and exclusion from disaster recovery programs, women bear a disproportionately greater financial cost.

[7]International Energy Agency, *World Energy Outlook 2024* (Paris, IEA 2024) https://iea.blob.core.windows.net/assets/c036b390-ba9c-4132-870b-ffb455148b63/WorldEnergyOutlook2024.pdf

<u>Economic Impact of Climate Disasters on Women:</u>

According to studies, women's income declines considerably more than men's following climate-related disasters, making recovery more difficult for them:

According to the UN Women Report (2022)[8]:After severe weather, women's income drops by almost 50%, while men's income drops by 30%. (In Bangladesh, 70% of women lost their main source of income after the 2017 monsoon floods, whereas just 25% of men experienced the same financial hardships.)

<u>Limited Financial Resilience and Savings:</u>

Due to their lower financial resources, women find it more challenging to relocate or reestablish companies following climate-related displacement. (Only 15% of women in disaster-prone areas have savings or financial insurance, compared to 35% of males, according to a World Bank report from 2021.)

<u>Gendered Responsibilities Increase Economic Hardship:</u>

Women are primarily responsible for managing the home and providing care, which restricts their participation in initiatives aimed at economic rehabilitation. (Women frequently put feeding young children and elderly family members first during post-disaster food shortages, which raises their risk of malnutrition and financial hardship.)

VI. Case Study: – A Comparative Analysis of Bangladesh and Kenya

Due to societal injustices, restricted access to financial resources, and economic restrictions, women are disproportionately impacted by climate change. Adapting to the effects of climate change is more difficult for women than for males in the fields of agriculture, energy access, and disaster recovery. In order to draw attention to the economic differences between men and women in climate adaptation, this case study looks at two climate-vulnerable nations, Kenya and Bangladesh.

Existing gender gaps in economic resilience have been made worse by climate change, especially in nations like Bangladesh and Kenya where women are economically underprivileged despite playing vital roles in agriculture, energy, and disaster relief. Though they encounter structural obstacles to land ownership, financial resources, and contemporary

[8] UN Women, *Women, Peace, Security and Resilience Annual Report 2022* (UN Women 2024) https://www.unwomen.org/en/digital-library/publications/2024/03/women-peace-security-and-resilience-annual-report-2022

agricultural technologies, women in both nations make substantial contributions to small-scale farming, animal management, and food production. Due to cultural norms and restrictive inheritance laws, women only possess 10% of Bangladesh's agricultural land, despite the fact that over 60% of the country's rural population is employed in agriculture. This makes them extremely vulnerable to droughts and floods brought on by climate change because it restricts their access to loans, government subsidies, and crop insurance.90% of the female farmers who lost their crops during the 2017 monsoon floods lacked the funds to reinvest in climate-resilient seeds and irrigation systems, which pushed many of them into low-paying informal professions or forced them to migrate. Male farmers, on the other hand, recovered more rapidly because they had easier access to government assistance funding. Similarly, because traditional land tenure rules in Kenya promote male inheritance, barely 1% of the country's 75% female agricultural labour owns land. Because of this, they are unable to obtain bank financing and implement climate-smart farming methods. According to research by the International Food Policy Research Institute (IFPRI),[9] male farmers were twice as likely as female farmers to obtain government drought relief payments in 2019 after severe droughts in Kenya affected over 2 million people and caused food insecurity. While men had more access to financial aid and water conservation initiatives, women were frequently compelled to sell cattle at reduced prices or cut back on food consumption.

Gender-based economic disparities extend beyond agriculture to the renewable energy transition and energy access. Women spend an average of four hours a day gathering firewood and biomass in rural Bangladesh, where 45% of families lack access to clean cooking technologies. This increases their financial risk by limiting their capacity to participate in activities that generate revenue. Only 25% of women have benefited from government investments in solar household systems, mostly because of the high costs and restricted credit availability. Men, on the other hand, have greater access to training and jobs in renewable energy, and they profit from positions installing and maintaining solar panels. Women have found it difficult to gain from renewable energy projects in Kenya, although clean energy sources provide 75% of the nation's electricity. Only 18% of the loans for solar installations were granted to female entrepreneurs, despite the Kenya Off-Grid Solar Access Project's

[9] International Food Policy Research Institute, *Reaching Smallholder Women with Information Services and Resilience Strategies to Respond to Climate Change* (IFPRI 2022) https://www.ifpri.org/project/grassroots-women-information-on-adaptation/m

(KOSAP) [10]goal of increasing rural access to solar electricity. Despite being the main consumers of household energy, women were 30% less likely than males to obtain funding for clean energy investments, according to a World Bank [11]study. Furthermore, just 20% of Kenya's solar industry's workforce is female, despite the fact that the sector employs over 10,000 people. This limits women's economic potential in climate adaptation and clean energy growth.

Gender differences in financial resilience are further highlighted by the economic effects of climate-related calamities. Floods and cyclones are common in Bangladesh, and women are disproportionately affected. Women's income decreased by 60% after Cyclone Amphan (2020),[12] while men's income decreased by 30%. Furthermore, more than 70% of women who worked in non-formal occupations (including housework and street hawking) lost their main sources of income. In order to repair their houses and businesses, many households led by women had to take out high-interest loans because they got less financial recovery assistance. In 2018, more than 10,000 homes were devastated by flash floods in Kenya, forcing thousands of families to relocate.

The systemic obstacles that impede women's financial resilience in climate change adaptation are exemplified by the economic difficulties that women encounter in Bangladesh, Kenya, and in agriculture, energy access, and disaster recovery. Women are more vulnerable to climate-related economic losses because of their limited land ownership, financial isolation, and lack of access to government relief money, climate-smart technologies, and sustainable energy programs. Gender-responsive financial policies, fair access to resources for climate adaptation, and more government backing for women-led projects in renewable energy, agriculture, and disaster resilience are all necessary to address these inequities. Inclusive policies that acknowledge and address the economic obstacles encountered by women in developing nations are necessary to achieve climate resilience for vulnerable populations.

---

[10] Kenya Ministry of Energy, *Kenya Off-Grid Solar Access Project: Environmental and Social Management Framework* (MoE 2017) https://www.kplc.co.ke/storage/01JBV00EXPN41YEAQBZEMH61ZV.pdf

[11] World Bank, *Kenya's Economic Recovery Remains Strong, Although Slowed by Drought and Inflation* (World Bank 2022) https://www.worldbank.org/en/news/press-release/2022/12/08/kenya-s-economic-recovery-remains-strong-although-slowed-by-drought-and-inflation

[12] UN Women, *Rapid Gender Analysis: Cyclone Amphan Emergency Response in 2020* (UN Women 2020) https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Publications/2020/06/RGA%20Cyclone%20Amphan%20Bangladesh%20revised%20%28002%29.pdf

VII. Government Policies and Institutional Frameworks

In order to address gender gaps in climate adaptation, institutional structures and governmental policies play a critical role. In order to ensure that women, who are disproportionately impacted by climate change, receive sufficient support, a number of international accords and state legislation seek to incorporate gender perspectives into climate action. The success of these activities is still constrained, though, by issues including structural discrimination, a lack of money, and gaps in policy implementation.

International Frameworks and Agreements:

The necessity of gender-inclusive climate policies is emphasized in a number of international accords and programs. The Paris Agreement (2015), [13]which acknowledges the significance of gender equality in climate action and adaptation plans, is among the most important frameworks. The importance of gender-responsive strategies in boosting resilience and lowering vulnerabilities is particularly highlighted in Article 7 of the Agreement. In order to encourage women's involvement in climate decision-making, financial inclusion, and access to climate adaptation technologies, the UNFCCC [14]has also created Gender Action Plans (GAPs).

Another key initiative is the United Nations Development Programme (UNDP) Gender and Climate Change Strategy (2023-2026). This strategy aims to:

- Increasing the number of women in climate discussions and policymaking will help to strengthen their leadership in climate governance.
- Ensure that women in climate adaptation programs have equitable access to funds for projects that increase resilience.
- Promote female-led innovation in disaster resilience initiatives, renewable energy, and climate-smart agriculture.

Although these frameworks lay the groundwork for gender-responsive climate action, their success hinges on how motivated and able national governments are to put them into practice locally.

[13]*Paris Agreement*, opened for signature 22 April 2016, entered into force 4 November 2016, UNTS No I-54113, art 7.
[14]United Nations Framework Convention on Climate Change, *Enhanced Lima Work Programme and Gender Action Plan* (UNFCCC, 2019) https://unfccc.int/topics/gender/workstreams/the-gender-action-plan

Country-Specific Policies and Programs:

A number of nations have implemented particular policies and initiatives to empower women in climate adaptation, agriculture, and financial resilience in recognition of the gendered effects of climate change.

1. *India: Mahila Kisan Sashaktikaran Pariyojana (MKSP)*

- The National Rural Livelihoods Mission (NRLM) launched the Mahila Kisan Sashaktikaran Pariyojana (MKSP) [15]to increase the economic empowerment of women farmers in India, where women comprise 75% of the rural labour. The program's main objectives are:
    - Supplying funding so that female farmers can get better seeds, irrigation systems, and organic farming methods.
    - Training women water-saving and climate-resilient farming practices like agroforestry.
    - Establishing self-help groups (SHGs) that give women access to loans and microfinance for investments in climate adaptation.
- MKSP has benefited over 3.2 million women farmers across India by improving their economic security and climate resilience.

2. *Kenya: Women's Climate Centres International (WCCI)*

- In Kenya, where women face economic barriers in land ownership, agricultural investment, and clean energy access, the Women's Climate Centres International (WCCI) [16]was launched to provide:
    - Women can invest in climate-resilient farming and renewable energy companies with the help of financial literacy training and entrepreneurial assistance.
    - Microfinance initiatives that give female farmers access to climate-smart equipment like drought-tolerant seedlings and solar irrigation pumps.
    - Initiatives for community-based disaster resilience that train women in emergency response techniques, food storage, and flood preparedness.

[15]Ministry of Rural Development (India), *Mahila Kisan Sashaktikaran Pariyojana: Guidelines* (MoRD 2017) https://msrls.nic.in/sites/default/files/mksp-agriculture-guidelines.pdf

[16] Women's Climate Centres International, *Impact Report 2022* (WCCI 2022) https://www.shechangesclimate.org/scc-resources/impact-report-2022

- By strengthening their economic resilience, this program has assisted thousands of rural Kenyan women in adapting to climate change. The full potential of these gender-focused climate adaption programs is, however, hampered by issues including inadequate funding, male-dominated land tenure systems, and delays in policy implementation, much as in India.

VIII. Recommendations for bridging Gender-based Economic Disparities in Climate Adaptation

Targeted financial inclusion, legislative changes, and increased female involvement in climate governance are necessary to address gender-based economic gaps in climate adaption. Women are less resilient to the effects of climate change because of systemic restrictions that restrict their access to capital, land, and decision-making platforms. In order to overcome these obstacles and guarantee fair climate adaptation for all, governments, financial institutions, and international organizations must put inclusive policies and economic empowerment initiatives into place.

Strengthening Financial Inclusion for Women:

Women's restricted access to financial resources is one of the biggest obstacles to their adaptation to climate change. Rural women frequently face obstacles when trying to obtain loans, insurance, or government funding for climate adaption projects. To address these concerns, microfinance services and climate-specific financial aid can be expanded by:

Offering grants and low-interest loans to women-led climate adaption initiatives, including eco-friendly businesses, renewable energy companies, and climate-resilient agribusiness.

Promoting collaborations between the public and commercial sectors to create gender-responsive financial initiatives that give women's involvement in sustainable industries top priority.

To ensure that funding reaches those most at risk from climate change, national climate adaptation programs should set aside a certain proportion of their resources for projects led by women.

In Bangladesh, for instance, the Grameen Bank [17]has effectively given microloans to thousands of female company owners, enabling them to make investments in sustainable enterprises and climate-smart agriculture. By extending these models worldwide, women's economic resilience in climate adaption can be enhanced.

Policy Interventions for Equitable Adaptation Strategies:

Gender-specific issues are not well addressed by many national climate policies, which frequently ignore the financial obstacles that women encounter when trying to get land, funds, and adaption technology. To address this disparity, governments need to:

Create gender-responsive climate policies that specifically address financial assistance, job openings, and leadership positions for women.

Make sure that the needs of women are given top priority in climate adaption plans, especially in the areas of energy transitions, agriculture, and disaster risk reduction.

Policymakers will be able to monitor and assess the economic effects of climate change on women if gender-disaggregated data collection is mandated.

For instance, gender-responsive measures have been successfully incorporated into Rwanda's National Strategy for Climate Change and Low Carbon Development, guaranteeing that women receive funding for climate adaption initiatives. Global adoption of comparable frameworks is necessary to lessen economic inequalities in climate adaption initiatives.

Enhancing Women's Participation in Climate Governance:

Due to their frequent exclusion from climate governance and policymaking, women have less power to affect financial allocations, economic policies, and adaption plans. In order to strengthen women's leadership in climate governance, it is necessary to:

Quotas for the proportion of women in national and international bodies that make climate policy.

Programs for developing leaders that teach women financial management, policy advocacy, and climate governance.

[17] Grameen Foundation and Oxfam America, *Climate Change and Microfinance* (Oxfam America 2025) https://www.oxfamamerica.org/press/grameen-foundation-and-oxfam-america-release-new-report-on-climate-change-and-microfinance/

Financing for climate organizations run by women, guaranteeing that their opinions are heard during policy debates and decision-making.

Countries like Norway and Canada have successfully improved women's representation in climate governance, resulting in more inclusive and effective adaptation plans. This strategy should be adopted by other countries to guarantee that plans for climate change sufficiently reflect the economic requirements of women.

IX. Conclusion

In conclusion, Building inclusive and resilient communities in the face of climate change requires addressing gender-based economic gaps in climate adaptation. Women encounter structural obstacles such restricted land ownership, limited access to financing, and exclusion from climate governance, especially in the fields of agriculture, energy access, and disaster recovery. Case studies from Bangladesh and Kenya show how these inequalities increase women's susceptibility to economic losses brought on by climate change, but they also show how women-led initiatives can propel sustainable solutions. Women can be empowered to fully engage in climate-smart agricultural, renewable energy, and disaster resilience initiatives by bolstering financial inclusion, legal frameworks, and policy actions. Furthermore, fostering gender-responsive climate policy, investing in education, and guaranteeing women's involvement in climate governance would all contribute to reducing current disparities and opening up economic opportunities for women in climate adaptation. Governments and organizations may unleash women's potential as important drivers of economic sustainability and climate resilience by incorporating gender-sensitive approaches into national and international climate initiatives. This will promote a more just and adaptable future for everybody.

LEGAL MECHANISMS FOR CLIMATE CHANGE ENFORCEMENT: HARMONISING ENVIRONMENTAL PROTECTION WITH CONSTITUTIONAL RIGHTS

"Conservation is a state of harmony between men and land."-Aldo Leopold

ABSTRACT

A worldwide phenomenon, urbanization, has shaped communities for ages. Urbanization is a continuous trend that has altered the social, economic, and political stability of many nations. It has undoubtedly given people all around the world a wealth of opportunities, but has also presented serious threats to the stability of the environment. One of the main concerns at the moment is uncontrollable climate change brought on by the global urbanization and associated urban developments. Climate change is a worldwide problem with extensive environmental, economic, and social repercussions that is primarily caused by haphazard human activities. Extreme weather conditions and rising temperatures brought on by drastic climate change have had an unimaginably negative impact on people's lives. States have ratified regional agreements, laws, policies, and constitutions that guarantee everyone the human right to a safe, clean, healthy, and sustainable environment. A safe and stable climate, the preservation of ecosystems and biodiversity, a pollution free environment and access to justice in environmental concerns are all necessary to uphold this Constitutional right. Legal frameworks must evolve, as climate change intensify, to effectively address its challenges and consequences. This paper analyses the contribution of legal mechanisms in enforcing climate change policies, focusing on how constitutional rights can be balanced with the need for robust environmental protection. By understanding the connection between climate justice and constitutional obligations of states, this research paper also discusses about the evolving role of the judiciary in enforcing climate laws in alignment with the provisions of the Constitution.

Keywords: *Urbanisation, Climate Change, Constitutional Rights, Environmental Protection, Climate Justice, Human Rights*

MANDATORY SHARING OF DATA AMONG ONLINE SEARCH ENGINES: NEED FOR PRO-COMPETITIVE INTERVENTIONS

- *NAVEED AHMAD*

INTRODUCTION

In today's digital World, the internet has become indispensable for information, communication, and commerce. The internet is the repository of a vast amount of information, which can easily be accessed using online search engines. This makes online search engines a central part of our daily lives. However, even after playing an integral role in all spheres of life, online search engines do not charge a penny for most of the services that they offer to the end users. This is made possible by network effects and the multi-sided nature of the market.[1] Online Search Engines typically collect data regarding search queries entered by the end users and behavioural data as to how they have interacted with the search results. This data is then used to train the algorithms to provide relevant search results and targeted advertisements.[2] The Online Search Engines earn revenue from the online advertisements on their platform. This provides dominant entities with a huge competitive advantage over other firms. A huge end-user base translates into huge amounts of user data and, consequently, better search results. It also translates into more demand among advertisers and better-targeted advertisements due to a better-trained algorithm.[3] To reduce the competitive advantages of the incumbents, the European Union (EU) passed the Digital Markets Act (DMA).[4] The Digital Markets Act provides for additional obligations and restrictions for enterprises that are designated as a Gatekeeper in any of the Core Platform Services ("CPS").[5] Online search engines have been included in the definition of CPS.[6] One of the obligations that only applies to Online Search Engines is the obligation to provide ranking, query, click and view data to any third-party undertaking under article 6(11) of the DMA.[7] The draft Digital Competition Bill ("DCB") in India is heavily influenced by the DMA and contains similar provisions on many of the issues.[8] However, the DCB does not contain the mandatory data sharing provision mentioned in article 6(11) of the DMA. Against this backdrop, it becomes necessary to investigate the need for a similar provision in India.

---

1 Gunnar Niels, Helen Jenkins & James Kavanagh, *Economics for competition lawyers* (3rd Edition, OUP) [57-59]
2 Online Platforms and Digital Advertising: Market Study Final report (Competition & Markets Authority, July, 2020) [43-46]
3 ibid
4 The Digital Markets Act, 2022
5 The Digital Markets Act, 2022, arts 3, 5-7
6 The Digital Markets Act, 2022, Art. 2(2)
7 The Digital Markets Act, 2022, Art. 6(11)
8 Pankhudi Khandenwal, "Tying, Self-Preferencing and the Digital Competition Bill: A Changing Landscape for Competition Intervention?" 19 IJLT 1

In this academic sphere, a lot of literature exists on the importance of data in the digital markets.[9] Some scholars have also argued that data is an essential facility and a refusal to provide the same can be considered as an abuse of dominance.[10] However, no literature exists on the necessity of a mandatory data sharing regime akin to Article 6(11) of the DMA in India. It is this gap that this paper seeks to fill. This paper deals with two research questions. The first question is whether a mandatory data sharing regime is necessary in the Online Search Engines Market in India. The second is whether mandatory data sharing is feasible considering possible conflicts with Privacy and Intellectual Property (IP) rights. In this paper, I shall firstly, argue that a mandatory sharing of Search queries, clicks, and view data ("Click and query") is necessary to protect competition in the market for Online Search Engines. Secondly, look at a possible way of enforcing such a provision and argue that it can be balanced with any privacy or IP rights concerns. I shall majorly rely upon Legal and Economic concepts as well as surveys conducted by different agencies across the globe to support my claims.

I. Online Search Engines: Need for data Sharing to break perpetual Monopoly

In this section, I shall firstly, provide a brief overview of the relevant markets, the players involved and the lack of competition in the markets; Secondly, discuss the importance of data for providing Online Search services; Thirdly, I shall highlight the loss of consumer welfare that the lack of competition is causing.

A. Market for Online Search Engines and Online Search Advertisements: More than a decade-long monopoly

As discussed in the introduction, Article 6 (11) only applies to Online Search Engines. Online Search Engines is further defined as: *"a digital service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found"*.[11]

[9] Anush Ganesh, "Effective Remedies in Digital Market Abuse of Dominance cases" (2024) European Competition Journal 1; Alissa Johnson & Ors, "A Strategy for Challenging Anticompetitive Refusals to Deal in the Digital Economy (Department of Justice Conference, Yale University); Erik Hovenkamp, "The Antitrust Duty to Deal in the Age of Big Tech" (2022) 131(5) The Yale Law Journal 1385; Michael L. Katz, "Multisided Platforms, Big Data, and a Little Antitrust Policy" (2019) 54 Review of Industrial Organization 695

[10] Garima Gupta, "Antitrust Concerns in the Age of Data-Driven Economies: The Need to Revive the 'Essential Facilities Doctrine'" (2024) 45 Liverpool Law Review 209; Edouard Bruc, "Data as an essential facility under EU law: How to define the "Target" market and divert the data's pipeline" (2024) 15(2) European Competition Journal 177; Inge Graef, "Rethinking the Essential Facilities Doctrine for the EU Digital Economy" (TILEC Discussion Paper, 2019)

[11] Regulation (EU) 2019/1150 of the European Parliament and of the Council, Art. 2

The requirement of *"all websites"* in the above definition effectively means that the market only includes players that offer the services of a general web search rather than the services of specialized search services that are restricted to specific domains like hotels, restaurants that are offered by many other companies.[12] In effect, the market for Online Search Engines is similar to the relevant market of *"General Web Search"* defined by the CCI in the Google Ecosystem Case.[13] Therefore, for the purposes of this paper, reference to Online Search Engines shall mean the market for General Web Search. In the Google Ecosystem case, the CCI had traced the market share of different players in the market from 2009 to 2019. Google consistently had more than 95% of the market share while other players like Bing, Yahoo, etc, never had more than 3.5% of the market share in any of the years.[14] The trend has continued, and Google still has more than 95% market share in Online Search Engines in India.[15] In the European Union[16] and globally[17], the picture remains the same, with Google consistently having more than a 90% share for the past 10 years. I shall discuss the factors contributing to Google's high market share in the next sub-section.

Online Search Services and Online search advertising are two sides of the market for Online Search Engines. The revenue from the Online Search advertising is used to maintain and upgrade the Online Search Services.[18] Online Search advertising is, however, not the only source of revenue for Google. Google also generates revenue from Online display advertisements.[19] The CCI and other regulators have already differentiated between the two markets in their past decisions and reports.[20] For the purposes of this paper, I shall focus solely on the market for Online Search Advertisements. This is because the Online Search advertising market is open only to Online Search Engines. The players operating in the market for Online Search advertisements are the same as players operating in the Online Search Services market.[21] The Online Display advertisement market has other platforms like Meta, Amazon, etc.[22] Further, Google is present in the market for Online Display advertisement through YouTube, Google Maps, and other products

[12] In Re: Umar Javed & Ors. v. Google LLC & Anr (CCI, Case no. 39/2018) [205- 220]; Google Search (Shopping) [EC, case AT.39740] [5.2]
[13] Umar Javed (n 12) [205-206]
[14] Umar Javed (n 12) [222-224] [244]
[15] Market share of leading search engines in India from January 2018 to June 2024 (StatCounter, Statista)
[16] Market Share of Leading Search Engines in Europe from January 2015 to March 2024 (Statista)
[17] Market Share of Leading Search Engines worldwide from January 2015 to March 2025 (Statista)
[18] Michal S. Gal & Nival Elkin Koren, "Algorithmic Consumers" (2017) 30(2) Harvard Journal of Law & Technology 309
[19] CMA (n 2) [211-290] Prachi Kohli v. Whatsapp LLC (CCI, Case No. 05/2021) [224.3]
[20] CMA (n 2) [211 – 260], Prachi Kohli v. WhatsApp LLC (CCI, Case no. 05/2021) [109.2-110]
[21] CMA (n 2) [213]
[22] WhatsApp (n 19) [216]

that are not connected with the Online Search services.[23] Further, from the demand side, online search and display advertisements are not substitutable as they serve different purposes. Search advertisement is intent-based, that is, it is targeted towards customers who are already looking for the product. Online Display, on the other hand, is more suitable for raising brand awareness and venturing towards newer audiences.[24] Therefore, comparing the revenue generated by Google through online display advertisement with that of other Online Search Engines will not provide a correct assessment.

In the Google Ecosystem order, the CCI found that the revenue generated by Bing and Yahoo in the relevant market during the period of 2011 to 2018 was minuscule in comparison to Google.[25] This was because Google had more than 95% of the market share in the Market for General Web Search, which left no incentive for the advertisers to opt for Bing or Yahoo.[26] The condition of the market is expected to be similar since Google continues to hold more than 95% share in the market for general web search in India.[27] Therefore, Google's market share in the market for Online Display advertisement market should remain the same. The condition is not unique to India, as Google held more than 90% of search advertising revenue from 2010 to 2019 in the United Kingdom.[28] Therefore, Google enjoys a High Market Share not just in India but in developed markets like the United Kingdom as well. In the next sub-section, I shall look at the factors that have contributed to the continued high market share of Google and argue that access to some of the data collected by Google is necessary to build a product that can compete with the Google Online Search Engine.

B. Impossible to Compete: Access to Data a prerequisite for building a Competitive Online Search Engine

Online Search Engines collect aggregated click and query datasets. Click and query dataset is essentially information about the queries that the consumers have entered into the search box and the links that they have clicked from the results that were shown.[29] Click and query data is then used to train algorithms, which makes changes to the order of results shown (ranking).[30] The click

---

23 Annual revenue of Alphabet from 2017 to 2024, by Segment (Statista) <https://www.statista.com/statistics/633651/alphabet-annual-global-revenue-by-segment/>
24 CMA (n 2) [217 – 218]
25 Umar Javed (n 12) [244]
26 ibid [252]
27 Statista (n 15)
28 CMA (n 2) [224]
29 'How Does Google Determine Ranking Results - Google Search' (*How Search Works*) <https://www.google.com/intl/en_us/search/howsearchworks/how-search-works/ranking-results/> accessed 9 May 2025.
30 ibid

and query data not only help in improving the quality of results shown but also help advertisers reach consumers who are more likely to avail their products or services. This click and query data can also be used to develop newer algorithm models that can suggest corrections to spellings.[31] This makes the Online Search Engine that has access to huge amounts of data highly superior in comparison to the ones that do not have access to the data. In a survey conducted by Duck-Duck-Go, consumers mentioned that relevance and quality of search results are the most important criteria for choosing a Search Engine.[32] Google's competitors like Duck-Duck Go and Bing have tried other ways of gaining consumers, like non-collection of personal data[33], providing rewards and incentives to consumers[34], respectively. However, all these strategies have failed, and DuckDuckGo and Bing could not effectively gain market share. This implies that a competitor will have to at least provide a similar standard of relevance in search results in order to compete with Google. The value of relevant search results seems to be so high that consumers are not responding to any other incentives provided by the competitors. However, as discussed earlier, the massive difference in market share and consequently the difference in the amount of data collected make it impossible to build a product of similar quality. In the next sub-section, I shall discuss some of the consumer harms that result from a lack of competition in this market.

C. The Cost of Online Search: Loss of Innovation and Consumer Welfare

The use of an Online Search Engine may come at zero cost to the consumers. However, the weak competition in the Online Search Advertising market is expected to significantly raise the cost of advertising for producers.[35] The higher cost of advertisement ultimately adds to the total cost of the producers and gets passed down to the consumers in the form of increased prices of goods and services. Consumers also face a lack of choice and are forced to accept whatever terms and conditions are put forward by the incumbent. In a more competitive market, we would expect competition for Consumer-friendly terms and conditions.

The highly concentrated nature of the market and the high entry barrier also result in a lack of innovation. As other players do not have the capability to make a product of similar quality, they lose the ability to innovate further. A lack of sufficient revenue also affects their ability to invest in R&D. Google also does not have any strong incentive to substantially upgrade or improve the

[31] CMA (n 2) [92]
[32] 'Search Preference Menu Immediately Increases Google Competitors' Market Share by 300-800%' (*Spread Privacy*, 30 October 2019) <https://spreadprivacy.com/search-engine-preference-menu/> accessed 14 May 2025.
[33] 'DuckDuckGo - Protection. Privacy. Peace of Mind.' (*DuckDuckGo*) <https://duckduckgo.com> accessed 14 May 2025.
[34] 'Bing Rewards | Microsoft Bing' <https://www.microsoft.com/en-gb/bing/features/rewards-features-tips/> accessed 14 May 2025.
[35] Robert S. Pindyck, Daniel L. Rubinfeld et. al, *Microeconomics* (Pearson, 9th Edition) [369-370]

quality of its product. As a result, the perpetual dominant position of Google has also translated into a lack of innovation.

II. Mandatory Data Sharing: Procedures and Conflicts

From the discussion in the previous section, it is clear that the unique nature of the Online Search Engines market is such that click and query data not only provides a competitive advantage but is a necessary raw material for the development of the product. Without access to this data, a competitor will not be able to develop a product of similar quality. This feature of the product is unique from most other markets. Digital markets are usually prone to high switching costs and entry barriers. However, the development of the product is usually not dependent on the sharing of a particular resource by a competitor.[36] This makes the nature of the product unique and ensures that a refusal to supply the same to the competitor is enough for Google to maintain dominance for years and decades. The only solution, therefore, is to mandate the sharing of click and query data that Google collects so that the development of similar or better products is not stopped. In this section, I shall firstly discuss ways of enforcing a mandatory data sharing regime; Secondly, address possible conflicts with privacy and Intellectual Property Rights.

A. Non-Personal Data Authority: Operationalizing the Non-Personal Data Governance Framework

After the DMA came into force, Google has complied with Article 6(11) by starting the European Search Dataset Licensing Program.[37] Under the program, Google provides access to a dataset of more than 1 billion queries in all countries across the European Economic Area.[38] This dataset includes click, view, query, and ranking data.[39] All the data shared is anonymized following a frequency threshold method as already provided in article 6(11). The licensing program, however, has faced criticism from competitors for the data anonymization policy followed by Google. DuckDuckGo has alleged that Google's anonymization technique reduces the benefits that can be derived from that data.[40] Therefore, a contractual licensing system may not be ideal for enforcing the data sharing obligation.

---

[36] For example, platforms for Hotel booking or shopping do not need a large amount of data, and they can gain at least make a product that is competitive. It is possible for a new entrant to make a similar product as MakeMyTrip, but the usefulness of the platform will not be substantially lower.
[37] Alphabet, "EU Digital Markets Act (EU DMA) Compliance Report" <www.transparencyreport.google.com/report-downloads?hl=en> accessed 9 May 2025
[38] ibid [185-187]
[39] 'Google European Search Dataset Licensing Program | Google Search Central | Support' (*Google for Developers*) <https://developers.google.com/search/help/about-search-data-program> accessed 14 May 2025.
[40] 'Roadblocks to Competition: Investigate Google's Non-Compliance with the EU's Digital Markets Act' (*Spread Privacy*, 20 November 2024) <https://spreadprivacy.com/investigate-google-dma/> accessed 14 May 2025.

A mandatory data sharing regime is not entirely novel in the Indian policy space. The Gopalakrishnan Committee had already recommended the same under the non-personal data governance framework.[41] The framework envisaged for the creation of a Non-Personal Data Authority, which will look at the policy and procedure for data sharing among entities.[42] This may provide for a better mechanism that will ensure that the data provided is useful, compliant, and free from risks like privacy. The Authority can also look at whether the price of the licence is reasonable. An excessively high price may defeat the purpose of the provision.

B. Data Sharing vs Privacy and IP: In Search of a Balance

A prominent argument against the adoption of a mandatory data sharing regime is a possible conflict with data privacy[43] and IP rights. In this sub-section, I shall deal with both arguments.

One of the possible reasons why the DCB has an obligation for Data Portability but not data sharing with third parties is compliance with the Digital Personal Data Protection Act, 2023 ("DPDPA").[44] The DPDPA requires consent from Data Principals before their personal data is processed or shared with any third party.[45] Data Portability does not require data to be shared with any third party, which is why compliance with DPDPA is not an issue.[46] For a mandatory data sharing provision akin to article 6(11) of DMA, data has to be shared with third parties. However, the search and query data is generally non-personal in nature and is not capable of identifying any person.[47] Further, personal data can be anonymised and identification of the data principal is not possible. So, DPDPA will not be a bar for the sharing of data, and privacy concerns do not exist as no personal data is being shared.

Another possible argument against adopting a provision similar to Article 6(11) could be the protection of IP rights and an adverse effect on the incentive to innovate. The Indian copyright law does not cover raw data or ideas.[48] It does not have a sui generis protection over databases, which is present in the EU.[49] Facts or raw data cannot be copyrightable. However, a compilation or database may enjoy copyright protection if the author has exercised their own skill and judgment

---

[41] Report by the Committee of Experts on Non-Personal Data Governance Framework (MEITY, 2020)
[42] ibid [20]
[43] Sophie Stalla-Bourdillon and Bárbara da Rosa Lazarotto, 'Search Queries and Anonymisation: How to Read Article 6(11) of the DMA and the GDPR Together?' [2024] European Law Blog <https://www.europeanlawblog.eu/pub/2uxr4anu/release/1> accessed 14 May 2025.
[44] Digital Personal Data Protection Act, 2023; Draft Digital Competition Bill, 2023
[45] Digital Personal Data Protection Act, 2023, s4(1)
[46] Draft Digital Competition Bill, 2023, s 12(3)
[47] CMA (n 2) [366]
[48] *Tech Plus Media Private Ltd. V. Jyoti Janda & Ors.* 2014 SCC OnLine Del 1819
[49] Directive 96/9/EC (EC, 1996)

and the database has sufficient originality.[50] A mere mechanical database containing the number of times a query has been searched or the number of times a link has been clicked will not fall under copyright protection. However, even if some form of copyright protection is established, the Online Search Engine is not being forced to give up the data for free. They can still charge a reasonable amount for licensing the search and query data. The benefits to consumers, innovation, and competition far outweigh the grant of absolute copyright protection that would result in a perpetual monopoly. Therefore, a reasonable restriction on copyright protection may be allowed by which a possible Systemically Significant Digital Enterprise (SSDE) in the Online Search Engines market may be forced to license its search and query data in exchange for a reasonable fee. This would not adversely affect the incentive to innovate, as the underlying algorithm or infrastructure has to be built by the competitor. It is only the raw data that the competitors will get.

III. <u>Conclusion</u>

The persistent dominance of Google in the Online Search Engine and Online Search Advertising market in India and abroad points towards the existence of structural barriers to entry. In this paper, I have shown how access to click and query data is so central to the development of Online Search Engines that without access to it, a similar product cannot be developed. As a result, the market suffers from stifled innovation, inflated advertising costs that are passed on to consumers, and a lack of meaningful consumer choice. This paper has argued that a mandatory data sharing regime akin to Article 6(11) of the EU's Digital Markets Act is necessary for India. I have also dealt with possible concerns related to privacy and IP rights. The privacy concerns are valid, and the proposed data sharing regime can adequately address them. Intellectual Property Rights violations should not arise as raw data is not copyrightable. However, even if some part of the database is copyrightable, the benefits of sharing the same far outweigh any possible negative effects of diluting the protection. Therefore, a data sharing regime similar to Article 6(11) needs to be introduced in the DCB to ensure that the Online Search Market can be made competitive.

[50] The Copyright Act, 1957 s2(o); *Emergent Genetics India Pvt. Ltd v. Shailendra Sharma* (47) PTC 494; *EBC v. D.B. Modak* (2008) 1 SCC 1

THE INHERENCE-PROPORTIONALITY FRAMEWORK IN ACTION: REGULATING THE EXCHANGE OF COMMERCIALLY SENSITIVE INFORMATION DURING COMBINATIONS

-*NAVEED AHMAD*

ABSTRACT

The Competition Commission of India is entrusted with the responsibility of regulating combinations that may have an Appreciable Adverse Effect on Competition in the market, in order to protect the competitive landscape in India. Under the suspensory merger control regime in India, no combination can be implemented without obtaining a prior approval from the CCI. The process as provided under the Competition Act, 2002 has to be duly followed before a combination can be brought into effect. A significant challenge arises during the due diligence process, where parties often exchange commercially sensitive information to determine the feasibility and profitability of the deal. While information exchanges are essential for assessing the value and risks of a transaction, they also pose the risk of premature integration which harms the competition if the transaction does not eventually materialize. To address this concern, the CCI has introduced the inherence proportionality test. This paper analyses this test which requires that any exchange of information or related arrangements must be inherent and proportional to legitimate business objectives, while ensuring that the standstill obligations under the Act are not violated. The paper also discusses a set of safeguards suggested to reduce the risk of adverse effects on competition during the course of transactions.

I. INTRODUCTION

The Competition Act, 2002[1] ('the Act') has conferred powers on the Competition Commission of India ('CCI' or 'Commission') to regulate combinations that cause or are likely to cause an Appreciable Adverse Effect on Competition ('AAEC') in the market. A corporate transaction involving acquisition or merger of one entity with another is typically undertaken as a strategic initiative to enhance long-term profitability and achieve sustainable growth within a competitive market landscape. The combination regulation provides for a suspensory framework where no combination can be consummated until it is assessed by the CCI.

The events take an interesting turn during the due diligence process which is inherent to combination transactions. At this stage an entity may share commercially sensitive information with another entity for a legitimate objective. However, such exchanges carry the risk of premature

[1] The Competition Act, 2002 (12 of 2003).

integration. If the CCI later declares the combination harmful to competition, the damage caused may be irreversible.

In order to resolve this dilemma, the CCI has laid down a standard for information exchange through its recent decision in the case of *In Re Adani Green Energy* (*'Adani Green')*.[2] This case marks the origin of the 'inherence-proportionality test,' which requires that the extent of information exchange be proportionate to the stage of the combination. The subsequent sections of this paper will elaborate on this test in greater detail.

As Lord Goff once remarked, "*We are there to help businessmen, not to hinder them; we are there to give effect to their transactions, not to frustrate them; we are there to oil the wheels of commerce, not to put a spanner in the works, or even grit in the oil.*"[3] The role of the law therefore, is to carve out a balance by framing its policies in such a manner that they promote the economic growth, allowing the businesses to strive while ensuring businesses are not subject to unnecessary impediments. The CCI's approach in the recent *Adani Green* case reflects this spirit, where it sought to preserve the competitive health of the market while simultaneously facilitating new commercial opportunities. This paper will explore the framework introduced by the CCI and examine the complexities tied to such transactions.

This paper *firstly* elaborates upon the regulatory scheme of combinations as per the Competition Act, 2002. *Secondly,* it delves into the meaning of the 'standstill obligations' imposed over the combinations. *Thirdly,* it explains the exchange of sensitive information during the due diligence process and its outcomes. Further, the paper shall build upon the gun jumping concerns and shall explore the *inherence proportionality* test developed by the CCI. *Lastly*, the paper suggests various safeguards to avoid the anti-competitive concerns.

II. COMBINATION REGULATION UNDER COMPETITION ACT, 2002

The CCI has powers to regulate mergers, acquisitions and amalgamations and assess whether they cause an AAEC in the market, under Sections 5 and 6 of the Act.[4] The CCI can prohibit any combination which causes or is likely to cause an AAEC within the relevant market in India. There are two stages to every combination transaction under the Act:

i. The notification of the combination to CCI
ii. Passing of an order to approve, reject or modify the transaction.

---

[2] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act, 2002* Reference No C-2021/05/837.
[3] *Commercial Contracts and the Commercial Court* (1984) LMCLQ 382, 391.
[4] The Competition Act, 2002 (12 of 2003) s 5.; The Competition Act, 2002 (12 of 2003) s 6.

The Act places a requirement of notification for transactions falling under certain threshold limits, which are prescribed under Section 5 of the Act. The threshold values concern the turnover and asset value of the parties, viz. the target and the acquirer. It provides that any acquisition or merger or amalgamation which exceeds the threshold prescribed therein, is a combination for the purposes of the Act and there is a mandatory notice requirement for this transaction.

This pre-consummation obligation is prescribed under Section 6(2) of the Act which states that the parties entering into a combination shall notify the CCI disclosing details of the combination before its consummation.[5] The post-notification procedure/*standstill obligation* is provided in Section 6(2-A)[6], which stipulates that after filing the notice, no combination shall come into effect until the expiry of 150 days from the date of filing of the notice, or until the CCI passes an order under Section 31 of the Act, whichever is earlier.[7] The CCI may approve the combination by passing an order, if it is of the opinion that the combination does not or is not likely to cause an appreciable adverse effect on competition. Moreover, Section 29(1-B)[8] mandates that the Commission shall form a prima facie view within 30 days of receipt of notice, otherwise, there is a deemed acceptance of the combination.

The concept of *Deal Value Threshold* ('DVT') has been introduced in the 2023 Amendment Act, through insertion of Section 5(d) and introduction of the CCI (Combination) Regulations, 2024[9]. The parties, which would have earlier benefited from the exemption of *de minimis*, may now have to seek approval from the CCI if the value of the deal meets the DVT criteria. It includes two aspects: *first*, the deal value must cross INR 2,000 crores and *second*, the target must have substantial business operations in India. Any deal which satisfied both these conditions has to be notified to the CCI.

Therefore, it can be concluded that these provisions require combinations to be notified to the CCI, thereby, giving the Commission an opportunity to form a prima facie view on whether the transaction may cause an Appreciable Adverse Effect on Competition (AAEC). Section 6(2-A) also imposes a *standstill obligation*, which means that the parties cannot complete the transaction until the CCI issues its order or 150 days have passed since the notice was filed. Under Section 31 of the Act, the Commission may approve the combination, reject it, or require modifications to address competition concerns.

[5] The Competition Act, 2002 (12 of 2003) s 6(2).
[6] The Competition Act, 2002 (12 of 2003) s 6(2-A).
[7] The Competition Act, 2002 (12 of 2003) s 31.
[8] The Competition Act, 2002 (12 of 2003) s 29(1-B).
[9] The Competition Commission of India (Combinations) Regulations, 2024 (7 of 2024).

III. STANDSTILL OBLIGATIONS UNDER THE 2002 ACT

The combination regulatory regime is in the nature of a mandatory and a 'suspensory regime' wherein, any combination that meets the requirements of asset or turnover thresholds under Section 5 has to be notified before the Commission. As also discussed above, this means that a transaction cannot be consummated before, either passing of an order by CCI or lapse of a given number days, whichever is earlier.[10]

Section 6(2-A) of the Act, imposes the standstill obligation upon the parties, where even *part-consummation* is not allowed.[11] In *SCM Soilfert v. CCI,* [12] it was observed that it places an *ex-ante* obligation on the parties by using the phrase *"no combination shall come into effect"*. The Commission has to be given a chance to examine the anti-competitive effects of the proposed combination before its consummation. The underlying objective of the provision is to guarantee that the parties continue to operate as independent competitors until the transaction is assessed for AAEC and receives the Commission's approval.

In *In Re Bharati Airtel Limited*, it was again noted that the purpose of the obligation is two-fold, i.e., *firstly*, to prevent any harm to the competition in the interim stage where combination is under review and *secondly,* to prevent any harm which is not capable of being reversed in the event the transaction is not approved.[13] This acts like a safety net, protecting the competitive health of the market by mandating that the firms involved in the combination still continue to carry our activities independent of each other.[14]

Therefore, the standstill obligations help preventing any harm to competition by prohibiting the parties from undertaking activities closely related to integration before receiving approval, as any resultant harm cannot be reversed.

IV. EXCHANGE OF COMMERCIALLY SENSITIVE INFORMATION DURING DUE DILIGENCE

---

[10] Competition Commission of India, *Frequently Asked Questions Booklet* (CCI, 2022) <https://www.cci.gov.in/images/whatsnew/en/faq-english-compressed-31020221664785663.pdf> accessed 12 May 2025.

[11] The Competition Act, 2002, §6(2-A).; Competition Commission of India, *Compliance Manual for Enterprises* (Competition Commission of India, 2017) <https://www.cci.gov.in/images/publications_compliance_manual/en/compliance-manual1652179683.pdf> accessed 10 May 2025.

[12] *SCM Soilfert v CCI* (2018) 6 SCC 631.

[13] *Notice given under Section 6(2) of the Competition Act, 2002 by Bharti Airtel Limited* Combination Registration No C-2017/10/531.

[14] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act, 2002* (n 2).

In major business transactions, due diligence is conducted to understand the operations of the other party. This process requires examination of the commercially sensitive information of a competitor.[15] The Commission in its Compliance manual and FAQ Booklet acknowledges the necessity of pre-transaction due diligence and post-signing integration planning. However, while carrying out these procedures, the parties need to ensure that these arrangements are not causing a violation of the *Standstill Obligations* under Section 6(2-A).

The CCI has emphasized that nature and scope of exchange of information varies with the stage of the transaction. During due diligence, the only information desirable is of the kind which helps in an assessment of suitability of the target and for valuation of the transaction. Further, after execution of more definite agreements, the focus of the information exchange should be more towards ensuring the preservation of economic value of the target and to facilitate a successful integration planning.[16]

1. WHAT CONSTITUTES COMMERCIALLY SENSITIVE INFORMATION?

Commercially sensitive information includes exchange or transfer of forward-looking planning documents, details of projects or strategic plans, cost data, pricing and discount policies not publicly available etc. [17] Furthermore, a perusal of the Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union, facilitates an understanding that commercially sensitive information includes "*pricing, costs, capacity, production, quantities, market shares, customers, plans to enter or exit markets, or concerning other important elements of a firm's strategy that undertakings active in a genuinely competitive market would not have an incentive to reveal.*"[18] It denotes that the other relevant considerations over the sensitivity of data include, the nature and age of data[19], frequency of exchange and, the analysis of whether the exchanged information is present in public domain.

2. EXCHANGE OF COMMERCIALLY SENSITIVE INFORMATION: AN ANTI-COMPETITIVE AGREEMENT?

---

[15] ibid
[16] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act, 2002* (n 2).
[17] Competition Commission of India, *Compliance Manual for Enterprises* (n 11).
[18] European Union, Commission, 'Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements' (European Commission, 21 July 2023) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XC0721(01)> accessed 21 May 2025.
[19] Office of Fair Trading, *Agreements and Concerted Practice: Understanding Competition Law* (2004) <https://assets.publishing.service.gov.uk/media/5a7c457e40f0b6321db38123/oft401.pdf> accessed 13 June 2025.

Section 3(1) of the Act[20] prohibits any agreement between enterprises which harms or has the potential to harm the competition in the market. The provision includes in its ambit any such agreement between two parties which may be harmful to the competition. Most importantly, the Act places a very low threshold of entering into an agreement and it may be any convergence of purpose leading to anti-competitive effects, be it any informal arrangement. The exchange of commercially sensitive information may harm the competition in various manners. It has the potential of removing or reducing degree of strategic uncertainty in the market. This means reducing uncertainty about the future decisions of the competing firm.[21]

It also may allow them to reach a focal point or convergence or a common understanding, while taking their market decisions, such as allowing them to facilitate a coordination of prices.[22] This means that the information may be used as a tool to signal other parties to an anti-competitive agreement, in turn, facilitating a concerted practice. The practice of sharing such information assists in implementation of anti-competitive agreements.[23] In such cases, an assessment can be carried out to determine whether there exists an anti-competitive agreement through an analysis of the behaviour of such parties in entirety, along with examination of all the forms of evidences present, such as communication evidences, economic evidences, etc.[24]

The Commission expounded in *Paper Manufacturing Industries case*, that even the presence in the channel of discussion of information can lead to comprising one's ability to take decisions independently and has held the same to be anti-competitive in nature. In a situation where the parties are present in the channel of communication of discussion of prices and thereby, there is also fixing of prices, it leads to a contravention of Section 3(3)(a) of the Act. There is a presumption that their presence in the channel of communication influences their ability to decide independently. [25]

In another noteworthy ruling, *In Re: Express Industry Council of India v. Jet Airways, Indigo Airways and Spice Jet airways*, it was seen that where parties enter into an anti-competitive agreement, it is not necessary that the price rise happens at the same time. Rather, the companies may incorporate the agreement after an artificial gap of time to create a façade of competitive environment.[26] Therefore, it can be concluded that any agreement, including an agreement facilitating sharing of sensitive

---

[20] The Competition Act, 2002 (12 of 2003) s 3(1).
[21] *Ambuja Cements Ltd v Competition Commission of India* (2018) 95 taxmann.com 310 (NCLAT).
[22] *Rajasthan Cylinders and Containers Ltd v Union of India and Another* 2018 SCC OnLine SC 1718.
[23] *In Re Cartelisation in respect of Zinc Carbon Dry Cell Batteries Market in India* 2018 SCC OnLine CCI 5.
[24] *Express Industry Council of India v Jet Airways (India) Ltd* Case No. 30 of 2013.
[25] *In Re Anti-competitive conduct in the Paper Manufacturing Industry* Suo Motu Case No. 05 of 2016 (CCI).
[26] *Express Industry Council of India* (n 24).

information, having the potentiality of reducing competition in the market, is prohibited under the Act.[27]

The exchange of such information can lead to various collusive outcomes. It is the ordinary course of business that the undertakings under normal competitive conditions, have no incentive to publish their commercially sensitive information. It may arise in situations where the parties are planning an action in concert. Such exchange can lead to various collusive outcomes such as:

i. *Firstly,* it can be used to increase transparency between competitors and thus facilitate a coordination. It means that the information can be used to signal competitors to follow the conduct.
ii. *Secondly*, it allows for reaching a common understanding of the terms of coordination.
iii. *Thirdly,* it can be used to increase internal stability and keep a check on other undertakings to avoid their deviation.[28]

Therefore, it is evident that the exchange of competitively sensitive information can lead to formation of an anti-competitive agreement. This means that during the combination transaction, any exchange carries the potential to lead to coordinated behaviour or an anti-competitive understanding between the parties to a combination. If, during the process of due diligence, the parties begin to act in concert or prematurely integrate, it can harm competition in the market. This constitutes gun-jumping, which violates the standstill obligations imposed by the Act. The next section of the paper shall discuss this dilemma at length and also analyse the manner in which the CCI has attempted to resolve it.

V. EXCHANGE OF INFORMATION DURING DUE DILIGENCE AND GUN JUMPING CONCERNS: ANALYSING THE INHERENCE-PROPORTIONALITY STANDARD

Gun jumping refers to a situation where, before obtaining approval by the CCI, any party or parties to the combination consummate the transaction in part or wholly, which violates the standstill obligations. The CCI acknowledges that combination transactions carry within them a dual character, i.e., the legitimate need for information sharing, but also the peril of gun-jumping. The Commission has tried to mitigate this dilemma in the *Adani Green* case.[29] It has introduced a standard to be followed which enables the parties to share the information in a controlled manner, so that the gun-jumping concerns can be kept at bay.

---

[27] *Builders Association of India v Cement Manufacturers' Association* (2016) SCC Online CCI 46.
[28] European Union, Commission, 'Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements' (n 18).
[29] ibid.

In addressing the delicate balance between legitimate safeguards and compliance with standstill obligations, the Commission articulated its position through the following observation:

> "*Wherever it is felt that certain restrictions are required to be imposed or certain information is required to be exchanged/discussed to ensure preservation of economic value of assets or any other such legitimate objective, the parties ought to strive to make the arrangement as objective and precise as possible to avoid any likelihood of inference on interference with ordinary course activities of the target or causing any competition distortions in contravention of standstill obligations.*"

Here, the CCI emphasized that there may be a need for the acquirer to:

i. impose certain restrictions on the target company; or
ii. information may be needed to exchanged/discussed; or
iii. any other arrangement;

for purposes such as ensuring the valuation of business, profitability of business, or preservation of economic value of the assets of the target company, or broadly any legitimate purpose required to be served by this restriction or exchange. These objectives may be carried out but with a caveat that the arrangement does not interfere with ordinary course of business of the target.

Further, conceding that sharing of information may be a potential cause of competition distortions, an observation was made that these actions/agreements need to be examined as per the *inherence-proportionality* test/framework.[30] The CCI worded the aforementioned requirement as follows:

> *"It is incumbent on the acquirer to ensure that the form and scope of the aforesaid customary arrangements imposed by it on the target* ***is inherent and proportionate*** *to the objective of ensuring certainty in business valuation and preservation of the same and that such conditions do not violate standstill obligations as envisaged in the Act."*

Here, it clarifies that the acquirer may impose such arrangements on the target, however, it must ensure that the form and scope of agreements imposed on the target are *inherent and proportional* to the objective of ensuring certainty in business valuation or its preservation. Further, the conditions imposed on the target or information received purposes such as ensuring the valuation of the business, shall not violate standstill obligations.[31]

In the *Adani Green* case, the CCI observed the Clause in the agreement:

---

[30] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act, 2002* (n 2).
[31] *Notice given under Section 6(2) of the Competition Act, 2002 by Bharti Airtel Limited* (n 13).

"(i) allows the parties to discuss ongoing business and operations of the Target and its subsidiaries; (ii) allows the Acquirer to provide inputs on the business of the Target; and (iii) provides for the Target to take such inputs into account in the best interests of the Target and its subsidiaries. Prima facie, the scope of the Clause is broader than what has been stated by the Acquirer, as it envisages the discussion on the "on-going business and operations of the target"."

This clause allowed the acquirer to discuss ongoing business operations and provide inputs to the target. The CCI examined the construction of the Clause and ruled that it was broadly worded and in such a manner that the possibility of exchange of sensitive information or any coordinated outcome could not be ruled out. The intent of preservation of value could not be substantiated, where the requirement was for discussions including those on *ongoing business and operations*. Even if the intent was to monitor/ preserve the value of the business, the Clause was held to be ***not inherent and proportionate*** to the objective.

The perils associated with these arrangements can also be understood by taking note of *Hindustan Colas* case.[32] It was discussed that agreements between parties to a combination may, at times, incorporate clauses that result in premature integration. Interestingly, ***Clause 4.2.1*** of the Sale and Purchase agreement required payment of 'consideration less deposit' at the time of completion. The same is quoted below as follows:

*"**Clause 4.2.1 of SPA:** The Consideration less Deposit, along with the other amounts listed in Clause 4.1 above, shall be paid at Completion in immediately available cash funds through electronic funds transfer to the Seller's Account."*

The Commission ruled that it clearly demonstrates that the deposit was actually the payment of part consideration and not a refundable deposit. The pre-payment of consideration in the transaction was considered capable of reducing incentive/will of target to compete or may become a basis to access confidential information of the target. The CCI noted that "*gun jumping takes many forms and has the potential to distort the competition dynamics of the markets*." Therefore, gun jumping may take place even in cases where the information is exchanged, provided that the nature of exchange is such that it leads to a premature integration or it reduces the incentive and will of the target to continue to compete in the market.

This is in furtherance of the discussion in the previous section of the paper that the exchange of information may lead to collusive outcomes and reduce the uncertainty in the market, in result,

[32] *Notice given under Section 6(2) of the Competition Act, 2002 by Hindustan Colas Private Limited* Combination Registration No. C-2015/08/299.

causing an AAEC in the market. The rule is that the arrangement must be inherent and proportionate to the legitimate business objectives.

To further illustrate the types of clauses in combination agreements that result into a premature integration, we shall discuss the ruling of CCI in the combination notice by *Bharati Airtel*, where the commission observed that a clause which has the effect of allowing one party to influence the target's business before formal approval violates standstill obligations.[33]

The commission noted the following regarding the nature of the ER clause:

The *ER clause* in the acquisition agreement provided for a mechanism to the acquirer to exercise operational control on the target company from the agreed date, which was prior to the approval. It was in nature of a direct interference to the ordinary course of activities of the target. The cash flow was sought to be managed retrospectively by the acquirer.

It was held that the cash flow is a variable that can only be managed prospectively and the clause may have the effect of causing the parties to cease to act independent of each other. The CCI held that the direct interference with the ordinary course of business and violated standstill obligations, as it could eliminate the target's incentive to compete independently.

Taken together, the cases discussed above illustrate the various ways in which standstill obligations can be breached. Building on these examples, the Commission has clarified the broader legal principles governing combinations:

i. The CCI has clarified that there is no distinction between "actual actions" and "agreed contractual obligations" as they stand in violation of the ex-ante nature of the provision, meaning that even terms agreed in a contract, although, not yet performed still constitute a violation of the standstill obligations.[34] Section 6(2-A) does not prohibit only actual actions aimed towards implementation, such as pre-payment of consideration, but also prohibits making of agreements of this nature.
ii. The combinations shall be examined ex-ante and the question whether the parties benefitted or not from the impugned conduct or whether there were any commercial exigencies behind a particular conduct are not relevant for determination.[35]

In conclusion, it can be safely stated that while the Commission recognizes the risks of premature integration, it also acknowledges that information exchange during mergers and acquisitions is

[33] *Notice given under Section 6(2) of the Competition Act, 2002 by Bharti Airtel Limited* (n 13).
[34] ibid.
[35] *Notice given under Section 6(2) of the Competition Act, 2002 by Hindustan Colas Private Limited* (n 32).

necessary. To resolve this dilemma, the Commission has tried to balance the possibility of premature integration/gun jumping and the inherent requirement of information exchange through the *inherence-proportionality test* in the *Adani Green* case.

It has been established therein that the acquirer is permitted to impose customary standstill obligations and interim arrangements on the target.[36] The only requirement is that it should comply with the inherence-proportionality test, which will determine whether the customary obligations are consistent with the standstill obligations provided under Section 6(2-A). Concludingly, the imposed arrangements have to be inherent and proportional to the legitimate business objective.

VI. VARIOUS MEASURES TO SAFELY CARRY OUT DUE DILIGENCE

The Commission recommends that parties ought to implement some safeguards during the exchange of competitively sensitive information, and that such safeguards must be expressly incorporated into the agreement and adhered to in practice.[37]

One effective measure is in the form of a clean team protocol. Clean team refers to a team of individuals who are not involved in the operational activities of the company. These have the potential to deter the unwarranted causes of information exchange.

The Compliance Manual recommends formation of a clean team while conducting the due diligence of integration planning.[38] It provides the constitution of such a team including:

i. Members of senior management
ii. Internal legal team
iii. External legal counsel

However, this team excludes personnel involved in dealings with matters related to pricing, sales, marketing, etc. It ensures that there is no influence on the day-to-day operations like determining prices, strategies, sales quantities etc.

Moreover, we can also adopt several measures suggested by the Guidelines for applicability of Article 101 of TFEU, including formation of a clean team or trustees to receive information and process it. These trustees are independent third parties providing their services to the firm.[39] The participants can further, ensure that they have only access to their own information and only the

[36] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act*, *2002* (n 2).
[37] ibid.
[38] Competition Commission of India, *Compliance Manual for Enterprises* (n 11).
[39] European Union, Commission, 'Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements' (n 18).

aggregated information of the other. The aggregated and not detailed data is generally considered less competitive in nature.

The parties may set-up an agenda and purpose prior to the meeting/call to ensure that the purpose of disclosure is clarified. The undertakings can also opt to verify prior to exchange that whether it is strictly a genuine and legitimate requirement of the transaction. Also, the minutes of meetings can be recorded as a Standard Operating Procedure, whereby it can be ensured that the parties strictly adhered to the agenda. This is in consonance with the decision in Adani Green Case, where it was observed that the exchange has to be limited to the purpose according to the stage of the transaction.

In toto, the parties can opt for various safeguards to ensure that they minimize the gun-jumping concerns. The Commission however has opined that in order to make the clean team protocol successful, the agreement should include various aspects such as constitution, rules, etc and should be complied with "*in letter and spirit*".[40]

VII. CONCLUSION

In conclusion, there are various concerns arising from the exchange of commercially sensitive information which are capable of potentially distorting competition in the market. The exchange may give rise to some danger to the competitive landscape if the transaction does not come into existence. The result could be that the parties enter into a premature integration and ultimately harm to the competition. This can happen in various ways viz. one firm gaining some advantage over the other, or the target firm losing the incentive to compete. This harm cannot be reversed, even if the CCI later on declares the combination to be void.

The pertinent issue lies in determining the manner in which parties to a proposed combination may legitimately exchange information or impose customary standstill obligations, while simultaneously ensuring that the exchanges or arrangements instituted by the acquirer vis-à-vis the target do not amount to a contravention of the statutory provisions under the Act. In order to deal with the dilemma, the Commission came up with the inherence-proportionality standard, whereby, the information exchange has to be inherent and proportionate to the legitimate objective of the transaction. The objective differs at different stages of the transaction. Moreover, the concerns can also be avoided by putting to use other measures, including the setting up of a clean team,

[40] *Proceedings against Adani Green Energy Limited under Section 43 A of the Competition Act, 2002* (n 2).

consisting of third parties and excluding the personnel involved in carrying out the daily business operations of the firms.

In toto, the framework laid down by the CCI requires that the exchange of sensitive information has to be carried out in the view of inherence-proportionality standard, and the agreement of combination must also duly prescribe safeguards to be put in place.