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CONSOLIDATION OR COMPROMISE? THE ILLUSION OF FLEXIBILITY: WORKER PROTECTIONS AND CAPITAL FLUIDITY UNDER INDIA'S FOUR LABOUR CODES

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ABSTRACT

On 21 November 2025, India brought into force 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, repealing 29 central labour statutes, many of them colonial or early post-colonial in origin.¹ The central rules followed in May 2026.² The reform was justified as a long-overdue simplification: a single definition of wages, a single registration, and a compliance regime fit for an economy that wants to attract manufacturing capital.

This paper argues that the simplification is real but not neutral. Using doctrinal legal research, it reads the operative provisions of each Code against the constitutional benchmarks of Articles 14, 19 and 21 and the Directive Principles in Articles 38, 39, 41, 42 and 43. It finds that the Codes modernise vocabulary while shifting structural power toward employers in three ways. First, the Industrial Relations Code raises the threshold for prior permission before retrenchment from 100 to 300 workers and extends strike notice requirements to every industrial establishment, making lawful collective action procedurally fragile. Second, the Code on Social Security names gig and platform workers for the first time but places them outside the category of employee, so recognition arrives without the rights that ordinarily follow it. Third, the Codes leave an unusually large share of their substance to rules 'as may be

¹Code on Wages 2019; Industrial Relations Code 2020; Code on Social Security 2020; Occupational Safety, Health and Working Conditions Code 2020. The four Codes were brought into force by notifications of the Ministry of Labour and Employment dated 21 November 2025, which also repealed the 29 central statutes subsumed in them.

²Code on Wages (Central) Rules 2026; Industrial Relations (Central) Rules 2026; Social Security (Central) Rules 2026 (notified 8 May 2026); Occupational Safety, Health and Working Conditions (Central) Rules 2026 (notified 9 May 2026). See KPMG, 'Government of India notifies final Rules on four Labour Codes' (Flash News, 10 May 2026) <<https://www.in.kpmg.com/taxflashnews/KPMG-Flash-News-Notification-of-final-Rules-on-Four-Labour-Codes.pdf>> accessed 5 October 2026.

prescribed', moving core labour policy from Parliament to the executive.

The paper concludes that constitutional courts will have to read fundamental rights back into the Codes, and proposes amendments including a dependent contractor category, sector-linked retrenchment thresholds, and parliamentary scrutiny of key rules.

Keywords: *labour codes; Industrial Relations Code; gig and platform workers; right to strike; Article 21; delegated legislation.*

I. Introduction

A. The Regulatory Bottleneck

Before the Codes, Indian labour law was a stack of statutes enacted across seven decades for different industries and different anxieties. The Trade Unions Act 1926, the Industrial Disputes Act 1947 ('ID Act'), the Factories Act 1948, the Minimum Wages Act 1948, the Employees' Provident Funds and Miscellaneous Provisions Act 1952 and the Contract Labour (Regulation and Abolition) Act 1970 each defined 'employee', 'worker' or 'wages' in its own way. A single enterprise could be an 'establishment' under one Act, a 'factory' under another and an 'industry' under a third, and could owe registers, returns and inspections under all of them. The Second National Commission on Labour recommended in 2002 that the central laws be grouped into a small number of codes for precisely this reason.³

The demand for reform had two sources. Domestic and foreign investors complained of compliance cost and, more pointedly, of rigidity: Chapter V-B of the ID Act required establishments with 100 or more workers to obtain government permission before lay-off, retrenchment or closure, and permission was rarely granted.⁴ Economists argued that this rule encouraged firms to stay small or to rely on contract labour. Workers' organisations, by contrast, pointed out that the existing protections already reached only a small formal minority of the workforce, and that the real problem was weak enforcement rather than excessive regulation.

B. The Legislative Overhaul

Parliament answered with four Codes. The Code on Wages 2019 merges four statutes on minimum wages, payment of wages, bonus and equal remuneration, and introduces a national

³Ministry of Labour, *Report of the Second National Commission on Labour* (Government of India 2002).

⁴Industrial Disputes Act 1947, ch V-B, ss 25K, 25M, 25N and 25O.

floor wage. The Industrial Relations Code 2020 ('IR Code') merges the Trade Unions Act, the Industrial Employment (Standing Orders) Act 1946 and the ID Act. The Code on Social Security 2020 ('SS Code') merges nine statutes, including the provident fund, employees' state insurance, maternity benefit and gratuity laws, and adds chapters on unorganised, gig and platform workers. The Occupational Safety, Health and Working Conditions Code 2020 ('OSH Code') merges thirteen statutes, including the Factories Act, the Contract Labour Act and the Inter-State Migrant Workmen Act 1979. The government's stated aims were simplification, wider coverage and 'ease of doing business' without loss of protection.⁵

The Codes therefore present themselves as a gain for both sides: simpler rules for employers and wider coverage for workers. This paper tests that claim.

C. Research Questions

The paper asks two questions:

- (i) Do the relaxed thresholds for retrenchment, standing orders and contract labour, read with the new restrictions on strikes, violate the right to livelihood under Article 21 or the guarantee against arbitrary classification under Article 14 of the Constitution of India?
- (ii) Does the SS Code provide genuine relief for gig and platform workers, or only a statutory facade that names them without protecting them?

D. Thesis

This paper argues that the Codes achieve consolidation at the price of compromise. They modernise terminology and widen nominal coverage, but they structurally weaken the instruments through which workers actually secure protection: collective bargaining, the credible threat of a lawful strike, and a direct legal relationship with an identifiable employer. Gig and platform workers illustrate the pattern most clearly, since they are acknowledged by name but left in a legal grey zone. Because so much of the detail is delegated to rules, the decisive questions will be settled by the executive and, ultimately, by constitutional courts.

II. The Industrial Relations Code: The Erosion of Collective Bargaining

The IR Code makes three changes that, taken together, shift bargaining power decisively toward employers: it widens the space for layoffs without permission, it narrows the space for

⁵See the notifications cited in (n 1).

lawful strikes, and it rationalises union recognition in a way that marginalises minority unions.

A. Retrenchment and Closure Thresholds

Chapter X of the IR Code reproduces the former Chapter V-B of the ID Act with one decisive change. Prior permission of the appropriate government for lay-off, retrenchment or closure is now required only in industrial establishments employing at least 300 workers, not 100, and the appropriate government may raise that number further by notification.⁶ Rajasthan had already moved to 300 by state amendment in 2014, and several states did so by ordinance during the pandemic; the Code makes the higher figure the national baseline.⁷ The certified standing orders regime, which fixes conditions of service and misconduct procedure, has been lifted to the same 300 threshold.⁸ The Code also recognises fixed-term employment across all sectors, allowing employers to engage workers for a defined period with parity of benefits but with no retrenchment compensation when the term simply ends.

The constitutional history of Chapter V-B matters here. In *Excel Wear v Union of India*, the Supreme Court struck down the original closure provision as an unreasonable restriction on the employer's freedom of trade under Article 19(1)(g), because it gave the government unguided power to refuse closure.⁹ The Court later upheld the retrenchment permission requirement in *Workmen of Meenakshi Mills Ltd v Meenakshi Mills Ltd*, reasoning that a restriction on retrenchment serves the Directive Principles in Articles 38, 39, 41 and 43 and is therefore a reasonable restriction in the public interest.¹⁰ The amended closure provision was itself upheld in *Orissa Textile and Steel Ltd v State of Orissa*.¹¹ The jurisprudence therefore treats prior permission as a legitimate constitutional instrument for protecting livelihoods in larger establishments.

Raising the threshold does not violate that jurisprudence, since the Court never held that permission was constitutionally required. But it does change the character of the protection. Industrial survey data consistently show that the large majority of registered factories employ well under 300 workers, so the permission regime now reaches only a thin layer of the largest units.¹² Below that line, a worker's protection against retrenchment is reduced to notice,

⁶Industrial Relations Code 2020, ch X, s 77(1) and proviso, and ss 78-80.

⁷Industrial Disputes (Rajasthan Amendment) Act 2014.

⁸Industrial Relations Code 2020, s 28; on fixed-term employment, see s 2(o).

⁹*Excel Wear v Union of India* (1978) 4 SCC 224.

¹⁰*Workmen of Meenakshi Mills Ltd v Meenakshi Mills Ltd* (1992) 3 SCC 336.

¹¹*Orissa Textile and Steel Ltd v State of Orissa* (2002) 2 SCC 578.

¹²Ministry of Statistics and Programme Implementation, *Annual Survey of Industries* (various years), reporting the distribution of registered factories by number of persons engaged.

compensation of 15 days' average pay per completed year of service, and a further 15 days' wages credited to a new Worker Re-skilling Fund.¹³ These are money remedies. They compensate job loss; they do not slow it. The result is not a formal 'hire and fire' regime, but it is a regime in which the cost of dismissal is predictable and modest for the great majority of employers. Whether that is consistent with the State's duty under Article 41 to secure the right to work 'within the limits of its economic capacity' is a policy question the Directive Principles leave open, but the direction of travel is clearly away from security of tenure.

B. The Right to Strike

Under the ID Act, the requirement of advance notice before a strike applied only to public utility services.¹⁴ Section 62 of the IR Code extends it to every industrial establishment. No worker may go on strike without giving notice within 60 days before the strike and at least 14 days before it, nor during the pendency of conciliation proceedings and for seven days after they conclude, nor during proceedings before a tribunal or arbitrator and for 60 days after.¹⁵ Because a strike notice itself triggers conciliation, the conciliation officer can in practice keep the window for a lawful strike closed for extended periods. The Code also widens the definition of 'strike' to include concerted casual leave taken by 50 per cent or more of the workers on a given day.

Indian courts have never recognised a fundamental right to strike. In *All India Bank Employees' Association v National Industrial Tribunal*, the Supreme Court held that the freedom of association in Article 19(1)(c) does not carry with it a guaranteed right to achieve every object of association, including through strikes.¹⁶ *Kameshwar Prasad v State of Bihar* confirmed that there is no fundamental right to strike, even as it protected peaceful demonstrations.¹⁷ In *T K Rangarajan v Government of Tamil Nadu*, the Court went further, stating that government employees have no fundamental, statutory or moral right to strike.¹⁸ Yet in *B R Singh v Union of India*, the Court described the strike as a recognised weapon of workers and acknowledged its place in industrial adjudication.¹⁹ The orthodox position, then, is that the right to strike is statutory and may be regulated by statute.

¹³Industrial Relations Code 2020, ss 70 and 83.

¹⁴Industrial Disputes Act 1947, s 22.

¹⁵Industrial Relations Code 2020, s 62; see also s 2 (definition of 'strike').

¹⁶*All India Bank Employees' Association v National Industrial Tribunal* AIR 1962 SC 171.

¹⁷*Kameshwar Prasad v State of Bihar* AIR 1962 SC 1166.

¹⁸*T K Rangarajan v Government of Tamil Nadu* (2003) 6 SCC 581.

¹⁹*B R Singh v Union of India* (1989) 4 SCC 710.

The IR Code exploits precisely that position. It does not abolish the strike; it surrounds the strike with conditions that make a lawful one exceptional. The consequences of an illegal strike are serious, including loss of wages and exposure to penalties under the Code. This sits uneasily with international standards that India has accepted. Article 8(1)(d) of the International Covenant on Economic, Social and Cultural Rights, ratified by India, requires states to ensure the right to strike in conformity with national law, and the ILO Committee on Freedom of Association has long treated notice and conciliation requirements as acceptable only where they do not make lawful strikes practically impossible.²⁰ The extension of public utility rules to all establishments, regardless of whether the service is essential, is difficult to justify on that standard.

C. Trade Union Recognition

The Trade Unions Act 1926 provided for registration but not for recognition, so recognition depended on employer discretion or state legislation. Section 14 of the IR Code fills this gap. Where only one registered union exists, it is the negotiating union. Where there are several, a union supported by 51 per cent or more of the workers on the muster roll is recognised as the sole negotiating union; failing that, a negotiating council is formed from unions with at least 20 per cent support.²¹

Statutory recognition is a genuine improvement, and exclusive bargaining agents are not new to Indian law: the Supreme Court upheld a representative union's exclusive rights under state legislation in *Balmer Lawrie Workers' Union v Balmer Lawrie & Co Ltd*.²² The difficulty lies in the thresholds. A union below 20 per cent has no seat at the table at all, and the Code says little about how support will be verified, leaving that to rules. In fragmented workplaces, especially those with a large contract or fixed-term workforce, a 51 per cent majority is hard to assemble, which may push bargaining into councils that employers can play against each other. India has not ratified ILO Conventions 87 and 98 on freedom of association and collective bargaining, which removes one external check on how these rules are framed.²³

²⁰International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 8(1)(d); ILO, *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association* (6th edn, ILO 2018).

²¹Industrial Relations Code 2020, s 14.

²²*Balmer Lawrie Workers' Union v Balmer Lawrie & Co Ltd* 1984 Supp SCC 663.

²³Freedom of Association and Protection of the Right to Organise Convention 1948 (ILO No 87); Right to Organise and Collective Bargaining Convention 1949 (ILO No 98).

III. The Code on Social Security: The Gig and Platform Economy Paradox

The SS Code is the most progressive of the four Codes on paper and the clearest example of the gap between recognition and protection. It names gig and platform workers for the first time in Indian legislation, but it builds their protection on a welfare model that deliberately avoids treating them as employees.

A. Progressive Definitions

Section 2(35) defines a ‘gig worker’ as a person who performs work or participates in a work arrangement and earns from such activities outside a traditional employer-employee relationship. Section 2(60) defines ‘platform work’ as work in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or provide specific services for payment, and section 2(61) defines a ‘platform worker’ as a person engaged in or undertaking platform work.²⁴ An ‘aggregator’ is a digital intermediary or marketplace that connects buyers or users of a service with sellers or service providers, and the Seventh Schedule lists the categories of aggregator covered, from ride-sharing and food delivery to logistics and e-marketplaces.

The significance of these definitions should not be understated. NITI Aayog estimated that India had about 7.7 million gig workers in 2020-21 and projected 23.5 million by 2029-30.²⁵ Before the Code, these workers had no statutory identity at all. The Code allows them to register, obtain an identity, and become eligible for schemes on life and disability cover, accident insurance, health and maternity benefits and old-age protection.

B. The Classification Deficit

The critical flaw lies in the phrase ‘outside a traditional employer-employee relationship’. The definition does not merely describe gig work; it settles, by legislative fiat, the very question that courts elsewhere have treated as one of fact. A gig worker under the Code is, by definition, not an employee. It follows that the protections that attach to employment under the four Codes (minimum wages enforceable against an employer, working hour limits, retrenchment protection, provident fund, gratuity and employees’ compensation for workplace injury) do not attach automatically. Gig workers receive schemes; employees receive rights.

Indian law already has the tools to answer the classification question on the facts. Since

²⁴Code on Social Security 2020, ss 2(2), 2(35), 2(60), 2(61) and Seventh Schedule.

²⁵NITI Aayog, *India’s Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work* (June 2022).

Dharangadhara Chemical Works Ltd v State of Saurashtra, the courts have asked whether the principal controls not just what work is done but the manner in which it is done.²⁶ Platform work is a strong candidate for that test: the platform sets the price, allocates tasks through an algorithm, rates performance and deactivates workers who fall below its thresholds. The Code's definition pre-empts this inquiry.

The contrast with comparable jurisdictions is sharp. In *Uber BV v Aslam*, the UK Supreme Court held that Uber drivers were 'workers' for the purposes of minimum wage and working time legislation.²⁷ The Court refused to be bound by the contractual label Uber had drafted, because the drivers were in a position of subordination and dependency: Uber fixed fares, imposed contract terms, controlled acceptance of trips through penalties and monitored performance through ratings. The protective purpose of employment legislation, the Court reasoned, would be defeated if the stronger party could contract out of it by labelling. The European Union has gone further: Directive (EU) 2024/2831 creates a rebuttable presumption that a person performing platform work is in an employment relationship where facts indicating control and direction are present, and it regulates algorithmic management directly.²⁸

The SS Code inverts this logic. Where *Uber* looked through the label to the reality, the Code writes the label into statute. Where the EU Directive presumes employment and asks the platform to rebut it, the Code presumes non-employment and offers no route to rebut it. The Indian legislature has therefore produced a category that is visible enough to be counted but not strong enough to make claims.

C. The Welfare Fund Mechanism

Section 114 of the SS Code empowers the Central Government to frame schemes for gig and platform workers and to finance them through a social security fund. Aggregators may be required to contribute between 1 and 2 per cent of their annual turnover, capped at 5 per cent of the amount paid or payable by the aggregator to gig and platform workers.²⁹ A National Social Security Board advises on and monitors these schemes, and workers must register (in practice, on the e-Shram portal) to access them.³⁰

This design has real advantages. A turnover-linked levy does not require the State to identify

²⁶*Dharangadhara Chemical Works Ltd v State of Saurashtra* AIR 1957 SC 264.

²⁷*Uber BV v Aslam* [2021] UKSC 5, [2021] ICR 657.

²⁸Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L, art 5 and ch III.

²⁹Code on Social Security 2020, s 114(4) and Seventh Schedule.

³⁰Code on Social Security 2020, ss 6 and 113.

an individual employer for each transaction, and it suits a workforce that moves across several platforms in a single day. States have experimented with similar models: Rajasthan's 2023 legislation introduced a welfare fee on each transaction, and Karnataka enacted its own platform workers' social security and welfare legislation in 2025.³¹

But the mechanism also dilutes liability in three ways. First, it converts what would otherwise be the direct obligation of an employer into a pooled contribution administered by a state board. If a delivery rider is injured on the job, an employee would claim compensation directly from the employer under the provisions that replace the Employees' Compensation Act 1923; a gig worker must look to whatever scheme the government has notified, on whatever terms and with whatever budget it has chosen. Second, the levy is discretionary in both its existence and its rate: the Code says contributions 'may' be required, and the cap ties the total to platform payouts rather than to worker need. Third, the welfare model is silent on the issues that matter most to platform workers day to day: per-task pay below the minimum wage once waiting time and fuel are counted, opaque algorithmic deactivation, and the absence of any grievance mechanism against the platform itself. The Supreme Court has held in *People's Union for Democratic Rights v Union of India* that labour supplied for less than the minimum wage may amount to forced labour under Article 23.³² A statutory scheme that structurally excludes a growing workforce from minimum wage enforcement invites exactly that challenge.

The question of status is now before the Supreme Court in *Indian Federation of App-Based Transport Workers v Union of India*, a petition seeking a declaration that gig and platform workers are unorganised workers entitled to social security as a matter of Articles 14, 21 and 23.³³ Whatever the outcome, the SS Code has made the answer harder: the more clearly Parliament states that gig workers are not employees, the less room courts have to find otherwise through statutory interpretation, and the more the argument must be pitched at the level of constitutional validity.

IV. The Code on Wages and the OSH Code: Restructuring Remuneration and Safety

The Code on Wages and the OSH Code present a mixed picture. The unified wage definition is genuinely protective of long-term benefits, even if it costs workers in take-home pay. The

³¹Rajasthan Platform Based Gig Workers (Registration and Welfare) Act 2023; Karnataka Platform Based Gig Workers (Social Security and Welfare) Act 2025.

³²*People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235.

³³*Indian Federation of App-Based Transport Workers v Union of India* WP (C) 1068/2021 (SC, pending).

contract labour and migrant worker provisions, by contrast, narrow the regulated space at the point where workers are most vulnerable.

A. The Fifty Per Cent Rule under the Code on Wages

Section 2(y) of the Code on Wages defines ‘wages’ broadly as all remuneration expressed in money, including basic pay, dearness allowance and retaining allowance, and then excludes a list of components such as house rent allowance, conveyance, overtime, commission and statutory bonus. The decisive innovation is the proviso: if the excluded components exceed one half (or such other percentage as may be notified) of the total remuneration, the excess is deemed to be wages.³⁴ The same definition is adopted, with minor variations, across the other three Codes, so it governs provident fund contributions, gratuity, retrenchment compensation and maternity benefit.

The purpose is anti-avoidance. Indian employers had long structured salaries with a small ‘basic’ component and large allowances, because statutory contributions were calculated on basic wages. The Supreme Court had already moved against this practice in *Regional Provident Fund Commissioner (II), West Bengal v Vivekananda Vidyamandir*, holding that allowances paid universally and ordinarily to all employees form part of basic wages for provident fund purposes.³⁵ The Code generalises that reasoning into a bright-line rule.

The friction is real on both sides. For employers, the rule forces a restructuring of cost-to-company salary packages and raises the base for provident fund, gratuity and leave encashment liabilities. For workers, the same change increases deferred benefits (a larger provident fund corpus and gratuity) but, where employers hold total cost constant, reduces monthly take-home pay as more of the package is diverted to contributions. For a low-wage worker with immediate consumption needs, this is not obviously a gain. The rule thus protects retirement security at the cost of present liquidity, a trade-off that Parliament made on the worker’s behalf without allowing the worker to choose. That said, of all the changes examined in this paper, the wage definition is the one most clearly aligned with Articles 41 and 43, since it closes a long-standing avenue of evasion. The Code’s other major addition, a statutory national floor wage below which no state minimum wage may be fixed, is similarly protective in principle, though its value depends entirely on the level the Central Government notifies.³⁶

³⁴Code on Wages 2019, s 2(y) and proviso.

³⁵*Regional Provident Fund Commissioner (II), West Bengal v Vivekananda Vidyamandir* (SC, 28 February 2019).

³⁶Code on Wages 2019, s 9.

B. Contract Labour under the OSH Code

The Contract Labour (Regulation and Abolition) Act 1970 applied to every establishment and every contractor employing 20 or more contract workers. The OSH Code raises that threshold to 50.³⁷ Below 50, a contractor needs no licence and the principal employer owes none of the specific contract labour obligations in the Code, though general safety and welfare duties may still apply.

This matters because contract labour is where the formal and informal economies meet. The Supreme Court in *Steel Authority of India Ltd v National Union Waterfront Workers* held that the 1970 Act does not provide for automatic absorption of contract workers when contract labour is prohibited, and that sham contracts must be identified case by case by industrial adjudicators.³⁸ The practical protection of contract workers therefore rests on licensing, registration and inspection. Raising the threshold to 50 removes a large class of small contractors from that system entirely. Employers can also split work among multiple contractors, each employing fewer than 50, to stay outside the regime. The Code does prohibit contract labour in ‘core activities’ of an establishment, but with broad exceptions, including where the normal functioning of the establishment is such that the activity is ordinarily done through contractors.³⁹ The combined effect is to expand, rather than shrink, the unregulated sector.

C. Women Workers and Night Shifts

Section 43 of the OSH Code permits women to work in all establishments for all types of work, including before 6 am and after 7 pm, subject to their consent and to conditions relating to safety, holidays and working hours that the appropriate government may prescribe.⁴⁰ This removes a paternalistic prohibition that courts had already questioned: the Madras High Court in *Vasantha R v Union of India* struck down the night-work bar in section 66(1)(b) of the Factories Act as discriminatory.⁴¹

The difficulty is that the Code grants the permission in the statute but leaves the safety mandate to rules. The legal right to work at night is now universal; the employer’s duty to provide transport, lighting, supervision and an effective complaints mechanism exists only to the extent

³⁷Occupational Safety, Health and Working Conditions Code 2020, s 45; cf Contract Labour (Regulation and Abolition) Act 1970, s 1(4).

³⁸*Steel Authority of India Ltd v National Union Waterfront Workers* (2001) 7 SCC 1.

³⁹Occupational Safety, Health and Working Conditions Code 2020, s 57.

⁴⁰Occupational Safety, Health and Working Conditions Code 2020, s 43.

⁴¹*Vasantha R v Union of India* 2001 (2) LLN 343 (Mad).

that the rules impose it and inspectors enforce it. Consent is also a weak safeguard in workplaces where refusing a night shift may cost a woman her job. A rights-respecting design would have made specific safety obligations (secure transport, minimum numbers of women on a shift, and integration with the internal committees required under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013) conditions precedent written into the Code itself.⁴²

D. Inter-State Migrant Workers

The migrant labour crisis of 2020, when the national lockdown left millions of workers stranded far from home without wages or transport, exposed the near-total failure of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. The Supreme Court intervened in *In re Problems and Miseries of Migrant Labourers*, directing registration of unorganised workers and the extension of food security to migrants.⁴³ Chapter XI of the OSH Code replaces the 1979 Act. It widens the definition of an inter-state migrant worker to include workers who migrate on their own, not only those recruited through contractors, and provides for an annual journey allowance and portability of benefits.⁴⁴

These are improvements. But the definition is capped by a wage ceiling (currently 18,000 rupees per month or such amount as may be notified), and the chapter applies only to establishments employing ten or more inter-state migrant workers. More fundamentally, the Code abandons the displacement allowance that the 1979 Act provided, and it relies on self-registration and state portals rather than on contractor-level licensing. A protection regime that depends on the migrant worker taking the first step is unlikely to reach the workers who need it most.

V. Constitutional Validity and Judicial Scrutiny

The Codes are unlikely to be struck down wholesale. Indian courts have consistently given the legislature wide latitude in economic and labour regulation. The more realistic prospect is targeted challenges to particular thresholds, to the strike regime, to the exclusion of gig workers from employee status and, above all, to the delegation of core policy to the executive.

⁴²Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 4.

⁴³*In re Problems and Miseries of Migrant Labourers* Suo Motu WP (C) 6 of 2020 (SC, 29 June 2021).

⁴⁴Occupational Safety, Health and Working Conditions Code 2020, ch XI; cf Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979.

A. Article 14: Thresholds and Intelligible Differentia

Under the classical test in *State of West Bengal v Anwar Ali Sarkar*, a classification is valid if it rests on an intelligible differentia and that differentia has a rational nexus with the object of the statute.⁴⁵ *Shri Ram Krishna Dalmia v Justice S R Tendolkar* added a strong presumption of constitutionality and allowed the legislature to recognise degrees of harm.⁴⁶ On this test, numerical thresholds are generally safe: the line between 299 and 300 workers is arbitrary at the margin, but any line would be, and size is a rational proxy for an enterprise's capacity to bear regulation.

The Codes are more exposed under the later doctrine of manifest arbitrariness, which traces back to *E P Royappa v State of Tamil Nadu* and was applied to legislation in *Shayara Bano v Union of India*.⁴⁷ The Codes use different thresholds for different purposes (300 for retrenchment permission and standing orders, 50 for contract labour licensing, ten for inter-state migrant protections, and varying coverage thresholds for social security schemes) without any stated rationale for the differences. A worker may be in an establishment large enough to require a contract labour licence but too small to require permission before retrenchment. A challenger could argue that this patchwork lacks a determining principle. The stronger argument, however, is not that any single number is arbitrary but that the thresholds may be raised further by executive notification without guidance from Parliament, which leads to the problem of delegation discussed below. The exclusion of gig workers from 'employee' status is also open to challenge under Article 14, since it classifies workers by the technology through which they are engaged rather than by the reality of their dependence, a distinction whose nexus to the protective object of labour law is difficult to defend.

B. Article 21: Livelihood and Job Security

In *Olga Tellis v Bombay Municipal Corporation*, the Supreme Court held that the right to life in Article 21 includes the right to livelihood, because no person can live without the means of living.⁴⁸ Deprivation of livelihood is permissible only by a procedure established by law that is just, fair and reasonable. The Court has been careful, however, not to convert this into a positive right to employment: in *Delhi Development Horticulture Employees' Union v Delhi Administration*, it held that the right to work is not a fundamental right enforceable against the

⁴⁵*State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75.

⁴⁶*Shri Ram Krishna Dalmia v Justice S R Tendolkar* AIR 1958 SC 538.

⁴⁷*E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3; *Shayara Bano v Union of India* (2017) 9 SCC 1.

⁴⁸*Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

State, although it is a Directive Principle.⁴⁹

The Codes do not deprive anyone of livelihood directly. A challenge must therefore be framed as one of procedure: that the process by which the Codes permit job loss, including retrenchment without permission in establishments below 300, termination at the end of a fixed term, and penalties for strikes that are illegal only because of notice formalities, is not fair, just and reasonable. Since *Justice K S Puttaswamy v Union of India*, restrictions on fundamental rights must also satisfy proportionality: a legitimate aim, a rational connection, necessity (no less restrictive alternative) and a fair balance.⁵⁰ On necessity, the extension of public utility strike rules to every establishment is the most vulnerable provision. The State's aim of preventing sudden disruption in essential services could plainly be met by retaining the old public utility distinction, which suggests that the blanket rule restricts more than the aim requires. Similarly, a gig worker's exclusion from minimum wage enforcement and employees' compensation, read with the Court's reasoning in the *Asiad* workers' case, supports a credible argument under Articles 21 and 23 that the State has failed to secure the minimum conditions of a dignified livelihood.⁵¹

C. Excessive Delegation

The deepest structural problem in the Codes is how much they leave to the executive. The phrases 'as may be prescribed' and 'as may be notified' recur throughout all four instruments. Rules and notifications determine, among other things, the floor wage, the method of verifying union membership for recognition, the procedure for retrenchment compensation and the re-skilling fund, the safety conditions for women's night work, the content and funding of gig worker schemes, the rate of aggregator contributions within the statutory band and, in several places, the thresholds themselves. The proviso to section 77 of the IR Code allows the appropriate government to raise the 300-worker threshold by notification; section 1 of the SS Code allows the coverage of its chapters to be extended or altered in the same way.⁵²

The constitutional limit on delegation was set in *In re Delhi Laws Act*: the legislature may delegate the working out of details, but it may not abdicate its essential legislative function, which includes determining policy and laying down a standard for the delegate.⁵³ In *Hamdard*

⁴⁹*Delhi Development Horticulture Employees' Union v Delhi Administration* (1992) 4 SCC 99.

⁵⁰*Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1; *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

⁵¹*People's Union for Democratic Rights* (n 32).

⁵²Industrial Relations Code 2020, s 77(1) proviso; Code on Social Security 2020, s 1.

⁵³*In re Delhi Laws Act 1912* AIR 1951 SC 332.

Dawakhana v Union of India, the Court struck down a provision because it conferred uncanalised power on the executive without a guiding policy.⁵⁴ Later decisions have been more permissive, upholding delegation where policy can be gathered from the statute as a whole, but the principle remains.⁵⁵

The Codes test that principle in two ways. First, a power to raise the threshold for retrenchment permission is not a power to fill in details; it is a power to decide how many workers the protection reaches at all, which is the policy itself. Second, three of the four Codes were passed in September 2020 with limited parliamentary debate, during a session in which much of the opposition was absent, and the rules framed under them are subject only to the weak control of being laid before Parliament. When a statute is long on headings and short on substance, and the substance is filled in by the executive years later, the democratic accountability that should accompany a reform of this scale is lost. The 2026 central rules, and the separate rules that each state must frame because labour is a concurrent subject, will in practice determine whether these Codes protect workers or merely list the ways in which they might be protected.⁵⁶

VI. Conclusion and the Way Forward

A. Synthesis

The four Labour Codes are a real achievement of consolidation. They replace 29 statutes with four, unify the definition of wages, introduce a national floor wage, give trade unions a statutory route to recognition, open all occupations to women, and name gig and platform workers for the first time. On each of these points, the Codes improve on the law they replaced.

But consolidation has come with compromise, and the compromise runs in one direction. The instruments that give workers leverage, rather than mere entitlement, have been weakened. The retrenchment permission regime now reaches only the largest establishments. Lawful strikes are hemmed in by notice and conciliation rules designed for essential services. Minority unions can be shut out of bargaining. Contract labour regulation begins at a higher threshold that is easy to evade. Gig workers have been given a name and a welfare scheme instead of a legal relationship with the platforms that control their work. And across all four Codes, the details that determine real protection have been left to the executive. The balancing act between ‘ease of doing businesses and constitutional labour protection currently leans heavily toward capital.

⁵⁴*Hamdard Dawakhana v Union of India* AIR 1960 SC 554.

⁵⁵*Agricultural Market Committee v Shalimar Chemical Works Ltd* (1997) 5 SCC 516; *Gwalior Rayon Silk Manufacturing (Weaving) Co Ltd v Assistant Commissioner of Sales Tax* (1974) 4 SCC 98.

⁵⁶See the rules cited in (n 2).

B. Judicial Anticipation

Constitutional courts are likely to become the main site where that balance is contested. Three lines of litigation seem probable. First, challenges to the exclusion of gig and platform workers from employee status, building on *People's Union for Democratic Rights*, *Olga Tellis* and the comparative weight of *Uber BV v Aslam*.⁵⁷ Second, proportionality challenges to the universal strike notice rule under Articles 19(1)(c) and 21. Third, delegation challenges to notifications that raise thresholds or narrow coverage without parliamentary guidance. In each, the courts will need to read fundamental rights into the Codes actively, interpreting 'as may be prescribed' in favour of protection and refusing to let statutory labels foreclose a factual inquiry into dependency and control.

C. Policy Recommendations

Four amendments would preserve the Codes' gains while correcting their imbalance:

- (i) **A dependent contractor category.** The SS Code should create an intermediate category, modelled on the 'dependent contractor' concept in Canadian labour law and the 'worker' category recognised in *Uber*, for persons who are formally self-employed but economically dependent on, and subject to the control of, a platform or principal.⁵⁸ Such persons should be entitled to minimum wage protection calculated across logged-in time, employees' compensation for injuries, and a right to reasons and review before algorithmic deactivation, while remaining outside the full employment package.
- (ii) **Sector-linked retrenchment thresholds.** Instead of a single national number that the executive may raise, the IR Code should set thresholds by sector and capital intensity, and should require that any change be made by Parliament or, at the least, by a rule approved by an affirmative resolution of both Houses.
- (iii) **Restoring the public utility distinction.** Strike notice and conciliation bars should apply in full only to public utility and essential services, with a short, fixed cooling-off period elsewhere, so that the right to strike remains effective in ordinary industry.
- (iv) **Codified safeguards and parliamentary scrutiny of rules.** Safety conditions for women's night work, verification procedures for union recognition, and minimum contribution rates for aggregators should be written into the Codes themselves, and all rules under the Codes should be referred to a parliamentary committee on subordinate

⁵⁷*People's Union for Democratic Rights* (n 32); *Olga Tellis* (n 48); *Uber* (n 27).

⁵⁸Labour Relations Act 1995 (Ontario), SO 1995, c 1, Sch A, s 1(1) (definition of 'dependent contractor'); *Uber* (n 27).

legislation within a fixed period.

The Codes ask whether India can modernise labour law without abandoning the constitutional promise in Article 42 of ‘just and humane conditions of work’. The answer is not yet settled. It will be written in the rules, in the states and in the courts.

