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VOICES TO POLICY

SOCIAL JUSTICE POLICY ANALYSIS

NATIONAL POLICY ANALYSIS & PAPER PRESENTATION COMPETITION

VOLUME - I



TABLE OF CONTENTS

Foreword - Message from Our Patron……..III

Preface……..IV

Acknowledgment……..V

Editorial Team……..VI

Publication Details……..VII

Message from Founder……..VIII

About this collaboration……...IX

IJLCS Team Members……...X

Editorial Note……...XI

Disclaimer……...XV

Quote……XVI

Articles -

Manufactured Surrenders and Criminalisation of tribal Youths: A Legal and Policy Analysis of Alleged Fake Naxalite Surrenders in Jharkhand……1

Constitutional Accountability in the Age of Algorithms: Reforming Labor Law for India's Gig Economy……21

Social Justice in Higher Education: The UGC Equity Framework's Regulation, Governance, and Ground Realities……39

Caste, Campus, and the Constitution: Discrimination, Digital Harassment, and Segregation in India's Colleges and Universities…….57

Institutional Equity: Equal Opportunity Cells in Universities & Government Workplaces…71

Examining the Intersection of Case, Gender and Platform Labor: Assessing Social Security Gaps and the 'New Precarity' for SC/ST Workers under Modern Labor Regulations…….88

Between Recognition and Protection: Examining the Legal Status and Social Security Framework for Platform-Based Workers in India's Gig Economy……104

Re-Architecting Equity Governance: A Critical and Multi-dimensional Analysis of UGC Equity Regulations, 2026……...121

TABLE OF CONTENTS (CONTINUED)

From Abolition to Accountability: Rethinking Municipal Liability under the NAMASTE Framework 140

From Protection to Prosecution: PoA Act 154

Tribal Forest Rights and State Governance: A Comparative Analysis of India's Forest Rights Act, 2006 and ILO Convention No. 169 168

Enabling Without Entitling: Article 254 and State Gig Worker Legislation in India 181

FOREWORD

MESSAGE FROM OUR PATRON

"The study of law should not be confined to producing lawyers or judges but must serve as an instrument of social transformation by empowering the weaker sections of society."

The SC/ST Cell of Chanakya National Law University (CNLU) is a statutory body established with the objective of fostering an inclusive, equitable, and discrimination free academic environment in accordance with the constitutional ideals of equality, dignity, and social justice. The Cell is committed to safeguarding the rights, interests, and overall welfare of students, faculty members, and staff belonging to the Scheduled Castes and Scheduled Tribes, while also promoting a culture of mutual respect and diversity on campus. Through continuous sensitization and awareness programmes, academic initiatives, policy-oriented discussions, and community outreach activities, the Cell strives to enhance understanding of constitutional values, social justice frameworks, and inclusive governance practices among all stakeholders of the university. By ensuring a safe, supportive, and respectful learning and working environment, the SC/ST Cell plays a crucial role in strengthening institutional equity, encouraging constructive dialogue, and facilitating meaningful academic and social engagement on issues related to marginalized communities, public policy, and legal reform.

Voice for the Marginalized

Prof. Mustafa believes that law should be a tool for social transformation and has consistently supported marginalized communities through advocacy for affirmative action, inclusive education, and student wellbeing. He emphasizes mental health, campus dignity, and intersectional justice, including gender and caste equality. Beyond CNLU, he is a prominent constitutional scholar who stresses that democracy is judged by its treatment of minorities and deprived sections, educates the public on legal rights, and openly challenges unjust laws and practices that harm the underprivileged.

Prof. (Dr.) Faizan Mustafa
Vice Chancellor,
Chanakya National Law University, Patna

PREFACE

Social justice policy in India occupies a unique and difficult space: it is at once among the most constitutionally mandated fields of governance, and among the most persistently under-examined in terms of ground-level outcomes. Laws are passed, schemes are launched, and regulations are notified with regularity, yet the distance between the text of a policy and its lived effect on Scheduled Caste, Scheduled Tribe, and other marginalised communities often remains wide and largely undocumented.

SAMIKSHA 2026 is one of the initiatives which is the SC/ST Cell's response to that gap. Conceived as a National Policy Analysis and Paper Presentation Competition, SAMIKSHA invites undergraduate and postgraduate students, young researchers, and interdisciplinary scholars to move beyond doctrinal description and examine how welfare programmes, protective legislations, and constitutional guarantees actually function in practice; where they succeed, where they falter, and what reform could look like. The 2026 edition drew submissions across five broad themes: higher education and student welfare, gender and the SC/ST community, law and social practices, entrepreneurship and economic policy, and tribal empowerment in Scheduled Areas.

This volume brings together Twelve chapters selected through a multi-stage evaluation process; abstract review, full-paper evaluation, and final presentation before a panel of jury members. Together, they examine subjects ranging from the enforcement record of the SC/ST (Prevention of Atrocities) Act, to the implementation of the UGC Equity Regulations, 2026, to the conditions of sanitation and platform workers, to questions of land, livelihood, and governance in tribal regions. Read together, these chapters offer a cross-section of how a new generation of researchers is thinking about social justice; empirically grounded, doctrinally informed, and unafraid to ask difficult questions of the institutions responsible for delivering on constitutional promise.

It is our hope that this compendium serves not merely as a record of a competition well held, but as a living reference for academicians, policymakers, and practitioners engaged in the unfinished work of translating constitutional promise into social reality.

ACKNOWLEDGEMENT

This publication has only been possible because of the guidance, support, and efforts of a great many individuals, and the SC/ST Cell wishes to place its gratitude on record. First and foremost, I express my sincere gratitude to Prof. (Dr.) Faizan Mustafa, Vice-Chancellor, and Prof. (Dr.) S.P. Singh, Registrar, Chanakya National Law University, for their continued patronage of the SC/ST Cell. Their unwavering commitment to building an inclusive and discrimination-free academic environment is a vision of which SAMIKSHA is a direct expression.

My sincere thanks go to Dr. Kirti for heading and efficiently managing the entire SAMIKSHA 2026 event in my absence, and for serving as the Editor-in-Chief of this volume. I am deeply indebted for her invaluable support. I would also like to thank all the faculty members of the SC/ST Cell for their consistent guidance throughout the planning, evaluation, and execution of SAMIKSHA 2026. This volume of SAMIKSHA is result of sustained efforts over several months by the entire student organising team led by Surya Sawarkar along with Tanya Aanand as an event management head, Kumar Saurav, Himanshu Ranjan and Rakesh Kumar as the Research Team Head under the guidance of Shiwangi Kumari as Convenor of the cell and equal gratitude is owed to all the members who contributed in Samiksha 2026.

I want to extend our appreciation to the panel of evaluators and jury members who generously gave SAMIKSHA their valuable time and expertise during the abstract review, full-paper evaluation, and final presentation stages. Their intellectual contribution significantly shaped the quality of the papers eventually selected for this volume.

Last, and this matters most: the student authors and researchers whose work fills these pages. They chose to sit with hard questions about policy and justice rather than easy ones, and that choice is what gives this volume whatever life it has.

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The views expressed in the papers are those of the author(s) alone, and do not represent the views of IJLCS, Lex Academia Edutech, Chanakya National Law University, the SC/ST Cell or the Editorial Board.

MESSAGE FROM FOUNDER

IJLCS Special Issue: SAMIKSHA 2026

It is a matter of immense satisfaction to present this special issue of the International Journal of Law, Culture and Society (IJLCS), bringing together scholarly contributions associated with SAMIKSHA 2026. This initiative reflects a shared commitment to creating meaningful spaces for young scholars, researchers and students to engage critically with questions of social justice, constitutional governance and institutional accountability.

The idea behind IJLCS has always been to encourage rigorous, accessible and socially relevant legal scholarship. A journal must do more than provide a platform for publication: it must foster inquiry, invite diverse perspectives, and encourage scholarship that responds to the legal and social challenges of our time. This special issue is an important expression of that objective. It connects academic discussion with the concerns of communities and institutions, while recognising the value of emerging voices in legal and interdisciplinary research.

SAMIKSHA 2026, held in March 2026, provided a forum for participants to present and develop their ideas through an academic process involving abstract review, full-paper evaluation and presentation before a jury. The collaboration with the SC/ST Cell of Chanakya National Law University, Patna, gives this collection a particularly meaningful institutional context. I am grateful to the organisers, faculty members, evaluators, contributors and everyone who worked to bring this initiative to fruition.

The publication of a special issue is a collective undertaking. It depends on the intellectual commitment of authors, the careful work of editors, the guidance of faculty and the support of institutions. I extend my sincere appreciation to all those who contributed their time and effort. I also hope that readers will approach these papers not merely as finished academic exercises, but as invitations to continue questioning, researching and engaging with the issues they raise.

As IJLCS continues to develop, our aspiration is to uphold academic integrity, editorial responsibility and a genuine openness to thoughtful scholarship. We recognise that the credibility of an academic publication rests on transparency in its editorial practices and on the quality, originality and responsibility of the work it publishes. This special issue is another step in that continuing endeavour.

I hope this collection proves useful to students, researchers, legal practitioners, policymakers and all readers interested in the relationship between law and society. May it encourage further debate and contribute, in its own way, to a more inclusive and informed understanding of justice and constitutional values.

With best wishes,

Preeti Singh
Founder
International Journal of Law, Culture and Society (IJLCS)

ABOUT THIS COLLABORATION

This is a joint initiative of two institutional partners, bringing together the academic and organisational contribution of the SC/ST Cell, Chanakya National Law University, Patna, and the publishing role of the International Journal of Law, Culture & Society (IJLCS).

SC/ST Cell, Chanakya National Law University, Patna (Academic Partner and Organiser)

The SC/ST Cell conceived and organised SAMIKSHA 2026, a national policy analysis and paper presentation competition held on 25 March 2026. The Cell administered the three-stage evaluation process, comprising abstract review, full-paper evaluation and final presentation before a jury; selected the papers included in this compendium; and constituted the Editorial Team for this volume.

International Journal of Law, Culture & Society (IJLCS) (Publishing Partner)

IJLCS has undertaken the publication of this compendium through its publisher, Lex Academia Edutech. In this capacity, IJLCS provides the publication platform for the selected contributions and presents them as part of the SAMIKSHA 2026 special volume.

EDITORIAL INDEPENDENCE

The selection of papers, editorial standards and substantive direction of this volume rest with the SC/ST Cell and its Editorial Board. The publishing partner's role is to facilitate publication; it does not extend to altering the arguments or conclusions advanced by the authors. Responsibility for the content, accuracy and opinions expressed in each paper rests with its respective author(s).

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Editorial Note

India has an extensive legal and policy framework for equality. What happens when people seek the protection of these provisions is the concern taken up in this volume. This edited Special volume is a compilation of papers examining this question through experiences in universities, workplaces, public institutions and administrative processes. The distance between formal entitlement and substantive access is therefore not merely a question of legal design. Rather, it is equally a question of implementation, institutional capacity, accountability and lived experience. With this background we present this volume of Samiksha 2026.

The papers brought together here were selected from those presented at **SAMIKSHA 2026**, held on 25 March 2026. The selection followed a three-stage process comprising abstract review, full-paper evaluation and final presentation before a jury. In preparing the selected papers for publication, the Editorial Board has sought to maintain academic rigour and consistency while preserving the arguments, interpretations and individual voices of the authors.

SAMIKSHA was conceived as a forum for serious academic engagement with questions affecting Scheduled Castes, Scheduled Tribes and other marginalised communities. The papers in this volume reflect that purpose. They examine concerns arising in very different settings—from higher education and protective legislation to platform work, sanitation and rehabilitation policies. Yet, across these different subjects, one concern appears repeatedly: the distance that can arise between what a law or policy promises and what people experience when it is put into practice.

A significant part of the volume examines *work, technology and social protection*. The papers on platform and gig work consider how existing labour and social-security arrangements respond to new forms of employment. They examine algorithmic management, worker classification, wages, social protection and access to remedies, while also drawing attention to the particular experiences of women and workers from Scheduled Caste and Scheduled Tribe communities. Although these papers approach platform work from different directions, they raise a common concern: whether existing legal protections remain adequate when decisions concerning work allocation, pay and discipline are increasingly mediated through

digital platforms. The reforms proposed by the authors include greater transparency in algorithmic decision-making and stronger social-security protection. They further suggest minimum-wage safeguards, union recognition and accessible dispute-resolution mechanisms.

Another group of papers turns to *equality and discrimination within higher education*. These papers examine the functioning of Equal Opportunity Cells, institutional grievance mechanisms and the UGC Equity Regulations, 2026. They also look beyond formal structures to consider how discrimination may be experienced in everyday academic life; through representation, access to opportunities, informal academic practices, residential experiences and online spaces. Some papers concentrate on the ability of institutions to implement regulatory requirements; others focus more closely on lived experiences of discrimination or on the procedures through which complaints are addressed. Together, they draw attention to the importance of representation, administrative capacity, fair procedures, independent oversight and transparent grievance-redressal mechanisms.

The remaining papers take up questions that have long occupied an important place in debates on social justice in India. One paper examines the operation of the Surrender-cum-Rehabilitation framework in Jharkhand and discusses allegations concerning coerced and fabricated surrenders involving Adivasi youth. Drawing upon Howard Becker's Labelling Theory and Johan Galtung's concept of structural violence, the authors consider the consequences of such practices for due process and for individuals who come to be labelled as offenders. Another paper examines the persistence of manual scavenging and sewer-related deaths despite statutory prohibition and rehabilitation initiatives, drawing attention to problems of identification, contractualisation, compensation, rehabilitation and the accountability of Urban Local Bodies. A further paper evaluates the implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, considering difficulties relating to the registration of FIRs, prosecution, relief to victims and institutional enforcement.

This paper compares India's Forest Rights Act, 2006, with ILO Convention No. 169 to examine how tribal customary rights and state forest governance can coexist. Both frameworks recognize traditional land occupation and collective rights, but they differ in the protection of Indigenous self-determination and Free, Prior and Informed Consent (FPIC). The Forest Rights Act recognizes individual and community forest rights and empowers Gram Sabhas to participate in decision-making. However, community consent for forest

diversion relies significantly on executive directions, making it vulnerable to policy changes. International jurisprudence, including the Niyamgiri case, highlights the importance of community participation, cultural protection, and customary land rights. The paper identifies challenges such as overlapping administrative powers, limited remedies, and conflicts between conservation and community interests. It recommends legally embedding Gram Sabha consent in the Forest Rights Act, ensuring consultation before project approval, establishing fair benefit-sharing mechanisms, and strengthening independent remedies. These reforms would help balance environmental conservation, tribal autonomy, and state development objectives.

This article examines the aggregators' challenge in the Karnataka High Court, which argues that the Code on Social Security, 2020 (CoSS) occupies the field of gig-worker welfare and makes the Karnataka Platform Based Gig Workers Act, 2025 repugnant under Article 254. The author contends that the CoSS is a purely enabling statute. It offers definitions, registration and a power to notify future schemes, but confers no enforceable rights. It therefore sets a baseline floor, not an exclusive code. The Karnataka Act, by contrast, creates immediate protections, including a welfare board and fee, fair-contract and algorithmic-transparency rules, deactivation safeguards and dispute resolution. Applying *Karunanidhi* and *Tika Ramji*, the article finds no irreconcilable conflict, treats the fee-computation mismatch as administrative friction that section 20(5) reconciles, and notes that any partial repugnancy would leave the conduct provisions severable. EU, US and Australian comparisons support this view. It recommends that the High Court dismiss the petitions, that Parliament either confer real entitlements or state expressly whether the Code is exclusive, and that states consider Presidential assent under Article 254(2). The article acknowledges that it does not address legislative competence and cannot anticipate the Court's final ruling.

Read together, these papers do not offer a single explanation for the problems they examine, nor do they prescribe a single route to reform. Their subjects and approaches differ. What connects them is their attention to what happens after a right is recognised, a statute enacted, a regulation notified or a welfare scheme introduced. The effectiveness of a legal protection thus, ultimately rests upon the ways in which institutions interpret and implement it in practice.

For communities that have faced exclusion over generations, the working of a law matters as much as its stated purpose. Studying its implementation helps identify practical difficulties

and areas where institutional responses can be improved. SAMIKSHA provides a forum for such examination, with the aim of encouraging informed discussion and workable approaches to reform.

The Editorial Board has worked to ensure that the papers meet the expected standards of sourcing, citation and presentation without interfering with the authors' individual arguments. The views and conclusions presented in each paper are those of the respective author(s) and should not be attributed to *Chanakya National Law University, the SC/ST Cell or the Editorial Board.* Responsibility for specific factual claims, statistics, interpretations and arguments likewise rests with the respective author(s).

The twelve papers show, in different ways, that legal protection does not always translate into protection on the ground. Much depends on how institutions interpret their responsibilities, implement procedures and respond to those seeking remedies or entitlements. This concern appears across the different settings examined in the volume, including universities, platform work, rehabilitation programmes, local governance and the enforcement of protective legislation. The papers therefore bring us back to a practical question: *how can rights and protections recognised in law be made effective in the everyday working of institutions?*

It is with this question in mind that we present the papers selected from **SAMIKSHA 2026**. We hope that the volume encourages further research and discussion on the issues raised by its contributors and provides a useful basis for continued engagement with the institutions, policies and practices through which equality, dignity and justice are pursued.

Dr. Kirti,
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Editor-in-Chief,
Samiksha 2026, SC/ST Cell
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Disclaimer

The views, opinions, and conclusions presented in the chapters of this compendium belong solely to the respective author(s) alone. They do not reflect the official views, policy, or position of Chanakya National Law University, the SC/ST Cell, or the editorial board.

While all reasonable care and efforts have been taken by the authors and the Editorial Board to verify facts, citations, and data that is presented in this volume, the Editorial Board offers no guarantee regarding the ongoing accuracy or completeness of any statistic, case citation, or factual claim contained herein, and shall not be held liable for any error, omission, or consequence arising from reliance on the same. Readers are advised to independently verify the critical facts and figures, particularly where cited sources may be subject to subsequent revision.

This Journal is published for academic and non-commercial purposes only, in furtherance of research, discourse, and awareness in the field of social justice policy.

"An ideal society should be mobile, should be full of channels for conveying a change taking place in one part to other parts. In an ideal society there should be many interests consciously communicated and shared. There should be varied and free points of contact with other modes of association. In other words, there should be social endosmosis. This is fraternity, which is only another name for democracy. Democracy is not merely a form of Government. It is primarily a mode of associated living, of conjoint communicated experience. It is essentially an attitude of respect and reverence towards fellowmen."

-Dr. B. R. Ambedkar

in 'Annihilation of Caste'

MANUFACTURED SURRENDER AND CRIMINALISATION OF TRIBAL YOUTHS: A LEGAL AND POLICY ANALYSIS OF ALLEGED FAKE NAXALITE SURRENDERS IN JHARKHAND

Apoorva Sharan[*] *& Mimanshaa Deep*[**]

Abstract

This paper critically examines the phenomenon of fake surrenders of tribal youth, who are falsely branded as Naxalites, highlighting nationwide criminalization under anti-Maoist campaigns like the Naxal Mukt Bharat Abhiyan. It investigates two primary research questions: Firstly, what motivates tribal youth to "surrender," and what are their harsh legal realities post-surrender? Secondly, following major investigations revealing over 500 fabricated surrender cases involving tribal youth, to what extent have accountability mechanisms led to prosecutions or disciplinary actions against implicated officials?

By analysing national and state policies on Naxal eradication, alongside reports, ongoing public interest litigation, including High Court orders for police chief affidavits, and coerced labelling of the tribal youth, this paper identifies key drivers of exploitation of tribal communities in the mineral-rich forests of Jharkhand, which is driven by a confluence of factors-including institutional corruption, perverse financial incentives within the security apparatus, and the systemic marginalisation of Adivasi voices. From a socio-legal perspective, this paper also applies Howard Becker's and Edwin Lemert's labelling theory, revealing how the state arbitrarily imposes the "Maoist" label, trapping Adivasi youth in secondary deviance and systematic victimization. This approach exposes flaws in counter-insurgency frameworks, violating due process under the UAPA, Article 21, and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, etc.

The paper concludes by recommending an independent, Supreme Court-monitored judicial probe into past surrender scams and amendments to certain provisions related to Naxalites, while prioritizing the protection of Adivasi rights and accountability for authorities' misconduct.

Key words*: Naxalites, Fake Surrender, Adivasi rights, Victimisation, Naxal Mukt Bharat Abhiyan.*

Introduction

To understand the current situation of the innocent tribal youth of Jharkhand who have been framed as Naxalites, we need to understand the background of Naxalism. We must look back in history to where the uprising of the Naxalite movement started. The inception of the movement was in the late 1960s in the village named Naxalbari in West Bengal, led by

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[**] *National University of Study and Research in Law, Ranchi.*

figures like Charu Majumdar and Kanu Sanyal, who advocated for a protracted people's war to overthrow the state and for the redistribution of land from the zamindars to the landless.[1] While the initial displacement was largely reined in by the 1970s due to operations undertaken by the Indian government (such as *Operation Steeplechase*),[2] yet the underlying grievances of the rural poor remained largely unaddressed, leading to an eventual regrouping of various Naxal groups. The formation of CPI (Maoist) in 2004 through the merging of the MCC (*Maoist Communist Centre)* and the People's War Group marked the resurgence of the movement, which came to control vast lands of Central and Eastern India known as the Red Corridor.[3]

The major reason for the uprising of the Red Corridor was neglect and the heavy-handed militarization of the tribals.[4] The introduction of *Salwa Judum*, a state-sponsored tribal militia, led to a humanitarian crisis. This militia was eventually declared unconstitutional by the Supreme Court in 2011. This highlights the manner of approach that the government employed in the past on the Naxal issue.[5] In the wake of this judicial rebuke, the government's pivotal route prevailed towards a more standardized COIN *("counter-insurgency")* strategy that combines incentive-focused security operations with robust surrender and rehabilitation guidelines. Naxalism has been historically characterized as the greatest internal security threat to India.[6] As the conflict transitioned into a more mature phase in the 21st century, the state's trajectory evolved from purely kinetic military engagement to a sophisticated multi-approach encompassing security, development, and rehabilitation. For example, the focus of the government's Surrender-cum-Rehabilitation policy, which is a mechanism that is designed to weed out the "misguided youth" and hardcore criminals, is through offering alternative paths to integrate them into the socio-economic mainstream.[7]

However, emerging bodies of research, judicial enquiry, and investigative journalism suggest that the policy has been co-opted by a systematic pathological fake surrender phenomenon.

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[1]Biplab Dasgupta, The Naxalite Movement 14-25 (Allied Publishers 1974).
[2]The Lesser-Known Tales of the Naxalite Movement, THE HINDU (May 24, 2024), https://www.thehindu.com/news/national/kerala/the-lesser-known-tales-of-the-naxalite-movement/article68232592.ece. (last visited Mar. 8, 2026)
[3] Joint Press Statement on Merger of MCCI & CPI-ML(PW) and Founding of CPI(Maoist) (Sept. 21, 2004), reprinted in Bannedthought.net, https://www.bannedthought.net/India/CPI-Maoist-Docs/Statements/PressStatementOnMerger.htm. (last visited Mar. 8, 2026)
[4]P.V. Ramana, The Naxal Challenge: Causes, Linkages, and Policy Options 13-15 (Pearson Education 2008).
[5] Planning Comm'n, Gov't of India, Development Challenges in Extremist Affected Areas: Report of an Expert Group 49-50 (2008).
[6] The Naxalite Insurgency: India's Greatest Internal Security Threat, THE ECONOMIST, Apr. 12, 2006.
[7] Planning Comm'n, *supra note* 5, at 57-58.

This phenomenon is characterized by coercion or luring of innocent civilians, especially belonging to the scheduled castes and scheduled tribes, to pose as insurgents for the statistical and financial gain of their personal benefits for the people in power, standing for a significant deviance from constitutional law and counterinsurgency objectives.[8] The genesis of the fake surrender framework lies in the recognition that a purely military solution is insufficient for the insurgency route in socio-economic grievance, land alienation, and marginalisation of the tribal community, by providing financial incentives, vocational training, and legal immunity for specific acts.[9] The institutionalisation of this policy has created several cases where success is measured by the quantity of the quotas rather than the qualitative reform. This paper systematically analyses the manufactured surrender mechanism employed in the state of Jharkhand, its socio-economic impact on the tribal community, and broader implications of the same on India's goal of eradicating Naxalism by 2026.[10]

The Scope Of The Problem

The Legislative Intent:

The current *surrender and rehabilitation policy* for Naxalites was instituted as a key part of the state border counter insurgency strategy against the Naxalites. The policy looks to incentivize the insurgents to renounce violence and reintegrate them into the society by providing financial assistance, vocational training, and life support. This policy intends to enact these schemes in the following two ways: firstly, through weakening the insurgent organizations by encouraging voluntary defection amongst their members, and secondly, through facilitation of socio-economic rehabilitation.

However, the design of this policy is not immune to vulnerabilities because the guidelines issued by the Ministry of Home Affairs provided substantial administrative discretion to district-level authorities, police, and security forces in identifying, processing, and verifying individuals who claim surrender. While the policy does provide safeguards, such as the verification of surrendered individuals in extremist activity, these mechanisms are largely internal administrative checks rather than an independent or a judiciary-supervised scrutiny.

Furthermore, the framework does not clearly articulate the stringent evidentiary requirement to determine whether an individual is genuinely associated with an extremist or Naxalite

[8] Amit Gupta, Job Carrot for 'Pretend' Rebels, THE TELEGRAPH (Jan. 25, 2013), https://www.telegraphindia.com/jharkhand/job-carrot-for-pretend-rebels/cid/164427. (last visited Mar. 8, 2026)
[9] Minister of State in the Ministry of Home Affairs, Lok Sabha Unstarred Question No. 1599, Fake Naxal Surrender (2014) (India.
[10] Press Information Bureau, Ministry of Home Affairs, Status of Left Wing Extremism in India, GOV'T OF INDIA (Apr. 10, 2025).

group. As a result, they often rely on heavy police certification and intelligence input, which are rarely subjected to external scrutiny, thereby leading to the creation of multiple potential loopholes within the policy architecture.

The absence of a robust verification mechanism has contributed to the allegations that this surrender framework can be easily misused. The Investigation Report of the Human Rights Commission[11] has suggested that innocent tribals in conflict affected area have been misled and coerced into presenting themselves as surrendered Naxalite. Such practices fundamentally undermine the legislative intent of the policy and hamper its functioning as a rehabilitation mechanism for the long-standing insurgents. The policy risk becomes a tool through which vulnerable tribal communities are inadvertently criminalized, leading to the dilution of the objectives of the rehabilitation policy.

The Current Legal Scenario:

The present legal scenario surrounding the alleged fabricated Naxalite surrender reflects a very complex intersection of counter-Naxalite policies, administrative discretion, and human rights concerns. Over the past decade, several investigation reports, such as the Human Rights Commission Report and other reports by independent agencies, have conducted investigations regarding this issue, and they have highlighted that the tribal youth were allegedly presented as surrendered Naxals despite having no proven evidence of links to the extremist organization.[12]

Such cases attracted the attention of human rights institutions and judicial bodies, prompting a call for an inquiry into the role of the scrutiny agencies and the local authorities involved in the process. Despite this, there has been no accountability mechanism in place till present. In many instances, the investigation has primarily focused on verification of the status of the surrendered individual rather than determining the institutional responsibility of the officials who have facilitated the fabricated surrender case. As a result, publicly available evidence of criminal prosecution or disciplinary action against such officials is very limited in number.

This issue highlights a broader structural gap and challenge within India's counter-Naxalite government framework. The surrender policy operates within an administrative domain that prioritizes scrutiny, outcome, and uses statistical indicators of success, such as the number of Naxalites surrendering. In short, it can be suggested that they are more focused on achieving a targeted number through fabricating surrenders rather than incentivising the on-ground

[11]Fence Eating Crop: NHRC Finds Fake Naxalite Surrenders in Jharkhand, SABRANG INDIA (Jan. 17, 2014).
[12] SABRANG INDIA, *supra note* 11.

surrender of the operating members of the movement.

Furthermore, the tribal community in the conflict-affected area often lacks adequate access to legal representation, awareness of their rights, or an institutional capacity to challenge administrative action. Consequently, individuals who are falsely labelled as former Naxalites may face long-term social stigma, surveillance, and legal vulnerability even after participating in the surrender program under misleading circumstances. Therefore, it reflects a tension between the state's legitimate objective of countering insurgency and the need to safeguard the constitutional rights of vulnerable populations, including the tribal community.

Theoretical Framework

In order to understand the depth of such discrimination and exploitation of the Adivasi youth of the state of Jharkhand, we have also referred to different types of sociological perspectives and theoretical frameworks.

The Labelling Theory:

The Labelling Theory, which has been propounded by Edwin Lemert and Howard Becker, proposes that deviance is not an inherent trait of an individual but a status that is conferred upon them by the social group through the application of such rules and sanctions. Edwin Lemert's distinction between primary and secondary deviance is pivotal to the analysis of this paper.[13]

Firstly, the primary deviance in the context of Jharkhand often constitutes nothing more than the existence of the individual within the disturbed area and being vocal about land rights. A tribal youth might participate in a peaceful protest or simply be the only person in a village who speaks Hindi, as was the case with Birin Gora[14] who was labelled as a hardcore Naxalite despite being a security guard on holiday. These initial acts or circumstances do not define an individual's self-concept.

The secondary deviance occurs when the State, through the police and media, successfully applies the Naxalite label to the innocent. Once labelled, the youth is subjected to social exclusion, stigma, legal persecution, and the eventual status of a criminal. The individual faces the impossibility of returning to a normal life and may eventually internalize the label as a means of defense, attack, or adaptation to the problem created by society. The State tries to act as a "Moral Entrepreneur", defining the boundaries of what is acceptable and what is

[13] Labelling Theory, ENCYCLOPÆDIA BRITANNICA, https://www.britannica.com/topic/labeling-theory (last visited Mar. 5, 2026).
[14] Lower Bazar Police Station FIR No. 77/2014, cited in Minister of State, *supra note* 9.

extremist.[15]

In the state of Jharkhand, the application of the Naxalite label is often arbitrary. An investigation report from Gomia block shows that villages with no history of violence were summoned to the police station and were told that they were criminals with bounties on their heads.[16]

This process of biographical reconstruction allows the State to justify a repressive measure and present a narrative of success in the counter-insurgency effort to the public and the central government.

The Theory of Structural Violence:

Johan Galtung, who was a Norwegian sociologist and the principal founder of the discipline of peace and conflict studies, proposed the theory of structural violence.[17] According to this theory, the criminalization of the tribal youth is fundamentally linked to the structural condition of the region, which are directly or indirectly imposed through the social or political system. In the state of Jharkhand, this violence is embedded in the struggle over *jal, jungle, jameen,* i.e., water, forest, and land. Galtung proposed a triangle of violence in which he explained that there are three mutually reinforcing forms of violence that characterise the Jharkhand conflict:

1. Structural Violence: This is the systematic deprivation of Adivasi from their ancestral land despite the recognition of the Forest Act, 2006[18]. The tracts of land are acquired for mining and industrial purposes without the free, prior, and informed consent of the Gram Sabha. This economic violence keeps the population in a state of malnutrition and poverty while wealth is extracted for external corporate interests.
2. Cultural Violence: This involves norms and ideology that make the structural and direct violence appear right or natural. The portrayal of Adivasi as primitive or anti-development, or prone to Naxalism,[19] legitimizes the militarization of their habitat. The cultural violence can change the moral colour of an act, such as the shooting of a villager, from wrong to acceptable in the name of national security.

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[15] Howard S. Becker, Outsiders: Studies in the Sociology of Deviance 145-53 (Free Press 1963).
[16] On Stan Swamy's Death Anniv, Rights Group Releases Report on Falsely Accused Adivasis, Demands UAPA be Revoked, NAT'L HERALD (July 5, 2022).
[17] Johan Galtung, Violence, Peace, and Peace Research, 6 J. PEACE RSCH. 167 (1969).
[18] The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2 of 2007, India Code (2006).
[19] Uday Chandra, Liberalism and Its Other: The Politics of Primitivism in Colonial and Postcolonial Indian Law, 52 LAW & SOC'Y REV. 135 (2018).

3. Direct Violence: This is a visible manifestation of conflict, which includes the fake encounter, manufactured surrender, and custodial torture. In Jharkhand, direct violence is often a reaction to resistance generated by the structural violence, creating a cycle of perpetual conflict.

Statutory And Policy Analysis: The S&R Framework

Legal and Constitutional Framework:

The management of the Left Wing Extremism ("LWE") is primarily covered by the states due to the following entries in List II, which is the state list, i.e., through Entry 1 (public order) and Entry 2 (Police).[20] Consequently, states such as Jharkhand,[21] Chhattisgarh,[22] Odisha,[23] Andhra Pradesh,[24] and Maharashtra[25] have developed their own specific surrender-cum-rehabilitation policies, tailored to their unique socio-economic and geographical contexts.

While the state-level policy formulation allows for a localized response, it has historically led to a fragmented and uneven scrutiny landscape. Because of the disparity in the financial incentives and rehabilitation benefits across state borders, it can encourage "bounty shopping", where the insurgents surrender in a state that offers a high reward rather than where they were operationally active. Due to this, the central government, through the Ministry of Home Affairs, serves as a coordinating body.

The MHA released a model guideline that states are encouraged to adopt to ensure a degree of uniformity related to the surrender-cum-rehabilitation policy of different states.[26] Additionally, the union government provides substantial support to these policies through the security-related expenditure scheme. Under this scheme, the central government reimburses the expenditure incurred by the state government on the rehabilitation of surrendered LWE cadre.[27] This reimbursement mechanism acts as the primary leverage the Centre holds over the states to maintain certain minimum standards in their Surrender-Cum-Rehabilitation

[20] INDIA CONST. sched. VII, list II, entries 1-2.
[21] Jharkhand Surrender and Rehabilitation Policy, 2009 (amended 2013).
[22] Chhattisgarh Naxalite Surrender and Rehabilitation Policy, 2005 (revised 2025).
[23] Odisha Surrender and Rehabilitation Scheme for Left Wing Extremists (revised 2022 & Feb. 2026).
[24] Surrender and Rehabilitation Policy for Left Wing Extremists, GOV'T OF ANDHRA PRADESH, HOME (POLICE-E) DEP'T, G.O. Ms. No. 607 (2004).
[25] Maharashtra Surrender and Rehabilitation Policy, 2005.
[26] Ministry of Home Affairs, Gov't of India, Guidelines for Surrender-cum-Rehabilitation of Naxalites in the Naxal Affected States (2009).
[27] Ministry of Home Affairs, Gov't of India, Revised Guidelines for Surrender-cum-Rehabilitation of Left Wing Extremists in the Affected States para. 4.1 (2022).

Scheme ("S&R") protocols.[28] This fragmented approach has been further complicated through the Unlawful Activities (Prevention) Act, 1967[29] and Section 16 of the Criminal Law Amendment 1908,[30] under which organizations like them are banned at both the central and state levels.

Evolution of the 2013 S&R policy:

The Government of India implemented a significantly revised version of the Surrender-Cum-Rehabilitation Scheme[31] of left-wing extremists on April 1, 2013.[32] The revision was bought because the previous financial incentives were insufficient to lure high-ranking cadres away from the movement. The new guideline aimed to increase the opportunity cost of remaining in the agency by offering substantially higher grants and stipends.[33]

The policy introduced a clear distinction between a rank of surrender cadres, recognizing that a one-size-fits-all approach failed to distribute the leadership hierarchy, such as the higher-ranked cadre category A and middle and lower-ranked cadre B.

The most critical and highly debated feature of this guideline is the three-year fixed deposit requirement, according to which, in the instant of receiving a lump sum payment, the grant is deposited in a bank in the name of the surrendering for a mandatory period of three years.[34] The withdrawal is strictly contingent upon the "good behaviour", which must be satisfied by the state-designated authority. While it's a very good attempt to prevent cadres from returning to insurgency with the state fund, it creates an imminent "liquidity crisis" for insurers. Individuals who have abandoned their social and economic support network within the Naxalite fold further incentivize the de-escalation of violence.[35]

By assigning high value to specific weapons, such as ₹25,000 for a sniper rifle, the policy created a risk of weapon smuggling or even worse, stage-managed surrender, where police provide older weapons to individuals to inflate surrender statistics. Furthermore, the incentive

[28] Minister of State in the Ministry of Home Affairs, Lok Sabha Unstarred Question No. 481, Rehabilitation of Surrendered Naxalites (2026) (India).
[29] The Unlawful Activities (Prevention) Act, 1967, No. 37 of 1967, India Code (1967).
[30] The Indian Criminal Law Amendment Act, 1908, § 16, No. 14 of 1908, India Code (1908).
[31] Ministry of Home Affairs, *supra note* 27, at para. 4.1-4.2.
[32] Press Information Bureau, Ministry of Home Affairs, Rehabilitation of Surrendered Naxalites, Govt Of India (Dec. 9, 2014).
[33] Ministry of State in the Ministry of Home Affairs, Rajya Sabha Unstarred Question No. 2313, Surrender and Rehabilitation Policy for Left Wing Extremist (2015) (India).
[34] Ministry of Home Affairs, Govt of India, Revised Guidelines for Surrender-cum-rehabilitation of Left-wing Extremists in the affected states para. 3.3.1 (2022).
[35] Albert O. Hirschman, Exit, Voice, and Loyalty, cited in Margins of Revolution: A Sociological Inquiry into an Under-Trial Naxalite Leader in the Andhra-Odisha Borderlands, 5 IJIRT (2018).

for elimination is often seen as too low to encourage the surrender of large-scale cadres. Through it, it serves as a symbolic gesture of abjuring violence.[36]

Stipends and Vocational Training Mechanics

While discussing rehabilitation, the components focus on socio-economic reintegration, vocational training, and financial support. Under the 2013 guidelines, the surrenderees received a monthly stipend of almost ₹4,000 for 36 months. It is intended to sustain the individual while undergoing training in a trade or vocation of their choice; however, it will be discontinued immediately if the individual surrenders and secures government or gainful self-employment.[37]

Increasing the previous stipend from ₹2,000 rupees was a positive step, but the duration and the amount are often critiqued for failing to account for inflation and difficulties in finding employment due to social stigma.[38] By 2025, states like Odisha significantly diverged from these guidelines, offering up to ₹10,000 per month to remain competitive in the region, to finalize the eradication of the Left Extremities wing.[39]

The Screening-cum-Rehabilitation Committee: Mechanics and Identification

One of the most prominent gaps in the policy is that the legal requirement for genuine identification of the core strength of the committee to be eligible for benefits for a surrender must be a bona fide member of a banned LWE organization. The screening process involves Rank-Based Vetting, clear confession and antecedent verification.

The intelligence wing conducts a 15-day deep dive into the individual background to confirm their rank and history, and state guidelines generally restrict rehabilitation of "Dalam" members and above. Overground supporters or "Sangham" members are considered only in exceptional circumstances, as they were often viewed as vulnerable individuals rather than ideological combatants. It is on the committee that they have a 15-day timeline for acceptance or rejection, which is a critical administrative pressure point. If the identification is too slow, the surrendering may fear betrayal or recapture. If it's too far, the committee risks admitting a fraudulent candidate.

[36]Ministry of Home Affairs, *supra note* 27, at para. 3.3.1.
[37]Minister of State in the Ministry of Home Affairs, Lok Sabha Unstarred Question No. 4788 (2013) (India).
Minister of State in the Ministry of Home Affairs, Lok Sabha Unstarred Question No. 307 (2013) (India).
[39] Rewards on Maoist Surrenders in Odisha 10% Higher Than Chhattisgarh: Police, TIMES OF INDIA (June 18, 2022).

Implementation lapses and ethical dilemmas

The new guidelines provided a gradual schedule for rewards for surrendering weapons.40 These rewards are supplementary to the immediate grant and are often taken as a key factor in the credit decision to defect. The critics of this incentive structure point to the "marketization of disarmament". As per the report, a senior CRPF and state police officer were in contact with a middleman to pick up youths. Youths were often forced to pay middlemen to be "allowed" to surrender, with these payments allegedly shared among officers. Arms displayed during these surrender ceremonies were often weapons already in police custody. The media used to uncritically broadcast this as success.41 These lapses highlight a failure in the screening and rehabilitation committees in Jharkhand. In Jharkhand, the desire for promotion and gallantry awards led to the numbers game that prioritized quantity over the genuine identification of the hardcore Naxalite.

At the same time, there is a major administrative loop for the distribution of the reward money, which is the bounty on a Naxalite head. In many of the stages, if a Naxalite surrenders, the reward money is given to them as an incentive. However, if they have been captured with the help of an informer, the reward is split between the police and the informer.[42] This creates a persuasive incentive for the police officer to categorize insurgents as surrender or vice versa to control the flow of the reward capital and further complicate the "genuine identification" process.

Current trends: Inter-state Competition (2025-2026)

Even in 2025, the geographical footprint of Naxalism has significantly constricted, with only 11 districts around India reporting active LWE influence.[43] This success has triggered a new phase of S&R competition, most notably between Odisha and Chhattisgarh. [44]

In November 2025, the Odisha government notified a new highly aggressive S&R policy that the state recognized the bulk of its active Naxals, hailing from Chhattisgarh, and formulated a policy specifically to lure these outsider Naxalites into surrendering within Odisha's jurisdiction.[45] Odisha offers rewards that are almost 10% higher than those in Chhattisgarh

[40] Surrendered Naxalites, Jharkhand Police, https://jhpolice.gov.in/surrendered-naxal, (last visited Mar. 5, 2026).
[41] SABRANG INDIA, *supra note* 11.
[42] TIMES OF INDIA*, supra note* 39.
[43] Press Information Bureau, Ministry of Home Affairs, Release on LWE Security Situation, GOV'T OF INDIA (2025), https://www.pib.gov.in/PressReleasePage.aspx?PRID=2203440&reg=3&lang=1, (last visited Mar. 5, 2026).
[44] Odisha Revises Maoist Surrender Scheme, Introduces Stringent Eligibility Criteria, HINDUSTAN TIMES (Feb. 12, 2026).
[45]Home (Special) Dep't, Gov't of Odisha, Order No. 3446 (Nov. 2025),

across all the ranks. A central committee now receives ₹1.10 crore, the Chhattisgarh rate, plus ₹10 lakhs from the Odisha state, totalling around ₹1.20 crore.[46] A marriage incentive of ₹25,000 and provision of a house under "*Antyodaya Gruha Yojana*"[47] serve as long-term anchors for social integration.[48]

Whereas Jharkhand's policies, notably the "*Nayi Disha*" campaign, has the high-profile surrenderers, like that of Commander Kundan Pahan.[49] However, the state has struggled within the social backlash of its generosity, because Pahan, wanted in 128 criminal cases, including the murder of police officers and politicians, was given a ₹15-lakh reward and vocational compensation.[50] This hero's welcome for a man known as the Killing Machine highlighted the ethical tension in the S&R policy.[51] The state must offer enough to lure the commander, but not so much that it offends the sense of justice of the victim's family. The S&R policy for the left-wing extremists in India stands as a testament to the state's transition from a purely reactive policy to a sophisticated counter-surgency doctrine.

The Jharkhand Case Study: Fabricated Naxalite Surrenders and Policy Abuse

"Written laws are like a spider-web, it will trap the poor and the weak, but it will be torn to pieces by the rich and powerful."[52]

The name "Jharkhand" means "the land of forests". Jharkhand was carved out of Bihar on 15 November 2000, after almost half a century of people's movements around Jharkhandi identity, which disadvantaged societal groups articulated to augment political resources and influence the policy process in their favour.[53] The Jharkhandi identity and the demand for autonomy was not premised solely on the uniqueness of its tribal cultural heritage but was essentially a fallout of the failure of development policy to intervene in socio economic

[46] TIMES OF INDIA, *supra note* 39.
[47] Panchayati Raj & Drinking Water Dep't, Gov't of Odisha, *Guidelines of Antyodaya Gruha Jojana (AGJ)* (2025).
[48] GOV'T OF ODISHA, *supra note* 45.
[49] Amitabh Srivastava, Getting Away with Murder, INDIA TODAY, June 8, 2017.
[50] Dreaded Maoist Kundan Pahan Surrenders, Says 'Wasted 20 Years', NDTV (May 15, 2017), .http://www.ndtv.com/india-news/dreaded-maoist-kundan-pahan-surrenders-says-wasted-20-years-1693510 . (last visited Mar. 8, 2026)
[51] JHARKHAND POLICE, *supra note* 40.
[52] Stan Swamy, Laws in favour of Adivasis are showpieces not meant to be implemented, News Wing (July 3, 2015).
[53] Ved Marwah, India In Turmoil: Jammu & Kashmir, The North-East and Left Extremism 121 (Rupa & Co. 2009).

conditions of both the Adivasis and non-Adivasis in the region.[54]

Naxalism was prevalent in the area even before the birth of Jharkhand, in the then state of Bihar. Presently 18 districts out of 24 districts in Jharkhand are affected by Naxalism. Hazaribagh, Lohardaga, Palamu, Chatra, Garhwa, Ranchi, Gumla, Simdega, Latehar, Giridih, Koderma, Bokaro, Dhanbad, East Singhbhum, West Singhbhum, Saraikela, Kharsawa, Khunti, Ramgarhare are Naxalite affected areas.[55] Since the bifurcation of the state of Bihar into Bihar and Jharkhand, and birth of Jharkhand on 15th November 2000, Naxalite violence, especially that of the MCC, has shifted to Jharkhand, which is rich in mineral and forest wealth. Jharkhand, therefore, provides higher prospect for raising funds for the Naxalite activities.[56] In response, both the Union and state governments adopted a multi-layered counter-insurgency strategy combining security operations, development initiatives, and rehabilitation measures aimed at encouraging militants to abandon armed struggle.[57] Within this framework, Jharkhand implemented S&R schemes in line with the guidelines issued by the Ministry of Home Affairs, which sought to incentivize members of extremist groups to return to civilian life through financial assistance, vocational training, and reintegration support[58]. Over time, surrender statistics began to be presented as indicators of progress in weakening insurgent networks[59], However, the situation on the ground has often told a far more complex story. Reports emerging from certain districts suggested that the rising number of "surrenders" did not always correspond with the actual disengagement of armed militants from insurgent groups. Instead, allegations surfaced that vulnerable tribal youths with no links to extremist organizations were being falsely presented as surrendered Naxalites under the rehabilitation scheme.

The scale of the alleged fabrication became particularly visible in what came to be known as

[54]Jharkhand's Naxal Issue: A Comprehensive Overview, Google Docs (last visited Mar. 9, 2026), https://share.google/QuJYZg5R7nM8W6Hkd.
[55] Naxal Menace: 83 Districts Under, Intellibriefs (Dec. 2009), http://intellibriefs.blogspot.com/2009/12/naxal-menace-83-districts-under.html (last visited Feb. 28, 2026).
[56] Om Prakash Mishra & Sucheta Ghosh, Terrorism and Low Intensity Conflict in South Asian Region 520 (Manak Publication Pvt. Ltd. 2003).
[57] Nitin N. Zade, Surrender and Rehabilitation Policy for Left Wing Extremist: Myths and Reality (Doctoral Candidate, Tata Inst. of Soc. Scis. 2013).
[58]Min. of Home Affairs, Guidelines for Surrender-cum-Rehabilitation of Naxalites in the Naxal Affected States (Mar. 2017), http://mha.nic.in/sites/upload_files/mha/files/surrrenderPolAendments070909_0.pdf (last visited Mar. 9, 2026).
[59] Press Information Bureau, Union Home Minister Reviews LWE Situation, Confident of Naxal-Free India by March 31, 2026 (Dec. 12, 2024), https://www.pib.gov.in/PressReleaseDetailm.aspx?PRID=2225190 (last visited Mar. 9, 2026).

the "Ranchi surrender scam"[60]. Between 2010 and 2013, nearly 514 individuals, largely from economically vulnerable tribal communities, were reportedly presented as surrendered Naxalites and kept under the supervision of the Central Reserve Police Force within the premises of the old Ranchi jail. Investigations later suggested that the operation was orchestrated through a network involving intermediaries who approached youths from nearby villages with promises of recruitment in paramilitary forces. In return, they were asked to pose as surrendered Maoists during staged surrender ceremonies and, in several cases, were required to pay amounts reaching up to ₹2 lakh for the promised employment. A former Military Intelligence officer, Ravi Borda, who had earlier been associated with surrender operations in Assam, was allegedly brought in to replicate a similar model in Jharkhand. Following complaints, an FIR was registered and Borda, along with several associates, was arrested.[61]

The matter also drew the attention of the National Human Rights Commission, which took suo motu cognizance of the incident.[62] In its inquiry, the Commission noted serious irregularities in the surrender process and observed that several individuals recorded as the "surrenderees" had no demonstrable links with extremist organizations. The report highlighted allegations that poor villagers were induced through false promises of employment and financial assistance to participate in staged surrenders, raising concerns about exploitation, abuse of authority, and violation of basic human rights within the implementation of the S&R policy.[63] There are no indications that any investigation is being directed towards weeding out the wider conspiracy.[64]

Accounts from several of the affected youths further revealed how the scheme operated at the village level. When reporters from The Indian Express met fourteen such youths, they stated that nearly 500–550 others from the districts of Ranchi, Khunti, Gumla and Lohardaga had been similarly confined with them in the old Ranchi jail despite having no prior criminal

[60] Amitabh Srivastava, The story of 514 hapless Jharkhand men who were lured into surrendering as Naxals, India Today, April 23, 2015.
[61] Srivastava, *Id*.
[62] NHRC Report: 514 Innocent Tribal Youths Made to Surrender as Naxalites in Jharkhand, Sanhati (last visited Mar. 9, 2026), https://share.google/FgGJBqRq2W6bmOh4M.
[63] Fence Eating the Crop! NHRC Finds Fake 'Naxalite-Surrenders' in Jharkhand, SabrangIndia (Oct. 8, 2016), https://sabrangindia.in/article/fence-eating-crop-nhrc-finds-fake-naxalite-surrenders-jharkhand/ (last visited Mar. 8, 2026).
[64] B.P. Routray, Countering Left Wing Extremism: Failures within Successes, INST. FOR PEACE & CONFLICT STUDIES (May 5, 2015), http://www.ipcs.org/article/india/countering-left-wing-extremism-failures-within-successes-4878.html (last visited Mar. 8, 2026).

records.[65] One of them, Sundra Kujur from Gutia-Jamgai village in Namkum block, recounted that in November 2012 a man named Vijay Bara approached local youths claiming that the CRPF was conducting direct recruitment. Initially the youths were asked to pay ₹30,000, which later increased to higher amounts[66]. Thirteen young men from the village, aged between 19 and 31, eventually paid between ₹30,000 and ₹60,000 and agreed to present themselves as surrendered "Maoists".[67]

According to the testimonies, each youth was allegedly handed a pistol and a bullet and instructed to stage a surrender. Although it was the first time many of them had held a firearm, they agreed in the hope that it would lead to employment in the paramilitary forces. After the staged surrender ceremonies, the youths were taken to the disused Ranchi jail premises where they remained under the supervision of personnel from the CRPF. Their daily routine reportedly included two hours of physical training followed by cleaning duties within the jail compound.[68]

Similarly, apprehensions of dubious or coerced surrenders have also been raised in other parts of the Red Corridor. In one specific case in the Kookanur village of the Sukma district of Chhattisgarh, as many as twelve thousand people gathered outside a police station to protest the detention of a couple who were being coerced into surrender.[69] Investigative reports carried out by the Hindustan Times have revealed specific instances of Adivasi people being arrested in conflict zones for their involvement in Maoism and being kept in prison for long periods of time until acquitted.[70] One of the specific instances of Adivasi people being wrongly accused of being Maoists is that of Kawasi Hidme from the Dantewada district of Chhattisgarh. Kawasi Hidme was arrested at the age of seventeen for her involvement in the Maoist attack on a police party that resulted in the death of twenty-three policemen. Hidme spent nearly seven years in prison until she was acquitted due to the lack of evidence.

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[65] Times of India (Oct. 14, 2014), http://timesofindia.indiatimes.com/articleshow/38732881.cms (last visited Mar. 8, 2026).

[66]How Villagers in Conflict Zones Are Terrorised into Fake Surrenders, Sanhati (last visited Mar. 8, 2026), https://share.google/iZ03fx9C2Q6hzDUaw (reposting DailyO article on coerced surrenders).

[67] Malini Subharamaniyam Ground Report: The Truth About Chhattisgarh's Recent Maoist Surrenders, Scroll.in (Dec. 9, 2015), http://scroll.in/article/775849/ground-report-the-truth-about-chhattisgarhs-recent-maoist-surrenders (last visited Mar. 9, 2026).

[68] Subharamaniyam, *Id*.

[69]70% Chhattisgarh Naxal Surrenders Are Neither 'Naxal' Nor 'Surrenders', Indian Express (Dec. 8, 2014), http://indianexpress.com/article/india/india-others/70-chhattisgarh-naxal-surrenders-are-neither-naxal-nor-surrenders/ (last visited Mar. 8, 2026).

[70] Hindustan Times, Chhattisgarh: Rights Groups Allege Illegal Arrests, Killing of Tribals by Police (Nov. 16, 2024), https://www.hindustantimes.com/cities/others/chhattisgarh-rights-groups-allege-illegal-arrests-killing-of-tribals-by-police-101717473117156.html (last visited Mar. 8, 2026).

Families often struggle to secure bail, cope with the loss of their primary breadwinner, and endure the long-term stigma associated with allegations of extremism.[71] Lalit (40) is a Santhal from Bokaro district. He was arrested in 2001 and imprisoned. The police held him responsible for a murder committed by Naxalites. He spent about 10 months in Tenughat jail before he was granted a bail. A second time he was called to the nearby police station by the Officer-in-charge ostensibly to help carrying some housing materials. However, as he arrived at the police station, he was arrested. Similarly, he has been made party to two other cases as well. Presently, he is acquitted in a murder case. This acquittal happened since the family of the murdered person gave a written statement to the court stating that Lalit was innocent.[72]

A PIL filed by Jitendra Jain on behalf of "Fight for Human Rights" (FHR) alleged that there were thousands of "tribals" languishing in various central jails without any trial in Naxal-affected states like Chhattisgarh, Madhya Pradesh, Orissa, Jharkhand and West Bengal.[73] Advocate K.R. Chitra, who argued on behalf FHR, stated that Adivasi under-trials were languishing in various jails for very long periods without any trial and as a result, unrest and hostilities were prevailing in tribal areas of the country. The PIL also said that often Adivasi under-trials were not informed about the grounds of their arrests; they were not even duly represented by lawyers of their choice as there are very few interpreters available in courts who can speak Adivasi languages; and hence, they are deprived of their fundamental rights of fair trials as they are unable to explain the real facts and circumstances to the judicial officers. Furthermore, the PIL stated that most of those arrested in cases related Naxal-violence, were lodged in distant central jails.[74]

[71] P. Dhat, Acquitted after 7 Years, Tribal Woman Says She Was Tortured, The Hindu, Mar. 3, 2015.
[72]Lalit Majhi, in A Study of Jharkhandis Alleged as Naxalites (Bagaicha, 2016), https://www.adivasi-koordination.de/wpdev/wp-content/uploads/2023/01/bagaicha_study-of-adivasi_Undertrials_2016.pdf (last visited Mar. 9, 2026).
[73] N. Zade, Surrendered Maoist Person: Their Perspectives on Joining and Leaving from the Maoist Movement in Gadchiroli District (unpublished M.Phil. dissertation, Tata Inst. of Soc. Scis., Sch. of Soc. Work 2013).
[74] Zade, *Id.*

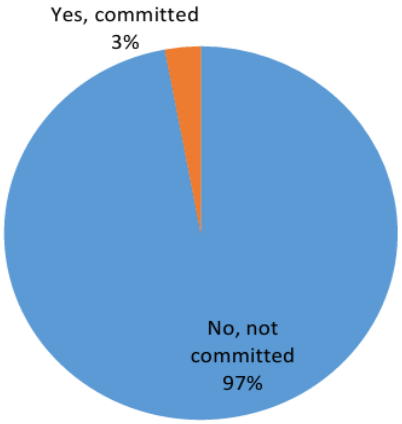

Figure - Percentage of persons who accept that they have committed and not committed the alleged crime[75]

The chart shows that about 97 per cent of the respondents, their co-villagers, and the research assistants who studied their cases have reiterated that they have not committed the crime the police have assigned to them. Just three per cent of the respondents have confessed that the crimes they have been accused of committing are true.

The Jharkhand episode demonstrates that fabricated surrenders are not merely administrative irregularities but raise serious constitutional and human rights concerns. These concerns require closer judicial scrutiny, which will be examined in the following chapter.

Judicial Review and Human Rights Implications

Judicial scrutiny has emerged as an important mechanism for addressing allegations of fabricated Naxalite surrenders in Jharkhand. The Jharkhand High Court in October 2025 directed the state government to furnish a status report on the alleged fake surrender of tribal youths as Naxalites. A division bench of the court, headed by Chief Justice Tarlok Singh Chauhan and including Justice Rajesh Shankar, was dealing with a Public Interest Litigation filed by the Jharkhand Council for Democratic Rights. The petition had stated that some tribal youths had been falsely implicated as surrendered Maoists when they had no connection with extremist organizations.[76] Knowing the gravity of the charge against the accused, the court had asked the state to reveal the process by which these people had been identified as surrendered militants.

Moreover, the Bench observed that in the event the allegations are found to be true, the case

[75] Bagaicha Research Team, Deprived of Rights over Natural Resources, Impoverished Adivasis Get Prison: A Study of Undertrials in Jharkhand 46 (2016), https://www.adivasi-koordination.de/wpdev/wp-content/uploads/2023/01/bagaicha_study-of-adivasi_Undertrials_2016.pdf.

[76] Jharkhand High Court Investigates Allegations of Fake Tribal Surrenders as Naxalites, Times of India (Oct. 8, 2025), https://timesofindia.indiatimes.com/city/ranchi/jharkhand-high-court-investigates-allegations-of-fake-tribal-surrenders-as-naxalites/articleshow/114278123.cms (last visited Mar. 8, 2026).

would signify an egregious abuse of the system of surrender and rehabilitation and could have grave consequences for the parties involved who would suffer the social and legal stigmatization of being labelled as insurgents.[77] By ordering the government to submit a detailed report and relevant records, the Court underlined the point that counter-insurgency measures must always be subject to constitutional review and administrative accountability. However, as of the present stage of the proceedings, no status report has been submitted before the Court and there have been no significant developments in the case.[78] Thus, the issues outlined in the petition remain unaddressed, and the accusations of fake surrenders and their connotations to the rights of tribal communities are a question that still awaits the judicial and administrative solution.

A landmark case of such precedence is the Supreme Court of India case Nandini Sundar v. State of Chhattisgarh.[79] In this case, the Court considered the legality of the state-sponsored militia, called *Salwa Judum*[80], and determined that the practice of tribal civilians being armed as Special Police Officers to conduct counter-insurgency operations had been in violation of constitutional guarantees.[81] The Court rationale can be applied to the current situation: when the Constitution forbids the use of untrained civilians to be used as the tools of state power, the intentional mistreatment of innocent civilians being considered insurgents is no less a perversion of a legitimate power. The two scenarios demonstrate the instrumentalization of the marginalised communities in the security operations and thus compromise the rule of law.

The constitutional ramifications of the manufactured surrenders are seen to be even clearer when we consider it through the prism of the Article 21 of the Constitution of India[82], which provides the right of life and personal liberty. The Supreme Court has always viewed Article 21 to incorporate the right to live with dignity, reputation and procedural fairness. The term extremist has far-reaching legal and social consequences, such as increased surveillance, job limits, and an extended stigma in the community.[83] Practically, these practices can be considered a violation of the legal and social identity of the individual without proper hearing

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[77] Times of India, *supra note* 75.
[78] Jharkhand Council for Democratic Rights v. State of Jharkhand, WP(PIL) No. ___/2015 (Jharkhand High Court) (ongoing as of Mar. 2026), reported in Jharkhand HC Directs DGP to File Affidavit in 'Fake Naxal' Surrender Case, The Print (Nov. 26, 2025), https://theprint.in/india/jharkhand-hc-directs-dgp-to-file-affidavit-in-fake-naxal-surrender-case/2793694/.
[79] Nandini Sundar v. State of Chhattisgarh, (2011) 7 SCC 547.
[80] Planning Comm'n, Gov't of India, *supra note* 1, at 2.
[81] H. Kumar, Who Is the Problem, the CPI (Maoist) or the Indian State?, 44 Econ. & Pol. Wkly. 8-12 (2009).
[82] INDIA CONST. art. 21.
[83] Counselling of Naxalites: Post Surrendered Life Explication, Google Docs (last visited Mar. 9, 2026), https://share.google/Csn7c3ZIbOUctBpTE.

which will be of grave constitutional concern. This could also involve several other essential rights. When such practices have a disproportionate impact on the members of Scheduled Tribes, the problem gains more social justice dimension. In these cases, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, comes into play since the Act is aimed at curbing the humiliation, intimidation, and the wrongful targeting of an individual who is a member of the Scheduled Castes and the Scheduled Tribes[84]. If the tribal youths are intentionally portrayed as extremists or pressured into surrender stories, the stigma and discrimination that could be said to be the resultant factors could constitute a form of institutional harassment which the Act was supposed to prevent.

Taken together, these legal issues indicate that the problem of manufactured Naxalite surrenders is not just an issue of improper policy application but also an issue that brings forth serious constitutional and human rights concerns. Constitutional courts intervention thus comes as crucial in the process of making sure that the security policies do not contradict the provisions of personal liberty, dignity and due process. Judicial review is not only a tool used in solving individual complaints, but it also acts as a repelling measure against the misuse of state authority in war-torn regions.

Recommendations

As demonstrated in the previous chapters, misusing the framework of 'surrender and rehabilitation' is not a minor administrative mistake but a structural failure that stems from a lack of checks and balances, institutional oversight, and the inherent vulnerability of tribal groups in conflict areas. When allegedly innocent villagers are referred to as 'surrendered militants,' it also speaks to how a rehabilitative policy can easily become a misrepresentational tool in the absence of checks and balances. In this context, it is also important to note that the intervention of the Jharkhand High Court speaks to how inadequate the current checks and balances are in the 'surrender' framework.

Two institutional reforms are particularly crucial.

Judicial Oversight and Independent Inquiry Mechanism

The process of surrender should not solely rest in the hands of police or local administration. When there are fraudulent or coerced surrenders, independent inquiry is a must. If there are genuine grievances, independent commissions or inquiry groups under judicial supervision can be established to assess whether those who are referred to as 'surrendered insurgents' are

[84] The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, § 3 (India).

actually affiliated with any of these extremist groups.

Transparency in Surrender Statistics and Verification Procedures

Transparency in documentation and verification is a must in every case of surrender. Government agencies should provide documentation that reveals information regarding the identities of those who allegedly surrendered, the circumstances of the surrender, verification of the information, any weapons seized from them, and rehabilitation benefits provided to them. Transparency in this regard is vital in controlling false or inflated figures of surrenders and assessing the legitimacy of the process.

Apart from that, there are many policy measures that are required to address the causes that allowed such practices to occur in the first place. For those who are wrongly identified as extremist and are not provided any compensation or legal aid to reduce the financial, social, and psychological impact of being misidentified, there is a need to provide them with legal aid to reduce the harassment of innocent people in the judicial process itself.

On the issue of Left Wing Extremism, there is a need to increase policy measures that provide a boost to local governance and ensure that tribal communities are involved in decision-making processes. Effective implementation of the Panchayats (Extension to Scheduled Areas) Act, 1996, is required to ensure that tribal communities are provided with a greater say in matters of land, forest, and developmental policies in Scheduled Areas. Addressing issues of socio-economic vulnerabilities is also important to reduce both insurgency and governance exploitation of these communities.

Lastly, security forces operating in conflict areas require training on constitutional rights, human rights laws, and procedures to be followed during arrests and surrender verification. Another crucial factor is to improve transparency, accountability, and governance of counter-insurgency operations. If all these systemic problems are not addressed, any welfare or rehabilitation programs implemented would not be effective in winning over the trust of citizens or in preventing peacebuilding policies from being misused against the very citizens they were meant to protect.

Conclusion

The surrender and rehabilitation process was aimed at persuading the militants to denounce violence and return to the civilian living as a larger counter-insurgency policy in India. The evidence examined in this paper, however, indicates that its execution has, in some cases, not been in accordance with this goal. The Jharkhand episode demonstrates how administrative

discretion, inadequate verification systems and institutional pressures to inflate the number of surrendered Naxalites had created an environment that enabled the creation of fake Naxalite surrenders of vulnerable tribal youths. This not only affects the essence of the counter-insurgency strategy, but it also raises a host of constitutional issues relating to dignity, personal liberty, and due process in the Indian Constitution. If innocent people are labelled as insurgents, it not only amounts to a misclassification in law, but it also invites social, economic, and psychological consequences. An investigation by the National Human Rights Commission and even judicial review underscore the need to improve safeguards, disclosure, and accountability in the surrender rehabilitation mechanism. Such a mechanism is not only required to prevent any potential misuse of these institutions, but it also helps in restoring public confidence in governance, rule of law, and the fight against Left Wing Extremism.

CONSTITUTIONAL ACCOUNTABILITY IN THE AGE OF ALGORITHMS: REFORMING LABOUR LAW FOR INDIA'S GIG ECONOMY.

Alok Ambedkar[*]

Abstract

In modern days with the expansion of digital labour platforms, the Gig economy has emerged as a prominent feature of India's labour market. Which has revamped India's employment landscape by introducing operation of digital labour platforms through algorithmic governance which allocates tasks, determines compensation and imposes discipline without managerial oversight. And this rapidly expanding gig economy presents a regulatory paradox where unprecedented technological innovation coexists with uncertain labour protection. Where many talk about how the gig economy offers freedom and makes you feel like a boss, in reality that's just the shiny side of a coin. The reality is quite different for women and marginalized sections, because this whole narrative hides the real struggle and risk they face on a daily basis. Many people who cannot find traditional jobs turn to gig platforms, but laws governing this sector have not done enough to fix the existing social inequalities that make this work precarious. This paper provides a critical assessment of the adequacy of existing Indian regulations in mitigating the structural risks associated with digital platform work. Through doctrinal analysis of the Code on Social Security, 2020 (SS Code), this study also examines to what extent statutory recognition actually translates into enforceable social security and substantive protection for the modern workforce. Within the framework of constitutional guarantees of equality and livelihood (Articles 14 and 21), the prevailing regime of algorithmic management, rating systems, and unilateral deactivation mechanisms fundamentally challenges traditional and often flawed concepts of worker autonomy and contractual freedom in India. This paper proffers digital subordination to describe how data, rather than direct management, controls workers and argues that simply passing laws without clear enforcement risks masking informal labour with a high-tech facade proposing a balanced regulatory framework featuring social security, algorithmic transparency, and procedural safeguards to ensure innovation does not come at the cost of worker dignity.

Key words*: Gig economy, Algorithmic* governance, Digital labour, Code on Social Security, Labour protection.

Introduction

India's labor landscape has undergone a profound transformation in recent years, one that echoes the broader global shift toward digital economies yet carries unique contours shaped by the country's vast informal workforce and uneven development. At the heart of this change lies the gig economy, a model of work that promises flexibility and opportunity but

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often delivers instability and exclusion. This introduction sets the stage for examining how algorithmic systems, embedded in platforms like Uber, Swiggy, and Zomato, are reshaping employment relations, challenging longstanding notions of worker rights, and exposing gaps in India's regulatory framework. By drawing on constitutional principles of equality and livelihood, the discussion here highlights the urgent need for reforms that safeguard dignity amid technological progress.

The Rise of The Gig Economy in India: A Digital Revolution in Labour Markets

The gig economy's ascent in India marks a pivotal moment in the evolution of work, blending technological innovation with the demands of a young, urbanizing population. What began as niche services in metropolitan hubs has ballooned into a cornerstone of the service sector, fueled by smartphone penetration and affordable internet access. According to a NITI Aayog report, the number of gig workers stood at approximately 7.7 million in 2020-21, a figure expected to surge to 23.5 million by 2029-30, reflecting an annual growth rate that outpaces traditional employment sectors.[1] This expansion is not merely numerical; it represents a digital revolution that democratizes access to income-generating opportunities, particularly for those sidelined by formal job markets, such as rural migrants and semi-skilled youth.

Consider the trajectory: pre-pandemic, platforms like Ola and Flipkart were already onboarding millions, but the COVID-19 lockdowns accelerated adoption, turning gig work into a lifeline for income during economic disruptions. An ASSOCHAM study projects the sector's value to reach $455 billion by 2024, growing at a compound annual rate of 17 percent, with contributions potentially amounting to 1.25 percent of India's GDP in the long term.[2] By 2025, estimates suggest up to 350 million gig jobs could emerge, positioning India as the fifth-largest market globally after the United States, China, and Brazil.[3] These jobs span ridesharing, food delivery, freelancing, and e-commerce logistics, where workers engage in short-term tasks mediated by apps rather than fixed contracts.

This revolution extends beyond urban elites. In a nation where over 90 percent of the workforce operates in the informal economy, gig platforms offer an entry point for

[1] Niti Aayog, Gov't of Ind., India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work (2022).
[2] Assocham, Gig Economy: Aligning Consumer Preferences: The Way Forward (2020),
[3] Naveen Kumar, *Regulatory Framework and the Protection of Basic Rights of Gig Workers*, Bar & Bench (May 16, 2024), https://www.barandbench.com/view-point/regulatory-framework-and-the-protection-of-basic-rights-of-gig-workers [hereinafter Regulatory Framework].

marginalized groups, including women entering the labour force post-childbirth and individuals from lower castes facing discrimination in conventional hiring.[4] Freelance platforms alone engage 15 million skilled Indians, comprising nearly 40 percent of the global freelance pool, underscoring how digital tools bridge geographical barriers.[5] Yet, this growth is uneven: while southern states like Karnataka and Tamil Nadu lead in platform density due to tech ecosystems, northern regions lag, exacerbating regional disparities. The allure is clear, workers often describe the freedom to choose hours and locations as empowering, a stark contrast to the rigidity of factory shifts or office routines. Still, as this section will explore through subsequent analysis, such empowerment comes laced with vulnerabilities that demand scrutiny.

Algorithmic Governance: from human oversight to Data-Driven Control

Traditional labour management relied on visible hierarchies: supervisors issued directives, monitored performance, and enforced discipline through interpersonal dynamics. In contrast, the gig economy introduces algorithmic governance, a subtle yet pervasive form of control where data streams replace human intermediaries. Platforms deploy proprietary algorithms to assign tasks, calculate earnings, and evaluate worker reliability, creating an ecosystem where decisions unfold in milliseconds, often inscrutably to those affected.[6]

Take delivery services as an illustrative case. An algorithm might route a rider to a distant order based on real-time traffic data, customer ratings, and predicted demand, while dynamically adjusting pay incentives to nudge acceptance rates. Ratings, accumulated from fragmented interactions, serve as a digital panopticon, influencing future opportunities; a dip below 4.5 stars could throttle task availability, mimicking demotion without appeal.[7] This shift extends to discipline: unilateral deactivations, triggered by anomaly detection in GPS logs or complaint patterns, sever livelihoods overnight, bypassing grievance mechanisms embedded in older labour laws.

Scholars term this "digital subordination," where surveillance capitalism extracts behavioral data to optimize compliance, far removed from overt boss-worker tensions.[8] In India, where platforms handle over 10 million daily transactions, such systems amplify power

[4] *Id.*
[5] *Id.*
[6] Avani Kanswa, *From Delivery Apps to Courtrooms: The Struggle to Define Gig Work in India* (Working Paper No. 5582015, 2025).
[7] Regulatory Framework, *supra* note 3.
[8] Anweshaa Ghosh, *Engendering the Gig Economy in India* (Working Paper No. 4551740, 2023), [hereinafter Gig Economy in India].

asymmetries. Workers report feeling constantly tracked, with features like geofencing enforcing virtual boundaries akin to shift schedules. Unlike Fordist factories with union buffers, algorithmic opacity fosters isolation, as coders in distant offices refine rules without worker input. This evolution, while efficient for scaling, erodes the relational trust that once defined Indian labour relations, from textile mills to construction sites. As platforms expand, understanding these mechanics becomes essential to reclaiming agency in an era where code dictates destiny.

The Regulatory Paradox: Innovation Meets Precarious Work

Few phenomena capture the tensions of modern capitalism like India's gig economy: a beacon of innovation that propels GDP growth yet perpetuates precocity on a massive scale. On one hand, it fosters entrepreneurship, with platforms enabling micro-entrepreneurs to bypass gatekeepers and tap global markets; on the other, it entrenches inequalities, as the "flexibility" narrative masks exploitative undercurrents.[9] This paradox is stark in worker realities: surveys reveal 83 percent of cab drivers and 78 percent of delivery personnel logging over 10 hours daily, yet 70 percent struggle with household expenses due to earnings below minimum wage thresholds.[10]

Women and marginalized communities bear the brunt. Gig work, while accessible, amplifies gender biases; female delivery agents face heightened safety risks and algorithmic penalties for breaks tied to caregiving, with only 10-15 percent representation in male-dominated fleets.[11] Caste dynamics further compound this, as lower-caste workers cluster in high-risk urban gigs, their mobility curtailed by platform biases favoring networked insiders. Health tolls are alarming, 99.3 percent report chronic pain from ergonomic strains, and 98.5 percent endure anxiety from deactivation fears, conditions worsened by absent social security.[12]

Legally, the disconnect is glaring. The Code on Social Security, 2020 nods to gig workers via definitions in Sections 2(35) and 2(61), promising benefits through a National Board, but implementation lags, leaving millions in limbo.[13] State experiments, like Rajasthan's 2023 Act mandating welfare cesses, offer glimmers but falter on enforcement, with pending

[9] Pranav Aggarwal, *Gig Workers: The Need to Regulate the Unregulated*, Live L. (Dec. 26, 2023), https://www.livelaw.in/articles/gig-workers-the-need-to-regulate-the-unregulated-245340 [hereinafter Gig Workers].
[10] Regulatory Framework, *supra* note 3.
[11] Gig Economy in India, *supra* note 8.
[12] *Id.*
[13] Gig Workers, *supra* note 9.

disputes numbering over 8,000 in labour tribunals.[14] Globally, the EU's directive on platform transparency contrasts India's hesitance, highlighting how unchecked innovation risks entrenching a "high-tech facade" over informal drudgery. Resolving this requires viewing precarity not as a byproduct but a design flaw, one that innovation must redress rather than exacerbate.

Research Objectives and Methodology: A Doctrinal And Critical Lens

This paper pursues three core objectives: first, to critically evaluate the adequacy of existing regulations, particularly the Social Security Code, 2020, in addressing gig work's structural risks; second, to interrogate how algorithmic management intersects with constitutional guarantees under Articles 14 and 21, probing equality and livelihood erosions; and third, to propose a balanced framework integrating social security, transparency mandates, and procedural safeguards to harmonize growth with dignity.

Methodologically, the study employs a doctrinal approach, dissecting statutes like the Industrial Relations Code and judicial precedents through close textual analysis. This is complemented by a critical lens, drawing on feminist and subaltern theories to unpack digital subordination's gendered and caste-inflected impacts. Comparative glances at global models, such as Australia's fair work amendments, enrich the discourse without overshadowing Indian contexts. Sources are confined to peer-reviewed platforms and legal repositories, ensuring rigor amid evolving jurisprudence. Ultimately, this inquiry aims not just to diagnose but to catalyze reforms, ensuring the gig economy serves as a ladder rather than a trap.

Conceptualizing The Gig Economy: Promises And Perils

The gig economy has emerged as a transformative force in India's labour landscape, blending technological innovation with flexible work arrangements that promise empowerment while often delivering exploitation. At its core, this sector relies on digital platforms that connect workers with short-term tasks, reshaping traditional notions of employment. Yet, beneath the veneer of opportunity lies a complex interplay of autonomy, inequality, and risk that demands critical scrutiny. This section explores these dynamics, drawing on evolving theoretical lenses to unpack the sector's dual nature.

Defining Digital Labour Platforms: Uber, Swiggy, And Beyond

Digital labour platforms serve as intermediaries in the gig economy, facilitating transactions between service providers and consumers through algorithmic matching and oversight. In

[14] *Id.*

India, platforms like Uber and Swiggy exemplify this model: Uber deploys ride-hailing services where drivers operate as independent contractors, using the app to accept fares based on dynamic pricing algorithms, while Swiggy focuses on food delivery, assigning orders to riders who navigate urban traffic under time-bound expectations.[15] These platforms extend beyond mere facilitation; they exercise control through rating systems, surge pricing, and penalty mechanisms that dictate worker earnings and access to work.[16]

The scope of such platforms has broadened to include e-commerce logistics like Amazon Flex and freelance marketplaces such as Urban Company, encompassing over 77 lakh gig workers as of 2020-21, with projections reaching 2.35 crores by 2029-30.[17] This growth stems from the service sector's expansion, where low barriers to entry attract diverse participants, including urban youth and rural migrants seeking supplemental income. However, this definition hinges on the absence of a traditional employer-employee bond, positioning workers as self-employed entrepreneurs rather than subordinates, a classification that shields platforms from conventional labour obligations.[18] Consequently, what begins as a tool for economic inclusion often morphs into a mechanism for cost externalization, where platforms reap profits from labour-intensive tasks without bearing associated risks.

The Myth of Autonomy: Freedom or Facade in Gig Work?

Proponents of the gig economy tout autonomy as its cornerstone, arguing that workers enjoy the liberty to choose hours, reject tasks, and scale earnings based on effort. For Uber drivers in bustling cities like Mumbai, this translates to logging in during peak demand without fixed shifts, ostensibly fostering work-life balance.[19] Yet, this narrative crumbles under closer examination, revealing a facade sustained by algorithmic governance that curtails true independence.

Workers face invisible constraints: Swiggy riders, for instance, endure deductions for late deliveries or low ratings, enforced by opaque algorithms that prioritize efficiency over equity, leading to involuntary logouts and income volatility.[20] During the COVID-19 lockdowns, online gig protests in India highlighted this illusion, as platforms like Zomato imposed

[15] Rashmi Bagri, *Gig Workers, Platform Workers & Gig Economy*, LIVE L. (Jan. 18, 2022), https://www.livelaw.in/know-the-law/the-code-on-social-security-2020-gig-workers-ifat-indian-federation-of-app-based-transport-workers-industrial-disputes-act-1947-189769, (last visited Mar. 5, 2026).
[16] Regulatory Framework, *supra* note 3.
[17] Gig Workers, *supra* note 9.
[18] *Id.*
[19] V. Kumar, The Gig Economy - A Double-Edged Sword (Working Paper No. 5139026, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5139026. [hereinafter 'The Gig Economy'].
[20] Regulatory Framework, *supra* note 3.

unilateral fare cuts and safety mandates without consultation, prompting granular resistances that evolved into collective actions via social media.[21] Such controls mimic Fordist oversight but in digital form, where data tracking via GPS supplants factory clocks, eroding the promised flexibility. In essence, autonomy serves as a marketing ploy, masking a power imbalance where workers' "choices" are shaped by platform incentives and punitive metrics, fostering dependency rather than liberation.

Gendered And Marginalized Realities: Inequalities Amplified by Platforms

The gig economy, far from leveling the playing field, amplifies pre-existing inequalities, particularly along gender and caste lines, turning platforms into amplifiers of social divides. Women, who constitute a mere 19.2 percent of India's labour force compared to 70.1 percent for men, encounter heightened barriers in gig roles, often confined to lower-paying tasks like beauty services on Urban Company due to safety concerns and familial duties.[22] Discriminatory algorithms exacerbate this: rating systems penalize women for pauses during deliveries, presumed as inefficiency rather than caregiving interruptions, perpetuating a gender wage gap where female earnings lag by up to 20 percent in similar roles.[23]

Marginalized communities, including Dalit and Adivasi workers, face compounded exclusion; platforms' verification processes favor urban, networked individuals, sidelining those without digital literacy or reliable transport.[24] In delivery fleets, caste-based segregation persists, with lower castes assigned riskier night shifts, mirroring traditional labour hierarchies. These realities underscore how the gig model transplants societal biases into virtual spaces, where anonymity shields discrimination yet heightens vulnerability to harassment, as seen in unreported assaults on female riders. Ultimately, platforms do not dismantle inequalities but entrench them, demanding interventions that address intersectional harms.

Structural Risks: Precarity, Invisibility, And Social Exclusion

Gig work's structural underbelly manifests in precarity, where income instability and health hazards define daily existence. Delivery personnel on Swiggy report working over 10 hours daily without breaks, exposing them to 99.3 percent physical strain and 98.5 percent mental

[21] A. Surie & D. Koduganti, From Granular to Collective Resistance: Rethinking Workers' Protests During the Pandemic in India's Online Gig Economy (Working Paper No. 3963547, 2021).
[22] P. Gupta, Platform Work and Labour Legislation in India: Women's Engagement and Challenges (Working Paper No. 5345142, 2024.
[23] S. Datta, Engendering the Gig Economy in India (Working Paper No. 4551740, 2023),
[24] Gig Workers, *supra* note 9.

stress from unattainable 10-minute targets.[25] This invisibility stems from the sector's informal nature: workers lack formal contracts, rendering them absent from official statistics and welfare nets, with 94 percent earning below Rs 10,000 monthly.[26]

Social exclusion compounds these risks, as gig roles isolate workers from unions and community support, fostering burnout amid zero days off for 48 percent of delivery agents.[27] Platforms' disintermediation further erodes bargaining power, with algorithmic terminations bypassing due process. In a nation where self-employment dominates at 55.8 percent, this model entrenches exclusion, particularly for migrants who forfeit rural ties without urban security. Addressing these requires reimagining platforms not as neutral tools but as accountable entities, lest precarity becomes the gig economy's enduring legacy.

Theoretical Foundations: From Fordism to Platform Capitalism

The gig economy's theoretical roots trace from Fordism's mass production and rigid hierarchies to platform capitalism's decentralized yet surveilled labour. Fordism, with its assembly lines and welfare contracts, yielded stable employment but stifled flexibility; platforms invert this, fragmenting work into micro-tasks mediated by data-driven extraction.[28] Nick Srnicek's framework of platform capitalism illuminates this shift: firms like Uber accumulate value through network effects and behavioral data, commodifying workers' time and mobility while externalizing costs.[29]

In India, this evolution aligns with neoliberal reforms post-1991, where labour codes consolidate 29 statutes into four, ostensibly simplifying compliance but diluting protections.[30] Judicial precedents like *Bandhua Mukti Morcha v. Union of India* (1984) invoke Article 21's right to dignified work, yet platforms evade such mandates by reclassifying relations.[31] This theoretical pivot promises efficiency but breeds precarity, urging a hybrid model that integrates Fordist securities with digital adaptability. As India's gig sector swells to 350 million jobs by 2025, reconciling these foundations remains imperative for equitable growth.

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[25] Kartik Kanodia, *The Consolidation of Labour Laws in India: Promise or Precarity?*, SCC BLOG (Dec. 19, 2025), https://www.scconline.com/blog/post/2025/12/19/consolidation-of-labour-laws-india-promise-precarity. (last visited Mar. 5, 2026). [hereinafter 'The Consolidation'].
[26] *Id.*
[27] The Consolidation, *supra* note 25.
[28] The Gig Economy, *supra* note 19.
[29] The Consolidation, *supra* note 25.
[30] *Id.*
[31] Rashmi Bagri, *Gig Workers, Platform Workers & Gig Economy*, LIVE L. (Jan. 18, 2022), https://www.livelaw.in/know-the-law/the-code-on-social-security-2020-gig-workers-ifat-indian-federation-of-app-based-transport-workers-industrial-disputes-act-1947-189769, (last visited Mar. 5, 2026). [hereinafter 'Platform Workers']

Existing Regulatory Framework: An Assessment of Adequacy

India's regulatory response to the gig economy lags its explosive growth, with fragmented laws struggling to extend protections to platform-dependent workers. While recent codes signal intent, persistent gaps in coverage and enforcement undermine their efficacy. This section assesses this framework, tracing its evolution, dissecting key provisions, and contrasting global models to reveal why adequacy remains elusive.

Evolution Of Indian Labour Laws In The Digital Age

Indian labour jurisprudence, rooted in colonial-era statutes, has incrementally adapted to digital disruptions, transitioning from protective silos to consolidated codes. Pre-2019, laws like the Industrial Disputes Act, 1947 (IDA), governed organized sectors, defining "workmen" narrowly to exclude gig arrangements, leaving platforms like Uber outside scrutiny.[32] The Second National Labour Commission's recommendations spurred the 2020 codes, merging 29 enactments to streamline compliance amid gig proliferation.

This evolution reflects neoliberal pressures: the gig sector's rise, fueled by smartphone penetration, prompted recognition of unorganized labour, yet implementation falters. By 2023, states like Rajasthan pioneered the Platform Based Gig Workers (Registration and Welfare) Act, mandating aggregator cesses and redressal boards, signaling a federalist push.[33] Nonetheless, digital opacity, algorithmic opacity and data silos, challenges enforcement, as courts grapple with classifying app-mediated work under archaic definitions.[34] This trajectory promises universality but delivers patchwork coverage, ill-suited to the gig economy's fluidity.

The Code On Social Security, 2020: Statutory Recognition for Gig Workers

The Code on Social Security, 2020 (CSS 2020), marks a pivotal acknowledgment of gig labour, consolidating nine statutes to extend welfare to informal sectors. By defining gig workers (S.2(35)) and platform workers (S.2(61)) outside traditional ties, it bridges a long-standing void, enabling schemes via the National Social Security Board (S.6).[35] This recognition transforms gig roles from peripheral to protected, aligning with Article 41's

[32] Gig Workers, *supra* note 9.
[33] Gig Workers, *supra* note 9.
[34] Anjali Menon et al., *The Code on Social Security 2020: A Structural Reset of India's Social Security Framework*, BAR & BENCH (Feb. 26, 2026), https://www.barandbench.com/view-point/the-code-on-social-security-2020-a-structural-reset-of-indias-social-security-framework, (last visited Mar. 5, 2026).
[35] Anjali Menon et al., *The Code on Social Security 2020: A Structural Reset of India's Social Security Framework*, BAR & BENCH (Feb. 26, 2026), https://www.barandbench.com/view-point/the-code-on-social-security-2020-a-structural-reset-of-indias-social-security-framework, (last visited Mar. 5, 2026).

directive for social security.

Provisions For Social Security Benefits: Coverage And Gaps

Chapter IX (Ss.112-114) entitles gig workers to accident insurance, health/maternity benefits, old-age support, and crèche access, funded by government outlays and aggregator levies (1-2% of turnover, capped at 5% of worker payments).[36] Pro-rata gratuity for fixed-term gigs and voluntary ESI opt-ins broaden coverage, while a toll-free helpline (S.112) aids registration via Aadhaar-linked portals.[37] Gaps persist: schemes exclude comprehensive maternity for unorganized women, unlike ILO standards, and fluctuate with incomes, deterring low-earners.[38] Overlapping definitions (e.g., unorganized vs. gig) confuse applicability, with only 10% registration under prior acts like the Unorganized Workers Act, 2008.[39]

Enforceability Challenges: From Recognition to Real Protection

Enforceability hinges on unframed rules, delaying nationwide rollout despite Supreme Court prods on 4.5-year lags.[40] Aggregators resist contributions, citing hiring curbs, while overburdened tribunals (e.g., 8000+ pending cases) stymie disputes.[41] Judicial interventions, like IFAT's PIL seeking unorganized status for Uber/Swiggy workers, highlight algorithmic controls as de facto employment, yet outcomes remain pending.[42] Digitization aids compliance but raises privacy risks, underscoring the chasm between statutory intent and practical safeguards.

Other Relevant Legislations: Industrial Disputes Act and Contract Labour Act Revisited

The IDA, integrated into the Industrial Relations Code, 2020, regulates dismissals and strikes but sidelines gig workers as non-"employees," barring collective bargaining.[43] Revisited in gig contexts, it falters against transient ties, as platforms invoke independent contractor

[36] Platform Workers, *supra* note 31.
[37] Anjali Menon et al., *The Code on Social Security 2020: A Structural Reset of India's Social Security Framework*, BAR & BENCH (Feb. 26, 2026), https://www.barandbench.com/view-point/the-code-on-social-security-2020-a-structural-reset-of-indias-social-security-framework, (last visited Mar. 5, 2026).
[38] Platform Workers, *supra* note 31.
[39] Gursimran Kaur Bakshi, *Why 4.5 Years To Frame Rules? Supreme Court Questions Delay In Implementing 2020 Code On Rights Of Gig Workers*, LIVE L. (Feb. 22, 2025), https://www.livelaw.in/top-stories/why-45-years-to-frame-rules-supreme-court-questions-delay-in-implementing-2020-code-on-rights-of-gig-workers-284676, (last visited Mar. 5, 2026).
[40] Gig Workers, *supra* note 9.
[41] Gig Workers, *supra* note 9.
[42] Regulatory Framework, *supra* note 3.
[43] *Id.*

defenses in litigations like All India Gig Workers Union v. Uber.[44] The Contract Labour (Regulation and Abolition) Act, 1970, applies peripherally to aggregator "contracts," mandating welfare but lacking judicial teeth for digital enforcement.[45] These relics, while foundational, amplify invisibility, necessitating code-aligned amendments for dispute resolution in app ecosystems.

Comparative Insights: Global Approaches to Gig Regulation (EU, US, AND Australia)

Global models offer blueprints for India's deficits. The EU's Platform Work Directive mandates algorithmic transparency, banning sensitive data processing (e.g., union activity) to curb biases, with presumptive employee status for controlled gigs. In the US, California's AB5 (codified via Proposition 22) reclassifies drivers as employees for benefits, though platform lobbying diluted it; the Workplace Technology Accountability Bill further restricts predictive profiling.[46] Australia's Fair Work Act amendments impose "employee-like" protections, including minimum pay and superannuation for gig roles, enforced via ombudsman oversight.[47] These emphasize reclassification, data curbs, and funds akin to CSS 2020, yet India's state variations lag unified enforcement, highlighting the need for hybrid adoption.

Critical Evaluation: Why Current Laws Fall Short

CSS 2020's reset promises inclusivity but falters on implementation voids, with gig workers bearing 70% sub-minimum wages and 83% overwork amid unmonitored algorithms.[48] Consolidation eases business but entrenches precarity, as fixed-term provisions and eased retrenchments dilute rights without ILO consultations.[49] State initiatives like Karnataka's 2024 Bill add cesses but ignore grievance timelines, perpetuating exploitation in a $455 billion sector.[50] Critically, laws treat platforms as neutral, ignoring caste-gender overlays and privacy erosions, rendering protections symbolic.[51] Adequacy demands rule finalization, union empowerment, and global-inspired transparency; absent these, the framework sustains inequality rather than redress.

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[44] *Id.*
[45] Dev Mittal & Amritansh Sharma, *Need for Legislative Action to Protect India's Gig Workers*, BAR & BENCH (Oct. 29, 2024), https://www.barandbench.com/columns/need-for-legislative-action-to-protect-indias-gig-workers. [hereinafter 'Legislative Action']
[46] *Id.*
[47] *Id.*
[48] Regulatory Framework, *supra* note 3.
[49] The Consolidation, *supra* note 25.
[50] Legislative Action, *supra* note 45.
[51] Legislative Action, *supra* note 45.

Constitutional Dimensions: Equality, Livelihood, and Digital Subordination

The gig economy in India, while driving economic inclusion, raises profound constitutional questions about equality and human dignity in an era of digital mediation. Platforms like Uber and Swiggy, by design, embed power asymmetries that challenge core rights under Articles 14 and 21 of the Constitution. These provisions, once bulwarks against state arbitrariness, now confront private algorithms that dictate livelihoods with little recourse. This section delves into how such dynamics foster discrimination and subordination, urging a reevaluation of constitutional accountability in platform ecosystems.

ARTICLE 14: Equality Before The Law And Algorithmic Discrimination

Article 14 guarantees equality before the law, prohibiting arbitrary state action, yet its application to private platforms remains contested amid rising algorithmic biases.[52] In the gig sector, where decisions on task allocation and earnings hinge on opaque codes, this right faces erosion as platforms wield unchecked discretion, often mirroring societal prejudices.

Rating Systems And Bias: Perpetuating Caste, Gender, and Regional Disparities

Rating mechanisms, ostensibly merit-based, perpetuate entrenched disparities by embedding biases into everyday work. Female delivery workers on Swiggy, for instance, receive lower scores for delays linked to harassment or childcare, widening the gender pay gap to 30 percent in urban hubs.[53] Caste dynamics amplify this: Dalit drivers report algorithmic demotions to peripheral routes, reflecting offline segregation, while regional accents trigger voice-recognition failures that sideline non-metro workers. [54]Such patterns violate Article 14's equal protection clause, as courts have struck down discriminatory classifications lacking rational nexus, yet platforms evade scrutiny by claiming neutrality.[55] Without intervention, these systems entrench a digital underclass, where equality becomes a privilege of the algorithmically favored.

Unilateral Deactivation: Arbitary Power In The Hands Of Platforms

Deactivations, often triggered by automated flags for minor infractions, exemplify arbitrary power that flouts Article 14's reasonableness mandate. A Mumbai Uber driver, deactivated

[52] Rashmi Bagri, *Gig Workers, Platform Workers & Gig Economy*, LIVE L. (Jan. 18, 2022), https://www.livelaw.in/know-the-law/the-code-on-social-security-2020-gig-workers-ifat-indian-federation-of-app-based-transport-workers-industrial-disputes-act-1947-189769, (last visited Mar. 5, 2026).
[53] Regulatory Framework, *supra* note 3.
[53] *Id.*
[54] The Consolidation, *supra* note 25.
[55] *Id.*

sans explanation after a single low rating, lost his primary income source overnight, echoing the unreasonableness courts decry in administrative actions.[56] Platforms justify this as contractual prerogative, but the resultant economic devastation, coupled with barriers to appeal, renders it discriminatory against vulnerable groups reliant on gigs for survival.[57] Judicial whispers in ongoing PILs suggest reclassification of such acts as state-like, given platforms' public utility status, yet enforcement lags, leaving workers in limbo.

ARTICLE 21: Right To Livelihood and The Erosion Of Worker Dignity

Article 21's expansive right to life and personal liberty encompasses livelihood as essential to dignity, a principle strained by gig precarity where overwork and insecurity threaten basic existence.[58] Gig workers, denied stable incomes, confront not just financial ruin but a hollowing of self-worth, as endless hustling supplants meaningful labour.

Precarious Employment as a threat to Life And Liberty

The gig model's volatility, fluctuating fares, no overtime pay, poses direct threats to life, with riders facing fatal accidents from pressure to meet quotas, as seen in Delhi's 2023 spike of delivery-related deaths.[59] Liberty erodes too, as constant surveillance curtails personal freedoms, turning work into an inescapable tether.[60] This precarity undermines Article 21's holistic view of life, where dignity demands more than bare survival, yet current classifications as "independent contractors" sidestep these protections.

Judicial Interpretations: From Olga Tellis To contemporary Gig Cases

The Supreme Court's landmark Olga Tellis v. Bombay Municipal Corporation (1985) fused livelihood with Article 21, ruling evictions unconstitutional without alternatives, a precedent ripe for gig contexts.[61] Recent cases, like the Bombay High Court's interim relief to Zomato workers in 2024, extend this by mandating hearings before mass layoffs, recognizing platform dependence as akin to employment.[62] Yet, inconsistencies persist: while Olga emphasized humane process, gig litigations often falter on evidence of control, highlighting the need for doctrinal evolution to capture digital dependencies.

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[56] Legislative Action, *supra* note 45.
[57] Pranav Aggarwal, *Gig Workers: The Need To Regulate The Unregulated*, LIVE L. (Dec. 26, 2023), https://www.livelaw.in/articles/gig-workers-the-need-to-regulate-the-unregulated-245340, (last visited Mar. 5, 2026).
[58] *Id.*
[59] *Id.*
[60] Gig Workers, *supra* note 9.
[61] *Id.*
[62] V. Kumar, The Gig Economy - A Double-Edged Sword (Working Paper No. 5139026, 2025).

Introducing Digital Subordination: Data as the new manager

Digital subordination redefines employment as a web of data-driven controls, where platforms supplant traditional bosses with invisible algorithms, fostering compliance through constant monitoring.[63] This shift, rooted in surveillance capitalism, commodifies worker behaviors for profit, challenging notions of free labour.

Mechanism of Control: Survelliance, Survelliance Capitalism, and Behavioural Nudging

GPS tracking and performance metrics enable granular surveillance, as Swiggy's heat maps nudge riders toward riskier shortcuts, extracting value from exhaustion.[64] Shoshana Zuboff's surveillance capitalism framework illuminates this: platforms harvest data not just for efficiency but behavioral modification, predicting and preempting dissent. In India, this manifests in predictive terminations, where low "engagement scores" flag union sympathizers, stifling collective voice.

Challenging Contractual Freedom: Consent under Duress in Platform Ecosystem

Platform contracts, dense with fine print, extract consent under duress, workers sign to eat, not negotiate, undermining Article 19(1)(g)'s freedom of trade.[65] Courts, invoking unconscionability in cases like Central Inland Water Transport Corp. v. Brojo Nath Ganguly (1986), could void such terms, but gig adhesion contracts persist, masking subordination as choice.[16] True freedom demands renegotiating power, not ratifying imbalances.

Constitutional Accountability: Bridging the gap Between Rights AND Realities

Constitutional accountability requires platforms to internalize Article 14 and 21 duties, perhaps via horizontal application doctrines, as privacy rights now bind non-state actors post-Puttaswamy.[66] Bridging this gap entails worker data cooperatives for counter-surveillance and mandatory impact audits, ensuring rights transcend rhetoric. Without such measures, the gig economy risks constitutional irrelevance, perpetuating a subordinated underbelly in India's digital boom.

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[63] Naveen Kumar, *Regulatory Framework and the Protection of Basic Rights of Gig Workers*, BAR & BENCH (May 16, 2024), https://www.barandbench.com/view-point/regulatory-framework-and-the-protection-of-basic-rights-of-gig-workers, (last visited Mar. 5, 2026).
[64] *Id.*
[65] The Consolidation, *supra* note 25.
[65] *Id.*
[66] *Id.*

Conclusion and Recommendation

The gig economy in India stands at a crossroads, where digital promise collides with lived hardship, demanding urgent recalibration of laws and norms to honor constitutional ideals. From algorithmic biases eroding equality to precarity undermining dignity, this analysis reveals a sector that amplifies vulnerabilities rather than alleviating them. Yet, amid these shadows, pathways to reform emerge, rooted in accountability and inclusion. As platforms like Uber and Swiggy propel economic flux, the call is clear: labour law must evolve not just to regulate, but to liberate.

Summarizing Key Findings: The Imperative for Reform

At its heart, the gig economy embodies a paradox: flexibility that lures millions into urban hustles, yet delivers instability that frays social fabric. Platforms, under the guise of autonomy, impose digital controls that mirror Fordist rigidity, with ratings and deactivations dictating fates in ways that entrench caste, gender, and regional divides.[67] The 2020 Social Security Code's nod to gig workers offers statutory footing, but unframed rules and enforcement voids leave 90 percent uninsured, perpetuating invisibility in a workforce projected to hit 50 million by 2030.[68] Constitutionally, Articles 14 and 21 cry out against this: equality falters under biased algorithms, while livelihood's sanctity crumbles in accident-prone dashes for deadlines.[69] These findings underscore a stark imperative, reform is not optional, but foundational, lest the gig model cements a tiered society where innovation serves the few at the expense of the many.

Policy Recommandation: A Roadmap For Constitutional Compliance

To align gig work with constitutional mandates, a multi-pronged roadmap must prioritize enforcement, equity, and empowerment. First, operationalize the Social Security Code through immediate rule-making, mandating 2 percent platform levies for portable benefits like EPF inclusion and ESI coverage, as piloted in Karnataka's 2026 welfare fee notification that funnels Rs 50 crore annually into health and pensions.[70] This would extend dignity under Article 21, ensuring precarity yields to security without stifling growth.

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[67] V. Kumar, Tracing the Structural Limits of India's Labour Law in a Capitalist Gig Economy (Working Paper No. 5956694, 2025).
[68] The Consolidation, *supra* note 25.
[69] V. Kumar, Tracing the Structural Limits of India's Labour Law in a Capitalist Gig Economy (Working Paper No. 5956694, 2025).
[70] *Karnataka Notifies Gig Workers' Welfare Fee Under Social Security Framework*, SCC BLOG (Feb. 18, 2026), https://www.scconline.com/blog/post/2026/02/18/karnataka-government-notifies-gig-workers-welfare-fee-mandatory, (last visited Mar. 5, 2026).

Second, enact a Digital Labour Act mandating algorithmic audits and transparency disclosures, drawing from EU-inspired presumptive employee status to classify controlled gigs, thereby invoking Article 14 against discriminatory nudges.[71] Platforms should face penalties for opaque deactivations, replaced by due process appeals via dedicated tribunals, while unions gain statutory recognition for virtual bargaining.[72]

Third, foster stakeholder boards at state levels, blending government oversight with worker reps to monitor compliance, subsidized by aggregator cesses and backed by Rs 5,000 crore central funds for digital literacy training.[73] These steps, phased over three years, starting with metros, would bridge statutory intent and reality, recalibrating platform capitalism toward constitutional equity.

Future Research Directions: Emerging Challenges in AI-Driven Labour

As AI deepens platform entrenchment, research must probe uncharted terrains to pre-empt harms. One avenue lies in dissecting surveillance capitalism's toll: how behavioural data harvesting stifles dissent, warranting studies on privacy intersections with labour rights under post-Puttaswamy jurisprudence.[74] Another demands empirical mapping of AI biases in Indian contexts, caste-inflected routing or gender-skewed quotas, via longitudinal surveys of 10,000 gig workers to quantify disparities and test mitigation tools.[75]

Explorations into reskilling for Industry 4.0 could evaluate code-aligned apprenticeships, assessing if they uplift or upskill out marginalized groups.[76] Finally, comparative analyses of global hybrids, like Australia's employee-like protections, versus India's federal patchwork would illuminate scalable models, urging interdisciplinary lenses from law to tech ethics. Such inquiries, disseminated through forums like NLIU's symposia, will arm policymakers against tomorrow's digital divides.

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[71] Syed M. Nasif, *Codifying Capitalism: The Corporatisation of Indian Labour Law*, BAR & BENCH (Dec. 3, 2025), https://www.barandbench.com/columns/codifying-capitalism-the-corporatisation-of-indian-labour-law, (last visited Mar. 5, 2026).
[72] Gig Workers, *supra* note 9.
[73] LIVELAW NEWS NETWORK, *LiveLaw Academy Announces Course on the New Labour Codes: Registrations Open Now*, LIVE L. (Feb. 8, 2026), https://www.livelaw.in/top-stories/livelaw-academy-announces-course-on-the-new-labour-codes-registrations-open-now-522332, (last visited Mar. 5, 2026).
[74] P. Gupta, Platform Work and Labour Legislation in India: Women's Engagement and Challenges (Working Paper No. 5345142, 2024).
[75] LIVELAW NEWS NETWORK, *Call For Papers: 4th NLIU Global Symposium On Labour And Employment Laws (GSLEL) 2025 [22nd-23rd March]*, LIVE L. (Feb. 5, 2025), https://www.livelaw.in/lawschool/call-for-papers/labour-laws-employment-laws-gslel-law-school-symposium-nliu-bhopal-283030, (last visited Mar. 5, 2026).
[76] *Id.*

Final Reflections: Ensuring Gig Work Empowers, Not Exploits

In reflecting on this landscape, one truth resonates: the gig economy need not be a zero-sum game, where worker gains erode platform vitality. Instead, envision it as a symbiotic engine, where empowered labourers fuel sustainable innovation. India's constitutional ethos, equality as bedrock, dignity as destiny, compels us to reject exploitation's allure for empowerment's embrace.[77] By centering voices long sidelined, from Delhi's delivery riders to Bengaluru's beauty aides, reforms can transmute peril into potential, crafting a labour paradigm that honors human agency amid machine mediation. The hour is now; let us build not just apps, but aspirations.

[77] Syed M. Nasif, *Codifying Capitalism: The Corporatisation of Indian Labour Law*, BAR & BENCH (Dec. 3, 2025), https://www.barandbench.com/columns/codifying-capitalism-the-corporatisation-of-indian-labour-law.

SOCIAL JUSTICE IN HIGHER EDUCATION: THE UGC EQUITY FRAMEWORK'S REGULATION, GOVERNANCE, AND GROUND REALITIES

Shivam Kumar[*] and Ajitesh Kumar[**]

Abstract

The University Grants Commission (UGC) Equity Regulations, 2026, were introduced to address or tackle discrimination and inequality in Indian higher education institutions. These Regulations required universities to establish various Equity Committees and grievance redressal mechanisms to protect students, staff, etc., especially those who belong to marginalised groups such as SC, ST, OBC, and PWD. The objective is to promote equal opportunity and create a fair and inclusive academic environment. At the same time, the UGC Regulations have led to public debate, student protests, and court cases, due to which the Supreme Court had to intervene temporarily. This paper follows a qualitative approach, using both doctrinal and empirical methods, to evaluate how effectively the UGC Equity Regulations, 2026 operate in practice and to highlight their shortcomings. The study finds that social background continues to influence access to education, academic experiences, and grievance mechanisms, underscoring the need for regulatory intervention. The Regulations have improved access to complaint procedures and increased institutional awareness of discrimination.

However, the framework has specific weaknesses. The regulations require certain social groups to be represented in the Equity Committees, but do not include members from the unreserved category. They also lack provisions to deal with false or malicious complaints. Because of this, questions arise about fairness, possible misuse, and the reliability of the grievance redressal process. To analyse these issues, the paper compares the Indian framework with Malaysia's affirmative action approach under the New Economic Policy and the Bumiputera system. Although these policies helped improve the socio-economic position of disadvantaged groups, they also created social tensions and continuing debates about equality and social integration. This comparison highlights the necessity of striking a balance between social protection and equity. The UGC Equity Regulations, 2026 are a big step toward equality, but more changes are still needed, the report says. It recommends transparent procedures, fair participation in committees, and unambiguous procedural safeguards so that universities can provide both protection and equity.

Key words: *UGC Equity Regulations, 2026, Discrimination in Higher Education, Social Justice and Inclusion, Grievance Redressal Mechanism, Equity Committees*

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Introduction

India prides itself as one of the world's largest democracies, built upon the constitutional principles of justice, liberty, and equality. The Indian constitution has established these principles through a series of provisions that include Article 14[1], which provides for equality before the law; Article 15[2], which prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth; Article 21[3], which provides for the protection of life and liberty; and Article 46[4], which directs the state to promote educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections. Despite these provisions, discrimination in higher educational institutions continues to prevail against students from various caste, religious, gender, regional, linguistic, and economic backgrounds. In this direction, the University Grants Commission launched the UGC Equity Regulations, 2026[5]. However, the regulations were criticised for failing to include unreserved categories. Furthermore, the regulations were criticised for lacking provisions to address false complaints. Petitions raising these issues were filed before the Supreme Court of India. This paper aims to assess the effectiveness of the regulations.

Social Background & Continuing Inequality in Higher Education

According to Dhaneswar Bhoi's analysis, student enrollment in higher education in India shows clear social disparities, with SC students accounting for approximately 14.9% and ST students around 5.5% of total enrollment. On the other hand, the enrollment of non-SC/non-ST students is approximately 79.6%. This disparity is clear among the gender groups as well. Among male students, SC students account for roughly 14.8%, while ST students account for approximately 5.4%.

On the other hand, the enrollment of non-SC/non-ST students is roughly 79.8%. Among female students, SC students account for roughly 15% of enrollment, whereas ST students account for roughly 5.5%. On the other hand, the enrollment of non-SC/non-ST students is roughly 79.5%[6]. To address this disparity, the government has introduced various policy measures to increase enrollment among these students. Studies indicate the importance of public policy interventions for students. For instance, almost 86% of students enrolled at the

[1] INDIA CONST. art. 14.
[2] INDIA CONST. art. 15.
[3] INDIA CONST. art. 21.
[4] INDIA CONST. art. 46.
[5] University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026, Gazette of India (Jan. 13, 2026).
[6] Dhaneswar Bhoi et al., *Marginality, Educational Opportunity and Access to Higher Education: Experiences of Scheduled Caste and Tribe Students in India*, CONTEMPORARY VOICE OF DALIT 1, 5 (2022).

higher education level in the SC/ST groups benefit from government-funded fellowships.[7]

Through an empirical study done by the sociology of education, it was found that individuals of lower castes are discriminated against and face consequences like exclusion, violence, etc., inside the educational institution. Further, a survey of first-year students at IIT Bombay showed that students from SC, ST, and Other Backwards Class (OBC) are discriminated against within the university. This survey revealed that 56% of students from these three communities feel discrimination on their university campus.[8] Further, 72% of SC/ST students who received admission to higher education through government-funded fellowships were mocked by other students.

Lima (27), a student from an ST background, narrated that:

She used her fellowship money to purchase books, attend seminars, and present papers at national and international conferences. But her fellowship was held intentionally many times, and the clerical staff remarked that the government was wasting money on these jangli people.[9]

Further, it was found that 85% of SC/ST students who received admission through these government-funded fellowships were having difficulty using them. The teaching and non-teaching staff are discriminatory in their evaluations and academic perceptions, which can socially, economically, and academically weaken students from these communities. Prafulla (26), a student from an SC background, narrated that:

He was unable to complete his PhD coursework because the university is not allowing him to conduct research. Due to his failure to complete his PhD coursework, he was unable to begin his fellowship. Further, due to these, he was not able to pay his tuition and hostel fees. Furthermore, due to these, he has to skip meals for some days in the initial year of his fellowship.[10]

Furthermore, it was found that most of the students in these communities who receive government fellowships are at risk. Approximately 83% of students' fellowships are at stake. Mohan (25), who belongs to the SC community, narrated that:

Every time he submits his monthly report, the clerical staff finds loopholes in it. He has to

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[7] *Id. at 4.*
[8] Divya Padalia, *'How Can a Dalit Student Write So Beautifully, So Nicely?' Caste-Based Stereotyping and Its Implications for Dalit Students in Higher Education*, 10 J. SOC. INCLUSION STUD. 75, 79 (2024).
[9] Bhoi, *supra note 6, at 7.*
[10] Bhoi, *supra note 6, at 10.*

give a monthly report because the clerical staff asked him to sign a monthly form and submit the reports. He also mentioned that he had only been troubled. He also protested, but when he did, they threatened him, saying they would complain to the UGC and that the UGC would discontinue his fellowship.[11]

These data and surveys clearly show that students from SC, ST, and OBC communities have very little enrollment in Indian higher education, especially students from SC/ST communities. Further, after they were admitted to the university through a government-funded fellowship, they were discriminated against by other students, faculty, and others. They are also having difficulty applying for these fellowships. The university and faculty are unsupportive towards them, do not evaluate their assignments, and sometimes scare them from complaining to the UGC.[12]

Hence, there is a need for a law that can protect the rights of these marginalised communities. So the UGC introduced the Equity Regulation, 2026, to protect students from marginalised communities from discrimination within the university.

The UGC Equity Regulations, 2026

The UGC Equity Regulations, 2026, were issued by the University Grants Commission under the University Grants Commission Act, 1956[13]. The Regulations aim to create institutional mechanisms in Higher Educational Institutions (HEIs) to promote equality, prevent discrimination, and ensure a structured grievance redressal process. They operate within the constitutional framework of Articles 14[14], 15[15], 19[16], and 21[17] of the Constitution of India and apply to universities and colleges recognised under the UGC system.

Objectives of the Regulations

The Regulations aim to bring the principle of equality guaranteed under the Constitution to life through institutional action, as informed by Articles 14 and 15 of the Indian Constitution. The Regulations require Higher Educational Institutions to establish internal systems that promote equal opportunities and eliminate discrimination faced by marginalised sections of society. Universities must aim for equality in admissions, access to academic resources, jobs, and membership in decision-making bodies.

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[11] Bhoi, *supra note 6, at 12.*
[12] Bhoi, *supra note 6, at 8-11.*
[13] University Grants Commission Act, 1956, § 26, No. 3, Acts of Parliament, 1956 (India).
[14] INDIA CONST. art. 14.
[15] INDIA CONST. art. 15.
[16] INDIA CONST. art. 19.
[17] INDIA CONST. art. 21.

It is informed by the need to protect historically disadvantaged sections of society, including the Scheduled Castes, Scheduled Tribes, Other Backwards Castes, minorities, women, and persons with disabilities. There is a need to eliminate discriminatory behaviour and to take steps to prevent harassment in academic institutions. The Regulations create a system of grievance redressal mechanisms, requiring universities to follow a grievance-handling process.

Structure and Composition of Equity Committees

A key requirement of the Regulations is the establishment of an Equity Committee in every HEI. To address complaints relating to discrimination or denial of equal opportunity committee is only responsible. Its functions include receiving complaints, conducting inquiries, recommending corrective or disciplinary action, and monitoring institutional compliance with equality standards.

In large universities, departmental or sub-unit facilitation mechanisms may assist complainants and forward matters to the central committee for formal inquiry[18].

The composition of the committee generally includes a senior faculty member as Chairperson, faculty representatives from different departments, members representing marginalised groups, a student representative, and, in some cases, an external expert with knowledge of law or social justice. The objective of this structure is to ensure diversity, credibility, and administrative competence.

Grievance Redressal and Inquiry Process

When a student, faculty member, or staff member submits a complaint or grievance, the process will be initiated in either written or oral form, alleging discrimination or unequal treatment, to the committee. The committee first conducts preliminary scrutiny to determine whether the complaint falls within its jurisdiction and whether a prima facie case exists.

Once the complaint has been found to be maintainable, the committee proceeds to conduct an inquiry into the matter. The respondent is informed of the complaints and allowed to make his response. Documents relevant to the inquiry can be examined, and witnesses can be consulted, if necessary. This inquiry has to be held in accordance with the principles of natural justice, providing a fair hearing to both parties. Once the inquiry is over, the committee draws up a report, which is submitted to the concerned authority of the institution

[18] University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026, Gazette of India (Jan. 13, 2026).

for final administrative action. The Regulations place great emphasis on the fact that such inquiries must be completed within a reasonable period of time. It is generally expected that the investigations must be completed within a period of 30 to 60 days, although extensions may be granted in specific cases.

Reporting and Compliance

Universities are required to maintain records of complaints and actions taken. They must also submit periodic compliance reports to the University Grants Commission (UGC).

Institutions should publish information regarding Equity Committees and grievance procedures on their official websites[19]. Awareness programmes may also be conducted to inform students and staff about the mechanisms available to address discrimination and promote equality within the academic environment.

Statute Relation with Constitutional Framework

Constitutional Framework

The Indian Constitution aims to protect every individual by providing a discrimination-free environment and ensuring equal treatment for all. In the Indian higher education context, these constitutional provisions aim to protect students from discrimination by ensuring equal treatment for all students.

Article 14 - Equality Before Law

Article 14[20] of the Indian Constitution asserts the principles of equality before the law and equal protection of the law. The Supreme Court held in the case of *State of West Bengal v. Anwar Ali Sarkar*[21] that the government can classify by making a distinction that is "reasonable" for the welfare of the citizens. Regarding higher education institutions, the government can frame policies to ensure equal access to universities while protecting students from discrimination. This is evident in the formulation of the UGC Equity Regulations, 2026.

Article 15 - Prohibition of Discrimination

Article 15[22] prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.

[19] University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026, Gazette of India (Jan. 13, 2026).
[20] INDIA CONST. art. 14.
[21] State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75, 79.
[22] INDIA CONST. art. 15.

At the same time, clauses (4[23]) and (5[24]) allow the State to introduce special measures for socially and educationally backward classes, including the Scheduled Castes and the Scheduled Tribes. Within higher education, this provision provides a legal basis for policies that prevent discrimination against students from SC, ST, OBC, and other disadvantaged groups. The UGC Equity Regulations, 2026, aim to address this objective by requiring universities to establish Equity Committees and structured grievance-redressal mechanisms to protect marginalised individuals from discrimination within academic institutions.

Article 21 - Right to Live with Dignity

Article 21 guarantees the protection of life and personal liberty. The Supreme Court of India in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*[25] expanded the scope of Article 21 by holding that the right to life includes the right to live with dignity. In the context of higher education, this principle requires that student's study in an environment free from harassment, humiliation, or discriminatory treatment. The Equity Regulations aim to promote such conditions by mandating grievance-redressal systems that address discrimination and protect the dignity of students from marginalised communities.

Article 46 - Protection of Weaker Sections

Article 46[26] directs the State to support the educational and economic well-being of weaker sections of society, such as the Scheduled Castes and Scheduled Tribes. This directive serves as the foundation for policies that promote inclusion and protect the most vulnerable members of society. UGC Equity Regulations, 2026, are a step in this direction by requiring HEIs to establish Equity Committees and grievance redressal systems to ensure the rights and interests of weaker sections within HEIs are not violated.

Statutory framework

The statutory basis of UGC Equity, Regulation 2026, is the UGC Act, 1956, which establishes the University Grants Commission (UGC) as an appellate authority for maintenance and coordination under the Indian Universities Act. The main aim of UGC is to ensure quality, uniform standards, and proper governance within Indian universities.[27]

Section 26 of this act allows the UGC to develop a new framework for the proper functioning

[23] INDIA CONST. art. 15, cl. 4.
[24] INDIA CONST. art. 15, cl. 5.
[25] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746, 753.
[26] INDIA CONST. art. 46.
[27] University Grants Commission Act, 1956, § 12, No. 3, Acts of Parliament, 1956 (India).

of higher education universities.[28] Hence, UGC introduced the UGC Regulation to protect marginalised individuals who had been discriminated against within universities before their establishment and to ensure the proper functioning of higher education Institutions.

The Scheduled castes and the Scheduled tribes (Prevention of Atrocities) Act, 1989

This act prevents the commission of offences of atrocities against the members of the scheduled Castes and the Scheduled Tribes, to provide for special Courts for the trial of such offences, and for the relief and rehabilitation of the victims of such offences, and for matters connected therewith or incidental thereto.[29] In the context of Indian higher education, individuals from the SC/ST communities are facing discrimination and violence. Hence, the UGC introduced the Equity Regulation, 2026, which protects these communities by establishing the Equity Committee and a grievance redressal mechanism.

Judicial Observation

Judicial interpretation has long been an important factor in determining India's approach to equality and governance in the country's higher education system. In *Ashoka Kumar Thakur v. Union of India*[30] (2008), the Supreme Court upheld the constitutionality of reservations for OBCs in central institutions under the Central Educational Institutions (Reservation in Admission) Act, 2006. The court highlighted that affirmative action is an important step towards achieving equality in education under Articles 14 and 15 of the Constitution, but it must also be reasonable.

In addition, judicial review has also ensured that academic autonomy is maintained in India's higher education institutions. In *University of Mysore v. C.D. Govinda Rao*[31] (1964), the Supreme Court stated that it should not normally intervene in academic decisions unless there is evidence of arbitrariness, mala fide, or violation of any other provisions. Judicial review has also ensured that academic inquiries maintain procedural due process for individuals involved in academic institutions. In Board of High School and Intermediate Education v. Ghanshyam Das Gupta[32] (1962), the Supreme Court highlighted that academic disciplinary actions must incorporate elements of natural justice so that stus have a fair hearing.

In recent times, judicial review has also entered the regulatory domain of the University

[28] University Grants Commission Act, 1956, § 26, No. 3, Acts of Parliament, 1956 (India).
[29] The Scheduled castes and the Scheduled tribes (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 (India).
[30] *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1 (India).
[31] *University of Mysore v. C.D. Govinda Rao*, A.I.R. 1965 S.C. 491 (India).
[32] B*oard of High School & Intermediate Education v. Ghanshyam Das Gupta*, A.I.R. 1962 S.C. 1110 (India).

Grants Commission when any violation of the Constitution is involved. By these actions, the judiciary is attempting to maintain a delicate balance between academic autonomy and the responsibility of academic institutions towards protecting their students from any kind of discrimination[33].

Ground Realities & Implementation Gaps

The UGC Equity Regulations, 2026, offer a well-defined structure to promote equality in higher educational institutions, but the implementation of the same has some operational/structural challenges. This section deals with the operational/structural challenges in the implementation of the UGC Equity Regulations, 2026. The focus remains on understanding ground-level realities while maintaining the objective of equality and fairness.

Representation Issue

Mandatory Inclusion of Reserved Categories

The UGC Equity Regulations, 2026, require Equity Committees in higher educational institutions to include members from Scheduled Castes (SC), Scheduled Tribes (ST), Other Backwards Classes (OBC), minorities, women, and persons with disabilities. The purpose of this requirement is that the bodies for decision-making should represent the social diversity of the academic community and include groups that have historically been discriminated against or excluded.

Such an approach is consistent with India's affirmative action model as embodied in its constitution under Articles 15(4)[34] and 16(4)[35], which permit the State to take measures for the welfare of socially and educationally disadvantaged groups. So, to sum it up, these Regulations are meant to implement constitutional equality in the governance of universities. But, of course, there can be some hiccups involved in implementing this. There can be smaller or newer universities that may not have a large enough pool of senior staff to cover each category. Since Equity Committees usually require members with administrative experience and seniority, identifying suitable individuals while meeting representational requirements can sometimes be difficult.

Another obstacle arises when there are no members from a particular social group in a particular institution or department. In this instance, the same people end up serving on multiple committees, hence increasing their workload. Though the idea of inclusive

[33] *Prof. Yashpal v. State of Chhattisgarh*, (2005) 5 SCC 420 (India).
[34] INDIA CONST. art. 15(4).
[35] INDIA CONST. art. 16(4).

representation is sound, implementing it requires flexibility from the administration.

There also seems to be a debate over whether the unreserved or general category should be required to be represented. Though the Regulations aim to address the exclusion of the past, some argue that the institutions need to be representative of a broad scope of viewpoints[36]. Legitimacy for any institution also lies not just in its inclusivity but also in how neutral they look. If a committee seems unbalanced, the fairness of the grievance system also comes into question. However, this seems to be a general problem with balancing social justice with neutrality rather than a problem with the Regulations.

Debate on Institutional Neutrality

Another issue concerns how representational diversity and procedural neutrality intersect. The Equity Committees deal with discrimination claims and may recommend disciplinary measures. They are not judicial bodies but have considerable professional authority[37].

Both perceived and actual fairness are important in administrative law. The Regulations propose that a variety of voices can increase awareness of social issues. However, for this to actually happen, procedures need to be in place, committee members should be trained adequately, and investigations should be subject to scrutiny. This is to ensure that diversity and fairness work in tandem in decision-making processes.

Concerns about False or Malicious Complaints

Absence of Explicit Deterrence Provisions

The UGC Equity Regulations, 2026 is framed to facilitate an easily accessible redressal mechanism for persons who face discrimination in higher education institutions. The framework emphasises that complainants should be able to report grievances without fear of retaliation or administrative barriers, thereby encouraging accountability within universities. However, the Regulations do not clearly provide detailed provisions dealing with knowingly false or malicious complaints. In many grievance systems, safeguards exist to address possible misuse, such as allowing committees to dismiss frivolous complaints or discourage deliberately fabricated allegations.

The absence of such deterrence provisions may raise concerns about the potential misuse of complaint mechanisms. Even if false complaints are uncommon, the perception that the

[36] Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* 35-40 (Oxford Univ. Press 1984).
[37] *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262 (India).

system may be misused can affect institutional trust and faculty morale. In academic environments, allegations of discrimination can also harm reputations even before an inquiry is completed.

At the same time, imposing strict penalties for unsuccessful complaints may discourage genuine victims from reporting discrimination[38]. Therefore, grievance mechanisms must maintain a balance by preventing deliberate misuse while ensuring that individuals with genuine concerns are not discouraged from seeking remedies.

Due Process Considerations

Another important aspect of grievance redressal is procedural fairness for individuals against whom complaints are made. Equity Committees investigate allegations of discrimination and may recommend disciplinary action. Although these committees are administrative bodies rather than courts, their decisions can still affect the professional reputation and career prospects of faculty members or staff.

One concern is the lack of clearly defined standards of proof in some institutional inquiries. Universities may not specify whether decisions should follow the preponderance of probabilities or another evidentiary standard, which can lead to inconsistent evaluations of evidence.

Another issue involves the procedural rights of respondents. Opportunities for cross-examination or representation by legal counsel may sometimes be limited. Additionally, interim measures during inquiries may affect the respondent's professional standing before the final decision.

From an administrative law perspective, grievance mechanisms must follow the principles of natural justice[39]. Ensuring fair procedures that protect both complainants and respondents is essential for maintaining credibility and trust in the grievance system.

Administrative and Institutional Capacity Constraints

Lack of Specialised Training

The effectiveness of grievance redressal mechanisms in universities largely depends on the institution's ability to conduct fair and structured inquiries. In India, most universities do not have a long history of handling discrimination complaints through specialised administrative

[38] Tarunabh Khaitan, *A Theory of Discrimination Law* 23-45 (Oxford Univ. Press 2015).
[39] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

bodies, except in cases related to sexual harassment[40] (Workplace). As a result, newly formed Equity Committees may sometimes function with limited procedural experience.

In many institutions, committee members are faculty who mainly focus on teaching, research, and administration. While they are well-equipped academically, they may not be formally trained in quasi-judicial skills, such as evaluating evidence, fact-finding, and handling sensitive cases or disputes, among others. This has been a major challenge for the committees, especially in dealing with complex complaints. The main challenges are a lack of understanding of how to assess evidence, inadequate training in handling discrimination cases, and a lack of guidelines for conducting investigations[41].

Additionally, many universities lack procedural manuals that outline the procedures for the inquiry process. As a result, different institutions may handle similar complaints differently, leading to inconsistent outcomes. Capacity-building programmes, training workshops, and clear procedural guidelines are therefore important for improving the functioning of Equity Committees.

Awareness and Accessibility Gaps

Another challenge is the lack of awareness among members of the academic community. For grievance mechanisms to work effectively, students, faculty, and staff must know about the existence of Equity Committees and understand how to file complaints.

However, awareness often varies across institutions. In some universities, information about grievance procedures is not clearly communicated. Some websites do not provide detailed guidelines on how to lodge a complaint or how the inquiry process works. Although a few universities have established online complaint systems, their accessibility varies across universities[42].

These issues may be more visible in universities located in rural or semi-urban areas, where digital infrastructure and communication systems are limited. As a result, grievance mechanisms may exist formally but remain underused due to a lack of awareness.

Resource Constraints

Institutional capacity is also affected by financial and staffing limitations. Universities with

[40] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, Acts of Parliament, 2013 (India).
[41] Simon Marginson, Higher Education and Public Good, 65 HIGHER EDUC. Q. 411, 415 (2011).
[42] *Id.*

limited resources may face difficulties in conducting timely inquiries, maintaining records, or organising training and awareness programmes. Because complaints should be addressed within specified timeframes, the system's success depends on adequate administrative support, trained staff, and infrastructure[43]. Developing such capacities is vital for maintaining the functionality of grievance systems.

Campus Climate and Social Perception Issues

Polarion Risks

Colleges and universities are the melting pot of diversity, where students and professors of different social, cultural, and ideological backgrounds come together. In these places, the means that people adopt to voice their grievances on matters of discrimination or identity can, at times, influence the larger rhythm of life. When disputes are framed in terms of social identity, different groups may interpret institutional processes through their own perspectives.

In some cases, individuals may align themselves with particular social groups, and a dispute that began as an individual issue may gradually be seen as a larger group conflict. This may lead to increased social divisions within campuses, where disagreements are interpreted through identity-based views. Even routine academic issues, such as grading, supervision, or administrative decisions, may sometimes be perceived as discrimination. However, these outcomes are not necessarily caused by the Regulations themselves[44]. They often depend on how institutions handle complaints, communicate decisions, and promote open dialogue within the academic community.

Perception of Regulatory Overreach

Another issue relates to concerns about university autonomy. Universities have traditionally managed their own academic and administrative affairs. Because of this, centralized frameworks like the UGC Equity Regulations may sometimes be viewed as increasing external control over university governance.

The authority of the University Grants Commission comes from the University Grants Commission Act, 1956, which allows it to set standards in higher education. The Regulations are designed to provide similar protection against discrimination in all institutions[45]. However, educational institutions differ in size, governance structures, and administrative

[43] Christopher Hood & Helen Margetts, *The Tools of Government in the Digital Age* 50-77 (Palgrave Macmillan 2007).
[44] Pierre Bourdieu, *Homo Academicus* 45-50 (Stanford Univ. Press 1988).
[45] University Grants Commission Act, 1956, § 12, No. 3, Acts of Parliament, 1956 (India).

capacity, and some may perceive the regulatory requirements as limiting their ability to be flexible in addressing internal issues. The balance between the power of regulations and the autonomy of universities[46] has been considered by the Supreme Court of India.

Structural Balance in Implementation

These obstacles do not diminish the ambitions of the Equity Regulations; they illustrate the difference between aspiration and implementation. Universities face the challenge of balancing representational diversity with perceived neutrality, accessibility with fairness, timeliness with capacity, and consistency with autonomy. The success of the Equity Regulations, therefore, will depend on how effectively the universities implement them, how they train their staff, how transparent their procedures are, and how dedicated they remain to fairness and equality.

Comparative Perspective: Malaysia Model

After Malaysia gained independence in August 1957, in peninsular Malaysia, the problem of consolidation was a major concern due to the multiracial society, characterized by socio-economic and cultural differences. There are inequalities in the distribution of societies, particularly in Peninsular Malaysia. The Malay community's per capita income is less than half that of the Chinese, and some have 70% more than Malays. Of all the poor households in Malaysia, 74% are Malaysa[47]. Malays' ownership of share capital is very low compared to that of the Chinese and Indians. Due to the presence of socio-economic imbalances between the Malay, Chinese, and Indian communities, a riot broke out in May 1969. Further, following this riot, the Department of National Unity (DNU) introduced the New Economic Policy (NEP) in 1971.[48]

The New Economic policy introduced by DNU came with three objectives: (1) Reduction of Racial economic disparities, (2) Employment opportunity creation, and (3) Overall promotion of economic growth. Further, after the implementation of the NEP, it cemented pro-Malaya sentiment by promoting the Malaya community in high-level occupations, the management and control of enterprises, and wealth ownership during the period of 1971-1990. Due to the rigid quota system that was provided to the Malya community people, the Malya people get promoted, and many qualified non-Malya are deprived. Further, this creates a huge gap

[46] *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 SCC 481 (India).
[47] Government of Malaysia, *Second Malaysia Plan 1971-1975*, 1-35 (The Government Press, 1971).
[48] Lee Hwok Aun, *Fifty Years of Malaysia's New Economic Policy: Three Chapters with No Conclusion, 4-6*, ISEAS ECON. WORKING PAPER NO. 2021-07, (ISEAS-Yusof Ishak Inst. 2021).

between Malya and non-Malya communities in diploma and other courses. In the Employment sector, a significant gap exists between these communities. Further tensions arose between communities. Hence, NEP fails to achieve its goals.[49]

In the context of India, SC, ST, OBC, and PWD communities, people are discriminated against and humiliated inside higher education institutions due to their social and economic background. Further, the UGC introduced the UGC Equity Regulation, 2026, to protect these communities from discrimination and humiliation within their universities. At the same time, this regulation excludes Unreserved category students from the Equity committee, and there is no penalty provision for a false complaint. Hence, if we compare the UGC Regulation 2026 of India with the NEP 1971 of Malaysia, it is clear that the former leads to conflicts among different communities. Also, protests have broken out across India. Therefore, the UGC Equity Regulation, 2026, needs to be revisited.

Balancing-out Protection & Fairness

The UGC Equity Regulations, 2026, also raise some interesting questions regarding the need to balance the requirement to protect individuals from discriminatory practices with the need to ensure that the grievance handling process remains fair to all the parties involved. These concerns can be examined through constitutional equality principles and administrative law[50].

Equity vs. Equality

One issue to consider in the context of the Regulations is the distinction between formal equality and equity. Formal equality is the idea that everyone should be treated the same, regardless of their social background. This is consistent with the concept of equality embodied in the Constitution of India under Article 14, which guarantees equal treatment under the law[51].

Equity, however, entails the recognition that people and groups are not equal in the first place. There are issues of discrimination against certain communities because of their caste, gender, and disabilities. The Constitution allows such measures under Articles 15(4[52]) and 16(4[53]), which permit affirmative action for socially and educationally disadvantaged groups.

Several countries follow similar approaches. In the United States, the educational institutions

[49] *Id.*. at 1, 4, 15.
[50] Khaitan, *supra* note 38.
[51] INDIA CONST. art. 14.
[52] INDIA CONST. art. 15, cl. 4.
[53] INDIA CONST. art. 16, cl. 4.

are governed by Title IX of the Education Amendments Act. This requires colleges to address discrimination and harassment within their institutions[54]. In the United Kingdom, the educational institutions are governed by the Equality Act, which requires them to create an equal atmosphere and discourage discriminatory practices[55]. These examples prove that the concept of equity-based systems is accepted at large, but it depends on the maintenance of fairness.

Understanding Substantive Equality

Modern constitutional law increasingly supports the concept of substantive equality, which focuses on achieving real equality in outcomes rather than merely equal treatment. The Supreme Court of India has emphasised that treating unequal groups in the same manner may continue existing social disadvantages[56].

A similar principle exists in Canada, where Section 15 of the Canadian Charter of Rights and Freedoms allows programmes designed to improve the conditions of disadvantaged groups[57]. Canadian universities have established equality offices and human rights mechanisms to address discrimination and ensure fair investigative procedures.

The UGC Equity Regulations reflect this broader approach by establishing institutional bodies to address discrimination and promote the representation of marginalised groups. However, international experience also shows that clear procedures and safeguards must support such measures to avoid perceptions of bias or unfairness.

Institutional Autonomy and Regulatory Oversight

Another important issue concerns the relationship between university autonomy and regulatory oversight. Universities have traditionally functioned as autonomous institutions responsible for managing their academic and administrative affairs. At the same time, the University Grants Commission derives its authority from the University Grants Commission Act, 1956, to maintain standards in higher education[58].

International practice demonstrates that regulation and institutional autonomy can coexist. In countries such as the UK and Australia, equality laws impose a duty on universities to prevent discrimination but also leave room for universities to design their internal rules and

[54] Education Amendments of 1972, 20 U.S.C. § 1681 (2018).
[55] Equality Act 2010, c. 15 (U.K.).
[56] *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 (India).
[57] Canadian Charter of Rights and Freedoms § 15, pt. I of the Constitution Act, 1982 (Can.).
[58] University Grants Commission Act, 1956, § 12, No. 3, Acts of Parliament, 1956 (India).

governance as they see fit. There is a need for a similar balance in India, protecting national standards without imposing undue restrictions on how they govern themselves[59].

Importance of Procedural Safeguards

Equality systems should be underpinned by clear and fair procedures that all people can trust. When analysing the Equity Committees, it is important to follow the principles of natural justice to maintain our credibility. This entails providing a clear indication of what is being alleged, providing a voice, and basing decisions on clear reasoning[60].

Different countries have tightened equality legislation and introduced specific procedural mechanisms to safeguard equality procedures. In the U.S., changes to Title IX legislation emphasised the importance of transparent investigations, access to relevant evidence, and the opportunity for both parties to present their case[61].

By incorporating such measures, we can minimise arbitrary decisions, build confidence in how grievances are handled within individual institutions, and reduce the likelihood that grievances escalate into costly lawsuits, thereby improving the overall effectiveness of equality strategies in higher education.

Policy Recommendation

The UGC Equity Regulations, 2026, intend to create an environment of inclusion and non-discrimination in higher education. However, the success of the regulations depends on the proper execution, transparency, and trust. The regulations can be improved by addressing certain aspects of the process and administration. One such aspect is ensuring proper and fair representation on universities' equity committees. It is important to include marginalised groups to address discrimination, but the grievance redressal committee also needs diverse and fair representation across gender, educational qualifications, and institutional experience. It is important to include people from diverse social groups, such as legal experts, social activists, and social justice experts, to ensure greater impartiality and the effectiveness of the decisions made.

The second important change the regulations need to make is to address false and malicious grievances. The grievance redressal committee is important for protecting people from discrimination, but at the same time, regulations must ensure that grievances are not false or

[59] Sandra Fredman, *Discrimination Law* 109-214 (Oxford University Press, 2011).
[60] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).
[61] Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 40 Fed. Reg. 24128, 24137 (June 4, 1975).

malicious. It is important to implement measures to protect people from false grievances, and the university could do so by providing the accused with an opportunity to present their case, a principle known as natural justice[62].

The regulations need to ensure adequate capacity-building for the university administration and the members of the equity committee. It is important to provide proper training for members of the equity committee, university administration, and faculty representatives. It is also important to conduct awareness programs for the students to increase their trust in the grievance redressal committee[63]. The regulations could also implement grievance monitoring through digital channels, thereby increasing transparency and efficiency. The university could also include student representatives in the grievance committee, but they cannot hold any profit-oriented position in the student body.

Conclusion

The UGC Equity Regulations of 2026 are a bold move in the higher education landscape in India, directly addressing discrimination and promoting equality in meaningful ways. It involves universities in establishing Equity Committees and grievance redressal mechanisms, where the ideals of equality, dignity, and social justice enshrined in the Indian Constitution are being transformed into a reality in consonance with Articles 14, 15, 21, and 46 of the Indian Constitution. It is a move towards creating a more inclusive academic world where students and staff, especially those belonging to historically discriminated social groups, are provided with meaningful solutions in cases of discrimination. In this context, it aligns with the overall spirit of the Indian Constitution, ensuring equal educational opportunities and protecting vulnerable social groups within educational institutions.

However, it is in the implementation of these regulations that they are likely to face challenges, such as who should form these Equity Committees, issues of false complaints, administrative challenges, and questions of autonomy, among others, as highlighted in the study. It is in this context that learning from experiences in other jurisdictions and principles of law become relevant to protecting complainants while ensuring justice through a fair procedure. In this context, these UGC Equity Regulations have the potential to transform Indian higher education into a more inclusive, fair, and accountable system.

[62] Paul Craig, *Administrative Law* 395-401 (Sweet & Maxwell, 2016).
[63] Christopher Hood & Helen Margetts, *The Tools of Government in the Digital Age* 75-82 (Palgrave Macmillan 2007).

CASTE, CAMPUS, AND THE CONSTITUTION : DISCRIMINATION, DIGITAL HARASSMENT, AND SEGREGATION IN INDIA'S COLLEGES AND UNIVERSITIES

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Abstract

This paper examines the subtle, systemic mechanisms of caste-based discrimination in Indian higher education, shifting focus from overt harassment to everyday exclusionary practices in academic evaluation, student governance, informal campus networks, and digital spaces. It traces the regulatory evolution from the unenforceable UGC (Promotion of Equity in Higher Educational Institutions) Regulations, 2012 to the UGC Equity Regulations, 2026, analysing the recent judicial stay by the Supreme Court over concerns of vague drafting, potential misuse, and structural segregation.

Evaluating institutional failure, the paper demonstrates how underfunded Equal Opportunity Cells, university self-investigation, lack of protection against retaliation, and digital blind spots in offline grievance charters render existing redressal frameworks ineffective. Responding directly to the Supreme Court's constitutional concerns, the study adopts Amartya Sen and Martha Nussbaum's capabilities approach to propose a practical, campus-level model for equity. It outlines actionable interventions: independent Ombudsperson structures, mandatory anonymous digital harassment reporting protocols, transparent allocation of academic opportunities, integrated (non-segregated) academic support programs, and core curricular reform. Ultimately, the paper argues that constitutional guarantees and regulatory redrafts must be backed by structural transformations within daily university operations to ensure genuine social justice, mental well-being, and academic thriving for marginalized students.

***Key words**: Caste Discrimination, Higher Education in India, UGC Equity Regulations 2026, Institutional Exclusion, Digital Harassment, Campus Segregation.*

Introduction

Caste discrimination in Indian higher education rarely looks today like a slur shouted across a hostel corridor. More often it starts like a slow poison first a casual question about someone's entrance rank, a viva mark that never quite matches the written score, or the score which seems unfair to the efforts, a meme forwarded in a batch WhatsApp group, a casteist remarks on insta stories, or a hostel seating chart that quietly keeps a category of students apart from everyone else. This paper focuses on that every day, subtle discrimination the kind that rarely

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reaches a courtroom or a headline, but that shapes whether a student from a marginalised background actually thrives at college or simply gets through it or sometimes gives up on life all together.

The law has tried, unevenly, to keep pace with this reality. The UGC (Promotion of Equity in Higher Educational Institutions) Regulations, 2012[1] set out good intentions but had no enforcement power. After more than two decades of documented institutional failure and a long list of student deaths, the UGC notified a far stricter replacement, the (Promotion of Equity in Higher Education Institutions) Regulations, 2026, on 13 January 2026. Sixteen days later, the Supreme Court stayed it, calling parts of the drafting "vague" and "capable of misuse." [2] That litigation matters, and first Part summarises it briefly. But it is not the centre of this paper.

The centre of this paper is campus life itself: how discrimination shows up in the ordinary, casual everyday functioning of a college or university in who gets picked for a research assistantship, who sits on a hostel or mess committee, who is mocked on an anonymous meme page that no one officially runs, and how even a well-meaning attempt to protect marginalised students can backfire into a form of segregation that makes their identity more visible, not less. These are harder problems than a single regulation can solve, because they rarely take a form that any rulebook anticipates.

Initial part traces the regulatory background. Then it maps how caste discrimination actually operates inside colleges and universities today, including in academic opportunity, student governance, and online spaces. Then it further explains why existing grievance mechanisms consistently fail to catch these forms of harm. After that, the paper summarises, briefly, the specific legal objections that led the Supreme Court to stay the 2026 regulations kept short because this paper's purpose is to answer those objections in practice, not to relitigate them. Final part sets out concrete suggestions for colleges, universities, and regulators.

Methodology

This study employs a multi-disciplinary legal and socio-empirical methodology combining doctrinal legal analysis with qualitative synthesis of institutional data and empirical surveys:

[1]University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, notified under § 26, University Grants Commission Act, 1956.
[2] *Mritunjay Tiwari v. Union of India*, W.P. (C) Nos. 101, 108 & 109 of 2026, Order of Jan. 29, 2026 (India).

- **Doctrinal and Legal Analysis:** Critical evaluation of primary statutory texts, regulatory frameworks (UGC Equity Regulations of 2012 and 2026, UGC Anti-Ragging Regulations 2009), relevant constitutional provisions (Articles 14, 15, and 21), and key judicial precedents (*Abeda Salim Tadvi v. Union of India*, *Amit Kumar v. Union of India*, and *Kalyani Mathivanan v. K.V. Jeyaraj*).

- **Empirical Data & Survey Synthesis:** Secondary analysis of institutional data, parliamentary records (Rajya Sabha vacancy filings), committee inquiries (Thorat Committee Report, 2007), and survey findings from premier higher education institutions (including SC/ST Cell surveys at IIT Bombay and IIT Delhi) to map everyday discriminatory practices.

- **Socio-Legal and Digital Discourse Mapping:** Examination of contemporary digital spaces (batch WhatsApp groups, Instagram student-run meme pages, algorithmic curation) and judicial jurisprudence surrounding digital harassment under the SC/ST (Prevention of Atrocities) Act, 1989.

- **Theoretical Framework:** Application of Amartya Sen and Martha Nussbaum's *Capabilities Approach* alongside Satish Deshpande's sociological critiques of "meritocracy" to evaluate institutional access, capability conversion, and structural reform.

The Regulatory Backdrop, Briefly

i. India's first dedicated attempt to regulate campus equality, the UGC (Promotion of Equity in Higher Educational Institutions) Regulations, 2012[3], was issued under Section 26 of the UGC Act, 1956. It defined "equity" as a level playing field in the enjoyment of legitimate rights and required every institution to appoint an Anti-Discrimination Officer. In practice, it changed very little: the Supreme Court later clarified in *Kalyani Mathivanan v. K.V. Jeyaraj*[4] that mere "guidelines" are only recommendatory, and the UGC's own communications to universities used soft, permissive language that most institutions treated as optional. The regulations also excluded Other Backward Classes entirely, and allowed up to sixty days for a complaint to be resolved long enough for a student facing hostility to be worn down before any relief arrived.

[3]University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, notified under § 26, University Grants Commission Act, 1956.
[4]Kalyani Mathivanan v. K.V. Jeyaraj, (2015) 6 SCC 363.

Feature	**2012 Regulations**
Approach	Cooperative and advisory; relied on moral suasion rather than enforcement
Protected groups	Scheduled Castes and Scheduled Tribes only; OBCs excluded
Redressal officer	Anti-Discrimination Officer, usually an internal faculty member
Timeline	Up to 60 days for final disposal of a written complaint
Penalties	Vague threats of grant reduction; no personal liability for administrators

ii. The human cost of this weak enforcement became impossible to ignore through *Abeda Salim Tadvi v. Union of India*, a writ petition still pending before the Supreme Court. It was filed in 2019 by Radhika Vemula and Abeda Salim Tadvi, the mothers of Rohith Vemula and Dr Payal Tadvi, both of whom died by suicide after enduring sustained, institutionally tolerated caste-based harassment. Their petition documented more than twenty reported suicides of SC/ST students at elite institutions since 2004, a pattern later echoed in the deaths of Darshan Solanki at IIT Bombay and Ayush Ashna and Anil Kumar at IIT Delhi. [5] RTI data showed that for the 2015-16 academic year, only 155 of roughly 800 recognised universities had filed the compliance reports the UGC required, and not one non-compliant institution had ever been penalised.

A closely related crisis reached the Court through *Amit Kumar v. Union of India*[6], after the deaths of Ashna and Kumar at IIT Delhi. In March 2025, the Court ordered an FIR registered and constituted a National Task Force on student mental health, observing that caste-based discrimination "is rampant and pervasive, even in prestigious educational institutions."

[5] *Abeda Salim Tadvi v. Union of India*, W.P. (C) No. 1149 of 2019 (India).
[6] *Amit Kumar v. Union of India*, Criminal Appeal No. 1425 of 2025, 2025 INSC 384, 2025 SCC OnLine SC 631 (India) (Mar. 24, 2025).

iii. Acting on the Court's continuing supervision of the *Tadvi* case, the UGC notified the (Promotion of Equity in Higher Education Institutions) Regulations, 2026[7] on 13 January 2026. For the first time, OBCs were brought within the definition of caste-based discrimination; every institution was required to set up an Equal Opportunity Centre and Equity Committee; and severe complaints had to be addressed within twenty-four hours, with all complaints disposed of within fifteen working days.[8] The regulations lasted barely two weeks. General-category student groups organised large protests, and three writ petitions reached the Supreme Court arguing that the regulations' definition of caste-based discrimination unconstitutionally excluded general-category students. [9]

On 29 January 2026, the Court stayed the regulations as "vague" and "capable of misuse," reviving the older 2012 regulations under its Article 142[10] power while a redraft is prepared.[11] As of this writing, the matter remains pending before a larger Bench, tagged with *Tadvi*. [12] Part IV returns to the specific legal objections behind that stay; the remainder of this paper turns to what happens on campus regardless of which version of the regulations is in force.

Discrimination Inside the College Gate

Because the courtroom fight over the 2026 regulations dominates recent headlines, it is easy to lose sight of where discrimination actually happens: not in a courtroom, but in a hostel mess, a viva room, a WhatsApp group, and a list of names posted outside a professor's office. Elite Indian institutions are not the openly segregated, rural spaces that dominate older accounts of caste. They present themselves as meritocratic and cosmopolitan which is precisely what makes their exclusionary practices harder to see and harder to challenge. This Part maps that terrain directly.

The most common way students place each other within the caste hierarchy on campus is a seemingly casual question: "What was your rank?" or "What's your full name?" A survey by

[7]University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026, Notification F. No. 1-7/2011(SCT), GAZETTE OF INDIA, Jan. 13, 2026.
[8] University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026, Gazette of India (Jan. 13, 2026).
[9] *Mritunjay Tiwari v. Union of India*, W.P. (C) Nos. 101, 108 & 109 of 2026, Order of Jan. 29, 2026 (India) (three writ petitions filed by Mritunjay Tiwari, Vineet Jindal and Rahul Dewan).
[10] INDIA CONST. art. 142.
[11] *Mritunjay Tiwari v. Union of India***,** W.P. (C) Nos. 101, 108 & 109 of 2026, Order of Jan. 29, 2026 (India).
[12] *Mritunjay Tiwari v. Union of India*, W.P. (C) Nos. 101, 108 & 109 of 2026 (India) (pending; tagged with *Abeda Salim Tadvi v. Union of India*, W.P. (C) No. 1149 of 2019).

the SC/ST Cell at IIT Bombay[13], conducted after the suicide of first-year student Darshan Solanki, found that nearly 37% of SC/ST respondents had been asked their entrance rank by classmates specifically to identify their caste, and 26% had been asked their surname for the same reason.[14] A similar survey at IIT Delhi [15] found that 23% of Bahujan students had already experienced casteism while preparing for the entrance exam, and 14% experienced it after arriving on campus. These are not idle icebreakers; they are a quick, deniable way to sort new students into a hierarchy while maintaining the appearance of ordinary conversation.

Once a student's background is established this way, campus life often reorganises itself around it. Hostel rooms, dining tables and study groups tend to split along caste, regional and dietary lines. At some IITs, hostel messes have introduced "vegetarian-only" seating areas a rule that never mentions caste yet reproduces the old purity-and-pollution boundary between predominantly vegetarian dominant-caste students and everyone else. This kind of segregation is informal and student-driven, which already makes it hard to police.

A subtler and more troubling version of the same problem is segregation that the college itself creates, even with good intentions. A hostel block or floor reserved specifically for reserved-category students, a room-allotment list that is displayed publicly by category, or a remedial "bridge" batch that visibly separates marginalised students from their peers, all do the same thing that a segregated mess table does they make caste identity legible to everyone at a glance, which is exactly what feeds the rank-inquiry dynamic described above and the online harassment described in Section 2.5. A support structure that is meant to protect a student can end up marking them out instead. This is the same underlying concern that led the Supreme Court to question the word "segregation" in the stayed 2026 regulations, drawing an uneasy comparison to the United States' "separate but equal" doctrine in *Plessy v. Ferguson*;[16]

Discrimination in Indian higher education is not only about admission; it is also about what happens after a student is admitted. Research assistantships, spots in a professor's project team, internship referrals and letters of recommendation rarely go through an open, published process. They flow through informal relationships the student who talks comfortably with a professor after class, who shares a cultural reference point, who already sounds like the kind

[13] SC/ST Students' Cell, IIT Bombay, Survey on Caste Discrimination on Campus (Feb. 2022) (internal survey of 388 respondents; not publicly released).
[14] *Id.*
[15] Board for Student Publications, IIT Delhi, Fault Line: Category (2020) (student survey of 545 undergraduate respondents).
[16]Plessy v. Ferguson, 163 U.S. 537 (1896).

of person a lab expects to see. Because that comfort is itself a product of the cultural and social capital, a marginalised student can clear every formal academic bar and still be quietly passed over for the opportunities that actually build a career.

The same pattern repeats in student governance. Hostel committees, mess committees, cultural society bodies and student councils are where a great deal of everyday campus decision-making actually happens, and reserved-category students are often included on these bodies only nominally present for the purposes of institutional record-keeping, but without the standing or seniority to actually shape a decision. A committee seat that exists only on paper does little to change who controls the campus's informal economy of favours and recommendations.

In blind-graded written examinations, SC/ST/OBC students typically perform in line with their peers. The gap opens in subjective settings internal assessments, viva-voce examinations and dissertation reviews where the examiner knows the student's identity and has wide discretion over the mark. The Thorat Committee's 2007[17] inquiry into AIIMS, New Delhi found exactly this pattern, with examiners consistently marking down students from reserved categories in viva exams regardless of their written performance. A 2024 study of caste and medical education documented a similar pattern in supervisor allocation and clinical grading for Dalit and Adivasi students. [18] Faculty gatekeeping also shows up in smaller ways: a supervisor who assigns a marginalised doctoral scholar to manage lab inventory rather than co-author research, quietly limiting the scholar's later prospects of a faculty position which may help explain why roughly 80% of faculty across the IITs belong to dominant-caste groups, against 6% who are Dalit. [19]

Almost every Indian college now has an anonymous student-run "confession" or "meme" page on Instagram, alongside batch WhatsApp and Telegram groups that no official college office ever sees. These spaces have become one of the most common, and most easily ignored, sites of caste-based harassment on campus. At the Indian Institute of Mass Communication, students alleged that a WhatsApp group circulated a meme telling SC/ST students to leave the campus; the complaint reached the administration anonymously and, by

[17]Thorat Committee, Report of the Committee Constituted to Enquire into the Allegation of Differential Treatment of SC/ST Students in AIIMS, New Delhi (2007).

[18] Rasipogula Vinod Kumar & Mahesh Admankar, Caste and Medical Education: Exclusion of Dalit and Tribal Students in State Medical Colleges in Five States in India, 13 POSTCOLONIAL DIRECTIONS IN EDUC., No. 2, 325 (2024).

[19]Is India's Suspension of Discrimination Rules Another Blow for DEI?, TIMES HIGHER EDUC. (Apr. 13, 2026), https://www.timeshighereducation.com/depth/indias-suspension-discrimination-rules-another-blow-dei. (last visited on February 21, 2026)

the students' account, was not acted on for some time. Sukhadeo Thorat, chair of the original 2007 committee on caste discrimination in higher education, responded directly to that excuse: an anonymous complaint, he said, does not relieve an administration of the duty to act once it knows a problem exists. [20]

The scale of the problem is not confined to any one campus. Independent research on Instagram's recommendation algorithm found that accounts engaging with Dalit, Bahujan and Adivasi content were rapidly shown increasing amounts of casteist material jokes about reservation, mockery of caste assertion, content that "may not contain direct slurs, but spreads ideology hostile to marginalised communities under the veneer of ... satire." [21] Personal accounts from Dalit social-media users describe a familiar pattern of hiding their identity online for fear of exactly this kind of targeting the digital mirror of the same fear that keeps students from filing formal complaints, described in previous part. [22] Compounding the problem, courts have held that private WhatsApp group messages fall outside the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 because they are not made in a "public place" leaving the one law with real teeth largely unable to reach this behaviour. [23]

Four features make this kind of harassment unusually hard for a college to police: the page or group is anonymous; it is almost always hosted off official college infrastructure, so the institution's IT and disciplinary committees can plausibly claim it is not their responsibility; screenshots are deleted quickly, before any evidence can be preserved; and a target who reports it risks being identified in exactly the way a formal complaint would identify them, discussed further. It is worth noting that the same platforms have also become spaces for counter-narrative and organising Dalit and Bahujan students use Instagram infographics and reels to correct misinformation and build solidarity so the right response is not to discourage student social media use altogether, but to make the college responsible for what happens on

[20]WhatsApp Groups and Memes Targeting Ambedkar: Students Allege Caste Bias at IIMC, THE QUINT (May 3, 2023), https://www.thequint.com/news/india/caste-discrimination-at-iimc-media-br-ambedkar-latest-news. (last visited on February 21,2026)

[21]'Suggested for You': Caste Hate, Misogyny, and Digital Violence on Instagram in India, GENDERIT.ORG (Aug. 5, 2025), https://www.genderit.org/feminist-talk/suggested-you-caste-hate-misogyny-and-digital-violence-instagram-india. (last visited on February 21,2026)

[22]Suprakash Majumdar, Rampant Caste-Based Harassment Means Dalits Like Me Are Silenced on Social Media, REST OF WORLD (Mar. 28, 2023), https://restofworld.org/2022/caste-harassment-india-dalit-social-media/. (last visited on February 21,2026)

[23]Surbhi Ahirwar, Caste Slurs in WhatsApp Memes: Dehumanising Dalits and Caste Humiliation Masked as Humour, Feminism in India (Oct. 28, 2025), https://feminisminindia.com/2025/10/28/caste-slurs-in-whatsapp-memes-dehumanising-dalits-and-caste-humiliation-masked-as-humour/. (last visited on February 21,2026)

it when its own name and students are involved. [24]

The strongest defence of the existing order rests on the idea of meritocracy: that entrance ranks and grades are neutral measures of ability. Sociologist Satish Deshpande has argued this is a comfortable illusion "merit" rewards the accumulated material, social and cultural capital that dominant castes built up over generations: early access to English-medium schooling, private coaching, and a home environment already fluent in the language of formal education. [25] When an institution treats students who started from radically unequal positions as though they are competing on equal terms, it converts an unequal starting line into what looks like a fair result, letting successful dominant-caste students describe their own position as "casteless" while describing reservation as "reverse discrimination." [26]

Why the Campus Grievance System Keeps Failing

i. Both the 2012 guidelines and later administrative circulars required universities to set up Equal Opportunity Cells and appoint Liaison Officers. In practice, as sociologist Aseem Prakash has documented, these bodies are chronically underfunded and largely invisible to the students they are meant to serve. [27] The Liaison Officer typically reports directly to the Vice-Chancellor, and because the entire redressal structure is staffed by university employees, the institution effectively investigates itself a design flaw that all but guarantees complaints will be dismissed early or delayed indefinitely.

ii. A second structural flaw sits at the centre of the current debate: the tension between protecting genuine complainants and preventing misuse. Because most complaint mechanisms do not allow anonymous filing, a student must disclose their identity to be heard and once identified, frequently faces retaliation. At IIT Kanpur, faculty member Dr Subramahnyam Sadrela filed a complaint against senior colleagues who had questioned his qualifications because of his SC status; two independent committees upheld his complaint, and shortly afterward, anonymous complaints accused him of thesis plagiarism. A nine-member Academic Ethics Cell fully cleared him, but the accusation continued to be used against him. The IIT Bombay survey found that one in four

[24]Memes and Infographics on Instagram: How Dalit Students Are Busting Misinformation One Post at a Time, ROUND TABLE INDIA (Nov. 27, 2023), https://www.roundtableindia.co.in/memes-and-infographics-on-instagram-how-dalit-students-are-busting-misinformation-one-post-at-a-time/. (last visited on February 21,2026)
[25] Satish Deshpande, Exclusive Inequalities: Merit, Caste and Discrimination in Indian Higher Education Today, 41 ECON. & POL. WKLY. 2438 (2006).
[26] Balu Sunilraj & Prithiraj Borah, Between Assertion and Victimhood: Upper-caste Discontent and the Protests against UGC Equity Regulations, 61 ECON. & POL. WKLY., No. 16 (Apr. 18, 2026).
[27] Aseem Prakash, Dalit Capital and Markets: A Case of Unfavourable Inclusion, SOC'Y & CULTURE S. ASIA (2018).

marginalised students avoided SC/ST forums altogether out of fear that filing a complaint would expose their identity and invite further sabotage.

This dilemma has a digital blind spot that existing grievance charters rarely address. Most Equal Opportunity Cells are written to cover only formal, identifiable, on-campus incidents, leaving them silent on anonymous online harassment tied to college identity the meme-page problem described in Section 2.5. That leaves a student caught between a college that says a WhatsApp group is "not our jurisdiction" and a police complaint that a meme rarely meets the threshold to trigger.

iii. Section 14 of the UGC Act gives the Commission power to withhold grants from non-compliant institutions, but it has rarely used that power. [28] A July 2025 Rajya Sabha reply recorded faculty vacancy rates of 31% for Scheduled Castes, 37% for Scheduled Tribes and 40% for Other Backward Classes in Central Universities, against 15% for the general category decades after reservation in faculty recruitment became mandatory. [29] UGC's own 2026 data recorded a 118.4% rise in reported campus caste-discrimination complaints over five years, which is at least as plausibly a sign of eroding tolerance for silence as it is a sign of worsening discrimination. [30]

The 2026 Regulatory Dispute, in Brief

The regulatory history in ended in a Supreme Court stay. Because this paper's focus is campus life rather than constitutional litigation, this Part summarises without re-arguing the objections that produced that stay, so that recommendations can respond to them in practical terms.

- *Narrow definition.* Regulation 3(1)(c) defined "caste-based discrimination" as discrimination directed only at SC, ST and OBC students. Petitioners argued this was arbitrary because Regulation 3(1)(e) already offered a general, caste-neutral definition of "discrimination" for every student. [31] Defenders of the regulations argued that caste

[28] University Grants Commission Act, 1956, § 14, No. 3, Acts of Parliament, 1956 (India).
[29] Rajya Sabha, Unstarred Question Reply on Faculty Vacancies in Central Universities (July 2025) (India).
[30] Univ. Grants Comm'n, Data on Caste-Based Discrimination Complaints Received from Equal Opportunity Cells and SC/ST Cells, 2019-20 to 2023-24, submitted to a Parliamentary Standing Committee and to the Supreme Court in *Abeda Salim Tadvi v. Union of India*, W.P. (C) No. 1149 of 2019 (India).
[31] *Mritunjay Tiwari v. Union of India*, W.P. (C) Nos. 101, 108 & 109 of 2026 (India) (petitioners' challenge to Regulation 3(1)(c)).

discrimination is a structural, historically asymmetrical harm that a symmetrical definition would erase. [32]

- *The word "segregation."* The Bench itself questioned whether Regulation 7(d), addressing the "selection, segregation, or allocation" of students, implicitly permitted the very practice it aimed to prohibit, drawing a comparison to *Plessy v. Ferguson*. Section above addresses this concern as a design question for colleges, not only a drafting question for regulators.
- *A contested colonial analogy.* Some petitioners compared the regulations to the colonial Criminal Tribes Act, 1871; critics called the comparison historically inaccurate, since that Act targeted already marginalised communities. [33] The Bench separately raised a more defensible concern: whether the regulations adequately protected the "most backward" sub-groups within the SC, ST and OBC categories. [34]
- *Missing word: ragging.* The 2012 regulations named ragging as a mechanism of caste harassment; the 2026 regulations dropped the term, relying instead on the separate UGC Anti-Ragging Regulations, 2009. Petitioners called the omission a step backward. [35]

A Way Forward

Neither reverting to the toothless 2012 model nor defending the 2026 text as written serves the students these frameworks exist to protect. The suggestions below focus on what colleges, universities and regulators can actually do inside a campus in classrooms, hostels, committees and group chats rather than only in a gazette notification.

i. Reserving seats in admissions diversifies who enters a university, but does little to help students succeed once they arrive. Amartya Sen and Martha Nussbaum's capabilities approach offers a more complete standard: equity should be judged by whether an institution equips a student to actually exercise an opportunity, not only whether it admits them. [36] B.R. Ambedkar made a related point in describing what modern scholars now

[32]The Stay of UGC Equity Regulations 2026: The Interim Order, the Proceedings and the Constitutional Questions Raised, SABRANG INDIA, https://sabrangindia.in/the-stay-of-ugc-equity-regulations-2026-the-interim-order-the-proceedings-and-the-constitutional-questions-raised/. (last visited on February 21,2026)
[33]Criminal Tribes Act, 1871 (India) (repealed 1952).
[34] *Mritunjay Tiwari v. Union of India*, W.P. (C) Nos. 101, 108 & 109 of 2026, Order of Jan. 29, 2026 (India).
[35]University Grants Commission (Curbing the Menace of Ragging in Higher Educational Institutions) Regulations, 2009.
[36]Amartya Sen, Development as Freedom (Oxford Univ. Press 1999); Martha Nussbaum, Creating Capabilities: The Human Development Approach (Harvard Univ. Press 2011).

call "capability conversion." In practice, this means credit-bearing, universally available preparatory courses in English proficiency and technical writing, built into the regular curriculum rather than offered as a stigmatising remedial track, along with compensated peer-mentoring that connects first-generation students with senior scholars.

ii. Caste exclusion is also built into what gets taught. Humanities and social-science curricula are still organised around dominant-caste histories presented as the neutral academic default, while Dalit, Bahujan and Adivasi thought is treated as an optional elective. [37] Bringing the writings of Jotirao Phule, Savitribai Phule, Periyar E.V. Ramasamy and B.R. Ambedkar into the compulsory core curriculum directly challenges the unstated assumption that dominant-caste knowledge is the objective default while marginalised experience is merely anecdotal.

iii. The flaw shared by both the 2012 and 2026 frameworks is that university employees investigate complaints against their own institution. Fixing this requires structural independence: an externally appointed, tenure-protected Ombudsperson who reports outside the university's own administrative chain; a centralised, UGC-monitored digital tracking system modelled on the anti-ragging helpline, which resolves over 90% of registered complaints precisely because it does not depend on institutional goodwill; secure, confidential filing with automatic interim protection against retaliation; and a mandatory 72-hour preliminary fact-finding stage before any complaint proceeds, with proportionate penalties for complaints proven to be deliberately false protecting the innocent without slowing down credible complaints.

iv. The informal gatekeeping described in this paper thrives on the absence of any published process. Research assistantships, project slots and letters of recommendation should be advertised through an open application process with published, objective criteria, rather than handed out through informal conversation. Student committee seats hostel, mess, cultural society, and council should rotate through open nomination rather than administrative appointment, and institutions should publish anonymised data each year on who actually holds these positions, so that token representation becomes visible and answerable rather than invisible and permanent.

v. The Ombudsperson and Equity Committee structure proposed in Section 5.3 should explicitly cover online harassment that identifies a student by their college affiliation,

[37] Bagesh Kumar, Discrimination in Indian Higher Education: Everyday Exclusion of the Dalit-Adivasi Student, 15 CONTEMPORARY VOICE OF DALIT 94 (2023)

regardless of the platform or the anonymity of the account removing the jurisdictional gap . This should include clear guidance for students on preserving digital evidence before it is deleted; a designated liaison authorised to act on anonymous tips, in line with Thorat's own view that anonymity is no excuse for inaction; institutional agreements with platforms for faster takedown of casteist content tied to a specific college; and, rather than only policing student social media, active partnership with the same peer-run pages and accounts already doing counter-narrative work, to shift what is considered acceptable to post in the first place.

vi. Colleges designing support structures for marginalised students should build them to integrate rather than visibly separate. Bridge and remedial courses should be opt-in, unlabelled, and folded into the regular timetable rather than run as a clearly marked track. Hostel and room allocation should never be published by category. Where dietary or other practical distinctions genuinely require different arrangements, colleges should rotate and randomise seating rather than fixing a boundary that becomes, in effect, a caste-legible line answering, in practical terms on an actual campus, the same concern that led the Supreme Court to question the word "segregation" in Regulation 7(d).

vii. A redraft of the 2026 regulations could retain Regulation 3(1)(c) as a reasonable classification grounded explicitly in the documented, asymmetrical history of caste exclusion, while Regulation 3(1)(e) continues to protect every student generally; replace "segregation" with a clearer bar on any involuntary separation of students; require Equity Committees to track discrimination within the SC, ST and OBC umbrella rather than treating it as internally uniform; and fold ragging back into the same complaint mechanism instead of leaving it in a separate regime.

Conclusion

Unlike many who believe caste discrimination in Indian higher education has disappeared, the harsh reality is it has simply become harder to see, subtly present but hard to detect. It lives in a casual question about an entrance rank, a question about surname, in a scoresheet that never matches the written paper, in a research assistantship that goes to the student who already sounds like the professor's usual pick, in a committee seat held but never really used, and in a meme page that no official office claims to be responsible for. None of these show up cleanly in a court order or a gazette notification, which is exactly why regulation alone cannot fix them.

The Supreme Court's stay of the 2026 regulations deserves a careful, narrow legislative answer,. But the more important work sits with colleges and universities themselves: publishing how opportunities are actually allocated, taking responsibility for what happens to their students in spaces they do not officially control, and building support structures that lift students up without marking them out. A framework that only changes the wording of a regulation, without changing what happens in a hostel mess, a viva room, or a WhatsApp group, will keep failing the students it is meant to protect in precisely the way the 2012 regulations did for fourteen years.

INSTITUTIONAL EQUITY: EQUAL OPPORTUNITY CELLS IN UNIVERSITIES & GOVERNMENT WORKPLACES

Aman Raj[*]

Abstract

Institutional equity in higher education and public employment cannot remain a matter of formal compliance; it must operate as a lived constitutional commitment. Although reservation policies for Scheduled Castes (SC) and Scheduled Tribes (ST) are firmly embedded within Articles 14, 15(4), 16(4), 17, and 46 of the Constitution, structural inequalities persist within universities and government workplaces. Underrepresentation of SC/ST faculty at senior levels, accumulation of backlog vacancies, procedural opacity in recruitment, and limited effectiveness of grievance redressal bodies reflect a gap between constitutional design and institutional practice.

This paper critically interrogates the functioning of Equal Opportunity Cells (EOCs) not merely as regulatory requirements but as potential instruments of transformative governance. It argues that institutional equity must be measured beyond admission statistics or roster compliance. Instead, it should be assessed through indicators such as diversity across academic hierarchies, retention and outreach of SC/ST students, accessibility of complaint mechanisms, mental health safeguards, and transparency in promotion and employment processes.

Departing from existing scholarship that treats reservation as the primary site of analysis, this study advances a governance-centered framework that evaluates whether institutions genuinely encourage inclusivity, promote non-discrimination, foster equitable participation, develop enforceable accountability structures, and strengthen substantive equality. The specific contribution of this research lies in proposing an outcome-based accountability model that integrates constitutional doctrine with institutional performance metrics.

By situating Equal Opportunity Cells within the broader project of transformative constitutionalism, the paper contends that universities and public institutions must function not only as sites of learning and employment, but as active engines of inclusive development and social justice.

Key words: *Institutional Equity, Equal Opportunity Cells, SC/ST Representation, Affirmative Action, Transformative Constitutionalism*

Introduction

Background and Context of Institutional Inequality

Institutional inequality refers to the disparities in societies, politics, and administration that provide different opportunities, treatment, and outcomes for various groups. Unlike individual discrimination, it is embedded in the institutions. It is normally structural in nature,

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limiting overall access to society. It normally affects the marginalized in stratified societies. Institutional inequality can affect decision-making that is crucial in maintaining long-term environmental and social well-being. It is present even if there is constitutional equality. This is because it is embedded in the social and political systems.[1] It is normally visible in a stratified society.

Indian society has historical structural roots that are deeply entrenched into the system of social stratification called caste system. This system has divided society into hierarchical class groups swayed by birth and traditional occupation, thereby creating rigid boundaries that limit social mobility[2]. The four main varnas are: Brahmins (knowledge creators and priests), Kshatriyas (warriors), Vaishyas (merchants), and Shudras (labourers/servants). A fifth group, the "untouchables" or "Dalits" (Pariahs/Panchamas/Antyajas), exists outside this system, forced into dehumanizing, stigmatized occupations like cleaning latrines and handling animal carcasses, who are ostracized socially and live on the margins.[3]

Dr. B.R. Ambedkar markedly delineated this robust Hindu social order as a "multi-storeyed tower with no staircase and no entrance," where individuals remain confined to the social position into which they are born.[4] This metaphor shows how caste restrictions influence decision-making and the allocation of resources, affecting certain groups in a stratified society. The metaphor is based on neo-institutionalist theory, which views the workplace, schools, and the government as the result of the struggle for power and culture over the years. For centuries, Dalits and other minority groups were denied access to schools and temples, and any attempt at acquiring education or literacy was met with aggression and social boycotts.

Access to education is a major factor in promoting social mobility, flexibility, and empowerment. Traditionally, education has been in the hands of the upper castes, and the lower castes have not been allowed access to knowledge and engagement. The colonial period did provide some scope for the lower castes, but the impact of the change on the caste system was limited. For the Dalits, the act of matriculating into educational institutions is an act of courage and violation. Even today, despite the high rates of primary education for the children of the marginalized castes, many are not in school, and the struggle of the Dalits

[1] Gov't of India, Social Inequalities in the Current Education System of India (2023).
[2] B R Ambedkar, Castes in India: Their Mechanism, Genesis and Development 41 Indian Antiquary 81 (1917).
[3] B R Ambedkar, Castes in India: Their Mechanism, Genesis and Development 41 Indian Antiquary 81 (1917); Prakash Louis, Scheduled Castes and Tribes: The Reservation Debate (Indian Social Inst. 2003).
[4] B R Ambedkar, Dr Babasaheb Ambedkar: Writings and Speeches vol. 1 (Gov't of Maharashtra 1979).

continues once they are in school.

Underprivileged students suffer from "Merit Stigma" in the academic world, where their success is not recognized as meritorious but rather as an outcome of reservation policies. While reservations help create an even platform for oppressed groups, people in the higher castes consider it discriminatory. They believe that general category students have to work harder to compete in the academic and professional world.

SC/ST underrepresentation indicates that there is inequality in terms of faculty at the higher levels. Underprivileged students being denied opportunities is an indication that there is less representation in terms of mentorship. This is an indication of epistemic injustice, where the knowledge of the oppressed is not considered valuable.

This indicates that laws alone do not help in solving the problem of social inequality. It is important that institutions address discrimination in their premises. As such, higher education regulators have set up Equal Opportunity Cells to ensure equality, address discrimination complaints, and create an environment that is inclusive of oppressed groups.

Research Objectives

1. To examine the historical and structural factors that influence the institutional inequality faced by Scheduled Castes and Scheduled Tribes.
2. To examine the legal and policy provisions that have been put in place for the promotion of equality and the eradication of discrimination in the academic field and the work arena, keeping in mind their symbolic nature.
3. To examine the role and efficacy of Equal Opportunity Cells in the promotion of institutional equality for the marginalized communities and to analyse the challenges associated with their implementation along with probable reforms to strengthen their working.

Research Questions

1. What are the historical determinants of the institutional inequality faced by the Scheduled Castes and Scheduled Tribes in India?
2. What are the legal and policy provisions that deal with the issue of caste discrimination in the workplace and academic institutions?
3. To what extent have the Equal Opportunity Cells helped in the promotion of equality and reduction of discrimination in the workplace and academic institutions?

Scope of the Research

This research seeks to examine the issue of institutional inequality in higher education institutions and government workplaces in the Indian context, particularly focusing on the Scheduled Castes and Scheduled Tribes. The research examines the issue of structural discrimination and the role of social hierarchy in the Indian social order. The research focuses particularly on the role of the Equal Opportunity Cells set up in higher education institutions and government workplaces to promote the cause of equality and deal with issues of discrimination.

This research evaluates the effectiveness of these institutional mechanisms in ensuring the promotion of equality for the marginalized sections of society. The research also attempts to examine the larger issue of the relationship between caste and meritocracy in the context of education. The research is limited to the examination of the relevant policies, academic literature, and guidelines; therefore, the research does not rely on any primary research or surveys. The research relies on secondary research and academic literature on the issue of caste discrimination.

Literature Review

Historical Roots of Caste-Based Inequality

The caste system has traditionally maintained a social order in the country, dividing people into a hierarchical order depending on birth, occupation, and social class. This has traditionally resulted in a rigid stratification order in the country. It has been argued by various researchers that the caste system maintained a social order through the stratification of the population.[5]

The caste system, according to B. R. Ambedkar, is not only division in society but a grading of inequality, in which the members of society have been arranged in a hierarchical pattern while maintaining social division.[6] Traditionally, this division has been justified by the varna system, which divides society into four castes: Brahmin, Kshatriya, Vaishya, and Shudra. 'Untouchables' have always remained outside the caste system and have experienced the greatest division in society.[7]

[5] Prakash Louis, Scheduled Castes and Tribes: The Reservation Debate (Indian Soc. Inst. 2003).
[6] B R Ambedkar, Castes in India: Their Mechanism, Genesis and Development 41 Indian Antiquary 81 (1917).
[7] Gov't of India, Social Inequalities in the Current Education System of India (2023).

B. R. Ambedkar further emphasized that caste should not be seen merely as a division of labor, but rather as a division of laborers, where social hierarchy determines the dignity of an individual.[8] As such, the caste system has resulted in a graded inequality, where each social group occupies its position within the caste hierarchy. This has led to the continuation of social exclusion and discrimination against the marginalized sections of society.[9]

Caste discrimination has been an integral part of social interactions. In the book "Waiting for a Visa," Ambedkar describes the history of untouchability, including his experiences at school, where untouchable children could not sit with others and could only drink water after the higher caste peon opened the tap for them. Thus, there is discrimination at the institutional level too, including schools.[10]

Even after the establishment of the legal equality framework, the influence of the caste hierarchy at the institutional level is evident. The historical patterns are linked to Institutional Inequality.[11]

Educational Exclusion of SC/ST Communities

One of the major areas in which the phenomenon of caste-based discrimination has been evident is education. The accessibility of education has always been a reflection of the social hierarchy prevalent in the past, with the dominant sections of society ensuring that the marginalized sections of society are denied the right to education. A research on the education of Dalit children has revealed that the discriminatory practices prevalent in the education sector have always hindered the accessibility of education for the marginalized sections of society.[12]

According to a research on the access to education for marginalized sections, the obstacles faced do not end with the deprivation of the right to education. Instead, factors like poverty, absence of facilities, and attitudes in the field of education cause inequalities among Scheduled Castes and Scheduled Tribes.[13]

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[8] B R Ambedkar, Annihilation of Caste (1936).
[9] Prakash Louis, Scheduled Castes and Tribes: The Reservation Debate (Indian Soc. Inst. 2003).
[10] B.R. Ambedkar, Waiting for a Visa, in Dr. Babasaheb Ambedkar: Writings and Speeches vol. 12, at 661 (Vasant Moon ed., Gov't of Maharashtra 1993).
[11] Dipankar Chakrabarty, Development of Scheduled Castes and Scheduled Tribes: The Success So Far (2000).
[12] Bhalchandra Mungekar, Report of the Commissioner of Enquiry into Complaints of Caste-Based Discrimination in Vardhman Mahavir Medical College and Safdarjung Hospital, New Delhi (Nat'l Comm'n for Scheduled Castes, Sept. 6, 2012).
[13] Geetha B. Nambissan, Equity in Education? Schooling of Dalit Children in India, 31 ECON. & POL. WKLY. 1011 (1996).

According to research, the marginalized sections face discrimination within the field of education even after entering the field. This causes inequalities and stigmatization. This is due to the fact that the inequalities within the field of education result from the historical discrimination faced by these sections. Thus, the access to education and the educational institution must be considered.[14]

Institutional Discrimination in Educational Institutions

Despite evidence of obstacles to education for marginalized groups, recent studies also point to institutional discrimination in contemporary schools. Institutional discrimination is discrimination at the system level, focusing on certain groups even when equality is constitutionally ensured. The studies conducted on caste discrimination among marginalized groups found that these students were not only subject to open discrimination but also subtle discrimination, like stereotyping, social boycott, and even doubting their intellectual capabilities even after being admitted under reservations. This discrimination not only stigmatizes these students but also affects their academic performance in a hostile academic environment.[15] The number of complaints of caste discrimination has registered an increase of 118% in UGC data (2019-2024)[16]

Another form of institutional discrimination in the educational sector is the lack of representation of marginalized groups at leadership positions. Studies have shown that there is high underrepresentation of Scheduled Castes and Scheduled Tribes among the teaching and other authorities.[17] This is also responsible for the maintenance of the status quo regarding the hierarchy of society because the marginalized are not represented among the authorities.

Furthermore, empirical studies also show that discrimination in educational institutions continues to impact the lives of marginalized students in a significant manner. Studies on discrimination in higher education institutions reveal that marginalized students are likely to experience unfair academic evaluation, limited interactions with teachers, and social

[14] Sukhadeo Thorat and Katherine S Newman, Blocked by Caste: Economic Discrimination in Modern India (Oxford Univ. Press 2010).
[15] Prakash Louis, Scheduled Castes and Tribes: The Reservation Debate (Indian Soc. Inst. 2003).
[16] Univ. Grants Comm'n, Data on Caste-Based Discrimination Complaints Received from Equal Opportunity Cells and SC/ST Cells, 2019-20 to 2023-24, submitted to a Parliamentary Standing Committee and to the Supreme Court in *Abeda Salim Tadvi v. Union of India*, W.P. (C) No. 1149 of 2019 (India).
[17] Ministry of Educ., Gov't of India, All India Survey on Higher Education 2022-23 (Dep't of Higher Educ. 2024).

exclusion in educational institutions and campus places.[18] Such forms of discrimination in educational institutions reveal how these institutions also mirror social hierarchies in a significant manner, even though they claim to adhere to principles of equality and meritocracy.

The harsh effects of institutionalized discrimination can be seen in the educational system of India, for example, in the case of Rohith Vemula, a PhD student at the University of Hyderabad from the Scheduled Caste community, committed suicide in 2016 due to disciplinary actions that resulted in his expulsion from the university hostel.[19]

Another example is the case of Dr. Payal Tadvi, a postgraduate medical student at the Topiwala National Medical College and BYL Nair Hospital in Mumbai. Dr. Tadvi committed suicide in 2019. She belonged to the Scheduled Tribe community, the Adivasi Tadvi Bhil Scheduled Tribe. During her residency, she was subjected to harassment and discrimination by the staff at the hospital.

Affirmative Action and Reservation Policies

Affirmative action in India was implemented to remedy historical discrimination and socio-economic inequalities faced by marginalized communities, with specific reference to Scheduled Castes (SCs) and Scheduled Tribes (STs). The main purpose of affirmative action in India is to promote social justice by ensuring greater representation in education and government jobs. One of the most notable examples of affirmative action in India is the reservation policy.[20]

At present, reservations of 15 percent of seats in government education institutions and jobs are available for Scheduled Castes, and another 7.5 percent of reservations are available for Scheduled Tribes.[21] After the Mandal Commission recommendations in 1990, the government implemented a policy of providing 27 percent reservations in government jobs and education institutions to Other Backward Classes (OBCs).[22] Recently, with the implementation of the 103rd Constitutional Amendment Act of 2019, there is a provision of a

[18] Comm. to Enquire into Allegations of Differential Treatment of SC/ST Students in AIIMS, Report of the Inquiry Committee (Gov't of India 2007).
[19] *Abeda Salim Tadvi v. Union of India*, W.P. (C) No. 1149 of 2019 (India) (petition by the mothers of Rohith Vemula and Payal Tadvi).
[20] Marc Galanter, Competing Equalities: Law and the Backward Classes in India (Oxford Univ. Press 1984).
[21] Gov't of India, Reservation for SCs, STs, OBCs, PwDs and EWS in Posts and Services in the Central Government (Department of Personnel and Training 2024).
[22] Gov't of India, Report of the Backward Classes Commission (Mandal Commission) (1980).

10 percent reservation for Economically Weaker Sections of society in general categories in government jobs and education institutions.[23]

Besides these reservation policies, there are many other supporting initiatives taken by the government of India to promote education among marginalized communities. For instance, there is a scholarship program, special hostels, remedial coaching, financial support, etc. for students belonging to marginalized communities[24]

Legal And Institutional Framework

Constitutional Provisions Against Caste Discrimination

The Indian Constitution has put in place a comprehensive mechanism to combat caste-based discrimination and ensure equality in both social and institutional spheres. Article 14 ensures equality under the law,[25] and Article 15(1) prohibits state-initiated discrimination on the basis of religion, caste, sex, or place of birth. Article 15(2) includes differential treatment in the use of public spaces and educational institutions.[26] Another important provision of the Constitution of India is Article 17, which abolishes untouchability and makes its practice a punishable crime.[27] This shows the commitment of the Constitution to tackling social hierarchy based on caste. The Constitution of India has also acknowledged the potential of education to ensure social equality. Article 21A of the Constitution has guaranteed free and compulsory education for children between the ages of six and fourteen.[28] According to the All India Survey on Higher Education 2022-23 data, Scheduled Castes comprise 14.7% of the total enrollment in higher education, while Scheduled Tribes comprise 5.6%.[29] Furthermore, Article 46 of the Constitution has mandated the state to promote the educational and economic interests of Scheduled Castes and Scheduled Tribes and protect them from social injustice. Yet, social inequality based on caste remains a reality, as indicated by the 50,000+ crimes against Scheduled Castes recorded in 2022 by the National Crime Records Bureau (NCRB).[30]

[23] Constitution (One Hundred and Third Amendment) Act 2019 (India).
[24] Ministry of Soc. Just. and Empowerment, Gov't of India, Scholarship Schemes for Scheduled Castes and Scheduled Tribes.
[25] INDIA CONST. art 14.
[26] INDIA CONST. art 15.
[27] INDIA CONST. art 17.
[28] INDIA CONST. art 21A.
[29] Ministry of Educ., Gov't of India, All India Survey on Higher Education 2022-23.
[30] Nat'l Crime Recs. Bureau, Crime in India Report 2022.

Reservation Policies in Education and Employment

Reservation policies are considered a key affirmative action in India, aimed at correcting historical injustices and increasing representation of these sections in Indian society. Currently, reservation policies provide 15 percent reservation to Scheduled Castes, 7.5 percent reservation to Scheduled Tribes, and 27 percent reservation to Other Backward Classes in public educational institutions and government employment.[31] Furthermore, a reservation of 10 percent to Economically Weaker Sections (EWS) within the general category was also introduced through the 103rd Constitutional Amendment Act of 2019.[32]

In order to address the situation of reserved vacancies not being filled in a particular recruitment year, Article 16(4B) was inserted in the Indian Constitution through the 81st Constitutional Amendment Act of 2000, allowing the state to carry forward unfilled reserved vacancies for SCs and STs in successive recruitment years. Such vacancies are considered a separate category and are not subject to any restriction of 50 percent reservation in a recruitment year. Such vacancies also cover situations where candidates from reserved categories are marked as "Not Found Suitable (NFS)" during recruitment processes, ensuring such reserved vacancies are filled when suitable candidates are found.[33]

Despite these affirmative actions, challenges in implementing reservation policies are still faced by the Indian government. As per the Department of Personnel and Training (DoPT) Annual Report 2024, Scheduled Castes account for 17.2 percent of central government employees, and Scheduled Tribes account for 8.5 percent of central government employees, indicating a gradual improvement in representation in Indian society.[34]

UGC Policies on Institutional Equity

The University Grants Commission (UGC) has introduced policies that promote equity and prohibit discriminatory practices in Indian higher education. For example, the University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, is a major initiative by the UGC in the direction of promoting equity in higher education. The main aim of the regulations is to ensure that the students belonging to

[31] Gov't of India, Reservation for SCs, STs, OBCs, PwDs and EWS in Posts and Services in the Central Government (Dep't of Pers. & Training 2024).
[32] Constitution (One Hundred and Third Amendment) Act 2019 (India).
[33] Constitution (Eighty-First Amendment) Act, 2000 (India) (inserting INDIA CONST. art. 16, cl. 4B).
[34] Dep't of Pers. and Training, Gov't of India, Annual Report on Representation of SC/ST Employees in Central Government Services (2024).

Scheduled Castes, Scheduled Tribes, Other Backward Classes, minorities, and persons with disabilities are not subjected to discriminatory practices in higher education institutions.[35]

The higher education institutions are expected to establish Equal Opportunity Cells (EOCs) that will provide academic support and address the grievances of the students against discriminatory practices. The UGC has introduced various schemes in the direction of promoting equity in higher education.

Statutory Laws and Institutional Policies against Discrimination

Besides this, various other legal instruments in the form of statutory provisions have been framed to address the issue of caste-based discrimination. A major piece of legislation is the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This act criminalizes violence, harassment, or discrimination against the members of the SC and ST groups. It has framed stringent punishment for the commission of such offenses against the members of these groups. Moreover, it has framed special courts for the speedy disposal of such cases.[36]

Another important piece of legislation is the Right of Children to Free and Compulsory Education Act, 2009. This act has guaranteed the right to free and compulsory education for all children. It has prohibited discrimination practices in educational institutions. This act aims at creating an environment where the children belonging to the marginalized sections of society can enjoy equal opportunities for education.[37]

Judicial Interpretation of Affirmative Action Policies

In the judgment of Indra Sawhney v. Union of India (1992), the Supreme Court upheld the constitutional validity of the reservations for the Other Backward Classes while also laying down the 50 percent cap for reservations in public employment. This judgment marked an important milestone in the evolution of the Indian system of reservations.[38]

In the judgment of Ashoka Kumar Thakur v. Union of India (2008), the Supreme Court upheld the constitutional validity of the reservations for the OBCs in higher education institutions under the Central Educational Institutions (Reservation in Admission) Act of 2006.[39] The Court held that the policy of affirmative action for the marginalized sections of

[35] Univ. Grants Comm'n, UGC (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, notified under § 26, University Grants Commission Act, 1956 (India).
[36] Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (India).
[37] Right of Children to Free and Compulsory Education Act, 2009 (India).
[38] Indra Sawhney v. Union of India, 1992 Supp. (3) SCC 217 (India).
[39] Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1 (India).

society was a crucial tool to achieve the goal of substantive equality.

In the judgment of P. V. Indiresan v. Union of India (2009), the Supreme Court upheld the policy of reservations for the elite institutions of the country, i.e., the Indian Institutes of Technology. However, the Court held that the policy of affirmative action should not compromise the standards of academic excellence.[40]

Critical Analysis of Equal Opportunity Cells

Implementation of Equal Opportunity Cells in Universties

In this regard, the establishment of Equal Opportunity Cells (EOCs) has been mandated in higher educational institutions to address inequality and foster an inclusive higher educational environment for marginalized communities. The establishment of EOCs has been directed by the University Grants Commission (UGC), and higher educational institutions are required to comply with the UGC Regulations on Promotion of Equity in Higher Educational Institutions, 2012. The basic role and responsibility of EOCs are to support disadvantaged communities such as Scheduled Castes, Scheduled Tribes, Other Backward Classes, minorities, and persons with disability.[41]

In spite of these regulatory provisions, the implementation of EOCs is still limited in higher educational institutions. India has a vast higher educational system with approximately 1,168 higher educational institutions and over 45,000 colleges.[42] Despite the regulatory provisions for the establishment of EOCs, their presence and efficacy are still limited. Data presented to the Supreme Court by the UGC reveals that out of 3,522 higher educational institutions surveyed, only 3,067 higher educational institutions reported the presence of EOCs.[43]

Nevertheless, the effectiveness of EOCs is still in question. The studies and media have shown that EOCs are only on paper and do not deal with discrimination issues in a significant manner. EOCs are only advisory bodies and do not have investigation and disciplinary authority. Higher education institutions are not allocating enough funds to EOCs and are assigning this responsibility to teachers along with their already heavy workload. The

[40] P.V. Indiresan v. Union of India, (2009) 7 SCC 300 (India).
[41] Univ. Grants Comm'n, UGC (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, notified under § 26, University Grants Commission Act, 1956 (India).
[42] Ministry of Educ., Gov't of India, All India Survey on Higher Education 2021-22 (Dep't of Higher Educ. 2023).
[43] Univ. Grants Comm'n, Affidavit (Feb. 2025), *Abeda Salim Tadvi v. Union of India*, W.P. (C) No. 1149 of 2019 (India) (data from 3,522 responding higher educational institutions on Equal Opportunity Cells and complaints received).

enforcement of rules and caste hierarchy in higher education is also not effective.[44]

Awareness and Accessibility of Equal Opportunity Cells

Yet another important challenge that affects the efficacy of EOCs is the general lack of awareness among students and staff with regard to their existence and mandate. EOCs were established as per the UGC Regulations (Promotion of Equity in Higher Educational Institutions), 2012. However, there are instances where institutions failed to disseminate information with regard to EOCs or did not establish adequate grievance redressal cells.

There are also structural factors that contribute to the low awareness of EOCs among students. To begin with, there are some universities that operate EOCs with inadequate staff and infrastructure. In most cases, teachers are also responsible for running EOCs alongside their other roles. In other cases, there is also poor regulatory oversight, leading to the operation of EOCs on the surface only.

There is also the issue of stigma with regard to caste-based discrimination, as well as the reluctance of students to approach EOCs with regard to caste-based discrimination issues. There are instances where students did not approach EOCs with regard to caste-based discrimination issues despite their existence.

Challenges And Limitations

Despite their purpose of creating a sense of equality among all members of the academic or professional environment, EOCs face various structural and social challenges that limit their effectiveness. One of the main challenges from the perspective of the students or staff who have been discriminated against is the fear of retaliation or negative academic consequences. There is often a fear of negative academic evaluation or recommendations for students who have made complaints of discrimination against senior faculty members or academic staff.[45]

Another main challenge is the lack of trust in the institutional mechanisms for handling grievances. There is a feeling of mistrust among students that their grievances will not be taken seriously or that the institution will try to protect their own reputation rather than the person who has been discriminated against. The lack of independent investigation mechanisms or the lack of transparency in complaint mechanisms is another reason why the victims of discrimination will not come forward.

Another factor that is critical in the case of students is the hierarchy of the academic

[44] Equal Opportunity Cells Functioning as Token Bodies in Several Universities, Times of India.
[45] Prakash Louis, Scheduled Castes and Tribes: The Reservation Debate (Indian Soc. Inst. 2003).

environment. There is often a feeling of shame or being labeled as a "troublemaker" for students from the margins who try to bring up the issue of discrimination.

Case Illustration of Institutional Discrimination

Caste based discrimination within the institutions and workplaces persist to exhibit evidently in both minute and undisguised way, which not only affect students but also faculty members. One of the most horrific incident discussed is the 2016 death of Rohit Vemula, a doctoral student at the University of Hyderabad, whose suicide brought national attention to allegations of institutional discrimination and the underrepresentation of Dalit students within universities.[46] Equivalently, Dr Payal Tadvi, a postgraduate medical student in Mumbai, committed suicide in 2019 after reportedly encountering caste based harassment from senior colleagues, highlighting discrimination within professional medical institutions. At school level, violent forms can be taken by caste prejudice. In 2022, a nine-year-old Dalit student in Jalore, Rajasthan, died after being beaten by a teacher for drinking water from a pot allegedly reserved for upper-caste students, bespeaking the perseverance of untouchability practices in educational spaces.[47] Discrimination has also exerted upon faculty members; Dr Ritu Singh, an ad-hoc professor at Delhi University, publicly alleged caste-based discrimination and wrongful removal from her position, reflecting broader Institutional biases in academic employment.[48]

These cases evince that institutional discrimination can lead to severe consequences against students belonging to marginalized sections of society and highlight the need for institutional mechanisms to address the problem effectively.

Effectiveness of Equal Opportunity Cells in Addressing Institutional Inequality

The effectiveness of EOCs in institutional equality is a controversial issue. The development of EOCs may enhance equality in higher education, but it is dependent upon the effectiveness of equity policies. Statistics have shown that discrimination is a serious problem in higher education. According to data released by the University Grants Commission (UGC), the total

[46] *Abeda Salim Tadvi v. Union of India*, W.P. (C) No. 1149 of 2019 (India) (petition by the mothers of Rohith Vemula and Payal Tadvi).
[47] India Today, Dalit Boy Beaten by Teacher for Drinking Water from Pot in Rajasthan Dies (Aug. 13, 2022), https://www.indiatoday.in/india/story/dalit-student-beaten-to-death-teacher-rajasthan-jalore-for-drinking-pot-water-1987714-2022-08-13 (last visited Mar. 7 (2026).
[48] Mohammad Ibrar, Delhi University Ad Hoc Teacher Alleges Caste Bias, Times of India (Sept. 3, 2020, 8:11 AM), https://timesofindia.indiatimes.com/city/delhi/du-ad-hoc-teacher-alleges-caste-bias/articleshow/77899813.cms (last visited Mar. 7, 2026).

number of caste-based discrimination complaints has increased from 173 in the academic session 2019-20 to 378 in 2023-24, an increase of about 118% over five years.[49]

According to data released by the All India Survey of Higher Education (AISHE), there are still issues of inequality in academic representation. Scheduled Castes comprise about 14-15% of the total enrollment of students, but their academic representation in the form of faculty members within higher educational institutions is still below 10%.[50]

The issue of inequality is even more pronounced within premier institutions. According to parliamentary records, out of 23 Indian Institutes of Technology, comprising over 6,000 faculty members, only 149 are from Scheduled Castes, while 21 are from Scheduled Tribes, indicating the low representation of these communities within India's premier technical institutions.[51]

The low representation of these communities can be attributed to issues of ineffective implementation of reservation policies within the recruitment of faculty members. There have been reports of backlog vacancies, delay in the implementation of reservation policies, and the declaration of reserved positions as "Not Found Suitable" to undermine the effectiveness of such policies.[52]

This shows that while the establishment of Equal Opportunity Cells is a significant move towards ensuring equality within institutions, their efficacy depends upon the successful implementation of these measures.

Conclusion and Recommendations

Major Findings

The present study aims to explore the persistence of inequality in Indian education and the effectiveness of Equal Opportunity Cells in addressing caste-based discrimination in these institutions. The findings suggest that despite an effective constitutional framework and the long history of affirmative action policies, inequality persists in Indian education.

From the literature review above, it is evident that exclusion based on caste has been part of

[49] Univ. Grants Comm'n, Data on Caste-Based Discrimination Complaints Received from Equal Opportunity Cells and SC/ST Cells, 2019-20 to 2023-24, submitted to a Parliamentary Standing Committee and to the Supreme Court in *Abeda Salim Tadvi v. Union of India*, W.P. (C) No. 1149 of 2019 (India).
[50] Ministry of Educ., Gov't of India, All India Survey on Higher Education 2022-23 (Dep't of Higher Educ. 2024).
[51] Rajya Sabha, Unstarred Question No. 1693: Representation of SC/ST/OBC Faculty in IITs, Parliament of India (Mar. 2021).
[52] Dep't of Pers. & Training, Gov't of India, Annual Report on Representation of SC/ST Employees in Central Government Services (2024).

Indian history and is still part of the education system. Although reservation policies have provided opportunities for disadvantaged groups to access higher education facilities, there is inequality when it comes to faculty representation. Scheduled Castes and Scheduled Tribes are not well represented as faculty.

The present study suggests that despite their role in promoting equality and preventing discrimination in Indian education, Equal Opportunity Cells are not effective in many Indian universities. The cells often lack administrative power and visibility in the university. The findings suggest that inequality in Indian education requires effective governance and institutional reforms.

Need for Institutional Accountability

The persistence of discriminatory practices within educational institutions underlines the need for a more effective system of institutional accountability. While constitutional provisions under Articles 14, 15, 16, 17, and 21A of the Constitution of India provide a robust framework for the promotion of equality, the implementation of these provisions within educational institutions has been inconsistent.

Educational institutions need to understand that a situation of discrimination within academic institutions undermines constitutional principles and the very credentials of the higher educational system. Therefore, it would be essential for educational institutions to have a transparent system of governance to ensure a fair deal for students and faculty members of marginalized communities.

The regulatory bodies, such as the University Grants Commission, need to have a better monitoring system to ensure the implementation of equity provisions. The results of grievance redressal can be publicly disclosed to ensure greater transparency and accountability. Independent oversight bodies within educational institutions can ensure a fair deal for members of marginalized communities.

Policy Recommendations

However, to address institutional inequality in a most effective manner, policy interventions are required to go beyond symbolic compliance and address structural reforms in higher education institutions. Existing policy and legal frameworks are in place to ensure equality, but their effectiveness is conditional on their implementation, institutional accountability, and

enforcement.[53]

One of the key measures that can be introduced to address institutional inequality is to provide administrative autonomy and authority to Equal Opportunity Cells (EOCs). Equal Opportunity Cells were established to promote equality and address issues of discrimination in universities and higher education institutions.[54] However, in most universities, these cells are not provided with adequate authority to address and resolve grievances of students and staff members regarding discrimination.[55] Providing authority to these cells would help them address and resolve grievances of students and staff members in a most efficient and effective manner.

Another intervention that can be introduced to address institutional inequality is to establish independent grievance redressal committees. Most students and staff members who are victims of discrimination are not willing to seek assistance from institutional authorities and grievance redressal cells due to fear of retaliation and lack of trust in institutional authorities.[56]

Third, there should be mandatory training and sensitization programs on anti-discrimination. Although there are awareness programs in place through gender sensitization and anti-ragging initiatives, training on caste-based discrimination is lacking. This can help sensitize and create awareness on issues of inequality and discrimination.[57]

Fourth, there is a need to address the gap in faculty representation through effective implementation of reservation policies. The more marginalized groups are represented in leadership positions, the more they can be mentored and assisted in overcoming structural barriers within higher education.[58]

Fifth, there is a need to have centralized monitoring systems put in place by national regulatory bodies to track and record instances of discrimination, institutional response to it,

[53] INDIA CONST. arts. 14, 15(4), 16(4), 17, 46.
[54] Univ. Grants Comm'n, UGC (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, notified under § 26, University Grants Commission Act, 1956 (India).
[55] Univ. Grants Comm'n, Establishment of Equal Opportunity Cells in Higher Educational Institutions (UGC Circular).
[56] Prakash Louis, Scheduled Castes and Tribes: The Reservation Debate (Indian Soc. Inst. 2003).
[57] Univ. Grants Comm'n, UGC Guidelines on Prevention of Caste-Based Discrimination in Higher Educational Institutions.
[58] Ministry of Educ., Gov't of India, All India Survey on Higher Education 2022-23 (Dep't of Higher Educ. 2024).

and data on representation. Although there are data collection initiatives such as the All India Survey on Higher Education, it is more focused on enrollment and infrastructure data.[59]

Nevertheless, it is observed that despite government regulations that mandate the setting up of Equal Opportunity Cells (EOCs), there is a lack of equal distribution of these cells. India boasts 1,168 universities and over 45,000 colleges, yet only 3,067 of 3,522 surveyed institutions reported that they had established EOCs.[60] Finally, there is a need to develop institutional strategies to help students overcome structural and psychological barriers that are faced by students from marginalized groups.

Conclusion

Institutional inequality is still an influential force in the experiences of marginalized social groups in the Indian higher education system. While constitutional guarantees and affirmative action programs have created significant opportunities for social mobility, inequality in the institutional environment is still significant.

Equal Opportunity Cells are an important step in the eradication of inequality and promoting equality and diversity. However, their success depends on the level of institutional commitment and the availability of resources and effective governance structures. Therefore, the achievement of better governance is possible through joint and collective efforts from policymakers and regulatory bodies and higher education institutions.

Therefore, the achievement of true institutional equality requires a move beyond mere compliance and into true reform and tackling inequality in the context of education. Through better accountability structures and promoting equality and diversity in academic institutions, the constitutional ideals of equality, dignity, and social justice among all citizens of society can be achieved.

[59] Ministry of Educ., Gov't of India, All India Survey on Higher Education 2022-23 (Dep't of Higher Educ. 2024).
[60] Univ. Grants Comm'n, Affidavit (Feb. 2025), *Abeda Salim Tadvi v. Union of India*, W.P. (C) No. 1149 of 2019 (India) (data from 3,522 responding higher educational institutions on Equal Opportunity Cells and complaints received).

EXAMINING THE INTERSECTION OF CASTE, GENDER AND PLATFORM LABOR: ASSESSING SOCIAL SECURITY GAPS AND THE 'NEW PRECARITY' FOR SC/ST WORKERS UNDER MODERN LABOR REGULATIONS

Sujal Sharma[*] & Priya Mishra[**]

Abstract

The labour market in India today operates through a system of platform-based employment which replaced its traditional caste-based job distribution system. The paper investigates whether digital disruption elements of present-day work organization show actual changes from existing work patterns. The caste system established permanent job divisions which forced Scheduled Castes and Scheduled Tribes to work in socially unacceptable hereditary occupations. The existing structural divisions between different groups throughout history determined their ability to access resources and maintain social status and achieve economic progress through successive generations.

The caste system's historical record established strict rules which determined specific jobs for people to perform according to their caste status. The system specifically restricted Scheduled Castes (SC) and Scheduled Tribes (ST) communities to their traditional jobs, which their families had held since ancient times.[1]

The research shows that algorithms which appear "neutral" actually create systemic disadvantages which digital capitalism relies on. The study investigates the regulatory vacuum because (Hypothesis 1) demonstrates that current state labor laws treat platform workers as one economic group instead of recognizing their unique vulnerabilities which stem from their "caste-plus-class" status. The research establishes a major gender aspect (Hypothesis 2), which proves that current state labor reforms do not include any rules that address the specific intersectional discrimination which SC/ST women experience in the gig economy based on their caste, class, and gender identity.

The research analyzes SC/ST gig worker entry patterns, task distribution, income fluctuations, and social advancement through its methodology, which combines historical research with secondary data and current empirical workforce data. The study assesses whether platform intermediation effectively diminishes caste-based discrimination or just transforms it into a form of "new precarity," in which the absence of social protections and bargaining strength reflects historical marginalization.

The central research question guiding this study is: To what extent does the contemporary gig economy reproduce, transform, or disrupt historically entrenched caste-based occupational hierarchies in India? This paper demonstrates how digital capitalism interacts with Indian labor through its analysis of social justice and structural inequality issues. The understanding of platform labor needs to move beyond economic study because it requires analysis through historical research that examines how technology and caste systems interact.

***Key words**: Gig Workers, Platform Labour Precarity, Caste-Class Intersectionality, Gendered Labour Inequality, Digital Capitalism*

Introduction

Digital platform economies' expansion during the past ten years created fundamental changes

[*] *Kurukshetra University, Thanesar*
[**] *National Institute for Smart Government, New Delhi*
[1] B.R. AMBEDKAR, ANNIHILATION OF CASTE (1936).

in the international employment market. Digital platforms operate through algorithmic systems to connect consumers with workers who provide services in ride-hailing, food delivery, logistics, and online freelancing.[2] Companies use algorithm-based applications to create platforms which connect consumers with workers who provide services in multiple fields including ride-hailing, food delivery, freelance work, and domestic services. The public commonly calls these platform-based work systems the gig economy.

India has experienced the fastest growth of platform labor across all countries in the world. The policy think tank NITI Aayog reported that India had about 7.7 million gig workers during the 2020–21 period, which represented approximately 1.5 percent of the total workforce and 2.6 percent of the non-agricultural workforce.[3] The same report projects that the gig economy workforce could grow to 23.5 million by 2029–30, forming about 4.1% of Indian labor.[4]

Digital labor platforms have expanded their reach, which provides workers with flexible job options while creating pathways to employment for those without formal qualifications. The historical development of labor markets in India remains under-recognized in these narratives.

Caste-based occupational hierarchies historically determined labour allocation across communities. The traditional system of caste established occupational links to social identity which mandated hereditary work duties to continue through successive generations.[5] Lower caste groups were historically restricted to work that carried social stigma because privileged groups maintained their authority over educational and economic resources.[6]

The Constitution of India abolishes untouchability through its provisions[7] while implementing affirmative action programs to rectify past injustices.[8] The existing structural inequalities still determine who can obtain education and employment opportunities, as well as who can achieve economic advancement.

The gig economy creates a contradictory situation. The digital platforms of today make it possible to hide worker identities, which should in principle lead to less discrimination during the hiring process.

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[2]Arun Sundararajan, The Sharing Economy (2016).
[3]NITI Aayog, India's Booming Gig and Platform Economy (2022).
[4]*Id.*
[5]André Béteille, Caste, Class and Power (1965).
[6]Ambedkar, *supra* note 1.
[7]India Const. art. 17.
[8]Marc Galanter, Competing Equalities: Law and the Backward Classes in India (1984).

In practice, platform work requires workers to have access to smartphones, digital literacy skills, vehicles, and financial resources , assets which different caste groups in Indian society already possess unequally.[9]

Historical Context: Caste and Occupational Hierarchies in India

In India, the caste system has played a traditional role in shaping the organization of labour according to the varna-jati structure, in which ancestral social status was often associated with vocations.[10] Individuals were expected to follow the occupation associated with their caste group, resulting in rigid labour segmentation across society. *The traditional varna–jati framework required individuals to follow their ancestral occupation because their caste determined their profession.* The system established fixed social groups which linked economic work to social identity and created boundaries that restricted movement between different work fields.[11]

The hierarchy exhibited its highest point through communities who dedicated themselves to intellectual, religious, and administrative tasks. These groups enjoyed superior educational opportunities, resource availability, and social status compared to others.[12]

The lower caste groups assigned to their traditional roles throughout history worked in manual labor, sanitation, agriculture, artisan production, and other jobs which required extreme physical work or faced social rejection.[13] The system created institutionalized labor segmentation because caste-based occupations passed down through generations determined the economic roles people worked in based on their birth status instead of their skills or personal preferences.

The Scheduled Castes and Scheduled Tribes represent the least privileged group within this social system. The Scheduled Tribes faced social exclusion because their communities were cut off from others due to both geographical barriers and the land policies which colonial powers used to extract resources.[14] Mainstream educational systems and economic institutions excluded them, which created barriers that prevented them from achieving economic progress. Dominant caste groups historically controlled land ownership, while

[9]Vaidehi R. et al., *Explaining the Caste-Based Digital Divide in India* (2021).
[10]Louis Dumont, Homo Hierarchicus (1970).
[11]*Id.*
[12]Béteille, *supra* note 5.
[13]B.R. Ambedkar, The Untouchables (1948).
[14]Galanter, *supra* note 8.

marginalized communities often worked as landless labourers.[15]

The distribution of education, which serves as a vital social mobility pathway, exists in an unequal manner throughout society. Marginalized communities faced formal educational restrictions and social discrimination that made schooling difficult.[16] The communities needed to develop basic literacy skills to enter well-paying jobs, but this path remained inaccessible for several generations.

The Constitution of India, adopted in 1950, established a legal and political framework that sought to eliminate all forms of caste-based discrimination. *Article 17 abolished untouchability as a practice and declared it to be an illegal act.*[17] The Constitution established multiple affirmative action programs, which included educational reservations, public employment quotas, and political representation rights for Scheduled Castes and Scheduled Tribes.[18] These policies existed to correct historical wrongdoings while helping to create greater social and economic opportunities for all citizens.

Wage inequality and payment insecurity remain a consequence of informal employment, and *almost 90% of the workforce in India relies on this kind of employment.*[19] Informal employment is characterized by irregular wages, lack of contracts, and absence of social security protections.

Workers in informal employment face job situations which lack written contracts and minimal job security, with irregular wage payments and no access to social protection programs such as health insurance, pensions, and unemployment benefits. Workers in these industries encounter dangerous work conditions while possessing limited ability to negotiate for improved salary and safer conditions.

National surveys, including the Periodic Labour Force Survey (PLFS), show that Scheduled Castes and Scheduled Tribes face higher rates of insecure employment. Historical educational and skill development disadvantages continue to restrict their access to formal sector jobs which offer better pay, secure employment, and social security benefits.[20]

Digital labor platforms and the gig economy have grown rapidly in recent years, creating new employment opportunities for workers in India's urban labor markets. The platforms present

[15]Béteille, *supra* note 5.
[16]Ambedkar, *supra* note 13.
[17]India Const. art. 17.
[18]Galanter, *supra* note 8.
[19]Ministry of Statistics and Programme Implementation, Periodic Labour Force Survey Annual Report (2023).
[20]*Id.*

themselves as employment models that provide flexibility and inclusivity because they enable workers to earn without needing to meet standard employment requirements.

The expansion of the gig economy needs evaluation through its historical connections to India's established labor systems. Most gig workers perform their tasks under conditions that match the characteristics of informal employment; they are classified as independent contractors instead of employees, which excludes them from benefits such as health insurance, paid leave, and job protection.

The gig sector attracts more workers from marginalized groups because it requires minimal educational credentials and offers instant job opportunities. Digital platforms provide a gateway for people without formal work routes to join the workforce, but this participation does not necessarily lead to better job opportunities.[21] Workers need financial resources to acquire essential equipment for gig work, including vehicles, smartphones, and stable internet connectivity.

The gig economy requires assessment through two lenses: its technological aspects and its functioning as a market system. *Digital labor platforms still suffer from the same structural inequalities that existed in traditional labor markets, including educational and resource limitations and networking difficulties for marginalized workers.*

Digital work needs to be studied together with caste and labor markets, because this understanding will help create labor policies that promote workplace inclusion. The gig economy needs specific solutions to tackle educational gaps, financial resource access, and worker safety issues, because these factors create patterns that exclude workers from Indian labor markets.

Literature Review: Gig Economy, Algorithmic Management, and Social Inequality

The past decade has seen major expansion in academic research on the gig economy as digital platforms now govern labor markets throughout the world. Early studies on platform labor showed that this work system could provide flexible job options while helping more people enter the workforce.[22] Digital platforms such as ride-hailing services, food delivery applications, and freelance marketplaces have changed employment systems by allowing workers to find jobs through mobile apps and web platforms. Some researchers initially

[21]NITI Aayog, *supra* note 3.
[22]Sundararajan, *supra* note 2.

argued that the gig economy could democratize access to employment by lowering entry barriers and allowing individuals to choose their working hours and generate multiple sources of income.

The scholarly work of *Guy Standing establishes a theory of the "precariat," which helps researchers understand the evolving characteristics of gig employment*.[23] Standing uses this concept to describe a new social class that suffers from unstable work situations and unpredictable earnings while lacking permanent social security benefits.[24] The concept has achieved academic importance in platform labour research because it shows how technological progress leads to new types of economic instability.

A parallel research field investigates algorithmic management, which describes how digital platforms use automated decision-making systems to manage their work operations.[25] Platform companies use algorithms for task distribution, productivity tracking, pay-rate determination, and disciplinary action. Gig platforms use software systems to manage work operations rather than direct managerial oversight. These systems enable companies to handle extensive workforces, but they produce major disparities in power distribution. Workers typically have limited understanding of how platform algorithms operate, which makes it difficult for them to understand how work and pay are determined.[26]

Early studies of digital platforms showed that these platforms functioned as tools which helped people in developing nations join economic activities. Gig platforms in India created new job opportunities for migrant workers, young professionals, and people without formal educational qualifications.[27] The digital platforms functioned as effective labor market intermediaries using extensive data, geographic information systems, and automated matching to connect consumers with service providers.[28]

However, recent scholarship has increasingly challenged these optimistic interpretations. Researchers now emphasize that gig work frequently reproduces existing labour insecurities rather than eliminating them. The classification of gig workers as independent contractors instead of employees results in their exclusion from essential labor protections, including minimum wage, health insurance, paid leave, unemployment benefits, and collective

[23]Guy Standing, The Precariat (2011).
[24]*Id.*
[25]Alex Rosenblat, Uberland (2018).
[26]Rosenblat, *supra* note 25.
[27]NITI Aayog, *supra* note 3.
[28]Sundararajan, *supra* note 2.

bargaining rights.[29] This classification enables platform companies to escape many of the legal responsibilities that come with standard employment relationships.[30]

Scholars also highlight the economic instability experienced by gig workers. Earnings fluctuate with market demand, while workers must bear operational expenses including fuel, vehicle maintenance, digital connectivity, and platform commission fees.[31] These elements combine to produce income patterns that are difficult to predict and that create financial instability for affected individuals.

The research field is also expanding its focus to the relationship between algorithmic management and social inequality. *Customer rating systems and automated decision-making processes create a situation in which social biases tied to caste, gender, language, and location risk being unintentionally reinforced*, generating discriminatory results even when workers complete identical tasks with equal productivity.

The literature demonstrates that digital inequality functions as a barrier which prevents people from accessing opportunities within the gig economy, since the platform workforce requires digital assets like smartphones, stable internet access, and digital literacy, that different social groups in India possess unequally. Scheduled Castes and Scheduled Tribes encounter systemic technological access challenges that create a caste-based digital divide.[32]

Research Gap and Contribution of the Study

The existing academic literature on the gig economy studies three main subjects: labor insecurity, algorithm-based worker supervision, and the absence of social security benefits for platform employees. Research from the International Labour Organization and NITI Aayog shows that platform employment is growing rapidly while gig workers face multiple risks, including unpredictable income, missing job contracts, and restricted access to social welfare programs.[33] The NITI Aayog report on India's gig economy estimates that 7.7 million people worked in the gig economy during 2020–21 and predicts that this number will rise to 23.5 million by 2029–30, underscoring how central platform work has become to India's labor market.[34]

[29]Rosenblat, *supra* note 25.
[30]Rosenblat, *supra* note 25.
[31]Standing, *supra* note 23.
[32]Vaidehi et al., *supra* note 9.
[33]International Labour Organization, World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work (2021).
[34]NITI Aayog, *supra* note 3.

The growing research field on caste, gender, and digital platform work has not yet produced enough studies investigating how these three factors interact with one another.[35] Most studies treat gig workers as a single group without investigating how prior social hierarchies affect their ability to work on digital platforms.[36] The Periodic Labour Force Survey and other empirical research show that Scheduled Castes and Scheduled Tribes, together with other marginalized groups, work mostly in informal and low-paying positions.[37]

This paper fills that gap by investigating how caste-based and gender-based discrimination work together with the algorithmic management systems used in the gig economy. The study shows, through a combination of historical research, labour market data, and policy analysis, that digital platform work reproduces structural inequalities that already exist in Indian society. *The paper therefore contributes to the literature by highlighting the need for intersectional labour regulation and targeted social security protections for marginalized gig workers.*

Methodology

The research uses a mixed-method design that combines historical analysis with policy review and empirical labour data to investigate how the gig economy functions in India and how it affects worker rights and economic disparities. This method provides a fuller picture of how historical events and current institutional systems influence gig work in Indian society.

The research uses historical analysis to track how caste-based occupational structures developed throughout India's history, situating contemporary gig work within broader historical patterns of labour hierarchy.

The study analyzes the existing labour legislation and regulatory guidelines that apply to gig workers through policy analysis. The research examines three main policy instruments: the Code on Social Security, 2020, state-level gig worker welfare initiatives, and platform regulation efforts aimed at implementing labour protections in digital economies.[38] The analysis determines how well current policy systems acknowledge gig workers while providing social security, labour rights, and welfare protections.

Finally, the research uses secondary datasets to conduct empirical analysis of trends in gig

[35]Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241 (1991).
[36]Vaidehi et al., *supra* note 9.
[37]Ministry of Statistics, *supra* note 19.
[38]The Code on Social Security, 2020, No. 36 of 2020, Acts of Parliament, 2020 (India).

work and labor market involvement, drawing on NITI Aayog gig economy reports, the Periodic Labour Force Survey (PLFS), and International Labour Organization (ILO) reports. These datasets enable the study of worker participation, income change, and sectoral and occupational distribution within the gig economy.

Findings and Discussion

Growth of the Gig Economy in India

Technological progress including smartphone penetration, affordable internet services, and digital payment methods has driven rapid growth in India's gig economy.[39] Digital payment systems enable financial transactions connecting platforms with customers and workers. The urban service economy has grown as food delivery, ride-hailing, logistics, and retail services demand flexible workers who can work on short notice. The ongoing prevalence of informal work throughout India remains the main factor driving the expansion of gig employment.

The NITI Aayog report identifies retail and transportation services as the largest sectors employing gig workers. Retail trade alone accounts for approximately 2.7 million workers, while transportation and delivery services employ around 1.3 million workers.[40] By skill level, an estimated 31 percent of gig jobs are low-skill work, 47 percent are medium-skill positions, and approximately 22 percent require high-level expertise, including professional freelancing, information technology work, and specialized consulting.[41]

Despite rapid growth, gig work remains characterized by significant labour vulnerabilities like income instability, job insecurity, and lack of social protection access. A recent study found that most gig workers earn up to about ₹20,000 per month while working 10–12 hours daily.[42] This situation raises serious concerns for labor rights, welfare protection systems, and the long-term viability of platform work in India.

Intersection of Caste, Class and Gender

The intersectional framework is an essential tool for studying gig workers' experiences in India.[43] Intersectionality explains how different forms of discrimination — caste, class, and gender — operate simultaneously and shape labour market outcomes. Structural obstacles, including insufficient educational resources, missing professional connections, and

[39]Telecom Regulatory Authority of India, Annual Report (2023).
[40]NITI Aayog, *supra* note 3.
[41]*Id.*
[42]*Gig Worker Earnings Study*, Times of India (2023).
[43]Crenshaw, *supra* note 35.

geographic isolation, make it hard for Scheduled Castes (SC) and Scheduled Tribes (ST) workers to find formal employment, pushing them toward gig work as one of the few accessible income options.[44]

However, *SC/ST women experience an additional layer of disadvantage, as gender inequality intersects with caste-based marginalization.* Participation of women in the gig economy remains significantly lower than men, particularly in sectors such as ride-hailing, logistics, and delivery services that dominate platform-based employment. According to estimates from labour surveys and gig economy studies, women represent only about 20 percent of platform workers, while the large majority of participants are male workers engaged in transportation and delivery services.

Table: Structural Barriers Affecting Participation of SC/ST Women in the Gig Economy

Factor	**Observed Impact**
Educational inequality	Limits access to higher-skill digital platform work
Limited access to vehicles and capital	Restricts participation in ride-hailing and delivery services
Safety concerns in urban mobility jobs	Discourages participation in night shifts and transportation sectors
Household care responsibilities	Reduces ability to work long or flexible platform hours
Digital literacy gap	Limits entry into higher-paying online platform work

Source: Adapted from NITI Aayog, India's Booming Gig and Platform Economy (2022); International Labour Organization, World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work (2021); and Ministry of Statistics and Programme Implementation, Periodic Labour Force Survey Annual Report (2023).

The structural limits of the gig economy demonstrate that gender discrimination operates through the combined effects of caste and class. Digital platforms function as neutral

[44]Vaidehi et al., *supra* note 9.

technological intermediaries according to common belief, yet existing social hierarchies determine how workers access employment opportunities. The evidence confirms Hypothesis 2 that existing labour regulations do not effectively cover the specific intersectional discrimination that SC/ST women face when working on platforms.[45] The Code on Social Security, 2020 recognizes gig and platform workers as a category of labour, yet fails to establish regulations that would protect against caste-based discrimination, gender safety issues, and digital access disadvantages.[46]

Most welfare programs established by state governments concentrate on delivering insurance and welfare benefits to gig workers generally, without establishing specialized protections for vulnerable female workers. The current regulatory system treats gig workers as a single group and fails to recognize the various advantages and disadvantages that SC/ST women experience a deficiency that requires intersectional labor regulation to combat caste discrimination, gender discrimination, and digital access problems together.

Algorithmic Management and Digital Precarity

Digital platforms depend on algorithmic management systems to manage their operational procedures. These systems decide which employees will receive work assignments, determine how workers will be paid, and decide whether workers will continue to have access to the platform. The International Labour Organization notes that platform algorithms monitor worker performance by assessing task acceptance rates, task completion times, and customer evaluations, which affect a worker's capacity to obtain future work.[47]

Customer rating systems are an essential component of this process. Research shows that workers with lower ratings often receive fewer tasks or may even face temporary suspension from the platform.[48] Customer ratings can encode social discrimination because they reflect customer biases against caste, gender, language, and accent, which automated systems then use for decision-making.[49]

Research on gig workers in India shows that they perform "invisible labour" unpaid waiting time between assignments, with their performance continuously tracked through GPS and performance-monitoring systems.[50] Platform workers lose income stability because of

[45]Crenshaw, *supra* note 35.
[46]The Code on Social Security, 2020, *supra* note 38, § 2(35).
[47]International Labour Organization, *supra* note 33.
[48]Rosenblat, *supra* note 25.
[49]Crenshaw, *supra* note 35.
[50]Pratyay Suvarnapathaki et al., *Invisible Labour in India's Gig Economy* (2024).

changing pricing systems and variations in customer demand.[51]

These conditions illustrate what this study identifies a**s** *digital precarity — a system in which workers face income volatility, limited bargaining power, and opaque algorithmic control***.** This evidence supports Hypothesis 1, which argues that current labour regulations treat gig workers as a uniform category and fail to address how algorithmic management produces unequal outcomes for marginalized workers within the platform economy.

Legal and Constitutional Framework

India's Constitution provides strong normative commitments to equality and dignity. Key provisions include:

- Article 14 – Equality before the law[52]
- Article 15 – Prohibition of discrimination[53]
- Article 17 – Abolition of untouchability[54]
- Article 21 – Right to life and livelihood[55]

Recent labor reforms have attempted to address the challenges faced by gig workers. The Code on Social Security, 2020 recognizes gig and platform workers as a separate category eligible for social security schemes.[56]

Multiple Indian states have enacted laws to protect gig workers by establishing welfare fundsthat platform aggregators must fund. Karnataka's law mandates that digital platforms allocate between 1 percent and 5 percent of their platform transaction fees toward a welfare fund dedicated to supporting gig workers.[57]

The implementation of these reforms faces multiple obstacles even though they represent significant advancements.

Policy Recommendations

To solve the structural inequalities that exist in the gig economy, authorities need to establish regulatory frameworks which combine labor rights with social security measures and systems for controlling algorithms. Platform labor has generated new job openings that benefit millions of workers, but the absence of established labor protections creates new financial

[51]Standing, *supra* note 23.
[52]India Const. art. 14.
[53]India Const. art. 15.
[54]India Const. art. 17.
[55]India Const. art. 21.
[56]The Code on Social Security, 2020, *supra* note 38, § 2(35).
[57]*The Karnataka Platform Based Gig Workers (Social Security and Welfare) Act, 2025* (India).

risks for employees. The gig economy can promote fair economic development when policymakers use intersectional methods that identify all vulnerable groups in society, especially Scheduled Caste, Scheduled Tribe, and women workers.

Social Security for Gig Workers

The main problem gig workers encounter is the lack of a complete social security system. Platform workers lose essential labor rights because companies classify them as independent contractors rather than employees entitled to minimum wage, health insurance, unemployment benefits, and retirement pensions.[58] The Code on Social Security, 2020 establishes essential legal recognition of gig workers within India's labor law system, but implementation remains disjointed.[59]

A universal social protection system should be established to provide gig workers with access to health insurance, accident coverage, maternity benefits, and pension schemes, funded through a combination of mandatory digital platform contributions, government funding, and worker contributions.

International experience offers useful models. The European Union's Platform Work Directive requires digital platforms to fund worker welfare programs while creating clearer employment status determinations.[60] Spain requires platform companies to provide insurance coverage to their delivery workers under its 2021 "Rider Law."[61]

India could implement a national gig worker welfare fund through a hybrid model that requires platform companies to contribute a small portion of their transaction fees. Rajasthan has already tested this model: the Platform-Based Gig Workers (Registration and Welfare) Act, 2023 established a welfare board that provides gig workers with health insurance and accident compensation benefits.[62] Nationwide expansion of such initiatives, following Karnataka's example,[63] would enhance social protection systems for millions of platform workers.

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[58]Rosenblat, *supra* note 25.
[59]The Code on Social Security, 2020, *supra* note 38.
[60]*Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on Improving Working Conditions in Platform Work*, 2024 O.J. (L) 2831.
[61]*Real Decreto-ley 9/2021, de 11 de mayo* (Spain).
[62]*The Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023* (India).
[63]The Karnataka Platform Based Gig Workers (Social Security and Welfare) Act, 2025, *supra* note 57.

Algorithmic Transparency and Accountability

Digital labour platforms use algorithmic systems to distribute work tasks, calculate wages, and assess performance, often without sufficient transparency creating an imbalance of power between workers and platform organizations. This opacity leads to arbitrary pay alterations, unjust account suspensions, and discriminatory results driven by biased customer evaluations.

Regulatory frameworks need to require platforms to disclose their methods for assigning tasks, pricing, and measuring performance, and workers must be able to contest automated decisions through independent grievance redressal systems.

International regulatory developments offer useful lessons. The United Kingdom Supreme Court's decision in *Uber BV v. Aslam* determined that Uber drivers should receive worker status rather than independent contractor status, recognizing the degree of algorithmic control platforms exercise over how work is performed.[64]

At the EU level, the Artificial Intelligence Act[65] and the Platform Work Directive[66] work together to require risk assessments and impartiality safeguards for automated decision-making systems used by digital labour platforms. India needs to establish a comparable Algorithmic Accountability Authority to oversee digital labour platforms and ensure their automated systems function with transparency and impartiality.

Targeted Inclusion Programs for Marginalized Workers

The gig economy remains affected by structural inequalities arising from caste, class, and gender discrimination. Digital technology, financial resources, and transportation systems all present obstacles that restrict access to work opportunities for people from marginalized communities most acutely for ride-hailing work, which requires ownership or costly financing of a vehicle.

Government programs should focus on targeted inclusion initiatives that improve access to platform employment for marginalized workers, including: subsidized vehicle financing; digital literacy training; skill development for high-skill platform work; and targeted entrepreneurship programs for women workers.

The Digital India program provides a framework for increasing digital literacy and access to online job opportunities; its coverage should expand to include all gig workers, particularly

[64] *Uber BV v. Aslam*, [2021] UKSC 5.
[65] *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), 2024 O.J. (L) 1689.
[66] Directive (EU) 2024/2831, *supra* note 60.

those from marginalized groups, and specialized training programs should help workers move from low-paying gig work into remote freelancing, coding, and digital marketing roles.

Recognition of Gig Worker Unions and Collective Bargaining

The main obstacle preventing gig workers from securing their rights is their inability to form unions with legal collective-bargaining status, since independent contractors do not possess the legal rights that employees have to organize.[67] Without representation, workers cannot effectively obtain fair wages, contest unjust conditions, or push for regulatory change.

India has witnessed the formation of grassroots worker organizations in recent years, including the Indian Federation of App-Based Transport Workers and the All India Gig Workers Union, which have advocated for worker rights and highlighted issues such as declining earnings and unfair platform policies.[68] *The government should provide official recognition to these organizations while establishing systems for platform companies to negotiate with worker representatives through collective bargaining.*

International experience again offers valuable lessons: Spain's 2021 Rider Law designates delivery workers as employees and mandates that companies share algorithmic management data with worker representatives, bringing substantial improvements to delivery worker protections in that country. Similar legal reforms in India would strengthen worker rights and fairer workplace practices within the gig economy.

Data Transparency and Labour Market Monitoring

Effective policymaking needs reliable information to track gig economy participation, income trends, and worker demographics, but there is currently insufficient public data on the socio-economic background of gig economy workers in India.

The government needs to develop systems to gather and release ongoing platform-work statistics, including data on caste, gender, income brackets, and employment conditions.[69] The Periodic Labour Force Survey should expand its data collection to detect emerging patterns and inform targeted solutions.[70] Digital platforms should also be required to provide regulatory bodies with de-identified employment data to enhance transparency and enable data-driven policy development.[71]

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[67]Rosenblat, *supra* note 25.
[68]Pratyay Suvarnapathaki et al., *supra* note 50.
[69]Crenshaw, *supra* note 35.
[70]Ministry of Statistics, *supra* note 19.
[71]Rosenblat, *supra* note 25.

Conclusion and Scope for Future Research

This research investigates how caste and gender impact platform workers in India, showing that the growing gig economy has not removed existing labor disparities. *Digital platforms use advanced technology systems to organize work in ways that often reinforce existing social hierarchies rather than dissolve them.* The number of gig workers in India reached 7.7 million in 2020–21 and is projected to increase to 23.5 million by 2029–30, underscoring the growing importance of platform labour within the national workforce.[72] Nevertheless, Scheduled Castes (SC) and Scheduled Tribes (ST) from marginalized groups continue to work in unstable jobs that often pay below a living wage.

The findings of this research support Hypothesis 1: current labour regulations treat gig workers as a homogeneous category without addressing how algorithmic management systems create unequal outcomes for marginalized workers. Platform algorithms control task distribution, performance evaluation, and pay, and in doing so can amplify social prejudice while creating financial uncertainty for workers. The study also confirms Hypothesis 2: existing labour policies such as the Code on Social Security, 2020 do not incorporate targeted protections addressing the intersectional discrimination faced by SC/ST women in the gig economy.

Further research is needed despite these contributions. First, primary empirical studies, field surveys and interviews with gig workers from marginalized communities are necessary, since existing datasets rarely capture caste-based labour participation. Second, regional studies should investigate how digital infrastructure and labour markets create different patterns of gig work opportunity across states and cities. Future research should also examine how algorithmic governance and platform decision-making evolve, and how they affect social inequality between different groups.

The paper concludes that ***e****ffective labour reform in the gig economy needs intersectional policy solutions that allow digital labour markets to function according to the constitutional standards of equality, dignity, and social justice.*

[72]NITI Aayog, *supra* note 3.

BETWEEN RECOGNITION AND PROTECTION: EXAMINING THE LEGAL STATUS AND SOCIAL SECURITY FRAMEWORK FOR PLATFORM-BASED WORKERS IN INDIA'S GIG ECONOMY

Stuti Anvi[*] *& Aman Pandey*[**]

Abstract

The true legal status of platform-based workers in India is still unclear because of their overlapping characteristics of an employee and an independent contractor. This exposes the structural gaps in their protection and provision of social security benefit allowance. Platform-based workers work outside the traditional employer-employee relationship and use online platforms to provide specific services in exchange for payment. They are still commonly classified as independent contractors even when they lack collective bargaining power. At the same time, their work is often insecure, task-based, and can be terminated at any time, making it difficult to fit within traditional employment law principles. This paper interrogates the legal status of platform-based workers by examining whether their relationships with aggregators more closely resemble a contract for service or a contract of service. The paper critically analyses the framework introduced by the Code on Social Security, 2020 and the State Labour Laws on social security benefits. It formally recognises gig and platform workers, but their protection is confined to social security schemes and does not resolve classification ambiguities or prescribe clear standards regarding eligibility, working hours, termination safeguards, or accountability of the platforms employing them. The paper further compares this central approach with state legislations, such as the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023, and similar draft laws of Karnataka, Telangana, Bihar, and Jharkhand, to assess the gaps in the Central Code. Drawing comparative insights from other jurisdictions, the paper argues that India's current framework reflects partial recognition without comprehensive labour protection. It proposes a balanced reform model that introduces basic procedural safeguards to the platform-based workers. By analysing the classification of platform-based workers within the broader objective of social protection, the paper advances a framework for regulating platform-based workers in India.

Key words*: Platform-Based Workers, Gig Economy, Legal Status, Social Security Code, 2020, Labour Law Reform.*

Introduction

The gig economy has experienced substantial expansion over pevious years, as approximately 16% of the workforce globally was engaged in gig work as of the year 2021, which indicates a significant rise from the past few years.[1] This revolutionised the traditional labour market

[*] *National University of Study and Research in Law, Ranchi*
[**] *National University of Study and Research in Law, Ranchi*

[1] Int'l Labour Org., *World Employment and Social Outlook — Trends 2021*, 26, 26 (2021), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40dcomm/%40publ/documents/publication/wcms_795453.pdf (last visited April 19, 2026).

and while creating both new opportunities and challenges for workers across the world.[2] As per the 2022 NITI Aayog's report, nearly 77 lakh people were earning through the gig economy in the year 2020–21. By 2029–30, it is estimated that this economy might attract 2.35 crore workers. Among these workers, about 47% are employed in medium-skilled roles, 22% in high-skilled professions, and 31% in low-skilled occupations.[3]

This rapid expansion of gig work highlights transformation in labour markets, where employment is increasingly defined by short-term and flexible engagements rather than long-term and stable arrangements. Over the past twenty years, advancements in technological infrastructure, along with growing public awareness and access to digital platforms, have significantly widened the scope of employment opportunities. As technological systems have developed globally, 'Gig–Workers' and 'Platform-based Workers' started emerging as workforces in India and across the globe. As a consequence, the flexible and temporary nature of gig work is challenging the traditional employment models that have historically been characterised by long-term contracts, stable working conditions, and assured job security.[4]

The expansion of the gig economy shows a paradigm shift in the way work is structured and performed, and this calls for the need of adapting the labour laws to determine that gig workers are adequately protected.[5] It highlights the necessity of evolving labour and employment regulations to address the distinctive features of gig work and to guarantee fair treatment for gig and platform-based workers.[6] This issue has thus intensified debates on how current labour laws can be reformed to better deal with the realities of gig work and tackle some challenges such as the absence of job security, limited access to social security benefits, and the protection of workers right.[7]

The paper aims to move beyond mere recognition of platform-based workers and to acknowledge the complexities between recognition and protection. Specifically, the paper aims to (i) clarify who qualifies as a "platform-based" or "gig" worker for Indian law, (ii) assess the adequacy of central social security measures in addressing the vulnerabilities of platform-based workers, and (iii) draw comparative lessons from state-level legislations and

[2] Kirabo Anan, *The Evolution of Employment Law in the Gig Economy*, 4 J. Mod. L. and Pol'y 29, 33 (2024).
[3] NITI Aayog, *India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work* (2022).
[4] Anan, *supra* note 2, at 33.
[5] 31 ARNE L. KALLEBERG & STEVEN P. VALLAS, PRECARIOUS WORK 5 (Emerald Publ'g Ltd. 2018).
[6] Valerio De Stefano, *The rise of the just-in-time workforce: On-demand work, Crowdwork, and Labor protection in the gig economy*, 37 COMP. LAB. L. & POL'Y J. 471, 478 (2016).
[7] Anan, *supra* note 2, at 32.

selected foreign jurisdictions, namely the, the European Union, United States of America, Singapore and the United Kingdom to suggest practicable reforms.

This chapter shows that an increasing proportion of the Indian population is now relying on gig work and platform-based employment as a major source of livelihood. In such circumstances, it becomes crucial to examine the rationale behind the relevant legislation, the structural framework provided, and the nature of the security benefits it offers to the workers. It is equally important to assess whether these forms of employment are regulated as required and whether they are capable of ensuring a stable and dignified livelihood. The next chapter begins with a doctrinal examination of who exactly qualifies as a "gig worker" under current Indian law and how that classification compares to traditional employee or independent-contractor categories.

Legal Status and Definition of Platform-Based Workers

The gig economy describes economic activity in which individuals or firms obtain labour through short-term, project-based arrangements. A gig worker is a person who accepts a temporary job to finish a specific task within a limited time period. When gig workers work directly through web-based platforms, they are known as platform-based workers. Platform-based workers represent a specific subset of gig workers.[8] Before reforms can be introduced, there is a pressing need for the classification of platform-based workers. Presently, they are being treated as independent contractors, but doing so limits the formulation of effective policies for their social security benefits.

Platform-based workers are not employees and they do not fit the traditional notions that are recognised of independent contractors or self-employed.[9] They share similar characteristics with both independent contractors as well as employees.[10] They are equivalent to those workers whose work is regulated by a contract for service, namely the independent contractors. However, in practice, their work resembles that of employees working under a contract of service. An individual who is recognised as an employee is generally engaged for a longer duration and receives fixed wages or a regular salary. On the other hand, gig and platform-based workers are typically engaged for short-term assignments and are

[8] Anand Pawar & Ankit Srivastava, *Gig Workers and Employment Laws: An Indian Perspective*, 5 Shimla L. Rev. 88, 89 (2022).
[9] K.M. Kuhn & A. Maleki, *Micro-Entrepreneurs, Dependent Contractors, and Instaserfs: Understanding Online Labor Platform Workforces*, 31 ACAD. MGMT. PERSPECTIVES 183, 183-200 (2017).
[10] Sahaj Mathur, *Labour Law and the Gig Economy: Towards a Hybrid Model of Employment*, INDIACORPLAW (Dec. 25, 2022), https: //indiacorplaw .in /2022 /12/25/ labour -law -and -the -gig -economy -towards-a-hybrid-model-of-employment/ (last visited April 18, 2026).

compensated on a pro rata or task-based basis.[11] So, those who work in the gig economy defy the traditional classification as either independent contractors or employees. This ambiguity has lead to several legal disputes and regulatory reforms that aim to clarify the status of Platform-based workers and ensure fair treatment for them.

Although it may be technically possible to classify them within existing categories, doing so may not adequately reflect the realities of gig work.[12] It is because platform-based work combines elements of both employment and independent contracting. Platforms often exercise significant control through algorithms, rating systems, pricing mechanisms, and task allocation. This resembles the control, which is mostly seen in traditional employment. But at the same time, platform-based workers typically lack the stability, guaranteed wages, and long-term engagement that are often associated with employees. They instead work on a task-based, flexible basis, which is similar to that of independent contractors. This denotes d that Platform-based workers do not fall into either category. Their categorisation is *sui generis*. Therefore, legislation regulating their social security should also treat them as a distinct *sui generis* category.

Section 2(61) of the Code on Social Securities, 2020 **[**"the Code"**]** has tried to clarify the definition of Platform-based workers. It defines a "platform worker" as an individual engaged in a work arrangement outside the traditional employer–employee relationship, where organisations or individuals use an online platform to connect with users in order to address specific tasks or provide particular services in exchange for remuneration.[13] The definition explicitly recognises that the work arrangement is not like a traditional employer-employee relationship, yet in practice, their treatment is like that of an independent contractor.

All of these demonstrate that platform-based workers occupy a *sui generis* position within the labour market that does not fall into the traditional categories of employees or independent contractors. The hybrid nature of this work creates uncertainty in relation to labour rights and social security protections. Even though the Code recognises platform workers as a distinct and different category, such recognition alone does not resolve the broader issues concerning their legal status and access to effective social security benefits. Therefore, a closer examination of the existing Code becomes necessary in order to assess whether the current

[11] F. Zaccagnino, *Gig Economy Law in Different Countries around the World*, BUNNY STUDIO BLOG (Sept. 2021) https://bunnystudio.com/blog/gig-economy-law/ (last visited April 18, 2026).
[12] R.B. Collier, V.B. Dubal, and C Carter, Labour Platforms and Gig Work: The Failure to Regulate, IRLE WORKING PAPER. No 106, (2017).
[13] Code on Social Security, 2020, § 2(61), No. 36, Acts of Parliament, 2020 (India).

laws provide meaningful protection to the workers or not.

Analysis of the Social Security Code, 2020

Although a definition of gig and platform workers can be established, a critical question still remains: Even if we are able to clearly define and identify who gig workers are, does that guarantee that all platform-based gig workers will receive social security benefits? At present, the provisions of the Code are inadequate to effectively achieve this.

The Code on Social Security of 2020 provides provisions relating to eligibility criteria, helpline number, facilitation centres, registration procedure, specifically for the gig and platform workers.[14] Despite this legal recognition, the legislation lacks in certain crucial areas and is surrounded by challenges in providing benefits to those eligible and in need of the benefits. Due to these factors, platform-based workers are potentially deprived of utilising the benefits. The objective of the legislation was to elevate the legal status of gig workers. While the Code attempts to achieve this by providing social security benefits, it overlooks several other crucial factors that require urgent attention. Addressing only social security, without considering these additional concerns, is insufficient to elevate their status and condition in society. Moreover, even in the context of social security benefits, mere mention of social security schemes for gig workers is inadequate. It is crucial to establish a clear procedural framework and robust legislative safeguards to ensure that such benefits are effectively accessible to all gig workers.

Eligibility

The language of the Code with reference to gig and platform workers is ambiguous and is inadequate to provide appropriate social security benefits or protection.[15] The Code on Social Security of 2020 remains to this date the only of the four labour codes that addresses gig work, leaving such workers deprived of labour protections which the other three Codes offer with reference to wages and working conditions.[16] The Code struggles to address the working hours for such workers that remain inhumane, with insufficient wages and awful working conditions.

Around 38.2 per cent of platform workers are above the age of 31.[17] In today's technology-driven world, younger individuals are generally more familiar with rapid advancements in

[14] Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India).
[15] Isana Laisram & Ravi Shankar, *Navigating Labour Law in the Gig Economy*, 14 NUJS L. REV. 361 (2021).
[16] *Id.*
[17] V. Vasudevan, M.M. Alam & Dharmendra Kumar, *The RIGHTS Survey - Report on a Nationwide Survey of Platform Workers in India* 21 (Janpahal 2024).

mobile technology and are better able to adapt to emerging digital requirements. However, it may not be reasonable to expect older workers to easily learn and navigate increasingly complex mobile systems. In such circumstances, the Code and the governing Rules place the responsibility on the gig workers to register themselves for social security benefits and to keep up with regular digital updates.[18] This approach risks excluding individuals who are less technologically literate, undocumented, or otherwise lacking access to digital resources, thereby creating barriers to essential social security protections.

Working Hours

Although the Central legislation provides for a specific eligibility criterion of 90 working days or a single platform and 120 working days across multiple platforms for platform workers in order to access the benefits of the scheme,[19] it fails to acknowledge that these workers work for tremendously long hours in a day. The failure to recognise the working hours along with working days will lead to disregarding and ignoring seasonal workers, compressed work schedule employees and per diem workers. This comes to light with the fact that around 85 percent of the platform workers work for more than 8 hours in a day, with approximately 20 percent of the workers working for more than 12 hours.[20] These working hours to earn a basic livelihood are not just unjust but can also lead to depriving them of social security benefits, since the working hours of the platform workers are overlooked.

It also raises a significant concern that this rule allows a platform-based worker who earns even a rupee a day or works for merely 15 minutes a day for 90 days in a year to be considered eligible, while disqualifying those who may work for 10 hours a day on one or multiple platforms for 80 days a year. Considering that platform-based workers comprise diverse categories of workers and that the nature of gig work is characterised by flexible and irregular working hours, imposing a strict day-based threshold without accounting for the intensity, nature, and duration of work is a limitation that the Code fails to adequately address.

Safeguards Against Illegal Termination

The Code does not provide any safeguard against basic everyday problems these gig and platform workers face, such as lack of job security.[21] Job security is a basic entitlement

[18] Rules on Social Security, 2020, r. 49 (India).
[19] *Id.*
[20] Vasudevan, Alam & Kumar, *supra* note 17, at 22.
[21] Abhinav Ganji, *An Assessment of Social Security Frameworks for Platform-Based Gig Workers in India*, SSRN (2025), https://ssrn.com/abstract=5754802 (last visited April 19, 2026).

provided in formal employment. However, the lack of clear legal status prevents them from guaranteed protection against illegal termination, as these rights remain optional or unavailable.

With the increased responsibility placed upon aggregators to provide social security benefits to their platform workers, there is a heightened possibility of illegal termination. Since the financial contribution toward social security benefits by the aggregator is also linked to the number of workers engaged, aggregators could have an incentive to reduce their workforce in order to minimise such obligations. This risk is particularly significant in companies that engage platform workers in large scale across India. In such operations, where employment relationships are often structured in a more dispersed or disguised manner, workers may face a greater risk of arbitrary or unlawful termination. The absence of adequate job security measures or safeguards against unfair dismissal further increases the vulnerability of platform workers in such settings, despite the recognition provided by the Code.

Accountability

The code lacks any mandatory obligation upon the Government for gig workers and platform workers. Instead, it confers power subject to the discretion of the Centre only.[22] The legislation provides that the Centre "shall" frame a social security benefits scheme for unorganised workers, which highlights the mandatory nature of the provision.[23] However, when it comes to gig and platform workers, the provision merely states that the Centre "may" frame schemes for social security benefits, which showcases the discretionary power upon the Centre.[24] This makes guaranteeing social security benefits to such workers solely and independently based on the Code, inadequate.

The code provides no accountability of the Centre towards framing schemes for gig and platform workers. Even if the Centre does not frame any scheme for these workers, such an act does not defy any legal obligation or fundamental duty. Merely defining these workers does not guarantee them safeguards. The need is for the State to take responsibility to uplift these gig workers and take accountability for undertaking action towards this cause.

State Social Security Measures for Platform-Based Gig Workers

Although the Union government has enacted the Code on Social Security, 2020, the federal structure of the Indian Constitution also enables states to legislate on matters relating to

[22] Isana Laisram & Ravi Shankar, *Navigating Labour Law in the Gig Economy*, 14 NUJS L. REV. 361 (2021).
[23] Code on Social Security, 2020, § 109, No. 36, Acts of Parliament, 2020 (India).
[24] Code on Social Security, 2020, § 114, No. 36, Acts of Parliament, 2020 (India).

labour welfare and social security.[25] Labour is placed in the concurrent list, allowing both the Union and the states to frame laws on this subject matter. In this context, states, namely Rajasthan, Karnataka, Telangana, Jharkhand and Bihar, have introduced dedicated legislative frameworks for gig and platform workers. The initiatives put forward by these States have inculcated the objectives of the Centre, along with expanding the mechanism that shall regulate platform-based workers, based on the needs they identified that required legislation. Aimed to strengthen the objectives envisioned under the central framework, the State legislations tailored welfare schemes, mechanisms and enforcement structures to regional labour conditions. Through such initiatives, states can enhance access to social security benefits and improve institutional support for gig workers.

Rajasthan & Bihar

Rajasthan, in the year 2023, undertook the initiative to be the first State to legislate on Platform Based Gig Workers. Through its Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act of 2023[26], the state undertook the initiative to recognise platform-based gig workers and protect their rights and address grievances.[27] This Act sets a benchmark and governs platform workers and their associated aggregators, by requiring platforms to share databases and enabling the State to register workers.[28] It provides detailed administrative procedures pertaining to the welfare fund and associated welfare board meetings, scheme formulation, and other assigned tasks.

Similar to the Rajasthan Act, the Bihar Platform-Based Gig Workers (Registration, Social Security and Welfare) Act, 2025,[29] is developed on a welfare-registration model, since the emphasis of both the acts is more on the welfare of the workers through provisions guiding the working and procedure of the welfare board, related timelines and welfare funds. The Act has a strong emphasis on registration and administrative governance. The detailed nature of the rules helps reduce the implementation gap and also allows the identification of the appropriate authority responsible for accountability in situations of distress. This becomes

[25] Vedant Choudhary & Shambhulinganand S. Shireshi, *Analysing the Gig Economy in India and Exploring Various Effective Regulatory Methods to Improve the Plight of the Workers*, 57 J. ASIAN & AFR. STUD. 1343 (2022).
[26] Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023, No. 19, Acts of Rajasthan State Legislature, 2023 (India).
[27] Jasmine Gill & Sadhna Gupta, *The Gig Economy and Its Implications on Contract Labor Laws*, 9 NUJS J. REGUL. STUD. (Issue II).
[28] Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023, § 8, No. 19, Acts of Rajasthan State Legislature, 2023 (India).
[29] Bihar Platform Based Gig Workers (Registration, Social Security and Welfare) Act, 2025, No. 08, Acts of Bihar State Legislature, 2025 (India).

particularly important when a platform-based worker is unlawfully or unfairly treated through illegal termination, lack of accountability by the authorities, arbitrary deprivation of benefits, or the failure to address their grievances.

However, in the age of advancing technology, both the Acts, that of Rajasthan and Bihar, lack explicit provisions on algorithmic transparency, rights of data portability or safeguards against deactivation without following due process. Although the Acts provide administrative forms, their implementation will require technical capacity. The Acts also do not create a guaranteed minimum pay or fixed employment rights, and fail to address these crucial needs of gig employment that actually require urgent attention.

Jharkhand & Telangana

The Jharkhand Platform-Based Gig Workers (Registration and Welfare) Bill of 2024[30] intends to set a state framework for registering, creating a Welfare Board and Fund and providing statutory recognition for Platform-based workers. The Bill mandates a Central Transaction Information & Management System (CTIMS) that maps platform payments, records them, and makes cess collection visible.[31] It requires explicit disclosure of parameters such as allocation in automated monitoring and decision-making systems. It mandates weekly pay and prior notice for contractual change,[32] making the procedure more efficient.

The Bill, however, raises concerns regarding the technical difficulty associated with the implementation of the CTIMS as platforms operate on different digital systems, and smaller platforms may take a substantial amount of time to integrate with the required technology. Subsequent to the successful implementation, the bill still lacks information and rules regarding the protection of sensitive data related to transactions and payments that shall be protected in the CTIMS.

The Telangana Gig and Platform Workers (Registration, Social Security and Welfare) Act of 2025,[33] similar to the Jharkhand legislation, is yet to be enforced. Both these legislations aim to move towards procedural protections for Platform-based gig workers and statutory transparency requirements for automated systems. The Telangana state act creates a Welfare

[30] Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill, 2024, Jharkhand Legislative Assembly (India).
[31] Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill, 2024, § 25, Jharkhand Legislative Assembly (India).
[32] Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill, 2024, § 16, Jharkhand Legislative Assembly (India).
[33] Telangana Gig and Platform Workers (Registration, Social Security and Welfare) Act, 2025, Acts of Telangana State Legislature, 2025 (India).

Fund Fee on aggregators equal to not less than 1% and not more than 2% for each payout transaction.[34] These shall be mapped onto a central digital system called the Welfare Fund Fee Verification System (WFFVS), administered by the State and monitored by the Board.[35]

The act, however, fails to recognise a minimum earning level or pay to workers. Moreover, similar to Jharkhand's CTIMS, the WFFVS of Telangana lacks clear information with regard to protection, access and storage of workers' data as well as the similar technical difficulty in integration of platforms.

Karnataka

The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Act, 2025,[36] may be regarded as the digitally driven social security legislation for gig workers, which functions on a rights-based framework, as it provides some authority to the workers, focusing on their needs and does not work only on the formation of a welfare board or the procedures. It has a blend of common model constituting of registration of platform workers, the existence of a welfare board and a welfare fund, along with concrete worker protections, such as weekly income timing rule, explicit contractual fair term obligations, the right to refuse, a central Payment and Welfare Fee Verification System (PWFVS) that guarantees payment and fee transparency and fast grievance timelines. It can thus be regarded as the most progressive among state laws on social security for platform-based gig workers to date.

The act guarantees the express right to refuse tasks to the workers and mandates fair contract terms. It ensures that the contracts are transparent and must explicitly state the refusal rights.[37] The act mentions a 14-day notice period given to platforms for contract changes.[38] It requires platforms to make payouts according to contract cycles, but mandates weekly compensation with no delay as a minimum safeguard.[39] The PWFVS, administered by the State and monitored by the Board, shall map all payments and welfare fees.[40] It grants discretion upon the state to notify a Platform-Based Gig Workers Welfare Fee between 1%

[34] Telangana Gig and Platform Workers (Registration, Social Security and Welfare) Act, 2025, § 19(1), Acts of Telangana State Legislature, 2025 (India).
[35] Telangana Gig and Platform Workers (Registration, Social Security and Welfare) Act, 2025, § 20, Acts of Telangana State Legislature, 2025 (India).
[36] Karnataka Platform-Based Gig Workers (Social Security and Welfare) Act, 2025, Acts of Karnataka State Legislature, 2025 (India).
[37] Karnataka Platform-Based Gig Workers (Social Security and Welfare) Act, 2025, § 12, Acts of Karnataka State Legislature, 2025 (India).
[38] *Id.*
[39] Karnataka Platform-Based Gig Workers (Social Security and Welfare) Act, 2025, § 15, Acts of Karnataka State Legislature, 2025 (India).
[40] Karnataka Platform-Based Gig Workers (Social Security and Welfare) Act, 2025, § 21, Acts of Karnataka State Legislature, 2025 (India).

and 5% of payout per transaction, and may set different rates for different aggregator categories.[41]

Although the Act recognises the formation of the PWFVS model, it lacks in explaining the protection, access and storage of the personal data of workers. Further, it may face integration issues with different platforms, different technological systems and smaller platforms similar to Telangana's WFFVS and Jharkhand's CTIMS. Further, the Act requires the large platforms to establish Internal Dispute Resolution Committees;[42] however, neutrality concerns might be raised as these committees are formed by the platforms themselves.

Despite the progressive initiatives of each of these states, the existing state laws still fall short in guaranteeing certain crucial aspects of labour protection. Notably, they do not ensure that every platform worker is effectively covered under social security schemes. The legislation also does not adequately address persistent concerns regarding excessively long working hours, nor does it sufficiently regulate issues of illegal termination or the lack of job security faced by gig workers.

Nevertheless, these state frameworks represent a significant advancement when it is in comparison to the central framework. By recognising gig workers more explicitly and functioning with technologically driven governance systems for welfare contributions and monitoring, the state laws place platform workers on a comparatively higher pedestal and acknowledge their evolving labour status.[43] In this regard, the Union government can draw some insights from these state initiatives and inculcate similar technological mechanisms within the national framework.

International Approaches to the Regulation of Platform-Based Workers

Different countries around the world have reconsidered traditional labour law frameworks and developed new regulatory approaches for platform-based workers. Courts and legislatures have experimented with various models to address issues concerning worker classification, employment rights, and social security protections. This chapter examines the development of laws in the USA, the EU & UK and Singapore, regulating gig and platform-based workers to highlight some of the approaches that can be adopted by India.

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[41] Karnataka Platform-Based Gig Workers (Social Security and Welfare) Act, 2025, § 20, Acts of Karnataka State Legislature, 2025 (India).
[42] Karnataka Platform-Based Gig Workers (Social Security and Welfare) Act, 2025, § 22, Acts of Karnataka State Legislature, 2025 (India).
[43] S. Harish Kumar, Gig Workers and the Constitution: Redefining Employment Rights in the 21st Century, 5 INDIAN J. LEGAL REV. 986 (2025).

USA

The first U.S. state in 2019 to recognise gig workers as employees was California.[44] In *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, the California Supreme Court expanded on several issues regarding gig work.[45] Ultimately, the Court rejected the previously established criteria that was used to acertain whether workers should be classified as employees or independent contractors and created the "ABC Test" as a new legal standard. The test places the burden on employers to prove that workers are independent contractors rather than employees. A worker shall not qualify as an "employee" where the individual operates independent of the company's control, performs such services that are not within the ordinary scope of the company's business activities, and independently carries on an established trade, business or occupation.[46]

The Court determined that this could be demonstrated only when all three conditions contained in the ABC Test are fulfilled, the specific requirements of which are outlined below:

A. The worker performs the assigned tasks without being subject to the hiring entity's control or direction, either in actual practice or as stipulated in the contractual agreement;[47]

B. The services rendered by the worker fall outside the usual business activities of the hiring entity, which means that the worker is not performing work that forms part of the organisation's regular operations;[48] and

C. The worker is ordinarily involved in a separately independently trade, profession, or business that corresponds in nature to the services performed for the hiring organisation.[49]

The enactment of the Assembly Bill 5 in the year 2019 marked a great development in the evolution of employment law regarding platform-based and gig workers.[50] The legislation expanded labour protections by redefining the criteria used to determine whether a worker

[44] P. Mohanty et al., *US, Europe Lessons for Gig Economy Law*, FORTUNE INDIA: BUSINESS NEWS, STRATEGY, FINANCE AND CORPORATE INSIGHT (2022), https://www.fortuneindia.com/long-reads/us-europe-lessons-for-gigeconomy-law/110665 (last visited Mar. 04, 2026).
[45] *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903 (Cal. 2018).
[46] Anan, *supra* note 2, at 31.
[47] Pawar & Srivastava, *supra* note 8, at 90.
[48] *Id.*
[49] *Id.*
[50] Anan, *supra* note 2, at 33.

should be classified either as an employee or as an independent contractors.[51] The ABC test was codified under it and it required the companies to meet stringent conditions to classify workers as independent contractors rather than employees.[52]

UK & EU

Directive of the European Parliament and of the Council on transparent and predictable working conditions ("Directive") were issued by the European Union ("EU") for the workers who engage in on-demand contracts, or short-term employment in the EU member states.[53] This step highlighted the working conditions of the workers and recognised basic and minimum rights for those engaged in non-standard and on-demand forms of employment, including some platform-based workers. The Directive does not encompasses those who are self-employed but acknowledges a set of minimum rights to those workers who are engaged under on-demand and zero-hour contracts.[54]

The requirements of the Directive should apply to the workers working under "zero-hour" contracts and on-demand workers irrespective of the number of hours they work for. It is because of their vulnerability due to the lack of guaranteed hours of work and employment. As per the Directive, the nature of the employment should be determined by the sourrounding circumstances of each individual based on the realities of the work performed and not by any random definition used by the platforms engaging them.[55] Spain's *Ley Rider* law classified gig workers as employees of an organisation with full employment rights, rather than contractors who are self-employed.[56] This step ensures legislative recognition and tailored reforms to the platform-based workers.

The legal landscape of the United Kingdom for the workers has witnessed remarkable changes. In the decision of Uber BV v Aslam, the Supreme Court of the United Kingdom reconsidered the employment status of individuals working in the gig economy and concluded that Uber drivers should be treated as "workers" rather than independent contractors. This decision extended required labour protections to the drivers, including

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[51] Pawar & Srivastava, *supra* note 8, at 93.
[52] J. Bennett, *California's AB5: What it means for gig workers and employers*, 39 J. EMP. L. 75 (2020); Anan, *supra* note 2, at 33.
[53] Pawar & Srivastava, *supra* note 8, at 88-89.
[54] *EU Law Fixes Minimum Rights for 'Gig Economy' Workers*, BBC NEWS (Apr. 16, 2019), https://www.bbc.com/news/world-europe-47947220 (last visited Mar. 04, 2026).
[55] *Id.*
[56] Juan J Dolado, Álvaro Jáñez & Felix Wellschmied, *Riders on the Storm* 3 (IZA INST. OF LAB. ECON. 2025); Tiago Vieira & Pedro Mendonca, *The times, Are They Changing? Examining platform companies' chameleonic labour process as a response to the Spanish Rey Rider*, 23 SOCIO-ECON. REV. 877, 878 (2025).

entitlement to minimum wage and related employment benefits.[57] The ruling demonstrates how conventional legal definitions of employment struggle to capture the realities of contemporary platform-based work arrangements and underscores the necessity for reforms in labour law to ensure that gig workers receive fair and adequate protection.[58]

Singapore

Singapore's Platform Workers Act 2024[59] is a legislation that redefines a worker's classification against the traditional binary employment framework. As per the act, platform-based workers are neither considered as conventional employees nor are covered within the ambit of self-employed individuals, but rather belong to a "third category" with independent rights. While the international community has long debated these issues without resolution, Singapore has pioneered in establishing a balancing mechanism to safeguard the interests of the workers and the organizations both, hiring them. This approach provides for a new governance paradigm for the global platform economy.[60]

The Act, at a practical level, recognises beyond traditional employees and self-employed individuals, a third category of workers, establishing platform-based workers as an independent and distinct group placed within the broader framework of legislative protections specific to them. The Act, at the theoretical level, introduces a subordination test which is based on the criterion of "control". It defines platform-based workers as individuals who work on behalf of platform operators, provide services to end users in Singapore using those platforms, and are subject to the management and control of those operators. Clarifying the meaning of "management and control" the Act further provides that the use of the platform's application and the performance of tasks assigned through the platform constitute *prima facie* evidence of control, and unless the platform operator can provide sufficient evidence to the contrary, such worker is deemed to be under the control of the platform.[61]

Drawing on international developments, India can refine its regulatory framework for platform-based workers by incorporating the most effective elements from different jurisdictions. As in the USA, India should therefore amend its existing framework to include a rebuttable presumption of employment where platforms exercise significant control to

[57] M.A. Cherry, *The gig economy and the new employment paradigm: A review of recent legal developments*, 50 INDUS. L. J. 12, 20 (2021).
[58] Anan, *supra* note 2, at 30.
[59] Platform Workers Act 2024 (No. 23 of 2024) (Sing.).
[60] Bin Xu, Yasai Jin & Ni Zhang, *The Singapore Platform Workers Act and Its Implications*, 2 J. ECON. & L., 114, 115 (2025).
[61] *Id.*

determine the employment status of workers. Similar to the standards adopted in the EU, India should mandate algorithmic and contractual transparency to prevent exorbitant working hours and illegal termination of workers. Similar to that of the UK and Singapore, India should recognise a third category of "platform-based worker" with specific laws regulating social-security benefits. It is only after these reforms that labour laws can protect the interests of the platform-based workers.

Conclusion

Findings

This study finds that formal recognition of platform-based gig workers without specific labour protections for them leaves them in a vulnerable position. Even though the existing central legislation formally identifies gig and platform workers, it does not provide the benefits to the workers in reality. This produces lacunae in working-hours of workers, safeguards against arbitrary and illegal termination, and enforceable accountability. The Code's reliance on registration and contribution mechanisms shifts burdens onto workers without mandating minimum standards, which, in turn, results in workforce reduction and exclusion of digitally marginalised workers.

State statutes provide for registration, welfare boards, digital payment-mapping systems, and mandated welfare fees. They increase administrative visibility, enable portable contributions, and introduce procedural protections such as notice periods, weekly payout rules, and internal grievance forums. However, state measures remain uneven in scope and technical feasibility as many of them lack transparency, data-protection safeguards, guaranteed minimum earnings, clear dispute-resolution independence, and standards for integration across different platforms.

Comparative analysis of laws regulating gig workers across different countries shows three types of policy approaches. The first approach relies on fact-sensitive judicial tests and burden-shifting mechanisms, through which the employment status of gig workers can be determined based on the degree of control exercised by platforms and other practical realities of the work relationship. The second approach involves sectoral or presumptive statutory rules, where legislatures presume the categorisation of platform-based workers as employees and extend certain labour protections to them. The third approach recognises platform-based workers as a *sui generis* category, accompanied by specific protections such as social security coverage, minimum standards of work, and regulatory oversight designed specifically for platform work.

Recommendations

Building on the paper's findings, the following statutory recommendations propose a distinct, cohesive regulatory architecture for platform-based workers that fills gaps in the Social Security Code and operationalises positive innovations from state laws and comparative regimes.

First, enact a *sui generis* statutory category of "platform worker" similar to that of Singapore, which is defined by a test identifying the workers by the operational relationship with the digital platform, such as algorithmic control, deactivation power, pricing influence, and data dependency, rather than contractual labels. This preserves doctrinal flexibility while securing baseline protective entitlements. *Second*, the current rules fail to recognise the actual working hours logged in by platform-based workers. The Code and the State laws must address the gaps relating to working hours and eligibility for social security benefits. The framework should take into account workers' real working hours when determining eligibility for benefits and protections.

Third, the existing frameworks fail to address the issue of unguaranteed minimum income, which makes the workers vulnerable to income instability and unpredictable earnings. A minimum pay standard with regular weekly or fortnightly settlement of payments under the relevant welfare schemes should be introduced so as to provide income stability to the workers. *Fourth*, concerns faced by platform-based workers, such as arbitrary terminations, lack of job security, absence of algorithmic transparency, and the lack of procedural safeguards, need to be addressed. A streamlined grievance redressal framework should be established, comprising specialised labour benches for dispute resolution to provide for interim relief in cases of sudden deactivation. Easily accessible complaint portals should also be statutorily mandated so that the workers can efficiently raise and track their grievances.

Together, these measures convert mere recognition into enforceable protection by building on the positive aspects of the state and foreign legislations. They create an administrable, rights-centred statutory framework that addresses the structural instability identified in this study.

Conclusion

The changing legal status and social security framework for platform-based gig workers within India's expanding gig economy requires new and evolving regulatory frameworks. While these recent legislations have taken important step by formally recognising them, the analysis demonstrates that mere recognition is insufficient without labour protections that can

be enforced. The current framework treats social security as a welfare-oriented scheme rather than rights-based. This leaves gaps in crucial areas such as income security, algorithmic accountability, dispute resolution, and protection from arbitrary termination. At the same time, emerging state-level legislations and regulatory models show that innovative necessary legislations are possible. By proposing clear statutory recommendations, a forward-looking path is suggested to address the concerns of platform-based workers.

RE-ARCHITECTING EQUITY GOVERNANCE: A CRITICAL AND MULTI-DIMENSIONAL ANALYSIS OF UGC EQUITY REGULATIONS, 2026

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Abstract

The notification of the University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026, marks the most ambitious attempt yet to confront entrenched caste-based and intersectional discrimination within Indian universities and colleges. Designed to move beyond the weakly enforced 2012 framework, the Regulations mandate Equal Opportunity Centres, Equity Committees, Equity Ambassadors and Squads, dedicated helplines, strict timelines for redressal, and institutional-level equity reporting, thereby reframing discrimination as a question of governance and accountability rather than isolated grievance. However, the Supreme Court's interim stay on the 2026 regime, grounded in concerns of vagueness and potential misuse, has produced a moment of doctrinal and policy uncertainty, as institutions revert to the earlier framework even while social movements continue to highlight the persistent exclusion of Scheduled Caste/Scheduled Tribe and other marginalised groups in higher education. Against this backdrop, the paper traces the evolution from advisory guidelines to the 2012 and then 2026 equity regulations, examines how the new regime aligns with the constitutional equality code and India's international commitments, and interrogates its institutional design for complaint handling, monitoring and sanctions. It then proposes an "Equity Readiness and Compliance Framework" that translates the 2026 Regulations into measurable indicators of access, campus climate, institutional preparedness and participation, using secondary data such as All India Survey on Higher Education (AISHE) and University Grants Commission (UGC) disclosures to illustrate how equity can be evaluated as a concrete governance outcome rather than an abstract promise. In doing so, the paper situates the UGC Equity Regulations 2026 within contemporary constitutional debates on the permissible scope of equity-oriented regulation, highlights gaps in the present architecture, and advances normative and institutional recommendations for making inclusion in higher education both justiciable and empirically tractable. The paper employs a doctrinal legal research method supplemented by policy-oriented analysis.

Key words: *UGC Equity Regulations 2026, caste discrimination, higher education governance, substantive equality, SC/ST inclusion*

Introduction

On 17 January 2016, a doctoral student, Rohith Vemula, committed suicide following years of institution-level harassment and caste discrimination at the University of Hyderabad.[1] In

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[1] Radhika Vemula & Anr. v. Union of India & Ors., W.P.(C) No. 1163 of 2019 (India) [hereinafter Vemula PIL].

2019, 3 years later, Dr Payal Tadvi, a postgraduate medical student in Mumbai, committed suicide following ongoing casteist oppression by her seniors. These were not sporadic cases, but a symptom of a *structural crisis experienced in Indian higher education*: even with the constitutional reservations and welfare systems, Scheduled Caste (SC)/Scheduled Tribe (ST) students are still finding themselves in social marginalisation, academic marginalisation, and psychological violence on campuses across the nation. According to Data released by the All India Survey on Higher Education (AISHE), as of the year 2020-21, the enrolment of SC/ST students is at a whopping 14.25 per cent and 5.5 per cent of total enrolment, respectively, yet, according to the same, drop-outs are disproportionately prevalent among the first-generation learners from these communities.[2] A Thorat Committee report of 2007 that examined discrimination in the All India Institute of Medical Sciences (AIIMS) established that seventy five per cent of SC/ST students received preferential treatment in classes, eighty four per cent faced unjust assessment during the practicals, and the segregation of the hostels was the norm.[3] At least 115 students fell to suicide in the Indian Institute of Technology alone, between 2004 and 2024, and a disproportionately large number of them belonged to marginalised groups, which is now more and more spoken of as institutional murder by student movements.[4][5]

Following ongoing campaigning by the families of Rohith Vemula and Payal Tadvi, and judicial guidance of the Supreme Court, the *University Grants Commission informed the University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2026* on 13 January 2026.[6] The 2026 Regulations replace an already largely ineffective regulatory framework, the 2012 one[7], requiring a full institutional architecture: Equal Opportunity Centres (EOCs), Equity Committees in which UGC schemes membership, and recognition withdrawal can be enforced, 24x7 Equity Helplines, rigid time constraints on

[2] Ministry of Education, All India Survey on Higher Education 2020-21 (Government of India 2022) [hereinafter AISHE 2020-21].
[3] Sukhadeo Thorat et al., Report of the Committee to Enquire into the Allegation of Differential Treatment of SC/ST Students in All India Institute of Medical Sciences, New Delhi (Ministry of Social Justice & Empowerment, Government of India 2007) [hereinafter Thorat Committee Report].
[4] See Gopal Guru, Humiliation: Claims and Context (Oxford University Press 2009); Sukhadeo Thorat & Narendra Kumar, B.R. Ambedkar: Perspectives on Social Exclusion and Inclusive Policies (Oxford University Press 2008).
[5] National Crime Records Bureau, Accidental Deaths and Suicides in India 2020 (Ministry of Home Affairs, Government of India 2021); see also Sukhadeo Thorat, Dalits in India: Search for a Common Destiny (SAGE Publications 2009).
[6] University Grants Commission (Promotion of Equity in Higher Education Institutions) Regulations, 2026, F. No. 1-20/2023(CPP-II), Gazette of India, Extraordinary, pt. III, sec. 4 (Jan. 13, 2026) (India) [hereinafter 2026 Equity Regulations].
[7] University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, Gazette of India (2012) (India) [hereinafter 2012 Equity Regulations].

complaint resolution (24 hours on committee meetings, 15 working days on inquiry reports, 7 days on institutional action), annual equity reporting, severe penalties of non-compliance, and a bar to UGC schemes membership and This is the largest effort, so far, to entrench equity as a governance requirement in Indian Higher Educational Institutions (HEIs).[8]

Nevertheless, the Regulations were challenged within days of being published, as some petitions claimed that the definition of the term caste-based discrimination, which applies only to SC/ST/Other Backward Class (OBC) students, was exclusionary and imprecise, and that the deadlines and penalties were burdensome in their own manner. On 29 January 2026, the Division Bench consisting of Chief Justice Surya Kant and Justice Joymalya Bagchi ordered a stay on the 2026 Regulations and said that it was guilty of prima facie vagueness and that it was subject to misuse, and ordered the management to persist with the 2012 system until further adjudication.[9]

Research Questions

The paper will deal with three questions that are interlocked:

1. In what ways do the UGC Equity Regulations, 2026, rethink the concept of equity and discrimination in Indian institutions of higher learning in comparison to the 2012 concept and the wider concept of equality inherent in the constitutional code of equality?
2. What transformative potential do the new institutional mechanisms have for SC/ST inclusion, and what are their administrative and constitutional weaknesses?
3. Bearing in mind the interim stay by the Supreme Court, are the Regulations administratively feasible and constitutionally solid, and which changes are needed to ensure effective implementation?

Objectives and Methodology

The paper aims at trying to achieve three goals, namely, first, to conduct a doctrinal review of the 2026 Regulations by the means of close reading and drawing parallels between the 2012 framework and constitutional equality jurisprudence, second, to conduct an empirical review of the policies with a view to providing a framework of recommendations to mainline an Equity Readiness and Compliance Framework, using secondary information gathered by AISHE, UGC reports and institutional disclosures to operationalise the requirements of the

[8] 2026 Equity Regulations, supra note 6.
[9] Vemula PIL, supra note 1.

Regulations, and finally, a normative review with reference.

Law and History of Equity in Higher Education

Architecture of Constitutional Equity

Normativity in education in the Indian Constitution has provided a strong framework. Article 14 gives equality before the law, and as a result, equality of protection of laws whereby state acts that are not arbitrary are based on it.[10] Article 15 (1) and 15 (4), 15 (5) and 15 (6) that was inserted due to the constitutional amendment obviously forbid discrimination based on religion, race, caste and sex or place of birth whereas Article 15(4),15(5) and 15(6) expressly allow the State to provide special provisions to the socially and educationally backward classes such as SC/ST/ OBC in educational institutions including the institutions under the private sector.[11] Article 16 (4) and 16 (4A) allow reservation in civil employment.[12] Article 21, in a broad understanding of the term by the Supreme Court, helps to protect not only life but also personal liberty, including the right to dignity and a non-hostile environment.[13] Directive Principle article 46 points the State to advance with particular concern the educational and economic well-being of SC/ST, and safeguard them against social and economic inequality and exploitation.[14][15]

Equality jurisprudence in the Supreme Court has increasingly come to the realisation that formal equality would not be enough to redress deeply-rooted social hierarchies. In *Indra Sawhney v. Union of India (1992)*, a bench of 9 judges ruled in favour of OBC reservations in government employment, stating that Articles 15(4) and 16(4) are not exceptions to equality but should be an enabling provision to ensure the realisation of substantive equality.[16] The Court had stressed that affirmative action is needed to reduce the disadvantage faced by backward classes in the past, but has limited the ceiling of 50 per cent to the total reservations

[10] INDIA CONST. art. 14; see also E.P. Royappa v. State of Tamil Nadu, AIR 1974 S.C. 555 (India) (establishing anti-arbitrariness as a component of Article 14).
[11] INDIA CONST. art. 15, cl. 1, 4, 5, 6; The Constitution (Ninety-Third Amendment) Act, 2005, No. 24 of 2005 (India) (inserting art. 15(5) to enable Parliament to mandate reservations in private unaided HEIs).
[12] INDIA CONST. art. 16, cl. 4, 4A.
[13] INDIA CONST. art. 21; Unni Krishnan v. State of Andhra Pradesh, AIR 1993 S.C. 2178 (India); Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608 (India); Consumer Education & Research Centre v. Union of India, (1995) 3 SCC 42 (India); Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).
[14] INDIA CONST. art. 46; International Covenant on Economic, Social and Cultural Rights art. 13, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR]; Sandra Fredman, Human Rights Transformed: Positive Rights and Positive Duties (Oxford University Press 2008).
[15] The Constitution (One Hundred and Third Amendment) Act, 2019, No. 2, Acts of Parliament, 2019 (India) (inserting art. 15(6) for EWS reservations); P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537; Society for Unaided Private Schools of Rajasthan v. Union of India, (2012) 6 SCC 1.
[16] Indra Sawhney v. Union of India, AIR 1993 S.C. 477 (India) (9-judge bench).

in order to strike a balance between conflicting constitutional principles.[17] This paradigm of replacement of formal with substantive equality is the basis of the effectiveness of proactive equity mechanisms in HEIs.[18]

Development of UGC Anti-Discrimination Laws

Before the year 2012, the UGC used to rely on advisory circulars to deal with discrimination, which were not enforced and were not obeyed by institutions.[19] The breakthrough point was the *Thorat Committee Report of 2007*, commissioned by Prime Minister Manmohan Singh to look into the allegation of caste-based discrimination at AIIMS. The Committee's results proved to be devastating: they recorded systematic exclusion of SC/ST students in hostels and messes, laboratories and sports and unfair treatment and assessment in teaching and evaluation and administrative complicity. The Report triggered civil society demands for binding regulations.[20]

UGC in 2012, the University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, required HEIs to establish Equal Opportunity Cells, anti-discrimination officers, and put grievance redressal systems in place. The 2012 Regulations, however, were fraught with fatal flaws: they were mostly advisory, had no timeframes in which complaints could be resolved, no penalties on non-compliance, and the scope was limited to SC/ST, excluding the OBCs, Persons with Disabilities (PwDs) and other disadvantaged communities.[21] A survey by the National Commission of Scheduled Castes showed that in 2018, of the 200 or so universities and more than 80 per cent of colleges, the required cells were not even formed. The 2012 structure was therefore little more than a paper structure.[22]

Payal Tadvi and Rohith Vemula gained momentum and attracted new power through their deaths. In 2019, their mothers lodged a public interest litigation in the Supreme Court requesting the enforcement of basic rights against caste-based discrimination and stronger regulation. The petitioners reported on the unchecked existence of caste discrimination in

[17] State of Madras v. Srimathi Champakam Dorairajan, AIR 1951 S.C. 226 (India); M.R. Balaji v. State of Mysore, AIR 1963 S.C. 649; Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1.
[18] Marc Galanter, Competing Equalities: Law and the Backward Classes in India (University of California Press 1984); Brown v. Board of Education, 347 U.S. 483 (1954); Sandra Fredman, Discrimination Law (2d ed., Oxford University Press 2011).
[19] Protection of Civil Rights Act, No. 22 of 1955 (India); Balmurli Natrajan, The Culturalization of Caste in India: Identity and Inequality in a Multicultural Age (Routledge 2012).
[20] Thorat Committee Report, supra note 3.
[21] 2012 Equity Regulations, supra note 7.
[22] National Commission for Scheduled Castes, Annual Report 2018-19 (Government of India 2019) [hereinafter NCSC Annual Report 2018-19].

HEIs and the insufficiency of current mechanisms, especially the lack of penalties in case of breaches. During the hearing of the case in January 2025, the Supreme Court mentioned that the majority of the institutions had not adopted even the 2012 Regulations, had no functional grievance cells and left vulnerable students without any support. Back to the Court, the strong and enforceable regulations were designed by the UGC, resulting in the 2026 framework.[23]

Empirical Landscape Before 2026

According to the AISHE 2020-21, SC students formed 14.25 per cent, and ST students formed 5.5 per cent of the total higher education enrolment, which was also a big improvement compared to 2010 when their joint share was less.[24] But the difference in representation is stark depending on the kind of institution: in the very prestigious cases of IITs, Indian Institute of Management (IIMs) and National Law Schools, SC/ST enrolment is usually lower than the constitutional reservation quota because of high cut-offs, lack of preparation assistance, and unfriendly campuses. The faculty itself is even more disproportionate: the SC/ST teachers are highly under-represented in senior academic posts, and most of them are vacant for years. The rates of dropping out and attrition among SC/ST students, especially postgraduate and doctoral students, are also much higher than those of the general category students, indicating that there are systemic impediments to admission. The practical fact that supports this is that the absence of access, coupled with a lack of systems of support, is inadequate, which preconditions the governance-oriented approach of the 2026 Regulations.[25]

The UGC Equity Regulations. 2026: architecture and comparable ANALYSIS

Anatomy of the 2026 Regulations: Section 2026 of the Regulations, which are notified under Section 12(j) of the UGC Act, 1956, also in conjunction with Section 26(1)(g) of the UGC Act, 1956, applies to all universities, colleges and deemed universities in India.[26] The mentioned purpose is to eliminate discrimination on the grounds of religion, race, gender, place of origin, caste or disability, especially of the members of scheduled castes and scheduled tribes, socially and educationally backward groups, economically weaker groups, and people with disabilities and to encourage complete equity and inclusivity.[27]

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[23] Vemula PIL, supra note 1.
[24] AISHE 2020-21, supra note 2; Registrar General of India, Census of India 2011: Primary Census Abstract for Scheduled Castes and Scheduled Tribes (Office of the Registrar General & Census Commissioner, India 2013) [hereinafter Census 2011].
[25] Ministry of Social Justice and Empowerment, Annual Report 2021-22 (Government of India 2022) [hereinafter MoSJE Annual Report]; Thorat, Dalits in India, supra note 5; University Grants Commission, Annual Report 2022-23 (University Grants Commission, Government of India 2023) [hereinafter UGC Annual Report 2022-23].
[26] University Grants Commission Act, 1956, §§ 12(j), 26(1)(g), No. 3, Acts of Parliament, 1956 (India) [hereinafter UGC Act]; 2026 Equity Regulations, supra note 6.
[27] ICESCR art. 13, supra note 14; Convention on the Elimination of All Forms of Discrimination Against Women art. 10, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; Convention on the Rights of Persons with Disabilities art. 24, opened for signature Mar. 30, 2007, 2515 U.N.T.S. 3 (entered into force May 3, 2008) [hereinafter CRPD]; UNESCO Convention Against

The Regulations give a broad definition of the term discrimination as any unfair, differential, or biased treatment, regardless of its explicitness or implicitness, based on the grounds of religion, race, caste, gender, place of birth, disability, or any combination thereof, including any distinction, exclusion, limitation, or preference that has the effect or the designation of obviating or undermining equality of treatment in education. Importantly, the definition encompasses direct and indirect discrimination, as there is an understanding of structural and implicit bias. The phrase caste-based discrimination is specifically given to refer to discrimination based solely on caste or tribe against the members of the scheduled castes, scheduled tribes, and other backward classes. This definition was the hot spot in the constitutional battle.[28][29]

The 2026 Regulations have a multi-layered institutional architecture that is required. All HEIs should create an Equal Opportunity Centre (EOC) to supervise equity policies, offer guidance and counselling, liaise with civil society and legal services officials, and promote diversity in campuses. The EOC needs to select a Coordinator as a senior faculty member who is committed to social justice. The EOC should have a ten-member Equity Committee that is to be chaired by the Vice-Chancellor/ Principal, and obligatory representation of SC, ST, OBC, PwD and women's interest groups, as well as civic society professionals and student representatives. The term of the Committee is two years, and the Committee should meet at least twice a year.[30]

Moreover, HEIs should create Equity Squads that are mobile units that have to visit vulnerable areas on campus (hostels, laboratories, libraries) to both preemptively find and stop discrimination. Hostels and facilities should appoint an Equity Ambassador, who is a stakeholder and serves as a nodal officer of the equity activities and reports any violation to the EOC. Any institution should have a 24x7 Equity Helpline that should be operational both on phone and online portal, as well as a physical address, and the complainants should be

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Discrimination in Education art. 1, opened for signature Dec. 14, 1960, 429 U.N.T.S. 93 (entered into force May 22, 1962) [hereinafter UNESCO Anti-Discrimination Convention].

[28] UNESCO Anti-Discrimination Convention art. 1, supra note 27; Tarunabh Khaitan, A Theory of Discrimination Law (Oxford University Press 2015); International Convention on the Elimination of All Forms of Racial Discrimination art. 5, opened for signature Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter ICERD].

[29] Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, No. 33, Acts of Parliament, 1989 (India) [hereinafter SC/ST Atrocities Act]; Committee on the Elimination of Racial Discrimination, General Recommendation No. 29: Discrimination Based on Descent, U.N. Doc. A/57/18, at 111 (Aug. 22, 2002) [hereinafter CERD General Recommendation No. 29].

[30] 2026 Equity Regulations, supra note 6, Reg. 4; T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 (India) (upholding regulatory oversight of private HEIs in core academic matters).

guaranteed confidentiality.[31]

The grievance redressal procedural design is quite time-based. The Equity Committee should then sit down within 24 hours after being notified of a complaint. In the next 15 working days, the Committee should present its inquiry report to the Head of the Institution. The Head shall take action within 7 days after the report has been received. If the complaint prima facie pertains to the offence(s) provided by the SC/ST (Prevention of Atrocities) Act, 2016[32] or any other penal laws, the Equity Committee should provide the police authorities with the information. The Ombudsperson nominated through the UGC (Redressal of Grievances of Students) Regulations, 2023 may, within 30 days, appeal (the person is not saying that the Equity Committee is negligent or wrong) the report issued by the Equity Committee.[33]

The 2026 Regulations lie in transparency and monitoring mechanisms. EOC has to issue bi-annual reports on the demographic makeup of students and personnel, dropout rates, complaints of students and their status. All HEIs are required to submit the annual equity report to the UGC, statutory councils and state higher education departments at the end of January. The UGC will be a monitoring committee at the national level, consisting of representatives of statutory bodies and civil society, which will monitor the implementation and provide recommendations about preventive measures and meet at least twice a year. Penalties in case of non-compliance with the Regulations are harsh: within the scope of UGC schemes, no opportunity to provide degree programmes, no permission to conduct Open and Distance Learning programmes, no permission to conduct online programmes, and elimination of the list of recognised institutions according to Sections 2(f) and 12B of the UGC Act. UGC has the freedom to subject a case to further sanctions at its own behest.[34]

Comparative Analysis: 2012 vs 2026

The disparities between the 2012 and 2026 frameworks are extreme in various aspects. The 2012 Regulations were only advisory and had no binding force, whereas the 2026 Regulations are binding with severe consequences for non-compliance, which has made equity a goal rather than an objective. The 2012 framework was based on coverage of SC/ST only, with the recent 2026 Regulations applying specifically to OBCs, PwDs, women and other marginalised areas; such coverage is intersectional. Under the Regulations of 2012, a

[31] 2026 Equity Regulations, supra note 6, Reg. 5; see P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537.
[32] SC/ST Atrocities Act, supra note 29; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, No. 1 of 2016 (India).
[33] University Grants Commission (Redressal of Grievances of Students) Regulations, 2023, Gazette of India (2023) (India) [hereinafter UGC Grievance Regulations 2023].
[34] UGC Act, supra note 26, §§ 2(f), 12B.

simple grievance cell and an anti-discrimination officer were sufficient on an institutional level; under the 2026 structure, there must be a multi-layered system of EOC, Equity Committee, Squads, Ambassadors and helplines, because discrimination is structural and needs to be addressed on multiple levels. The 2012 Regulations did not establish any deadlines on the resolution of complaints, meaning that it can be postponed indefinitely, whereas the 2026 Regulations have very rigid deadlines (24 hours, 15 days, 7 days) to prompt the organisation into action. The 2012 structure lacked the aspect of transparency and reporting; the 2026 Regulations stipulate bi-annual and annual equity reporting that is publicly posted, which brings about data-driven accountability. Most importantly, the 2012 Regulations lacked any enforcement provision and sanctions; the 2026 Regulations authorise the UGC to debar, suspend and derecognise non-compliant institutions, altering the logic of regulation to that of coercion.[35]

Critical Appraisal: Promise, Pitfalls and the Judicial Intervention

Strengths and Transformative Potential

The 2026 Regulations have several normative and procedural provisions. The Regulations, by simply mentioning the phrase "caste-based discrimination" and by mentioning OBCs and SC/ST in the same sentence, rectify a significant oversight in the original version of this regulation that had omitted OBCs due to political criticism.[36] Such a broad definition of discrimination, including indirect and indirect bias, is in line with modern-day anti-discriminatory law and the recognition of the fact that structural exclusion involves not just overt slurs but also less obvious actions such as segregated seating, differentiated mentoring, and informal social networks.[37]

The transformational potential of transparency mechanisms, in particular, annual equity reports and national dashboards, has to be recognised. The Regulations will facilitate comparative evaluation of the institutions through the compulsory publicity of the demographic statistics by the institutions, the complaint statistics and the outcomes of the resolution of the complaints, which will provide reputational motivations to the institutions to show equity results. This information can give strength to student movements, researchers and policymakers to detect patterns, compare institutions and otherwise promote evidence-

[35] 2012 Equity Regulations, supra note 7; Fredman, Discrimination Law, supra note 18.
[36] Khaitan, supra note 28; Fredman, Discrimination Law, supra note 18; Sandra Fredman, Substantive Equality Revisited, 14 Int'l J. Const. L. 712 (2016).
[37] Thorat Committee Report, supra note 3; Surinder S. Jodhka & Ghanshyam Shah, Comparative Contexts of Discrimination: Caste and Untouchability in South Asia, 45 Econ. & Pol. Wkly. 99 (2010).

based reforms. The harshness of the sanctions, debarment, and derecognition is an indication that equity is not a negotiable component of academic excellence but an extraneous add-on.[38]

Gaps, Risks and Administrative Weaknesses

Irrespective of these merits, the 2026 Regulations have serious procedural gaps. The inquiry procedure is limited in detail: there are no specifications in the Regulations as to standards of proof, rules of evidence, parties of concern on rights of representation or cross-examination and procedures of interim relief or protective measures against witnesses or procedures of further appeal outside the Ombudsperson route. This poses dangers of arbitrariness and lack of consistency in institutions. The combination of power in the Head of the Institution, who is the chairman of the Equity Committee and who makes the final decision about the action, raises concerns about the issue of conflict of interest, especially when the complaints concern the reputation of the institution or influential members of the faculty.[39]

The Regulations also cause possible conflicts with the current grievance procedures: Internal Complaint Committee (ICC) of sexual harassment, SC/ST Cell, anti-ragging committees, and internal complaint committees of numerous UGC regulatory acts.[40] There is an uncertain relationship between these forums. Is it possible to go to several bodies at the same time? If the Equity Committee forwards a matter to another committee [as is allowed under Regulation 8(c)], what are the time schedules and coordination procedures? This proliferation can become forum shopping without clear Standard Operating Procedures, which can result in duplication of inquiries or vice versa, and buck-passing among committees.[41]

The constitutional challenge became mostly pegged on the definition of the term caste-based discrimination, which was made to mean that it only applied to SC/ST/OBC. Opponents held that this establishes a privileged category with special redress and deprivation of equality before the law of general category students, which goes against the guarantee of equality

[38] Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999) [hereinafter CESCR General Comment No. 13]; CERD General Recommendation No. 29, supra note 29; Committee on Economic, Social and Cultural Rights, Concluding Observations on the Fifth Periodic Report of India, U.N. Doc. E/C.12/IND/CO/5 (Mar. 8, 2008) [hereinafter CESCR Concluding Observations on India].

[39] Vishaka & Ors. v. State of Rajasthan & Ors., (1997) 6 SCC 241 [hereinafter Vishaka]; Medha Kotwal Lele & Ors. v. Union of India & Ors., (2013) 1 SCC 297 (monitoring Vishaka compliance and finding widespread institutional non-compliance).

[40] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013 (India) [hereinafter POSH Act]; University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015, Gazette of India (2015) (India); Rights of Persons with Disabilities Act, No. 49, Acts of Parliament, 2016 (India) [hereinafter RPwD Act].

[41] Vishaka, supra note 39; Medha Kotwal Lele, supra note 39.

before the law under Article 14. Although the general meaning of the term discrimination in the Regulations (Regulation 3(e)) applies to all the stakeholders irrespective of their caste, the special clauses relating to caste discrimination and the mandatory representation provisions were seen to be skewed. Such framing supported accusations that the Regulations could be abused to file false complaints on general category students or faculty, but no evidence of high rates of false complaints under the 2012 system was provided.[42]

Performative compliance is a risk, also. The 2012 Regulations and other institutional committees (NAAC self-assessments, ICC filings) experience shows that HEIs can establish structures on paper without actually doing it. Equity Committees can be infrequent; too few questions may be too little rigour, reporting may be too superficial, and punishment may hardly be applied. Devoid of any culture change, that is, faculty training, curricular instillation of anti-discrimination ideas, peer mentorship and psychological assistance of the marginalised students, the Regulations can become bureaucracy.[43]

The Interim Stay of the Supreme Court and Its Implications

This was a setback, especially when the Supreme Court on 29 January 2026 announced that it would stay the 2026 Regulations. The fact that Regulation 3(c) was deemed to be entirely ambiguous by the Court and the whole structure susceptible to abuse meant that there were concerns over the clarity of definitions and due process. This was hinted at in the commentary of Chief Justice Surya Kant, who said: Are we becoming a regressive society? The Regulations are likely to entrench caste divisions instead of transcending caste divisions. Interestingly, the Solicitor-General, representing the Union and UGC, provided very little defence, and the Bench quashed the Regulations despite the resistance of Indira Jaising, the counsel representing the families of Rohith Vemula and Payal Tadvi, who maintained that the stay was not necessary.[44]

Constitutionally, the vagueness doctrine stipulates that legislations which prescribe penalties should give fair notice of what should be avoided.[45] But by comparative analysis, it would be seen that to the extent of the 2026 Regulations, there is no vagueness between discrimination

[42] INDIA CONST. art. 14, supra note 10; Grutter v. Bollinger, 539 U.S. 306 (2003) (U.S. Supreme Court upholding race-conscious admissions as a compelling state interest); Satish Deshpande, Caste and Castelessness: Towards a Biography of the 'General Category,' 48 Econ. & Pol. Wkly. 32 (Feb. 2, 2013).
[43] Thorat Committee Report, supra note 3; Jodhka & Shah, supra note 37.
[44] National Assessment and Accreditation Council, Manual for Assessment and Accreditation of Universities (NAAC 2017) [hereinafter NAAC Manual]; Medha Kotwal Lele, supra note 39; UGC Annual Report 2022-23, supra note 25.
[45] Shreya Singhal v. Union of India, (2015) 5 SCC 1 (striking down Section 66A of the Information Technology Act for vagueness and establishing the Indian constitutional vagueness standard).

and caste-based discrimination or rather similar clauses in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act or the POSH Act, which have been affirmed.[46] The definition of discrimination in the Regulations, as the unfair, different or biased treatment that is not compatible with human dignity, follows the international human rights instruments and gives enough guidance. The proportionality model is more complicated. The punishment that is given out- recognition withholding, programme suspension- is very harsh. Proportionality, however, entails consideration not only of the amount of penalty, but of whether there are other less restrictive ways of attaining the compelling governmental interest of eliminating caste discrimination. Considering the failure of voluntary and advisory schemes (pre-2012 and 2012 frameworks) that have been documented, the question now arises as to whether the institutional resistance is such that strong enforcement is needed to break it. The proportionality analysis was not, however, conducted by the Court, which stayed it; it was based on a prima facie judgment of vagueness.[47]

The real implication of the stay is disturbing. The Court returned to the 2012 Regulations and brought back a paradigm already proven ineffective, at a time of increased caste strife on campuses.[48] The stay empowers anti-equity advocates, confirms the accusations that anti-discrimination policies are anti-merit/reverse discriminatory in nature and leaves SC/ST students without legal protections.[49] It also extends the period of uncertainty: the case has been taken to a larger bench with the next hearing scheduled to take place in March 2026, which is months or even years before official adjudication.[50]

Instead of a stay, judicial narrowing down would have been more measured, which is clarifying definitions, prescribing model Standard Operating Procedures (SOPs) to inquiries, or correcting penalties. Whether or not the final judgment required additional protection (notably the introduction of new protective techniques), the Court could have instructed UGC to release clarificatory orders, but continued using the basic protective structure (EOCs, Equity Committees, schedules, helplines). This type of protective continuity would strike a

[46] Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, supra note 39; POSH Act, supra note 40.
[47] ICERD, supra note 28; ICESCR art. 13, supra note 14; UNESCO Anti-Discrimination Convention art. 1, supra note 27.
[48] P.A. Inamdar, supra note 15; Preeti Srivastava v. State of Madhya Pradesh, (1999) 7 SCC 120 (upholding lower eligibility criteria for SC/ST students in post-graduate medical admissions); Regents of the University of California v. Bakke, 438 U.S. 265 (1978) [hereinafter Bakke].
[49] 2012 Equity Regulations, supra note 7; Natrajan, supra note 19; Surinder S. Jodhka, Caste in Contemporary India: Beyond Ambedkar and the Brahminism, 48 Econ. & Pol. Wkly. 44 (Mar. 23, 2013).
[50] Bakke, supra note 48; Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

balance between due process issues on one hand and the demand of equity mechanisms on the other.[51]

Harnessing a Framework of Equity Readiness and Compliance

Rationale and Structure

The 2026 Regulations establish liabilities but do not set out the measure of compliance and impact. This part suggests an Equity Readiness and Compliance Framework that has four pillars: Access & Representation, Campus Climate, Institutional Preparedness and Participation and Voice, which have indicators and data sources. The Framework converts the legal text into governance deliverables that are measurable, enabling the UGC, HEIs, courts and civil society to determine the progress empirically.[52]

Pillar I – Access and Representation: The Common Core of Seduction Analysis

Indicators: Comparison between population quotas and constitutional reservation quotas and SC/ST/OBC share of total enrolment (undergraduate, postgraduate, doctoral). Annual retention rates of students by social group (percentage of those who complete the first year to the second, etc.).

Completion rates: Percentage of students who are SC/ST/OBC and are graduating after the stipulated period and one year more.

Faculty representation: SC/ST/OBC have share among assistant professors, associate professors and professors; unfilled reserved posts.

Sources of Data: AISHE annual reports present disaggregated enrolment, faculty and graduation data of all HEIs by social category and gender. The management information systems of HEIs (MIS) are capable of producing institution-specific data at the granular level. This data would be brought together in the annual equity reports that the 2026 Regulations would require of the UGC.

Baseline Analysis: According to AISHE 2020-21 data, the percentage of higher education enrolment of SC students was 14.25 per cent, and that of ST students was around 5.5 per cent, which is almost the same as the population shares of both groups (16.6 per cent and 8.6 per cent).[53] Nonetheless, this cumulative figure covers a lot of diversity: in elite institutions,

[51] CESCR General Comment No. 13, supra note 38 (4-A Framework: availability, accessibility, acceptability, adaptability).
[52] AISHE 2020-21, supra note 2; Ministry of Education, All India Survey on Higher Education 2021-22 (Government of India 2023) [hereinafter AISHE 2021-22].
[53] AISHE 2020-21, supra note 2; AISHE 2021-22, supra note 52.

SC/ST enrolment tends to be lower, and the rate of dropout is greater. Faculty description is at an all-time low: the SC/ST teachers form a minority of less than 10 per cent of the entire faculty in most central universities, and are severely under-represented in higher ranks.[54]

Pillar II – Campus Climate and Safety

Indicators: Received discrimination complaints (disaggregated by starting with caste).

Resolution rates: Percentage of complaints fulfilled on required timeframes (24 hours+15 days+7 days = about one month).

Results: Proportion of complaints that were upheld, measures that were imposed (warnings, suspensions, terminations, First Information Reports), and cases on hand.

Perception surveys: Optional campus climate surveys, including students and staff and understanding of their safety, inclusiveness and dignity.

Sources of Data: HEI equity helplines and EOC complaint registers, annual equity reports reported to UGC, RTI requests for historical complaint data, and research survey reports by independent organisations.[5556]

Base Analysis: Pre-2026, baseline unsystematic recording of discrimination complaints was difficult to find in the past because of the lack of data registration. Massive under-reporting is anecdotally recorded and documented in case studies (Thorat Committee, student testimonies) and stems from fear of retaliation, lack of trust in grievance systems and stigma. The confidential helplines and anti-retaliation provisions in the 2026 framework could enhance reporting, and that should be viewed as better access to justice and not more discrimination.[57]

Pillar III – Preparedness of the institutions

Indicators: Activation and movement of required bodies and/or committees: EOC, Equity Committee, Squads, Ambassadors, Helpline (binary: established/not established; functional/on paper). Composition compliance percentage of Equity Committees that comply with the mandatory requirements regarding representation (SC/ST/OBC/PwD/women). Training and sensitisation: how many equity training sessions have been held each year; what

[54] Census 2011, supra note 24.
[55] MoSJE Annual Report, supra note 25; UGC Annual Report 2022-23, supra note 25; NCSC Annual Report 2018-19, supra note 22.
[56] Thorat Committee Report, supra note 3; Thorat, Dalits in India, supra note 5; Jodhka & Shah, supra note 37.
[57] Thorat Committee Report, supra note 3; Natrajan, supra note 19.

percentage of the faculty, staff and students have been involved. Accessibility of policies: policy on equity is available in different languages; channels of distribution (website, induction, hostel notice boards).

Budgetary allocation: Per cent of the HEI budget allocated to EOC operations, training, scholarship and support services.

Sources of Data: HEI equity helplines, EOC complaint registers, Annual equity reports, but those sent to UGC; RTI requests of previous years of complaint volumes through research surveys by independent bodies.

Baseline Analysis: As observed, as of 2018, only about 40 per cent of universities, not to mention 80 or more colleges, had even the simple cells required by the 2012 Regulations.[58] In places where there were cells, there were many that were idle. The enforcement mechanisms of the 2026 Regulations (punitive measures against failure to comply) can address this inertia, although the capacity issues (capacity limitations in small, under-resourced colleges) are still a problem.[59]

Pillar IV – Concerns the participation and voice.

Indicators: SC/ST/OBC representation in various student councils, academic councils (Board of Studies, Academic Council) and hostel committees.

Benefit representation in decision-making: SC/ST/OBC in selection of committees, departmental and governance boards.

Representation in the Grievance forum: SC/ST/OBC and ICC in the anti-ragging committees and Equity committees.

Mentorship and support: Presence and attendance of peer mentorship programmes for first-generation learners.

Data Sources: HEI government data and records, election outcomes, committee lists; qualitative evaluation in the form of interviews and surveys.

Baseline Analysis: Students and faculty who are marginalised are constantly left out of influential posts. Such marginalisation is a symptom and a cause of discrimination: without

[58] 2012 Equity Regulations, supra note 7; NCSC Annual Report 2018-19, supra note 22.
[59] Deshpande, Grammar of Caste, supra note 42; Jodhka, Caste in Contemporary India, supra note 49; Christophe Jaffrelot, India's Silent Revolution: The Rise of the Lower Castes in North India (Columbia University Press 2003).

representation, the issue of equity is pushed to the periphery, and the validity of equity practices is compromised.[60]

Application: Institutional Scoring Hypothetical

Implementation of the Framework

The Framework needs to be added to the monitoring mechanism of the UGC, which is required by Regulation 10. All four pillars should be provided in the annual equity reports filed by HEIs. The UGC is able to release a national dashboard where scores are displayed as institution-level or show and tell numbers (red means critical failure, yellow means moderate, green means exemplary). Those with low scores are given specific capacity-building assistance; those with high scores are granted extra grants and freedom. The Framework ought to be included in NAAC accreditation in Criterion III (Student Support) and VII (Institutional Values and Best Practices), with a lot of weightage attached to equity outcomes. This generates good incentives instead of punishment.[61]

Recommendations

To UGC and the Union Government:

i. Explain and Refine the Regulatory Framework: Prepare and publish comprehensive model Standard Operating Procedures (SOPs) of Equity Committee inquiries, evidence standards, rights of the parties, interim relief, witness protection and appeals. Issue informative illustrations with examples to lessen the interpretive ambiguity.

ii. Proportional Punishment: Replace blanket punitive measures with a different gradation according to level and intent. First offence- administer warnings and capacity building assistance in case of serious non-conformity; frequent non-conformity- terminate grants; active non-conformity or severe discrimination- terminate recognition suspension. This balances both accountability and development.

iii. Create Capacity, Not Only Impose Penalties: Have regional resource centres in every UGC region offering technical support, training modules and model policies to higher educational institutions, especially those that are under-resourced. The fund does not place staff in unpaid faculty positions; instead devoting staff to EOC roles.

iv. National Equity Observatory: Establish a UGC centralised research, data analytics and monitoring unit other than annual reports. The Observatory ought to hold

[60] Galanter, supra note 18; Fredman, Substantive Equality Revisited, supra note 36; Deshpande, Caste and Castelessness, supra note 42.
[61] NAAC Manual, supra note 44.

randomised on-site audits, undertake independent campus climate surveys and deliver annual reports on the state of equity in Higher Education.

v. Clarify Supreme Court Issues: Should the need arise, revise Reg. 3(c) to make it clear that protection against caste-based discrimination is extended over all students, whilst acknowledging SC/ST/OBC as groups that are historically and structurally disadvantaged and need affirmative institutional action. Express this under the provisions of Article 15(5) of the Constitution and Article 46. To Higher Educational Institutes. Internalisation of Equity as Core: Institutionalising equity into IQAC and NAAC. Equity indicators in the performance appraisal of the Vice-Chancellors should be in place. Equity shall not be a single cell but should be embedded in the academic planning, curriculum design and institutional culture.

vi. Meaningful Representation: SC/ST/OBC members of Equity committees need to have a real voice and the ability to make decisions, and not tokenism. Think about co-chair models wherein the Coordinator is a joint leader with the Head of Institution to counter the conflict of interest. Enhance Prevention Measures: Require equity/anti-discrimination modules in induction programmes of all entrants. Lead faculty in implicit bias, inclusive pedagogy and traumatic mentoring training every year. Create peer mentorship between the first-generation SC/ST learners and senior students.

vii. Easy Communication: Implementation of policies about equity into languages popular in regions and readable forms (braille, audio, and so on). Publicise via various means: web pages, orientation programs, posters in hostels and SMS to students.

viii. Data Discipline: Have a granular, anonymised MIS dashboard on all enrolment, performance, complaints and outcomes by social group and gender. Officially audit quarterly meetings at the Equity Committee and the Academic Council. Post annual reports very high on websites.

To the Judiciary:

i. Embrace "Protective Continuity" Doctrine: Courts cannot take blanket stays on equity regulations. Rather, maintain general protective practices (in place of procedures, post-operations timeframes, call centres) but resolve particular issues in the procedure by either clarifying or instructing to revise certain provisions of law. This honours due process as well as the necessity to protect.

ii. Expedite Hearing: Due to the continuing damage of discrimination, the Supreme Court must focus on making the last call to the challenge of the 2026 Regulations. Extended interim cohabitation encourages injustice.

iii. Recognise Discrimination as Constitutional Harm: United Campus caste violence and hostile environments contravene Article 21(dignity), Article 14 (equality) and Article 15 (non-discrimination). The courts must balance the due process of the respondents and the basic right that complainants have to a safe, dignified education.

To Parliament:

i. Consider Comprehensive Legislation: Discuss implementation of a Higher Education Non-Discrimination Act, codifying all rights and responsibilities and remedies to any discrimination in HEIs, with UGC regulations being the subordinate legislation. The legislative support would give a better legislative mandate, decrease susceptibility to legal challenge and co-exist with the SC/ST (Prevention of Atrocities) Act, Rights of Persons with Disabilities Act and POSH Act to form a coherent anti-discrimination framework.

Conclusion

The UGC (Promotion of Equity in Higher Education Institutions) Regulations, 2026, are a grave, required and ambitious endeavour to change the normative structure of Indian higher education. Combining Equal Opportunity Centres, Equity Committees, strict timeframes, transparency in annual reports and harsh action against non-observance of the Time requirements, the Regulations redefine equity as a proactive governance tool which is an integral part of the institutional operations rather than a reactive grievance tool. This change of doctrinal path towards substantive rather than formal equality between the formally advisory exhortation and the actually binding enforcement is in line with the constitutional requirements of Articles 15(5), 21 and 46 and is a reaction to a history of documented discrimination and institutional inertia.[62]

Nevertheless, the Regulations are administratively under-specified, especially on the procedures of inquiry, evidence standards, appeal and integrations with existing forums of grievance. The specifics of the definition of the term caste-based discrimination, as something that aimed at SC/ST/OBC specifically, were constitutionally justified as positive

[62] INDIA CONST. arts. 15(5), 21, 46, supra notes 11, 13, 14.

treatment of historical disparity, but were a contentious point of a political/legal argument.[63] The temporary block placed on the regulation by the Supreme Court, based on the perceived vagueness and possible abuse, has caused regulatory inconsistency and has restored the proven unsuccessful 2012 model at a time when it is evident that the most powerful protections are required.[64] Principled clarification and not retreat is the way forward. The UGC should also issue elaborate SOPs, develop institutional capacity by funding and training, create a national Equity Observatory to monitor data and operationalise compliance by use of the Equity Readiness and Compliance Framework that has been proposed in this paper. Equity has to be internalised by HEIs as the core of academic excellence, not something thrust upon them by means of governance, pedagogy and campus culture.[65] The judiciary has to strike a balance between the due process issues and the need to uphold the fundamental rights of marginalised students by using protective continuity instead of blanket stays. Parliamentary consideration should be done on broad anti-discriminatory laws to give statutory clarity and coherence.[66]

In the case of SC/ST learners, existence is all that university education is about: without dignity, security and the institutional elements that could sustain such success, the university becomes a hollow shell without any substance. In the case of HEIs, equity is not an obligation, but an indicator of institutional quality and a constitutional requirement. In the case of Indian democracy, the way the country treats the most disadvantaged communities within the elite circles of knowledge is a test of its true dedication towards substantive equality and social justice. Even the imperfect UGC Equity Regulations, 2026, are an incomplete project in the constitution. The legal community, educators, policymakers and civil society should find a constructive way of engaging without giving up the instrument of making Indian higher education a real place of learning, dignity and transformative inclusion of all.

[63] Vishaka, supra note 39; Medha Kotwal Lele, supra note 39 (demonstrating that procedural under-specification leads to performative compliance).
[64] 2012 Equity Regulations, supra note 7; NCSC Annual Report 2018-19, supra note 22.
[65] Galanter, supra note 18; Brown v. Board of Education, 347 U.S. 483 (1954); Fredman, Discrimination Law, supra note 18; National Legal Services Authority v. Union of India, (2014) 5 SCC 438.
[66] B.R. Ambedkar, Annihilation of Caste (Bombay 1936), reprinted in The Essential Writings of B.R. Ambedkar 263 (Valerian Rodrigues ed., Oxford University Press 2002); Gopal Guru, The Language of Dalit-Bahujan Political Discourse, 29 Econ. & Pol. Wkly. 2212 (1994); Surinder S. Jodhka & Ghanshyam Shah, supra note 37.

FROM ABOLITION TO ACCOUNTABILITY: RETHINKING MUNCIPAL LIABILITY UNDER THE NAMASTE FRAMEWORK

Ankita Jain[*]

Abstract

The continued occurrence of sewer and septic tank deaths despite statutory prohibition under the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act (PEMSR Act) demonstrates a persistent failure of India's sanitation governance architecture. In Safai Karamchari Andolan v. Union of India, the Supreme Court of India recognized the death of sewer workers as a violation of Article 17 of the Constitution of India, and ordered the identification of workers, mechanization, and compulsory compensation of ₹10 lakh per death. However, later on, the Court admitted that there are still deaths and that there is a lack of proper identification of sanitation workers across States; thus, the enforcement and enumeration still have major structural issues.

In 2023, the NAMASTE Scheme was introduced as a major change in policy to mechanization, profiling of workers, skill development, and credit-linked rehabilitation. However, they do not consider whether the scheme's institutional set-up changes the incentives of the Urban Local Bodies (ULBs), which continue to be the primary implementing authorities.

This paper emphasizes that NAMASTE lacks the embedding of enforceable fiscal sanctions for non-mechanised cleaning, it depends on local self-reporting for worker identification without independent auditing, and it adopts an enterprise-based rehabilitation model without assured labour market absorption.

The paper puts forward a structurally different proposal: (i) a statutorily mandated, independently audited district sanitation worker registry; (ii) a system of performance-linked conditional grants to the ULBs based on mechanisation benchmarks; (iii) automatic criminal and financial liability triggers for manual cleaning in hazardous conditions; and (iv) loan-dependent entrepreneurship replaced by a livelihood guarantee-based transition support. By combining constitutional enforcement with the fiscal federal structure, the paper offers a rights-based institutional framework aimed at a sustainable abolition of caste-embedded sanitation labour.

***Key words**: Manual scavenging; NAMASTE Scheme; municipal liability; sanitation governance; caste and labour justice.*

Introduction

On the fourteenth of September 2023, a Dalit worker descended into a sewer in Chennai without protective equipment and did not come back up. He was just one of the 67 people

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who did not return.[1] However, he was also involved, according to the Government of India, in a practise that does not exist.

Between 2019 and 2023, three hundred and seventy-seven individuals perished while cleaning sewers and septic tanks. Within the very same parliamentary session, the Union Government informed the Lok Sabha that not a single instance of manual scavenging had been reported as ongoing anywhere across the country.[2] Neither of these statements can be regarded as mere mistakes. They were made, at the same time, by a single Government, in the same Parliament. India outlawed manual scavenging in 1993. Since then, till June 2025, 1, 313 people have died.[3]

This is not just an administrative failure. It is not even negligence. It is a precise institutional feat: the systematic segregation of death from the labour category that caused it, so that the body is present in the record, but the culprit is not. The State has mastered the art of counting the dead while it refuses to name what killed them. This paper names that accomplishment correctly: liability displacement, the structural mechanism through which Indian sanitation law consistently locates legal consequence on the worker's side of the relationship, through compensation after death, rehabilitation after exit, and skilling after dispossession, whereas the Urban Local Body that sent the worker into the sewer without equipment keeps institutionally untouched, fiscally unaffected, and constitutionally unanswered.

India has prohibited manual scavenging through three successive legislative interventions. The 1993 Prohibition Act[4] criminalised the practice yet generated no prosecutions. The 2013 Rehabilitation Act[5] expanded the definitional scope, established rehabilitation entitlements, and produced near-total non-enforcement. NAMASTE, the government's 2023 mechanisation initiative, channels resources toward worker profiling, skills training, and capital-linked entrepreneurship support. Yet fatalities have continued to climb: fifty in 2021,

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[1] National Commission for Safai Karamcharis, *Report on Sewer and Septic Tank Deaths* (Ministry of Social Justice and Empowerment, Gov't of India 2024)

[2] Minister of State for Social Justice and Empowerment Ramdas Athawale, Written Reply to Question in Rajya Sabha (July 31, 2024) (India); Minister of State for Social Justice and Empowerment Ramdas Athawale, Written Reply to Question in Rajya Sabha (July 31, 2024) (India), *both reported in* Deeksha Bhardwaj, *377 Died Cleaning Sewers in 5 Yrs, No Manual Scavenging Reported: Govt*, Bus. Standard (July 31, 2024), https://www.business-standard.com/india-news/377-died-cleaning-sewers-in-5-yrs-no-manual-scavenging-reported-govt-124073101378_1.html.

[3] National Commission for Safai Karamcharis, *supra* note 1; *accord* Raman, *supra* note 1 (reporting NCSK cumulative data on sewer and septic tank deaths from 1993 to June 2025).

[4] Manual Scavengers (Prohibition) Act, 1993 (India).

[5] Manual Scavengers (Rehabilitation) Act, 2013 (India).

fifty-eight in 2022, sixty-seven in 2023.[6] Three statutes, thirty years, one trajectory.

The continued existence of this pattern remains the main challenge that this paper tries to solve, and the solution to this puzzle starts with rejecting the blame for the failure being traditionally assigned. It is not that legislative drafting has failed. It is not a failure of judicial determination either. The Supreme Court of India, in *Safai Karamchari Andolan v. Union of India*[7], held that deaths in sewers constituted a breach of Article 17 of the Constitution, and issued directions for identification, mechanisation, and payment of compensation. It is not a failure of policy ambition, even. NAMASTE represents the most far-reaching programmatic intervention in sanitation labour that India has undertaken. The failure is both structural and specific: none of these instruments managed to make it financially unviable for a municipality to choose caste labour over machinery. Until that calculus changes, every new piece of legislation is just a performance of abolition rather than the realisation of abolition.

In the Constituent Assembly debates, Dr. B.R. Ambedkar stressed that constitutional morality must be cultivated through institutional design rather than assumed as a natural social disposition. [8]. Manual scavenging still exists, not because legislators did not prohibit it, but because the institutions responsible for sanitation, Urban Local Bodies, are still highly influenced by a social morality which associates this type of work with Dalit bodies and by a fiscal system which makes such types of assignments economically rational. Constitutional morality, as Ambedkar said, does not mean just proclamation but also design: institutions arranged in such a way that the righteous outcome is also the profitable one.[9] This paper aims to design a strategy for fighting against this system.

The underlying core of the paper is, as follows: the law and its repeated enforcement with the same immutable prohibitions three times, the same one trajectory, the same 1300 dead over a period of time and so on would get broken only when the very same institution that sends a worker to a sewer without equipment comes to face the reality that it is more expensive than the other alternative. This paper is an attempt to make it so.

Caste as Labor Assignment: The Theoretical Architecture of Perpetuation

Any serious discussion on manual scavenging should start not with the law but with the social structure that laws have consistently failed to break down. The failure is not a mere

[6] Ministry of Housing and Urban Affairs, NAMASTE Scheme Guidelines (2023).
[7] *Safai Karamchari Andolan v. Union of India,* (2014) 11 SCC 224.
[8] B.R. Ambedkar, Constituent Assembly Debates, vol. VII, at 38 (Nov. 4, 1948).
[9] B.R. Ambedkar, *Annihilation of Caste* (1936).

coincidence. It is the logical outcome of employing rights-based legal tools to a problem that actually stems from the presence of a social order that allocates labour, dignity, and death even before any legal category comes into being, rather than from a lack of rights. To find out why India continues to make laws against manual scavenging without stopping it, we first need to understand what caste actually does, not as a sociological phenomenon to be looked at from the outside, but as a labour regime to be analytically dismantled from within.

Ambedkar's Diagnostic: The Division of Labourers, Not Labour

Ambedkar's major point of differentiation in Annihilation of Caste between the labour division and the labourer division[10] remains the sharpest lens through which manual scavenging should be analyzed. While a division of labour assigns tasks and can be changed in principle with economic changes or technological substitutions, a division of labourers assigns persons and functions on the logic of purity and pollution rather than the logic of efficiency. In other words, manual scavenging is not just the lowest job in a labour market but also the lowest position in a moral understanding of the universe. The Valmiki community doesn't clean sewers because they are the only ones available; they do so because Hindu social morality has, through generations, tied this work to their bodies, making occupational destiny a matter of birth, and enforcing it by means of ostracism, violence, and the denial of the only identity which the caste society allows them to have.[11]

This is the reason why the rights framework keeps failing and why the remedy cannot be found only at the level of the worker. The PEMSR Act 2013 forbids the work but does not offer the worker a different identity, community, or means of survival. The ban is imposed on the person whose whole social life was built around the forbidden act. Rehabilitation plans, skill development courses, and compensation arrangements also treat the issue as if it is poverty or lack of alternatives[12], whereas Ambedkar's perspective is that it is a caste in operation as a designed system the beneficiaries of this system are the institutions that exploit Dalit labour at below-market wages while at the same time passing on every cost of that extraction, including death, to Dalit bodies. Therefore, the reform initiative should not only aim at the worker who is suffering but also at the institution that extracts.

Constitutional Morality Against Social Morality: The Institutional Design Imperative

[10] B.R. Ambedkar, *Annihilation of Caste* (1936).
[11] *See Narendra Jadhav, Untouchables 23-27 (Scribner 2005).*
[12] *PEMSR Act, 2013, §§ 13-17.*

Ambedkar's second great contribution came not in Annihilation of Caste but in the Constituent Assembly, where he drew an increasingly urgent distinction between constitutional morality and social morality.[13]. For Ambedkar, constitutional morality was the morality not of a society that already exists in it but the one which it needs to be forced to practice through institutional arrangements because the social morality, i.e., the inherited moral common sense of a caste society, if left to itself, will in fact continue reproducing the caste hierarchies as it always did. He cautioned very specifically that constitutional morality is not an innate feeling but one that needs to be developed.

It is exactly at this point that institutional design becomes a constitutional obligation and not a policy preference. If social morality will inevitably lead to the reproduction of caste-sanitation labour unless there is an institutional constraint, then Article 17 cannot be fulfilled by legislation alone.[14]. The reform framework this paper presents is aimed at putting into practice Ambedkar's caution, i.e., to create institutions that will make constitutional morality the easiest path to follow, even for those who have never come to look at it as a personal value.

Upendra Baxi and the Epistemic Violence of Welfare Law: The Worker as Constitutional Creditor

If Ambedkar gives us a diagnosis of the problem, Upendra Baxi offers the jurisprudential framework to see why legal measures have, time and again, turned out to be ineffective. Baxi's lifework emphasizes that the first place in any search for justice must be given to the voices of suffering people, that the standard of constitutional law is not how well it is formalized, but how it manages to reach the actually rightless.[15]. Applying Baxi's lens to India's sanitation regime reveals a troubling structural inversion: the entire body of law governing this domain has constructed the sanitation worker as an administrative object — a recipient to be rehabilitated, a casualty to be compensated, a statistic to be tallied — rather than as a constitutional subject to whom an enforceable debt of rights is owed across seven decades. Measured against Baxi's test of whether law actually delivers justice to the rightless, India's sanitation rights framework registers as a systemic failure[16]. Every tool from the 1993 Act to NAMASTE has been created based on what the State will do for the worker, not what

[13] B.R. Ambedkar, Speech at the Constituent Assembly of India (Nov. 4, 1948).
[14] India Const. art. 17.
[15] Upendra Baxi, *The Future of Human Rights* 3-8 (3d ed., Oxford Univ. Press 2008) [hereinafter Baxi, *Future of Human Rights*].
[16] Baxi, *Future of Human Rights*, *supra* note 16, at 9-11.

the worker is entitled to[17]. If the State sees itself as the benefactor, it still holds power over deciding when, how much, and how to enforce. But when the State is acknowledged as the debtor, that power vanishes. Debts are enforced, not given as gifts.

Gopal Guru's political theory of humiliation is a new perspective on the discussion that neither Ambedkar nor Baxi adequately addresses. It elaborates on caste degradation not just as physical deprivation but as a politics that remains in the social body long after a certain incident.[18]

A Valmiki woman who exits sewer cleaning does not exit caste; the stigma of association with waste and pollution follows her into every subsequent social relation[19], from her children's school admissions to her own internalised sense of what she is permitted to aspire to. In Guru's account, caste humiliation operates as a relational force lodged within asymmetric power structures, and no legislative instrument, however well-drafted, can by itself dislodge those structures.[20]

The Anatomy of Judicial Ambivalence Constitutional Promise And Institutional Evasion

India's Supreme Court has dealt with manual scavenging with a high degree of sincerity in terms of morality. It has also, across two landmark judgments spanning nearly a decade, failed to ask the one question that would have made its orders effective: not what should happen, but what institutional mechanism ensures that it does.

Safai Karamchari Andolan v. Union of India (2014): Compensation as Tariff

The petition had been pending since December 2003. When the judgment finally came, the Court recognised that sewer deaths were a violation of Articles 14, 17, 21, and 23[21], treating it as a grave constitutional transgression. It directed that the next of kin of every individual who had died in sewerage operations since 1993 be traced and awarded ₹10 lakh per fatality.[22]

The moral force of this instruction was very strong. However, a single arithmetic fact completely undermined its structural argument. One unit of mechanised sewer cleaning

[17] PEMSR Act, 1993; PEMSR Act, 2013.
[18] Gopal Guru, *Humiliation: Claims and Context* (2009).
[19] *See* Guru, *Humiliation*, *supra* note 19, at 3-9.
[20] Gopal Guru, *Rejection of Rejection: Foregrounding Self-Respect*, *in* Guru, *Humiliation*, *supra* note 19, at 209, 211-13.
[21] *Safai Karamchari Andolan v. Union of India*, (2014) 11 SCC 224.
[22] *Id.* at 224

equipment costs ₹40- 80 lakh per unit, a one-time capital expenditure. Workers from the Dalit community working informally cost ₹500- 800 per day. Only half of the workers who died while cleaning sewers from 1993 to 2013 received the ₹10 lakh compensation that the Court had ordered.[23]. Sadly, paid irregularly, challenged frequently, and delayed systematically, the compensation order did not influence the municipal cost calculation at all. It turned the death of a Dalit sewer worker into just another municipal budget item, something that can be done and, unfortunately, often is. This is not a deterrent. It is a tariff: a price that makes a practice permissible at a cost, rather than a consequence that makes it institutionally irrational.

The identification instruction was also structurally flawed. The Court ordered the count without naming the one who counts, the one who audits, the timeline, or what would happen if there was non-compliance. The petitioners, working with limited resources, identified 1, 098 manual scavengers in Bihar alone; the State's own Progress Report claimed only 136[24]. The difference is not a counting mistake. It is institutional self-interest; the one who counts is also the one who violates. The Court had asked the accused to file its own charge sheet.

***Dr. Balram Singh v. Union of India* (2023): Escalation Without Architecture**

Nine years later, the Court returned, not to decide a new legal question, but on the ground that the previous answers had not been implemented. It held that most States had not even constituted the statutory monitoring committees themselves, which, according to the 2013 Act, are the committees that merely require government notification for their establishment.[25]. The compensation was increased to ₹30 lakh. Fourteen new orders were given. Justice Bhat referred to Ambedkar and said, this struggle was for dignity and freedom.[26]

In January 2025, the Court prohibited manual sewer cleaning in six metropolitan cities and asked chief executives to submit affidavits explaining how they had carried out the ban.[27]. This was a command that would have been needless if the 2014 orders had been followed properly. The Court is coming back because it has not changed the institution that it is continuously giving directions to, in the first place.

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[23] Citizens for Justice and Peace, *Manual Scavenger Deaths: How Effective Is the Law in Preventing Them?* (Nov. 30, 2022), https://cjp.org.in/manual-scavenger-deaths-how-effective-is-the-law-in-preventing-them/
[24] *Safai Karamchari Andolan v. Union of India*, (2014) 11 SCC 224.
[25] *Dr. Balram Singh v. Union of India*, 2023 INSC 950.
[26] *Dr. Balram Singh v. Union of India*, 2023 INSC 950 (India), *available at* https://ncsk.nic.in/sites/default/files/Suprem%20Court%20Judgement_20-Oct-2023.pdf
[27] *Dr. Balram Singh v. Union of India*, W.P. (C) No. 324 of 2020, Order of Jan. 29, 2025.

The Architecture of Impunity: Structural Incentives, Empirical Evidence, And The Cost Calculus Of Caste Labour

The preceding sections have revealed the theoretical and judicial aspects of the breakdown of India's sanitation governance. What is left is the ground-level evidence showing that this failure is not incidental but is systematically produced by the institutional incentives that no legal instrument has so far changed. Three intertwined devices keep the framework of impunity intact: a purposely enumerated deficit, a contractualisation shield, and a cost calculation that renders Dalit death cheaper than mechanisation.

The Enumeration Deficit: Invisibility as Institutional Strategy

The first form of impunity arises even before the death of a sanitation worker, through the deliberate underreporting of their numbers. The Supreme Court in the Balram Singh case (2023) strongly condemned the official surveys of 2013 and 2018 as inadequate and unreliable, pointing out that the government data was full of discrepancies, and large numbers of persons doing this work were not only missed but also wrongly classified. This is not an oversight by the administration. It is a case of sacrificing one's own interest in the structures.

The architecture of NAMASTE, the identification system, even accentuates this. According to the NAMASTE scheme, the ULB is the nodal authority; they have to carry out the enumeration of sewer workers engaged by the ULB.[28]. The very institution at fault for the deaths of sewer workers is itself the institution that identifies those workers who would cause that fault. [29]

The data establish the pattern. Using the government's own figures, the number of workers engaged in hazardous cleaning is 57, 758 yet only 16, 791 PPE kits were provided, less than 14, 000 workers got health cards, and only 837 safety workshops were held in more than 4, 800 Urban Local Bodies.[30]. A program that manages to cover only around thirty percent of its own target population during its lifetime is not a situation of an implementation delay. Rather, it is a case of institutional resistance by the very bodies that are in charge of its implementation.

The Contractualisation Shield: Legal Distance as Impunity

[28] Ministry of Housing and Urban Affairs & Ministry of Social Justice and Empowerment, *National Action for Mechanised Sanitation Ecosystem (NAMASTE)*.

[29] Garima Chawla, *The Grim Reality of Manual Scavenging in India: A Human Rights Perspective*, 8(8) J. Infrastructure Pol'y & Dev. 4623, 4623-24 (2024), https://systems.enpress-publisher.com/index.php/jipd/article/view/4623

[30] Minister of State for Social Justice and Empowerment Ramdas Athawale, Written Reply to Unstarred Question No. 3453, Rajya Sabha (Dec. 17, 2024) (India).

The second mechanism operates through a deliberate restructuring of employment relationships designed to sever legal accountability from operational control. At present, most sewer workers reach the worksite through layered contractual chains anchored in municipal bodies. When deaths occur, the municipality points to the contractor and the contractor to the sub-contractor, exposing deep accountability gaps in the system; the system of contracting supports inequalities among laborers and creates precarity, besides deepening and multiplying the inequality of castes.

The mechanism works precisely. Contractualisation not only decreases the wages and working conditions of Dalit workers, but it also acts as a fig leaf for the state's obligation for their deaths.[31] Despite the legal framework, cases highlight the lack of municipal monitoring and accountability in the privately contracted sewage work; as there is an official unwillingness to treat such cases as criminal offenses under the Act, some even consider them as "accidents".

An audit found that only 5 of 54 mortalities were workers being on the official government payroll, whereas the remaining were employees of private contractors or "loaned" from public departments.[32] This quite complicated employment chain enables governments and contractors to sidestep legal liability in the event of accidents or fatalities. The worker is dispatched by a municipal body to enter a sewer. He dies in the sewer. The municipal body accuses the contractor. The contractor accuses the sub-contractor. The subcontractor has gone out of business. The woman gets no compensation, and nobody is prosecuted. This chain isn't by chance. It's by design.

The Cost Calculus That Kills

The third and most decisive mechanism is arithmetic. Bezwada Wilson, who was honoured with the Magsaysay Award for his campaign against manual scavenging, said, "Where is the budgetary allocation? The finance minister has passed the buck of mechanisation to the cities and municipalities without making any plan of his own."

A rational municipal actor will not choose Dalit labour out of sheer evil. It will choose Dalit labour because, within the incentive structure that NAMASTE and every other earlier scheme have failed to change, Dalit labour is the economically rational choice. The hesitation to fully mechanise sanitation work is a reflection of the costs involved and also the social mindset

[31] *See* Chawla, *Grim Reality*, *supra* note 32, at 4626-27.
[32] *See* Citizens for Justice and Peace, *Supreme Court Bans Manual Scavenging in Metro Cities* (Feb. 10, 2025), https://cjp.org.in/supreme-court-bans-manual-scavenging-in-metro-cities/

that certain communities are assumed to be the ones who will keep doing these jobs[33]. Cost factors and social mindset are not two separate forces. They are highly interactive: social morality, on one hand, contributes to the availability of caste labour at below-market rates, and, on the other hand, the lack of fiscal consequence makes that availability institutionally attractive.

This is the architecture of impunity in its complete form: workers are not properly counted, so liabilities are kept to a minimum, use of contracts ensures that no person can be held responsible when death occurs, and the cost consideration is such that even if the liability is legally established, it is still less expensive to pay irregularly than to mechanise. By permitting all three mechanisms to stay unchanged, NAMASTE is not reforming this framework. It is functioning inside it.

Rebuilding The Framework: A Four-Pillar Accountability Architecture

The reforms proposed in this section do not add to the existing architecture of prohibition. They are designed to dismantle the three mechanisms, pillar by pillar, by relocating the cost of non-compliance from the worker's body to the perpetrator institution.

The District Sanitation Worker Registry: Making Workers Visible as Constitutional Persons

The central failure of NAMASTE's profiling exercise is that it obligates ULBs to list their own liabilities. The solution is institutional disengagement: the entity that does the counting must not be the one that gets to live with the consequences of the count. This paper recommends a District Sanitation Worker Registry (DSWR) that can be set up through a legislative amendment of Section 11 of the PEMSR Act 2013, changing the current identification mission from a command without a tool to a power with a home institution[34].

The DSWR should be managed together by one officer at the District Magistrate-level, by a member of the National Commission for Safai Karamcharis, and, very importantly, by a local civil society organisation with a record of working with sanitation communities in that district. Groups such as Safai Karmachari Andolan have shown, through their work, that community-based identification yields figures that are much higher than those obtained

[33] Chawla, *Grim Reality*, *supra* note 32, at 4629-30; *see also* Citizens for Justice and Peace, *Manual Scavenger Deaths: How Effective Is the Law in Preventing Them?* (Nov. 30, 2022), https://cjp.org.in/manual-scavenger-deaths-how-effective-is-the-law-in-preventing-them/.

[34] Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, No. 25, Acts of Parliament, 2013, § 11 (India) (requiring municipalities to conduct surveys to identify manual scavengers in urban areas, currently through a self-reporting mechanism that creates structural conflict of interest).

through government surveys, not because the authorities are incapable, but because they have conflicting interests.[35].

The citizen-suit mechanism in United States environmental law permits any community actor to compel enforcement directly against a non-compliant agency, vesting oversight power in those most affected when the State defaults. This approach demonstrates that community-driven compliance monitoring is not merely legally feasible but structurally superior to regulated entities reporting on themselves. India's DSWR framework should therefore enshrine civil society participation in worker identification as a statutory entitlement, not an executive-discretion scheme subject to withdrawal.

To solve the problem of migrant and contractual workers who are invisible due to falling between municipal jurisdictions, the registry must be linked to Aadhaar for portability. At the same time, privacy safeguards should be made obligatory. Most importantly, the rates of completion of the district-wise registries should be made public on a yearly basis, along with automatic grant consequences in case of non-completion. This last factor changes the registry from a mere passive database to an active enforcement tool: the financial cost resulting from non-enumeration falls on the ULB rather than the inconvenience of the administration.

Mechanisation Benchmarks in Finance Commission Grants: Inverting the Cost Calculus

The 16th Finance Commission, which handed in its report in November 2025 for the award period 2026-31, has suggested that 50% of the basic grant given to Urban Local Bodies for sanitation and solid waste management and water management activities, while the rest of the performance grants should be split between the local body-level outcomes and state-level reforms.[36] What it has not done, however, is to link those conditions to a specific, quantifiable result of zero hazardous manual cleaning. The paper's proposal builds directly on what the 16th Finance Commission has already done and takes it one step further[37].

The specific idea put forward is to introduce a three-tier compliance ladder connected with the performance grant portion of the 16th Finance Commission's allocation for urban local bodies.[38]. The first tier, basic compliance, entails registry completion and worker profiling.

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[35] *Safai Karamchari Andolan v. Union of India*, (2014) 11 SCC 224.

[36] Sixteenth Finance Commission, *Report of the Sixteenth Finance Commission for 2026-31* (submitted to President of India, Nov. 17, 2025) (India), *tabled in* Parliament of India (Feb. 1, 2026)

[37] Sixteenth Finance Commission Report, *supra* note 41.

[38] *See* Sixteenth Finance Commission Report, *supra* note 41 (establishing performance grant structure with local body-level outcomes as a condition of disbursement, upon which this paper's three-tier compliance ladder is

The second tier, intermediate compliance, involves documented procurement of mechanised equipment and safety protocols. The third tier, full compliance, requires the certification of no manual hazardous cleaning incidents in the last year, which are verified by DSWR's civil society component rather than ULB self-report.

A ULB at full compliance is granted a fifteen percent increase in its performance grant. On the other hand, a ULB with documented non-compliance not only gets a twenty percent deduction but also has to face public disclosure. Besides, these reductions are not considered punitive on their own; rather, they are intended to make the non-mechanisation cost higher than the mechanisation cost for the first time. When the loss in grant surpasses the equipment cost, the institutional logic that has been supporting caste-sanitation labour for the last several years changes radically. This radical change is the reform.

Strict Institutional Liability: Relocating the Cost of Death

The mechanism proposed is a National Sanitation Safety Tribunal (NSST), based on the structure of the National Green Tribunal, but with one major difference: the financial penalty has to be self-executing at the same time[39]. Any death in the sewer or septic tank system recorded in the NCRB database will automatically lead to three consequences without the need for any officer to have discretion. First, a First Information Report (FIR) will be lodged against the municipal officer who is the head of sewer maintenance, named in the DSWR as the responsible official. Second, a compensation of ₹50 lakh is given within forty-five days from the State Sanitation Liability Fund, which is a pre-funded source. This fund is supplemented by a compulsory levy on every municipal sanitation contract awarded, thus making the fund self-sustaining, and the direct link between the source of the extraction and the source of the restitution is made. Third, the performance grant of the ULB is withheld until the NSST completes its investigation.

From Rehabilitation to Restitution: Redesigning Transition Support

The last pillar deals with the fate of the worker who survives and the bereaved family of the deceased worker. At present, these are both considered by NAMASTE as the beneficiaries of state charity: the survivor undergoes a skill development program and is granted a loan; the family is given compensation, which sometimes takes years to arrive and may never actually

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proposed to be built); India Const. art. 280 (constituting the Finance Commission and empowering it to make recommendations on grants-in-aid to States).

[39] National Green Tribunal Act, No. 19, Acts of Parliament, 2010 (India)

arrive. Both approaches are constitutionally insufficient as they misunderstand the essence of the duty.

The constitutional creditor concept introduced in Section II has a major implication here: if Dalit sanitation workers are creditors of a constitutional debt caused by the caste-based labour exploitation over many years under structural coercion, then the appropriate way to address this is not by giving charitable rehabilitation. Instead, it should be restitution, giving back to the creditor what was taken from them.

In Mazibuko v. City of Johannesburg, South Africa's Constitutional Court held that municipalities bear affirmative constitutional duties to progressively expand basic service delivery, and that a regime which formally provides services while structurally excluding the most marginalised cannot be said to discharge that obligation.[40]. Applying to our case, NAMASTE's model with loan as a component is placing the debt burden on the worker, a person who has been doing caste-coerced labour at very low wages for years, and calling this rehabilitation. The South African case sets a precedent that a positive constitutional obligation is not fulfilled when the very nature of the remedy contributes to the ongoing deprivation.

The entire point of this pillar is to swap loan-driven self-employment with a three-year Restitutive Income Guarantee equal to the relevant minimum wage, given directly via the Direct Benefit Transfer mechanism without any conditions of starting a business. The guarantee is financed by the State Sanitation Liability Fund set up under Pillar 3, thus establishing a seamless monetary rationale: the ULBs that have exploited Dalit labour at sub-market levels for decades are the ones financing the compensation of the workers from whom they have extracted that labour.

Three distinct groups require provisions that go beyond the general guarantee. Women sanitation workers, who make up the vast majority of dry latrine cleaners and are systematically undercounted in the existing registries, must be covered under a gender-disaggregated DSWR with specific restitution rights, which is under Articles 15(3) and 21[41]. Widows and dependents of deceased workers have to be given survivor benefits automatically when the recording of the death of the deceased worker is done through the

[40] Mazibuko & Others v. City of Johannesburg & Others, [2009] ZACC 28; 2010 (4) SA 1 (CC) (S. Afr.).
[41] India Const. arts. 15(3), 21; *see* UNFPA India, *A Fresh Start for Women Sanitation Workers in India* (July 2022), https://www.usaforunfpa.org/a-fresh-start-for-women-sanitation-workers-in-india/ (documenting that women constitute the overwhelming majority of dry latrine cleaners and are systematically undercounted in sewer worker registries due to misclassification and informal employment arrangements).

NSST, instead of the conventional route of compensation intended for formal workers. Children of sanitation workers should be considered as a constitutionally distinct class eligible to receive dedicated educational scholarships for their restitution, rather than being a welfare benefit that is subject to the next budget cycle.

Conclusion

This paper has consistently highlighted one fact: India has the legislation to prohibit manual scavenging, but what it really misses are institutions that would make the abolition the rational choice of those who are responsible for delivering it. The four pillars that are presented here are not additional elements to this structure. They dismantle it by making non-compliance automatically costly, enforcement self-executing, and restitution an obligation rather than a discretion.

The next step should not be another scheme or a Supreme Court direction. Instead, it should be three very focused legislative measures, namely: (i) an amendment to Section 11 of the PEMSR Act for the creation of an independently audited District Sanitation Worker Registry with a mandatory involvement of civil society for the distribution of reported cases; (ii) a 16th Finance Commission performance benchmark requiring urban local bodies to have zero manual hazardous cleaning as a condition for the release of grants; and (iii) a National Sanitation Safety Tribunal Act with self-executing financial triggers to be funded by a mandatory levy on municipal sanitation contracts. Together, these three steps will achieve what thirty years of prohibition have failed to do: they will constitutionally allocate the cost of caste-sanitation labour to the institution that continues it, rather than to the worker's body that carries it out.

FROM PROTECTION TO PROSECUTION: POA ACT

Raushani Kumari[*] *& Shrishti Garg*[**]

Abstract

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, also known as the SC/ST Act, stands as one of the most significant pieces of legislation on social justice, intended to protect the country's historically marginalized communities and ward off the pertinacious discrimination in India, but despite its robust legislation, its promise largely fails to erode deep seated caste prejudices within the justice and society itself. The Act is based on Part III's Article 17, which outlaws untouchability, as well as Part XVI (Articles 330–342), which contains special provisions for the protection of Scheduled Tribes and Scheduled Castes from exploitation.

This analysis critically examines the structural and institutional failure of the enforcement. Such as delayed FIRs, tremendously low conviction rate, etc. The weakness of the POA regime lies not only in the legislative deficiency, but also in the combustible political fallout, misuse by non SCs and non STs (Land mafia) people for their personal benefit, administrative inertia, delayed relief reimbursement, and many more. Many atrocities have been committed against them since time immemorial.

The Supreme Court of India stated that the SC/ST act has turned into a tool for "blackmail." Some people use it to seek "vengeance" and fulfil their personal agendas.

There are three systemic failures: (i) The institutional bias ingrained in policies implementation drawbacks, accountability gaps, and overall effectiveness. (ii) The correlation between local governments, land mafia, administration that sustains the eviction of STs, SCs communities. (iii) The privation of effective mechanisms and dilution from charges that protect them from accountability.

This analysis studies the consequences leading to the enactment of this act and critically maps its provisions with a bird's eye view. The abstract's equilibrium analysis, "India does not need a better law on atrocities it needs an institutional ecosystem capable of taking the law seriously it already has," will stick in the minds of competition evaluators.

Key words- *Social Justice, Caste Discrimination, Institutional Failure, Prevention of Atrocities, Marginalized Communities.*

Introduction

The social hierarchy and occupation divisions, which is deep rooted in our society, yielded by social evils like casteism, untouchability and discrimination, it draws centuries of caste

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hierarchy and social exclusion that resulted in failure of human and systematic dereliction of duty against marginalized communities, particularly Scheduled Castes [SCs] and Scheduled Tribes [STs].

Even after independence, caste-based atrocities continued in many forms. The persistence of such practices made it clear that it takes centre stage in discussion about social inequality and injustice. It has given rise to profound suffering for many people. The Act was created in response to a very unsettling empirical reality: the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 had proven severely insufficient to address this unique category of socially motivated violence, crimes against Dalits and Adivasis were widespread, and their perpetrators went mostly unpunished.

The Indian Parliament passed Act 33 of 1989 on September 11, 1989. The Act is also referred to as the Atrocities Act, POA, or SC/ST Act. The Act went into effect on January 30, 1990, after being published in the Gazette of India, Extraordinary, Part II, sec. 3(ii), dated January 29, 1990 (notification No. S.O. 106(E)). Significant changes were made to the 1989 Act in 2013, 2014, 2015, 2018, and 2019. The Act was last modified on October 31, 2019, as of April 1, 2023.[1]

The Parliament reacted to this ingrained violence by the SC/ST (Prevention of Atrocities) Act, 1989. It was the result of the intensely shocking *Kilvenmani Massacre (1968), the Belchi massacre (1977), the Karamchedu massacre (1985),* and *the Tsundur massacre (1991)* - incidents that gave a graphic demonstration of how ineffective the normal criminal law is when it comes to safeguarding Dalit and Adivasi communities. Although, caste atrocities were not on the decline as constitution had outlawed untouchability in Article 17, they were transforming and multiplying.

This paper contends that despite the SC/ST Act's structurally sound legislative framework, it functions in an extremely dysfunctional institutional setting. Three compounding failures have troubled the Act: *first,* an institutional bias ingrained in prosecutorial and police structures; *second*, a risky relationship between caste power, land interests, and local administration; and *third,* the progressive judicial dilution of the Act's protective provisions.

The objectives of this Act to emphasise the intention of the Act is for the government to come

[1] The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 (India), as amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, No. 1, Acts of Parliament, 2016 (India), and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, No. 27, Acts of Parliament, 2018 (India).

up with justice to the scheduled communities through preventive and proactive efforts. Yet, after so many years, this Act record on the ground tells a gruesome story. Due to these shortcomings, the Act is purposeless, leaving victims in a state of unfairness and perpetual fear.

Constitutional Foundations and Legislative genesis

The SC/ST Act has a normative legitimacy that is based on various provisions of the Indian Constitution. Article 17 clearly abolishes untouchability and the practice of it in any manner is prohibited and enforcing any disability that exists as a result is a punishable offense. Part XVI in articles 330 through 342 gives an outline of protection discrimination and special treatment of SCs and STs. The Article 46 (Directive Principles) directs the State to encourage with particular diligence educational and economic interests of the weaker sections and safeguard them against social injustice and being exploited in every way.

Although India had undertaken these constitutional promises, there were unprecedented caste-based atrocities in pre-1989 India. The Protection of Civil Rights Act, 1955 (which was a replacement to the Untouchability (Offences) Act, 1955) was too little it dealt exclusively with untouchability in its traditional, classical meaning, but not the entire gamut of atrocities. The conviction rates were pathetic. FIRs by the police were habitually denied. Witnesses turned hostile. The criminals, who were usually landlords belonging to high caste and thus having strong political ties in the local area, went scot-free.

The SC/ST (Prevention of Atrocities) Act, 1989 was thus formed, bearing in mind that it is an overall corrective action. It developed a separate set of offences - compel the members of SC/ST communities to drink unseemly substances, to sexual assaults, deprive them of their land, and subject them to social boycott, - and made the punishment severe. Importantly, it established special courts which were to be used to trial such offences within a short period and introduced special prosecutors. These provisions were further reinforced in the 2015 Amendment to the Act that included new categories of offences and planned provisions. Article 15[4] permitted the state to make special provisions for SCs and STs. Article 46 directed the state to protect SCs and STs from social injustice and all forma of exploitation. Article 23, under the Rights Against exploitation, prohibits trafficking in human beings, and forced labour. These provisions speculate the vision of Dr. B.R. Ambedkar, the principal architect of the constitution who had personally encounter of caste atrocities and was committed to its eradication.

This was recognised by the Indian Prime Minister *Manmohan Singh* in a speech delivered on 7 September 2009, when he stated that "it is shocking that the conviction rate for cases of atrocities against SC/STs is less than 30% against average of 42% for all cognizable offences.

Key Provisions:

In section 3 of the Act, there are twenty-two acts of atrocity. These consist of forcing an SC/ST member to drink or eat anything that is inedible or obnoxious, dumping excreta or other obnoxious material on their premises, offences parading them naked, depriving them of their land wrongfully and interfering with their right to vote and other manifestations of sexual violence. The 2015 Amendment has added a significant number of offences to this list, with such acts as using or allowing the use of manual scavenging, applying social or economic boycott, denying access to water sources, and destroying cultural property.

Procedural Provisions:

The Act creates unique procedural system that aims at hastening justice. In section 14, the Special Courts are established where the special cases under the Act are to be tried. Section 15A is also inserted by the 2015 amendment, which offers the rights of victims and witnesses such as protection, relief, and rehabilitation. Section 4 criminalises the occurrence of dereliction of duty by the public servants, which is a punishable offence, and a great potential this would be, yet it is not fully applied.[2] The Act also offers anticipatory bail restrictions the subject of the controversy in the Supreme Court in 2018 of Section 18.

Anticipatory Bail and Non-Bailable Offences:

Section 18 of the Act that prohibits the issuance of anticipatory bail to individuals charged under the Act, is one of the most influential procedural aspects of the Act.[3] Every crime that is committed by the Act is cognizable (not requiring a warrant to arrest) and non-bailable. These were meant to ensure that the accused who was often an influential person with means to coerce the witnesses could not use anticipatory bail as a shield of avoiding arrest and consequently coerce the victim into renouncing the complaint.[4]

Relief and Rehabilitation:

Victims can receive immediate financial assistance, food, clothing, and shelter under the Act and its Rules. Atrocity victims are entitled to compensation under Rule 12(4), which must be

[2] The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, §§ 4, 14, 15A, No. 33, Acts of Parliament, 1989 (India).
[3] The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, § 18, No. 33, Acts of Parliament, 1989 (India).
[4] *Prithvi Raj Chauhan v. Union of India*, (2020) 4 SCC 727 (India).

given within three months of the crime being reported. In reality, these deadlines are frequently missed, and relief is frequently given after years of bureaucratic delay, if at all, as the National Dalit Movement for Justice and several state-level studies have shown. Financial relief up to 5 lakhs.

Structural and Institutional Failure in Enforcement

The SC/ST (Prevention of Atrocities) Act, 1989 is rooted in a good legislative framework and its provisions on reading with the judicial interpretations of the same reveal the transformative intentions of the law and the current contradictions in its enforcement. Any fair guess with the SC/ST [Prevention of Atrocities] Act, 1989, must begin with the acknowledgment that its failures are not merely institutional but rather legislative- override mechanism of state was charged with its application- and that the court itself, which might have provided the remedy, has itself rendered a jurisprudence which on the once of protective and contradictory, progressing and narrowing, reflects the deep discomfort of the law professionalism of India with the legitimate implications of the law it is called upon to administer.

The most severe and devastating institutional failure is at very benchmark of the criminal justice process: *the consistent non- registration or intentional delay of First Information Reports*. In a country where caste hierarchy is reflected in the composition of the constabulary, police officers. Powerful dominant caste communities repeatably refused to register the case. It also includes threats of counter- complaints, social ostracism, and economic retaliation- to secure withdrawal of complaints.[5] According to NCRB report, the 2025 data releases, a high number of cases are pending in courts under the SC/ST (PoA) Act, 1989 (3,07,355 cases pending as per recent reports).

Beneath every registered case lies a dark ocean of violence and humiliation that never make up into the formal record and therefore never achieve the remedy that Act promises. Even tough cases are registered; *investigative failures amplify initially* suffered injury systematically. Slow response in apprehending accused individuals who have in many cases been economically or politically powerful as compared to their victims means that they are able to manipulate the evidence, bully the witnesses and organize their own social defence by the time the investigation catches up. Medical and forensic evidence that is vital in cases of sexual assault, physical violence, and property destruction are often lost by effect or mere

[5] The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, § 4(2)(b), No. 33, Acts of Parliament, 1989 (India); *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1 (India).

negligence of the administrative officials. Witness testimonies are taken in a manner that creates doubt and discrepancies which will be later turned against them by defence agents in court. But worst of all, investigating officers of dominant castes openly conspire with alleged offenders, leaking information about the inquiry, training witnesses not to testify true to their testimonies, and issuing charge sheets that are so flimsy in evidential matter that acquittal is the only logical result, and all of this has been done with impunity practically beyond law, because Section 4 of the Act making such dereliction of duty a criminal offence has been invoked in a more or less vanishing rate, perpetuating over decades a culture of impunity which tells all officers in the institutions.

The result of these upstream mistakes is *a conviction rate that stands as a quiet national scandal:* below 30 percent nationally, less than 10 percent in several major states, and declining further in cases involving land and sexual violence, where social pressure on victims and witnesses under the most intense social pressure.

Under all these separately, catalogue able failures, is structural situation that renders them in a way logical on the side of those who practice them: *the high nexus of dominant-caste economic interests, land mafias, local government, and political elites* that we can find in rural and semi-urban India. The SC/ST communities are landless (or even close to the landless), and their right to the land assigned by the government, forest land, and common land is the constant target of the predatory encroachment of socially, economically, and administratively powerful members of the community. The SC/ST Act is instrumentalised or repressed in inverse proportion of the power relation of the local political economy - mobilised by the powerful against the powerless when it is convenient, buried when it threatens the dominant-caste interests - and the revenue officers, patwaris, block development officers, and police inspectors are formally the agents of the implementation of the Act, are often its saboteurs in practice. Against this institutional scene of failure, it is necessary to read the judicial record of the Act and that record, when studied, is highly ambivalent.

Administrative Inertia and Delayed Relief- The compulsory relief offered under the SC/ST ACT and Rules are a binding promise to justice to the victims in an extraordinary manner. The Rules provide that the interim relief should be paid within seven days after an atrocity has been brought to the attention of the district authorities. Practically, relief disbursement is full of extraordinary delay, bureaucratic apathy and corruption. Victims are often compelled to visit government offices on several occasions, replicate documents that they never had in the first place, and move through a hostile system of administration which does not

necessarily look at them with compassion and urgency as required by law. The monitoring committees provided in the Act such as the high-power Committee of the State level and the vigilance and monitoring committees of the districts are on paper. They have infrequent or no meetings, and their role as overseers is merely superficial. Special Officers mandated to oversee the implementation on a regular basis do not perform their mandate. Such abdication of the administrative system implies that the victorious victims will still have to face struggle to receive the relief that they are legally entitled to by registering FIRs and charge-sheeting cases.

The Problem of Misuse and Dilution

The misuse of the SC/ST Act has emerged as an intensely politicized topic in modern India. Some dominant, caste groups, political parties, and even certain judicial members have contended that the Act can be and is misused that people lodge complaints, either falsifying or exaggerating the facts, mainly to serve their own interests like personal enmity, property fights, or a political vendetta.

The subsequent nationwide protests, mainly by SC/ST communities, and the quick legislative reaction with the SC/ST (POA) Amendment Act, 2018, which reinstated the original setup and negated the Supreme Court's protective measures, showed how deeply Dalit and Adivasi communities were attached to the Act as a safeguard. Even the Supreme Court's Review Bench admitted the earlier judgment to be problematic and recalled the changed directions.

Data on Misuse and False Allegations:

The case for systemic misuse according to empirical data hinges mainly on two statistics: a high acquittal rate under the Act and a large fraction of cases being labelled 'false' during police investigation. Both, after thorough examination, turn out to be extremely unreliable indicators of actual misuse. National Crime Records Bureau data, analysed in frame and through filter of other data, shows that very few acquittals in SC/ST acceptance cases are due to false complaints rather than institutional failures such as: witnesses getting hostile under social and economic pressures of dominant caste communities; the police that, due to their own upper caste biases, submit incomplete evidence to the court, not aiming for conviction but getting acquittal; Special Public Prosecutors that are without training, resources or accountability; and medical doctors that refuse to describe injuries with the precision required by law. In a justice system where the accused normally has the means, social standing, and better access to skilled lawyers much more than the victim; and where the whole local government machinery is structurally dominated by the interests of the upper castes; blaming

high acquittal rates for false complaints rather than for institutional capture is quite

False Cases Incidence: According to 2016 data from the National Judicial Academy, out of over 56,000 cases under investigation, 5,347 (approximately 9.49%) were found to be false by police.

The social pushback, financial loss, or even physical attacks, this makes false claims seem common, but it is not just about lies, it is about fear. The idea that misuse is widespread might not be true, but it is used instead to block justice. It stops real victims from speaking up. And plus, it also lets officials avoid acting on the law. So, the story about misuse may not reflect reality, more like a way to avoid responsibility.

Dilution Through Judicial Interpretation:

Beyond the very loud and clear Mahajan controversy, the Act has been undermined in a quieter but more deep and structural way by the steady buildup of the judiciary interpretations which, although individually reasonable, collectively act to limit the Act's protective scope in ways that neither the text nor the constitutional basis of the Act support. The major pillar of this weakening is the necessity of proven caste motivation.

The judicial insistence, articulated most clearly in *Hitesh Verma v. State of Uttarakhand (2020)*[6] but visible in High Court jurisprudence for decades, that the Act applies only where the complainant can affirmatively demonstrate that the offence was committed specifically on account of their SC/ST identity. However, the Court created a problematic precedent by holding that the SC/ST Act would not apply unless the incident occurred 'on account of' the victim's caste identity. While the Court's reasoning was not without logic, the practical effect has been to narrow the Act's protective scope and increase the burden on complainants to prove caste motivation in every case.

This rule doesn't fit what Section 3 actually says. Dalit victims have to prove something that's hard to show, because attackers rarely say why they acted, and the proof usually mixes caste motives with other reasons like land or past disputes. It also means the law rarely applies if someone can offer a believable reason that not about caste. So, unless there's clear caste hate, the law seems to stay out of action. It is very misleading, caste as a social structure is one of the things which a lot of people misunderstand very fundamentally. The point is that caste is not just one of the possible motivations in an act, something that can either be there or not be there; but rather, it is a pervasive ordering of social relations so that virtually every

[6] Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710.

conflict between two persons of unequal caste status carries elements of assertion and resistance that cannot be removed just by labelling the dispute as personal or civil one. All in all, these tendencies to interpret amount to a judicial rewriting of the Act's fundamental design a design that the legislature, through enacting the 2015 and 2018 Amendments, has most clearly and explicitly rejected, yet which in the daily functioning of courts across the country remains almost always in ways that no single legislative intervention can fully remedy it.

Landmark Judgements and Judicial Attitudes

State of Karnataka v. Appa Balu Ingale - (1995)[7]

The judgment, which is the cornerstone in the jurisprudential history of the Act, determined by the Supreme Court in 1995, and still is the toning rod of liberal, purposive interpretation of the legislation. The case was brought about as a result of a complaint against Act Section 3(1)(iii) which forbids the act of forcing a member of an SC/ST to do beggar or any other type of forced labour. The Sessions Court and the High Court had interpreted the facts in a very narrow manner effectively looking at this case as a normal civil or contractual case and not an atrocity. This was overruled by the Supreme Court with some degree of strength and it was found that the Act should be construed liberal and beneficent within the context of its constitutional mandate which is nothing short of the elimination of the centuries old tradition of untouchability and the systematic disenfranchisement of Dalits as a whole. The Court based its interpretative view on Article 17 of the Constitution that abolishes untouchability and that its practice is a punishable offence and Articles 14 and 21 which enshrines equality and dignity to all individuals irrespective of caste. It believed that a court that interpreted the Act technically and in a narrow way does not only run counter to the legislative intent of parliament but it is also a sort of betrayal of the constitutional promise to the SC/ST communities. The importance of the Appa Balu Ingale can never be overestimated: it made the principle that where there is ambiguity in the interpretation of the provisions of the Act, the ambiguity is resolved in favour of the victim and against the perpetrator and that the social purpose of anti-atrocity legislation required a purposive approach not a natural penal one. All other progressive judgments that have been made after the Act have been constructed on the basis of this.

[7] State of Karnataka v. Appa Balu Ingale, AIR 1993 SC 1126, 1995 Supp (4) SCC 469.

Dr. Subhash Kashinath Mahajan v. State of Maharashtra - (2018)[8]

There may be no decision in the history of the Act that has caused more controversy, more public outcry, or more swift reversal of a law, than this two-judge decision by the Supreme Court on 20 March 2018. The case was occasioned by an appeal to the use of the SC/ST Act on a petition challenging the use of the SC/ST Act against a public servant and the bench of Justices A.K. Goel and U.U. Lalit seized the opportunity to issue sweeping directions that fundamentally changed the Act in terms of its procedure. The Court was of the view that, first, no FIR can be registered under the Act without a preliminary inquiry by a Deputy Superintendent of Police to verify that the complaint is neither frivolous nor motivated; second, that no arrest of a public servant can be made under the Act unless the grant of the appointment is previously received by the appointing authority; and, third, that the bar to anticipatory bail in Section 18 is not absolute, and that in cases where it appears on the face of it that the allegations were false or motivated good faith is sufficient to entitle the complainant to The reasons given by the Court in making these directions were the supposed general abuse of the Act to make false complaints on individual or political grounds, and it cited very high acquittal percentages and heavy reliance on the judgments of the High Courts which had voiced similar sentiments. The SC/ST communities took them as a great judicial treachery. In response to a judicial ruling, the most violent in the history of independent India, the protests that broke out across India on 2 April 2018, Bharat Bandh, claimed at least 12 lives and hundreds more arrests. The scholarly, legal, and civil society denunciation of the judgment was no less vociferous: opponents noted that the Court had brought into law legislative clauses which were not contained in the Act; that the comparison between high acquittal rates and false cases was statistically unsophisticated, as the acquittals in India could easily be attributed to a breakdown in investigation and prosecution, not to false prosecution; and that the instruction given on preliminary inquiry prior to FIR registration was directly against the Constitution Bench decision in Lalita Kumari v. A government of U.P. (2014) to the effect that registration of a FIR is compulsory when a complaint of a cognizable offence comes in; and that no permission to arrest a public servant was needed, something that the Act was supposed to strike down in any case; government officials had established the very institutional protection of the powerful-caste criminal back in office that the Act intended to smash. Parliament even did not wait till the review petition was disposed of with the SC/ST (Prevention of Atrocities) Amendment Act, 2018 being passed a lightning-fast to approve the

[8] Dr. Subhash Kashinath Mahajan v. State of Maharashtra, 2018 (6) SCC 454.

Act with an extraordinary speed with the introduction of Section 18A into the Act.

Prithvi Raj Chauhan v. Union of India - (2020)[9]

This judgment of a three-judge bench of Justices Arun Mishra, Vineet Saran, and S. Ravindra Bhat, dated 10 February 2020, is the most detailed Supreme Court approval of the protective regime of the Act since Appa Balu Ingale. The court overturned the petition filed to review the Mahajan decision, as well as the writ applications to question the constitutional validity of the 2018 Amendment Act. In the review petitions, not only was the preliminary inquiry requirement but also the requirement to obtain prior approval before arresting a public servant and the dilution of the Section 18 bar recalled and set aside, as the bench decided that these directions were legislative directions and could not have been made under Articles 141 or 142 of the Constitution, were contrary to the constitutional scheme of Articles 15(4), 17 and 21, and disadvantaged the special procedural safeguards that Parliament had specifically sought to entrench in the Act as tools of substantive In its decision on the validity of the 2018 Amendment Act, the bench affirmed Section 18A as constitutional, and it was within the capacity of Parliament to legislate upon matters touching the procedure of investigating and prosecuting cognizable offences and the determination not to strike down judicial imposed procedural barriers was a valid exercise of legislative power based upon the constitutional duty of the State to safeguard the SC/ST communities. The most significant doctrinal input of the judgment is its expression of the principle that the non-obstante clause of section 18 of the Act, to the effect that the section 438 CrPC is not applicable, forms a part of the protective architecture of the Act, and it can neither be read down nor avoided by way of judicial intervention.

Patan Jamal Vali v. State of Andhra Pradesh - (2021)[10]

Perhaps the most jurisprudentially advanced and constitutionally progressive step in the recent history of the Act, and a landmark in Indian equality law more generally, is this judgment of a three-judge bench of Chief Justice N.V. Ramana, Justice J. Surya Kant, and Justice Hima Kohli, passed on 25 October 2021. It was a case of rape of a visually impaired Dalit woman and the question was whether in sentencing and formulating the charge under the SC/ST Act, the court had to consider not only the caste aspect of the identity of the victim but also her gender and to whether the particular vulnerability arising out of the combination of caste and gender required a special legal approach. The Supreme Court responded by

[9] Prithvi Raj Chauhan v. Union of India, AIR 2020 SC 1036., (2020) 4 SCC 727
[10] Patan Jamal Vali v. The State Of Andhra Pradesh, 2021 INSC 272., (2021) 16 SCC 225

saying yes with a lot of force. It believed that Dalit women are in a distinct place straddling caste and gender oppression, which is both not fully explained by a caste-centred analysis and not fully explained by a gender-centred analysis, but is a product of interrelated and reinforcing action of the two. The Court found that the constitutional guarantees of equality under Articles 14, 15, and 21, when applied properly, must be approachable on an intersectional basis, which is one that acknowledges the existence of qualitatively different forms of subordination which are not merely the aggregation of the axes of social disadvantage. This decision has far-reaching ramifications on the application and interpretation of the SC/ST Act to women cases, to the effect of where the Act is to be applied more sensitively to the particular types of violence - such as sexual violence as a means of caste assertion - experienced by Dalit women, and to the intersectional aspect in sentencing and in the evaluation of aggravating factors. This was directly based on international human rights documents, such as CEDAW and the Beijing Platform for Action, academic literature on intersectionality, to base its constitutional analysis in an advanced interpretation of the Indian caste-gender social dynamics.

Recommendations for Reforms

While there is the statutory provision, there is a big gap between what law says and what actually happens and it is not incidental but it reflects deep, systemic problems that need to be understood clearly to implement the act. In order to ensure that the objectives of the legislation are achieved, certain institutional and policy reforms are necessary. There are certain changes that should be implemented at multiple levels simultaneously.

Strengthening Institutional Machinery:

The ground level to reform the act is institutional. The act already provides for the creation of special courts in which the judges trained in sociology of caste and the jurisprudence of social justice legislation are appointed. These courts should be exclusive, fully functional with adequate infrastructure and resources. Time-bound trial mechanisms should also be implemented to reduce the delays and increase the efficiency of judicial process.

Police Accountability:

Section 4 of the act, which penalizes dereliction of duty by police servants, must be consistently enforced. Mandatory sensitisation training programmes on caste-based crimes and caste sensitivity should be conducted for police personnels. There should be strict accountability for non-registration of First Information Reports (FIRs) and dedicated SC/ST

cells in every district to ensure prompt legal action.

Victim and Witness Protection:

Victims and witnesses are often intimidated by the society and face societal pressure, and threats from perpetrators which discourages them from pursuing legal remedies. They must be provided visible and credible protection, including police escorts and legal support to build their confidence in the system. Their protection must be operationalized through state-funded support mechanisms and case-by-case oversight. Measures like this will encourage victims to come forward and participate in the judicial process without the fear of retaliation.

Administrative and Political Accountability:

The committees mandated by the act like monitoring and vigilance committees must be made functional. These committees should be accountable to state governments and work towards ensuring that they are putting forward recommendations that reflects the interests of SC/ST communities. The relationship between local communities, dominant-caste interests and land mafias must be addressed through structural reforms in land administration which includes strict enforcement of land ceiling laws and assigned-land protection statute. Appointments in political areas that oversee the enforcement machinery must be insulated from caste and biased considerations.

Data and Research:

Accurate data is crucial for the effectiveness of the law. A centralised, publicly accessible database of atrocity cases registered under the act should be maintained to track investigation progress, prosecution outcomes and conviction rates which would enable better oversight. The implementation reports at the district and national levels should be published regularly to enhance transparency and facilitate policy evaluation. Policymakers or courts cannot accurately detect the scale of the problem or measure the effectiveness of reforms without reliable data.

The success of the SC/ST Act lies not just in the robustness of its legal framework but also in the dedication of the agencies entrusted with its implementation. Enhancing accountability of administration, reforming judicial processes, and enabling vulnerable communities are crucial measures for the Act to serve its purpose of safeguarding those who have been historically discriminated against and subjected to violence.

Conclusion

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 remains, in

its letter, a very powerful piece of legislation for social justice. It covers wide, ranging provisions, its constitutional bases are very firm and its changes, particularly those made in 2015 and 2018, have addressed many of its weaknesses. But the fact that these heinous acts are still being committed, the extremely low number of convictions, the regular failures of police and administration and the sufferings of the SC/ST communities still going on all point to the fact that mere legislative refinement is not sufficient.

The real root of the problem is not the inadequacy of the law but the incapacity of the institutions and their unwillingness. The Indian State, right from the lowest level, the village police station, to the district collector's office and the Special Court level, has consistently failed to take the law seriously. Caste discrimination is not only alive in the minds of individuals; it is a part of the very institutional culture of the public administration and justice system. Unless there is a comprehensive transformation of this institutional culture through training accountability structural reform and a true political will, the SC/ST Act will continue to be nothing more than a symbol of aspirations instead of a tool for delivering justice.

There is no requirement for India to have a better law tackling atrocities. What it really needs is a system of institutions that can seriously implement the law. This would mean not only changing the law but also changing the nature of the bodies and administering them through which the law is enacted. The idea of Dr. B.R. Ambedkar that the Constitution would be a living document that can dismantle caste hierarchy calls for at least this.

RECONCILING CUSTOMARY TRIBAL SOVEREIGNTY AND STATE FOREST GOVERNANCE: A COMPARATIVE PUBLIC INTERNATIONAL LAW ANALYSIS OF THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006 AND ILO CONVENTION NO. 169

Alishba Khan[*]

Abstract

This paper compares India's Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 with International Labour Organization Convention No. 169 and asks whether customary tribal sovereignty and state forest governance can be reconciled. Both instruments abandon exclusionary forestry and treat long occupation as a source of legal right, but they differ on how far a community may decide for itself whether a project on its land goes ahead, on the ownership of minerals below the forest floor, and on who enforces the guarantees. Decisions of the Inter-American Court of Human Rights, the African Commission and Court on Human and Peoples' Rights and the Supreme Court of India are used to test the comparison. The paper finds that Free, Prior and Informed Consent in India depends on an executive direction, and that the Forest (Conservation) Rules, 2022 show how easily such a direction can be reshaped. It proposes statutory backing for Gram Sabha consent and a sliding scale of participation.

Key words: *Forest Rights Act, ILO Convention 169, Free Prior and Informed Consent, Gram Sabha, Indigenous Self-Determination*.

Introduction

A tribal household in a forest village in India can hold, at once, a customary claim to its land that is older than any statute, a title under the Forest Rights Act, 2006[1] that recognizes the claim, and a notice from a forest department that never accepted it. The coexistence is a product of history. Forest land passed to the state under eminent domain and a style of forestry that treated settlement as a nuisance, while the people living there went on using the land under custom. For such communities land is tied to identity, culture and livelihood

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[1]Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2, Acts of Parliament, 2007 (India) [hereinafter Forest Rights Act].

together, as the literature on indigenous peoples in international law has long said,[2] and ***the loss of forest land is the loss of a way of life*** that no cash compensation replaces.

The paper compares the Act with ILO Convention No. 169[3] and with the wider law on indigenous peoples, taking in the United Nations Declaration on the Rights of Indigenous Peoples[4] and the decisions of the Inter-American and African human rights bodies. India never ratified Convention No. 169. It remains party to the older Convention No. 107, which assumed that tribal peoples would merge in time into the national population and which the 1989 Convention was written to correct.[5] For India, then, Convention No. 169 is a benchmark and no more, and the interest of the comparison lies in seeing how far a domestic statute drafted without reference to the Convention nonetheless arrives at similar rules, and where it stops short.

Two questions guide the comparison: whether internal self-determination and customary control of land can sit alongside centralized forest governance, and what each instrument leaves to executive discretion.

The method is doctrinal. Three bodies of material are read side by side: the text and structure of the Forest Rights Act and of the executive instruments issued under it, the treaty text and soft law that make up the international standard, and the decisions of courts and commissions that have applied those standards to forests and forest peoples. Each is examined for what it guarantees, what it leaves out, and what it leaves to those who administer it. The analysis is confined to legal texts and reported decisions and says nothing about how the Act has been implemented in any particular district. The paper moves from theory to statute, from statute to comparison, and from comparison to the case law, and then turns to the difficulties of implementation and to what might be done about them.

[2]S. JAMES ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW (2d ed. 2004).
[3]Indigenous and Tribal Peoples Convention, 1989 (No. 169), June 27, 1989, 1650 U.N.T.S. 383 [hereinafter ILO Convention 169].
[4]United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007) [hereinafter UNDRIP].
[5]Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (No. 107), June 26, 1957, 328 U.N.T.S. 247. India ratified Convention No. 107 in 1958.

Theoretical and Conceptual Foundations under Public International Law

Self-determination appears in the first article of both 1966 covenants.[6] Applied to indigenous peoples it has mostly been read as an internal right, a claim to govern local affairs inside an existing state, with secession left out of it. The Declaration follows that reading. It affirms self-determination together with autonomy and self-government in internal and local matters,[7] and it adds a proviso that nothing in it authorizes action against the territorial integrity or political unity of a sovereign state.[8] ***Cultural integrity, collective rights and land rights are best taken as one entitlement***, because a community that keeps its land but loses the power to decide collectively how to use it, or the reverse, has lost most of what self-determination was meant to protect, and recognition of customary tenure is where the right first acquires practical content.[9]

The phrase customary tribal sovereignty needs some care. It does not describe a claim to statehood here. It describes a claim that a community's own rules about land, forest use and decision-making have a standing of their own and do not exist only at the pleasure of the state. Customary tenure is the clearest example. A household's right to a forest plot, or a village's right to graze a commons, is usually held under rules that the community itself makes and enforces, and the rules are rarely written down. Law can treat such rules in two ways. It can regard them as facts to be verified, which is what the Forest Rights Act does when it asks whether occupation predates a cut-off date, or it can regard them as sources of right, which is closer to what Article 8 of Convention No. 169 does when it asks states to have due regard to customs and customary laws.[10]

A second difficulty concerns the bearer of the right. Indian constitutional law is built mainly around individual rights, and the fundamental rights in Part III are drafted for persons, whereas the claims that matter in forests are frequently held by a village, a clan or a hamlet. International law has moved further toward recognizing collective subjects, and Convention No. 169 speaks throughout of peoples and not of individuals. The gap has a practical consequence. A court asked to enforce an individual's right to livelihood can order compensation to that individual, but a community's claim to manage a forest cannot be

[6]International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights art. 1, Dec. 16, 1966, 993 U.N.T.S. 3.
[7]UNDRIP, supra note 4, arts. 3-4.
[8]Id. art. 46(1).
[9]ANAYA, supra note 2.
[10]ILO Convention 169, supra note 3, art. 8(1).

satisfied by compensating its members one by one, and a remedy that treats it as if it could destroys what was claimed. Any comparison of the Act with the Convention has to keep asking whether the collective character of the right survives translation into domestic procedure.

Convention No. 169, adopted in 1989, binds the states that ratify it and is mostly concerned with participation, with consultation through the communities' own institutions and with recognition of traditional tenure,[11] whereas the Declaration of 2007, which is a General Assembly resolution and therefore soft law, sets minimum standards and states ***Free, Prior and Informed Consent (FPIC)*** more firmly than the Convention does.[12] India voted for the Declaration when the General Assembly adopted it,[13] which says something about its position even though the text creates no obligations.

Whether FPIC has hardened into a rule of customary international law is disputed. The Inter-American Court has treated consent for large-scale projects as a requirement of the American Convention, and the African Commission has followed it, but state practice is uneven, and India, which has not ratified Convention No. 169, has not treated the rule as binding on it. The Declaration is best read as evidence of an emerging norm and as a guide to the interpretation of domestic statutes, and that is how this paper uses it.

India is dualist, so a treaty takes domestic effect only after Parliament legislates.[14] The Constitution directs the state to respect international law and treaty obligations,[15] and in Vishaka the Supreme Court read international conventions into the fundamental rights where domestic law was silent,[16] but a directive principle and a rule of interpretation are thin support for a community that wants to enforce a treaty text against a forest department. The Constitution also has its own vocabulary of tribal protection, which is older than the international debate. Under the Fifth Schedule the Governor of a State may regulate or prohibit the transfer of land by or among members of Scheduled Tribes in Scheduled Areas,[17] and that provision carries much of the weight of the reasoning in Samatha, discussed in Part IV.

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[11]Id. arts. 6-7, 13-15.
[12]UNDRIP, supra note 4, arts. 19, 32.
[13]U.N. GAOR, 61st Sess., 107th plen. mtg., U.N. Doc. A/61/PV.107 (Sept. 13, 2007).
[14]INDIA CONST. art. 253.
[15]Id. art. 51, cl. (c).
[16]Vishaka v. State of Rajasthan, (1997) 6 SCC 241.
[17]INDIA CONST. art. 244, sched. V, ¶ 5(2).

Statutory Analysis of India's Forest Rights Act, 2006

The Indian Forest Act, 1927[18] was the colonial instrument that placed forests under state control. It allowed the state to constitute reserved and protected forests, and a right that had not been recorded when a forest was constituted could be lost. Independent India kept that control through the Forest (Conservation) Act, 1980[19] and the Wildlife (Protection) Act, 1972,[20] which added a requirement of central approval for non-forest use of forest land and a system of national parks and sanctuaries from which settlement was largely excluded. The rights of the people living in the forests were never recorded, and authority went to the forest bureaucracy. The preamble to the Forest Rights Act calls the result a "historical injustice."[21]

The Act divides rights into individual and community kinds. ***Individual Forest Rights (IFR)*** allow a person to hold and live on forest land under individual or common occupation for habitation or self-cultivation.[22] ***Community Forest Rights (CFR)*** cover community tenure, including nistar, the customary right to draw everyday needs from the forest, and ownership of, access to and the power to dispose of minor forest produce.[23] They also include a right to protect, regenerate, conserve or manage a community forest resource that the community has traditionally protected and used sustainably.[24] The Act defines that resource as customary common forest land within the traditional boundaries of the village,[25] a definition that resembles the international idea of territory more than the idea of a parcel of property. Recognition is declaratory, in that verification records rights which already existed, and until verification is finished no member of a forest dwelling Scheduled Tribe and no other traditional forest dweller may be evicted from forest land under occupation.[26]

The Act's personal scope is wider than the word tribal suggests. It protects forest dwelling Scheduled Tribes and also other traditional forest dwellers, defined as members or communities who for at least three generations before 13 December 2005 primarily resided in and depended on the forest or forest land for their bona fide livelihood needs, a generation being reckoned at twenty-five years.[27] Primitive tribal groups and pre-agricultural

[18]Indian Forest Act, 1927, No. 16, Acts of Imperial Legislative Council, 1927 (India).
[19]Forest (Conservation) Act, 1980, No. 69, Acts of Parliament, 1980 (India).
[20]Wildlife (Protection) Act, 1972, No. 53, Acts of Parliament, 1972 (India).
[21]Forest Rights Act, supra note 1, pmbl.
[22]Id. § 3(1)(a).
[23]Id. § 3(1)(b)-(c).
[24]Id. § 3(1)(i).
[25]Id. § 2(a).
[26]Id. § 4(5).
[27]Id. § 2(c), (o).

communities receive a separate right to habitat and habitation.[28] The three-generation test gives a non-tribal household a claim, and it also fixes a cut-off date that every household has to meet with documentary or oral evidence of occupation. That requirement of proof is the point at which customary tenure, which is rarely written down, meets a statute that needs evidence.

The Gram Sabha starts the process of determining the nature and extent of individual and community rights,[29] committees at the sub-divisional and district levels review what it decides,[30] and conservation duties, including protection of wildlife, biodiversity and habitat, rest with it as well.[31]

Two features of the process affect how the rights work in practice. The first is the burden of proof. A claimant has to show occupation, and the rules made under the Act allow a range of evidence, so that a village elder's account can count alongside a revenue record, but the choice of what to accept lies with committees whose members may be more used to documents than to oral testimony. The second is the Act's treatment of conservation. The preamble presents recognized rights as strengthening the conservation regime, and the duties placed on rights holders point the same way, so the Act cannot be read simply as a transfer of control from the department to the village. It is better read as an attempt to make the village a co-manager, and whether that attempt succeeds depends on a division of powers that the text leaves incomplete.

The Act itself uses the language of consent in one context only. Rights inside the critical wildlife habitats of national parks and sanctuaries may be modified or resettled only after a series of conditions is met, among them the free informed consent of the Gram Sabhas concerned to the proposed resettlement and to the package offered, obtained in writing.[32] The provision runs parallel to Article 16(2) of the Convention, which likewise reserves the strongest form of consent for relocation.

Gram Sabha consent to the diversion of forest land is often described as a requirement of the Forest Rights Act, and the text of the Act does not say so in terms. The requirement comes from a direction of the Ministry of Environment and Forests, issued under the Forest

[28]Id. § 3(1)(e).
[29]Id. § 6(1).
[30]Id. § 6(3), (6).
[31]Id. § 5.
[32]Id. § 4(2).

(Conservation) Act, which asks for a certificate that recognition of rights is complete and that the Gram Sabhas concerned have consented.[33] In Scheduled Areas the Panchayats (Extension to the Scheduled Areas) Act, 1996 adds a duty to consult the Gram Sabha before land is acquired for development projects.[34]

Comparative Public International Law Analysis: The FRA 2006 and ILO Convention 169

The comparison has to begin with the question of who each instrument protects. Convention No. 169 applies to tribal peoples whose social, cultural and economic conditions distinguish them from the rest of the national community and whose status is regulated wholly or partly by their own customs or traditions or by special laws, and to peoples regarded as indigenous because they descend from populations that inhabited the country at the time of conquest or colonization (Article 1).[35] The Forest Rights Act reaches Scheduled Tribes and other traditional forest dwellers alike and is tied to forest use, and no particular status is required. It is broader than the Convention in one direction, since non-tribal households qualify, and narrower in another, since it protects nobody who does not live in or depend on forest land.

On land, the Convention asks states to recognize the rights of ownership and possession of the peoples concerned over the lands they traditionally occupy, to identify those lands and to guarantee effective protection of the rights (Articles 13 and 14).[36] The Act reaches for the same end through a process of recognition, demarcation and titling that starts with the Gram Sabha and is run by community bodies and not by the forest administration.[37] Recognized rights are heritable but not alienable or transferable,[38] which protects a community against sale and suits a system of tenure in which land is held for a lineage and is not owned in the market sense. Both instruments treat ***prior possession and occupation as a sufficient basis for a property right*** and neither requires title issued by the state. Their objects differ: the Convention speaks of territory, and the Act of forest land and a closed list of rights.

Article 6(2) of the Convention requires that consultations be undertaken "in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent

[33]Ministry of Environment & Forests, Government of India, Letter No. 11-9/98-FC (pt.) (Aug. 3, 2009).
[34]Panchayats (Extension to the Scheduled Areas) Act, 1996, § 4(i), No. 40, Acts of Parliament, 1996 (India) [hereinafter PESA].
[35]ILO Convention 169, supra note 3, art. 1.
[36]Id. arts. 13-14.
[37]Forest Rights Act, supra note 1, § 6.
[38]Id. § 4(4).

to the proposed measures."[39] The formula stops short of a veto, and the one situation in which consent is demanded outright is relocation, which may take place "only with their free and informed consent."[40] The Declaration asks for more. Its Article 32(2) directs states to consult and cooperate in good faith with the peoples concerned "in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources," and Articles 10 and 19 apply the same standard to relocation and to legislative and administrative measures.[41]

Consent in India attaches, outside the narrow case of resettlement from critical wildlife habitats, only to the diversion of forest land, and it gives a community no general right to decide whether a project proceeds. It is delivered through the ministry direction[42] and through the consultation requirement of the Panchayats Act,[43] and a ministry can amend or withdraw a direction without any debate in Parliament.

Remedies deserve a brief comparison. The Convention requires that the peoples concerned be able to take legal proceedings, individually or through their representative bodies, for the effective protection of their rights (Article 12).[44] The Act builds its own review structure of committees, and beyond that a claimant is left with the ordinary jurisdiction of the High Courts to issue writs.[45] The structure works for a household with an identifiable grievance against a rejected claim. It works less well for a community that wants to challenge a diversion before it happens, because the review committees deal with claims and are not designed to hear objections to projects.

Natural resources are treated in Article 15 of the Convention, which safeguards the rights of the peoples concerned to the resources of their lands, including participation in their use, management and conservation. Where the state retains ownership of minerals or sub-surface resources, governments must maintain procedures for consulting the peoples concerned "with a view to ascertaining whether and to what degree their interests would be prejudiced" before any exploration or exploitation is undertaken, and the peoples are to share in the benefits

[39]ILO Convention 169, supra note 3, art. 6(1)(a), (2).
[40]Id. art. 16(2).
[41]UNDRIP, supra note 4, arts. 10, 19, 32(2).
[42]Ministry of Environment & Forests, supra note 33.
[43]PESA, supra note 34, § 4(i).
[44]ILO Convention 169, supra note 3, art. 12.
[45]INDIA CONST. art. 226.

wherever possible and to receive fair compensation for any damage.[46] The Declaration affirms the right to lands and resources that indigenous peoples have traditionally owned, occupied or used.[47] Indian law leaves minerals with the state under the Mines and Minerals (Development and Regulation) Act, 1957,[48] which since 2015 has required District Mineral Foundations for the benefit of persons affected by mining operations,[49] and the rights listed in the Forest Rights Act concern forest land and forest produce, which puts the sub-surface outside them.[50] The Supreme Court has nonetheless limited what the state can do with tribal land, holding in Samatha that the government may not lease land in Scheduled Areas to non-tribals for mining.[51] Ownership of the sub-surface can coexist with customary use of the surface only if procedure does the reconciling: benefit-sharing, environmental and social impact assessment, and consultation that has some chance of changing the outcome.

Jurisprudential Developments and Regional Human Rights Dialogue

In Awas Tingni the Inter-American Court of Human Rights read Article 21 of the American Convention on Human Rights[52] as an evolving guarantee that covers the communal property of indigenous peoples, and held that possession of the land should suffice for a community without formal title to obtain recognition.[53] Saramaka tied large-scale development projects to a requirement of consent and attached three safeguards: effective participation, a reasonable share of benefits, and a prior environmental and social impact assessment.[54] The Court added that a restriction on the use of the land, even one imposed for a public purpose, may not deny the survival of the people as a tribal people.[55] Sarayaku later repeated that consultation must be prior, informed and in good faith.[56]

[46]ILO Convention 169, supra note 3, art. 15.
[47]UNDRIP, supra note 4, art. 26.
[48]Mines and Minerals (Development and Regulation) Act, 1957, No. 67, Acts of Parliament, 1957 (India).
[49]Mines and Minerals (Development and Regulation) Amendment Act, 2015, No. 10, Acts of Parliament, 2015 (India).
[50]Forest Rights Act, supra note 1, § 3(1).
[51]Samatha v. State of Andhra Pradesh, (1997) 8 SCC 191.
[52]American Convention on Human Rights art. 21, Nov. 22, 1969, 1144 U.N.T.S. 123.
[53]Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶¶ 148-151 (Aug. 31, 2001).
[54]Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 129, 134 (Nov. 28, 2007).
[55]Id. ¶ 128.
[56]Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245 (June 27, 2012).

These decisions bind Nicaragua, Suriname and Ecuador. They do not bind India, and their value in an Indian court is persuasive, reached through the route that Vishaka opened and through the constitutional guarantee of life and livelihood. The strength of the persuasion depends on how closely the facts fit. In Saramaka and Sarayaku the state faced a distinct people occupying a defined territory, whereas under the Forest Rights Act the counterparty may be a Gram Sabha whose membership includes every adult in the village, tribal or not.

The African Commission on Human and Peoples' Rights recognized in Endorois the communal property rights of the Endorois over their traditional lands and their claim to the resources connected with those lands, drawing openly on the Inter-American reasoning.[57] It applied the African Charter's guarantees of property, development and natural resources,[58] though a decision of the Commission is a recommendation and lacks the binding force of a judgment. The African Court on Human and Peoples' Rights later gave a binding judgment in a forest case, holding that Kenya had violated the property rights of the Ogiek by evicting them from the Mau Forest.[59]

In April 2013 the Supreme Court decided the Niyamgiri case. It directed that the Gram Sabhas of the affected villages decide whether a proposed bauxite mine would violate the religious and cultural rights of the Dongria Kondh and other forest dwellers,[60] and it treated the Gram Sabha as the forum for community consent under the Forest Rights Act and the law on Scheduled Areas.[61] The Court did not itself decide whether the mine could go ahead. It sent the question of rights to the Gram Sabhas and made the approval of the project depend on what they decided. The *ratio* is narrow. It turns on the religious and cultural rights recognized by the domestic statutes, the term FPIC is not used, and the judgment does not lay down a general rule that every mining project needs community consent.[62] The twelve Gram Sabhas that were convened rejected the project, and the result was consent in substance, though the reasoning that produced it is domestic and not international.

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[57]Centre for Minority Rights Development (Kenya) & Minority Rights Group International ex rel. Endorois Welfare Council v. Kenya, Comm. No. 276/2003, Afr. Comm'n H.P.R. (Nov. 25, 2009). The decision was adopted in November 2009 and endorsed by the African Union Assembly in February 2010, and the literature cites it under either year.

[58]African Charter on Human and Peoples' Rights arts. 14, 21-22, June 27, 1981, 1520 U.N.T.S. 217.

[59]African Commission on Human and Peoples' Rights v. Republic of Kenya, App. No. 006/2012, Judgment (Afr. Ct. H.P.R. May 26, 2017).

[60]Orissa Mining Corporation Ltd. v. Ministry of Environment & Forest, (2013) 6 SCC 476.

[61]PESA, supra note 34, § 4(i).

[62]Forest Rights Act, supra note 1.

Set beside the regional decisions, Niyamgiri shows more difference than the shared word consent suggests. The regional courts derive consent from the right to property and from the survival of the people as a distinct community. The Indian Court derived it from statutes that recognize religious and cultural rights and from the Gram Sabha's place in the process of recognition. A community whose claim under the Act had been rejected, or had never been filed, would have had no Gram Sabha resolution to rely on, and the route taken in Niyamgiri would not have been open to it.

Implementation Challenges and Conflict Resolution

Overlapping jurisdiction is the obstacle most often met in practice. ***The wildlife and conservation statutes still give wide authority to the forest administration,***[63] and the boundary between conservation and community management is contested wherever a protected area overlaps a village's customary territory. The Act does not itself resolve the contest, since it makes conservation a duty of the community as well as of the department.

The treatment of benefits shows a similar gap. Saramaka speaks of a reasonable share in the benefits of a project as a safeguard that accompanies consent, and Article 15 of the Convention speaks of sharing in benefits wherever possible. The District Mineral Foundations mentioned above are trusts set up under State law, and they serve affected persons and districts generally, which is a different thing from an arrangement with the particular community whose customary land is used. A benefit paid into a fund for distribution among the affected is not the same as a benefit negotiated with the people whose consent was sought, and the difference is one of the places where a statutory consent right would have to be more specific than the present executive scheme.

The Act's own machinery reflects the same tension. Claims pass from the Gram Sabha to a sub-divisional level committee and then to a district level committee, and both committees include officers of the forest department alongside elected members and officials of the tribal welfare department.[64] The department that has historically controlled the land therefore sits in review of the claims of the people it controlled. The Panchayats Act adds a dependence on State legislation, because it requires States to bring their laws into conformity with it,[65] and the Gram Sabha's powers are only as strong as that legislation makes them.

[63]Wildlife (Protection) Act, supra note 20.
[64]Forest Rights Act, supra note 1, § 6.
[65]PESA, supra note 34, § 5.

Litigation has sharpened the problem. In February 2019 the Supreme Court directed the States to evict persons whose claims under the Act had been rejected, and it stayed its own order two weeks later.[66]

Behind these institutional questions lies a disagreement about how forests are best protected. One view holds that wildlife and forest cover survive only where people are kept out of protected areas. The other holds that communities who depend on a forest have reasons and skills to conserve it and do better when their rights are secure. The Act adopts the second view in its preamble and something closer to the first in the provisions on critical wildlife habitats, which is why the same statute can be invoked by both sides in a dispute such as the one that reached the Supreme Court in 2019. A court asked to choose between the two views is in effect asked to say which part of the Act controls, and the text alone does not answer.

The Forest (Conservation) Rules, 2022 allowed the Central Government to give final approval for diversion before the rights of forest dwellers were settled, leaving the State to complete that step afterwards,[67] and the sequence sits awkwardly with the protection against eviction before verification described in Part III. How far a court would treat it as consistent with the Act is an open question. The Forest (Conservation) Amendment Act, 2023 then exempted several classes of land from the Act, among them forest land within one hundred kilometres of the international borders and the Line of Control that is needed for strategic linear projects concerning national security.[68]

A sliding scale of participation would answer part of this. For a minor administrative measure, consultation in good faith is sufficient; for a measure that would seriously affect a community's territory or livelihood, or would displace it, the standard rises to consent.[69] The Convention draws the same line by requiring consultation generally and consent for relocation,[70] and the Declaration ties FPIC to approval of projects affecting lands and resources.[71] ***A sliding scale of participation leaves the state room to regulate and keeps consent meaningful where the stakes are highest.*** The scale is not self-executing, however. Someone has to decide where a given measure falls, and if that someone is the authority that

[66]Wildlife First v. Ministry of Environment, Forest & Climate Change, W.P. (C) No. 109 of 2008, order directing eviction (Feb. 13, 2019), stayed by order (Feb. 28, 2019) (India).
[67]Forest (Conservation) Rules, 2022, Ministry of Environment, Forest and Climate Change, Notification (June 28, 2022) (India).
[68]Forest (Conservation) Amendment Act, 2023, No. 47, Acts of Parliament, 2023 (India).
[69]Saramaka People, supra note 54, ¶ 134.
[70]ILO Convention 169, supra note 3, arts. 6, 16(2).
[71]UNDRIP, supra note 4, art. 32(2).

proposes the project, the scale collapses into discretion. A workable version needs the Gram Sabha, or a body answerable to it, to take part in the classification.

Conclusion and Recommendations

The Act and the Convention both ground customary rights in occupation and collective tenure, and they differ mainly in how firmly consent is secured.

Gram Sabha consent to diversion of forest land rests on a ministry direction, and the 2022 Rules moved it to a later stage without any amendment to the Act. Placing the requirement in the statute would remove that exposure, and the same amendment could carry a sliding scale of participation and a defined division of powers between the Forest Departments and the Gram Sabhas. Benefit-sharing and impact assessment should follow wherever the state retains the sub-surface.

Three drafting choices would give the amendment content. The consent requirement should name the body that gives consent, which is the Gram Sabha convened under the Act, and it should require the decision to be recorded in a resolution that is available to the community. It should apply before final approval and not after, so that the Central Government has the resolution before it when it decides. And it should provide for a remedy, in the form of an appeal to a body other than the department seeking the diversion, when a resolution is disregarded.

There is a practical reason to prefer statute over executive direction, apart from legal tidiness. A community deciding whether to invest in filing claims, mapping boundaries and preparing forest management plans needs to know that a consent right will still exist when a project reaches the approval stage. A right that can be rescheduled by notification cannot support that kind of planning, and the Act's promise of decentralized governance depends on communities being willing to plan.

ENABLING WITHOUT ENTITLING: ARTICLE 254 AND STATE GIG WORKER LEGISLATION IN INDIA

Priya Dutt[*] *& Prashant Raj*[**]

Abstract

The Indian gig economy falls under two constitutional levels of government: the Code on Social Security, 2020 and the Karnataka Act. The Code, on the other hand, provides definitions for both types of workers, as well as the central government's authority to create social security schemes, although it does not grant any rights and leaves all significant choices to future regulations. The Karnataka Act establishes a welfare board that imposes a welfare levy on aggregators, requires algorithmic transparency, and creates dispute-resolution procedures. Aggregators filed a petition with the Karnataka High Court challenging the Act's constitutionality, arguing that the Code was a complete code, and the two laws were incompatible with each other under Article 254 of the Indian Constitution.

This article, which examines a new doctrinal approach to the issue, argues that an enabling statute that contains no substantive rights cannot be construed as a complete code for the purposes of Article 254. Other writings on this topic have concentrated on worker classification and the absence of rights in the Code. Still, this article analyses the legislative competence of the Union and the states in the area of platform work.

By applying the finding of M. Karunanidhi v. Union of India to the interpretation of repugnancy and by drawing a distinction between the enabling and rights-conferring statutes in the context of Tika Ramji v. State of U.P., this article shows that the two statutes pertain to different areas of law and, therefore, can be followed at the same time. It also notes that many regulations on similar issues in the EU and US are fully compatible with Indian law. In the conclusion, the article recommends that the Karnataka High Court should rule in favour of the Respondent State and dismiss aggregators' petitions and that Parliament should re-examine the Code if it wishes to regulate the gig economy in India. The article's proposed solution to the constitutional dilemma would have been beneficial to the courts and legislators in any concurrent-list subject if the Centre had adopted a framework legislation and the states had supplemented it with detailed statutes.

Key words: *gig economy; Article 254; repugnancy; Code on Social Security; platform work; federalism*

Introduction

The regulation of platform labour in India raises a constitutional paradox. At the central level, the Code on Social Security, 2020 (CoSS)[1] has for the first time bestowed a statutory identity on gig workers and platform workers,[2] but left the content of their protection to be settled by

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[1] The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India) [hereinafter CoSS].
[2] *Id.* §§ 2(2), 2(35), 2(61).

schemes which the Central Government can frame in the future.[3] State level Karnataka has enacted the Karnataka Platform Based Gig Workers (Social Security and Welfare) Act, 2025 (Karnataka Act),[4] which gives the institutional and financial architecture which the central law merely contemplates.[5] The result is an inversion: the enactment which provides machinery for the welfare of gig workers is the one invoked as unconstitutional, and the enactment which provides definitions and enabling powers is invoked as the measure against which its validity is tested.

This issue is before the Karnataka High Court. A batch of petitions, led by the Internet and Mobile Association of India and joined by several leading aggregators contends that the CoSS is a comprehensive code governing social security for gig and platform workers, and that the Karnataka Act, which allegedly duplicates it, is void for repugnancy under Article 254 of the Constitution.[6] The High Court declined to stay the operation of the Karnataka Act but directed the petitioners to deposit the disputed welfare fee with the court registry pending final adjudication.[7] The Court observed that the CoSS appeared to occupy the legislative field, but would examine whether the State law could co-exist with it by conferring additional benefits on gig workers through a harmonious construction.[8] The Additional Solicitor General appearing for the Union supported the petitioners' position.[9] The eventual decision will determine not merely the fate of a single statute but the allocation of regulatory authority over platform work within the Indian federation.

This article addresses one research question: can an enabling central statute which delegates all substantive welfare decisions to future executive action be said to "occupy the field" under Article 254 of the Constitution to render supplementary, rights-conferring State legislation repugnant?

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[3] *Id.* § 114(1).
[4] The Karnataka Platform Based Gig Workers (Social Security and Welfare) Act, 2025, Karnataka Act No. 72 of 2025 (India) [hereinafter Karnataka Act].
[5] *Id.* §§ 3–6, 19–21.
[6] *Internet & Mobile Ass'n of India v. State of Karnataka*, W.P. No. 19746/2026 (Kar. H.C. July 3, 2026) (India) (interim order); *see* Sebin James, *Karnataka High Court Refuses to Stay State Gig Workers Act, Asks Platforms to Deposit Welfare Fund with Court*, LiveLaw (July 3, 2026), https://www.livelaw.in/high-court/karnataka-high-court/karnataka-high-court-interim-order-challenge-platform-gig-workers-act-539865; India Const. art. 254.
[7] James, *supra* note 6 (reporting the direction to deposit the second-quarter welfare fee with the court registry).
[8] *Id.* (reporting the court's prima facie remarks on the occupied-field argument and on harmonious construction); *Gig Workers Act: Karnataka HC Grants Interim Protection to IAMAI, Swiggy, Zomato, Others but Orders Deposit of Welfare Fee*, Bar & Bench (July 3, 2026), https://www.barandbench.com/news/karnataka-high-court-refuses-to-stay-gig-workers-act-but-grants-swiggy-zomato-others-interim-protection [hereinafter Bar & Bench Report].
[9] Bar & Bench Report, *supra* note 8 (reporting the submissions of Additional Solicitor General Aravind Kamath); James, *supra* note 6.

The question is narrower than it may appear. It does not ask whether Parliament has the competence to legislate on gig work, as social security and the welfare of labour are subjects on the Concurrent List.[10] Nor does it ask whether Parliament could, by a sufficiently comprehensive enactment, exclude State legislation. The question asks whether the CoSS, as it is actually drafted, establishes an exclusive regulatory ceiling or a baseline floor.

The thesis which is advanced is that it establishes a baseline floor. The CoSS is an enabling statute rather than a rights-conferring one. It creates macro-machinery: a registration framework, a contribution obligation on aggregators and a power to notify schemes,[11] but creates no immediate, enforceable entitlements in favour of any gig worker. The Karnataka Act, by contrast, creates an active welfare board, imposes an operational financial obligation, regulates the micro-conduct of aggregators and establishes immediate grievance mechanisms.[12] Because the two enactments operate on different regulatory planes the one establishing national baseline parameters and the other state-level operational protections and can be complied with simultaneously, one can infer that the two statutes do not conflict, rendering no question of repugnancy.

The CoSS as an Enabling Statute: Definitions Without Rights

The CoSS consolidated nine labour laws relating to social security[13] and came into force in a phased manner, with most of its provisions taking effect from 21 November 2025.[14] In so far as platform work is concerned, its main innovation lies in introducing definitions: a "gig worker" in section 2(35), a "platform worker" in section 2(61), and an "aggregator" as a "digital intermediary or marketplace represented by an entity providing a digital platform for connecting a buyer or user of a service and a provider of the service" in section 2(2).[15] Together, these integrate a class of workers hitherto not covered by India's Labour Law for the first time into the lexicon of the country's social security statutes. Definitions are, however, not entitlements.

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[10] India Const. sched. VII, List III, entries 23–24.
[11] CoSS, *supra* note 1, §§ 113–114.
[12] Karnataka Act, *supra* note 4, §§ 3–6, 12–18, 22.
[13] CoSS, *supra* note 1, § 164 (repealing the enactments consolidated by the Code); *see also* Ankita Singh, *Gig and Platform Workers Under Code on Social Security, 2020: Coverage, Portability, and Enforcement Challenges*, LiveLaw (Aug. 3, 2026), https://www.livelaw.in/articles/gig-platform-workers-code-on-social-security2020-543928.
[14] Ministry of Lab. & Emp., Notification S.O. 5319(E) (Nov. 21, 2025), Gazette of India, Extraordinary, pt. II, § 3(ii) (India).
[15] *See* CoSS, *supra* note 1, §§ 2(2), 2(35), 2(61).

The operative provisions of the CoSS relating to the social security of unorganised workers, gig workers and platform workers are set out in Chapter IX, i.e. sections 109-114.[16] This is largely modelled on the Unorganised Workers' Social Security Act, 2008, which also takes the form of a scheme-based, enabling statute.[17] Section 113 provides for the registration of such workers on a portal maintained by the Central Government.[18] Section 114, in turn, empowers the Central Government to notify schemes concerning suitable social security for gig workers and platform workers, including "life and disability cover, accident insurance, health and maternity benefits and old-age protection".[19] It also provides for aggregators to contribute to the funding of such schemes, the rate of contribution being notified by the Central Government as a percentage of turnover, subject to a maximum of five percent of the amount of payment made or to be made by the aggregator to such workers.[20] Finally, this section also amends the National Social Security Board's composition in relation to gig workers and platform workers and empowers the Central Government to exempt aggregators or classes of aggregators from such contribution.[21]

Four features of these provisions make it evident that they constitute enabling legislation. First, their very structure is permissive: while the Central Government is empowered to notify schemes, it is simultaneously free not to do so and, by implication, not to confer any benefits.[22] Secondly, the content of the schemes falls entirely within the domain of the Central Government. The Act itself contains neither a benefit nor a standard of eligibility or quantum of any kind; it merely states the broad areas in which schemes can be framed.[23] Thirdly, the contribution by aggregators is conditional: the date on which it takes effect, its rate and the threshold turnover are all subject to the Central Government's notification, and the Central Government may at any time exempt any aggregators from such contribution.[24] Fourthly, while registration under section 113 is a prerequisite to obtaining any benefit under any scheme, it confers no benefit itself.[25]

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[16] *Id.* §§ 109–114.
[17] *See* The Unorganised Workers' Social Security Act, 2008, No. 33, Acts of Parliament, 2008 (India).
[18] CoSS, *supra* note 1, § 113.
[19] *See id.* § 114(1)(a)–(d).
[20] *Id.* § 114(4) & proviso.
[21] *Id.* § 114(6), (7)(ii).
[22] *Id.* § 114(1); *see* Singh, *supra* note 13 (noting the discretionary language of the provision).
[23] CoSS, *supra* note 1, § 114(1)–(2).
[24] *Id.* § 114(4)–(5), (7)(ii).
[25] *Id.* §§ 113, 114(1).

The lack of direct benefits becomes even more evident when section 114 is placed alongside the rest of the Code. Nowhere else in the Code is there a provision that grants a right, creates a cause of action, or empowers any authority to grant a benefit or levy a contribution, with the exception of gratuity in Chapter V, which contains detailed provisions concerning the payment of gratuity, including its quantum and the circumstances under which it may be paid or forfeited.[26] The chapter on gig and platform workers, by contrast, contains no analogous provision.[27] Nowhere does it empower any authority to grant a benefit, confer a right or levy a charge: the Code creates mechanisms but does not utilise them to confer any entitlement. The internal inconsistency within the Code itself, therefore, highlights the fact that Parliament was fully aware of the distinction between granting rights and conferring powers and was willing to do both, but declined to do the former in the case of the CoSS.

One may object to the preceding line of reasoning by arguing that, since the aggregators' contribution is optional, the Social Security (Central) Rules, 2026, which provide methods of self-assessment, provisional contribution and finalisation of contribution,[28] have, by virtue of their very existence, created a justiciable entitlement. This objection too is misconceived for the simple reason that the very scheme of the contribution which the 2026 Rules provide for is in the nature of levy from the aggregator to the central fund.[29] As such, they create a fiscal administrative resource for the social security fund without any direct entitlement to it for the workmen. In other words, the 2026 Rules operate like a tax-collecting machinery and are not in the nature of justiciable rights conferred upon the worker by the state. They are empowering laws and not laws creating entitlements.

The subordinate legislation reinforces this conclusion: it shows that the central legislation has not created a system of entitlements but has instead established a framework for social security in India. The Rules of 2026 and the e-Shram portal are administrative measures,[30] and as such, they are consistent with the CoSS's basic structure as an enabling act. Statutes promulgated pursuant to another statute cannot enlarge upon it or create entitlements where there are none: their very existence depends upon the parent legislation's express or implied

[26] *Id.* §§ 53–58 (ch. V, gratuity).
[27] *See* Singh, *supra* note 13 (observing that the Code contains no guaranteed minimum floor of benefits for gig and platform workers and no grievance-redressal mechanism specific to them).
[28] Social Security (Central) Rules, 2026, G.S.R. 344(E) (May 8, 2026), Gazette of India, Extraordinary, pt. II, § 3(i) (India); *see* CoSS, *supra* note 1, § 114(7)(i)(c) (providing for rules on self-assessment of contribution by aggregators).
[29] CoSS, *supra* note 1, § 114(4) (referring to funding under § 141(1)(ii)).
[30] Social Security (Central) Rules, 2026, *supra* note 28; *e-Shram Portal*, Ministry of Lab. & Emp., Gov't of India, https://eshram.gov.in (last visited Oct. 14, 2026).

authorisation.[31] As evidence of this, one need only point to the Rules' very existence as proof of the CoSS's own lack of substance. To the extent that specific micro-level benefits under central schemes remain unnotified, it is doctrinally precise to characterise the operational field as open to concurrent state architecture.[32]

Legal commentators on the CoSS have similarly drawn a distinction between empowering frameworks and operational laws that create localized worker welfare protections, noting that the Code relies fundamentally on the future execution of scheme notifications to breathe substance into its platform-work parameters.

A similar conclusion can be drawn by examining India's historical practice. The Unorganised Workers' Social Security Act, 2008, which inspired the CoSS, was also a scheme-based, enabling statute, and, prior to the CoSS, India's state-level welfare statutes for unorganised workers existed alongside it in a similar capacity.[33] The CoSS has not changed this fundamental status quo: it has merely adopted the same approach for another class of workers.

With this observation as the preamble, the following Part will turn to an examination of the main thesis of this Note: that an enabling statute that delegates the details of welfare provision to future legislation cannot be regarded as containing a "code" for the purposes of Article 254 of the Constitution. Completeness in this sense is a function of a statute's content rather than the subject-matter on which it bestows authority for legislation by way of delegation.

The Karnataka Act: Substantive Regulation of Platform Work

The Karnataka Act bore the Governor's assent on 11 September 2025[34] and was deemed to have come into force on 30 May 2025,[35] the date from which it was retrospectively operationalized to replace the preceding Ordinance promulgated on 27th May 2025.[36] It

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[31] *Cf. State of Tamil Nadu v. P. Krishnamurthy*, (2006) 4 S.C.C. 517 (India) (discussing the limits of delegated legislation).
[32] *See* Singh, *supra* note 13.
[33] The Unorganised Workers' Social Security Act, 2008, *supra* note 17; *see* CoSS, *supra* note 1, § 6; Karnataka Act, *supra* note 4, § 8 (referring to the Karnataka State Unorganized Workers Social Security Board).
[34] Karnataka Act, *supra* note 4, assent clause (assent of the Governor on Sept. 11, 2025; published in the Karnataka Gazette Extraordinary on Sept. 12, 2025).
[35] *Id.* § 1(2).
[36] *Id.* § 32(1); *see also* The Karnataka Platform Based Gig Workers (Social Security and Welfare) Ordinance, 2025, Karnataka Ordinance No. 4 of 2025 (India); *Karnataka Platform Based Gig Workers (Social Security and Welfare) Ordinance, 2025 and E-Commerce Platforms*, Mondaq (June 23, 2025),

applies to aggregators and platforms providing services described in its Schedule, which include ride-sharing, food and grocery delivery, logistics, e-marketplaces, healthcare and travel and hospitality.[37] Its long title names five purposes: the protection of the rights of platform-based gig workers, the imposition of obligations on aggregators regarding social security, occupational health and safety and transparency in automated decision-making, the provision of dispute resolution mechanisms, the establishment of a Welfare Board and Fund, and the registration of workers and platforms within the State.[38] An analysis of its provisions exposes two distinct layers, an institutional and financial layer and a layer of direct conduct regulation. The latter is most clearly what differentiates the Act from the CoSS.

The institutional and financial layer entails the Welfare Board, the Welfare Fund and the Welfare Fee. The Act establishes the Karnataka Platform Based Gig Workers Welfare Board as a body corporate, composed of government officials, four representatives each of gig workers and of aggregators, and two from civil society, at least one of whom is a woman.[39] The Board is tasked with registering workers and aggregators and monitoring the collection of the welfare fee, implementing schemes of social security and disbursing benefits through individual accounts linked to a unique identification number.[40] The Act also creates a Social Security and Welfare Fund into which the welfare fee, worker contributions and grants are paid.[41] The welfare fee is levied on aggregators at not less than one per cent and not more than five per cent of the payout to the worker in each transaction as notified by the State Government.[42] A distinctive feature of this layer is section 20(5), which provides that the welfare fee so collected shall count towards the total contribution payable under section 114(4) of the CoSS, with any difference to reconcile annually.[43] This provision is a deliberate act of harmonisation. It is the legislative expression of an intention to work alongside the central framework rather than against it.

The layer of direct conduct regulation finds no analogy in the CoSS. Section 12 requires that contracts between aggregators and workers be transparent and fair and explicitly recognize

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https://www.mondaq.com/india/employee-rights-labour-relations/1640774/karnataka-platform-based-gig-workers-social-security-and-welfare-ordinance-2025-and-e-commerce-platforms (reporting promulgation on May 27, 2025).

[37] Karnataka Act, *supra* note 4, § 1(3) & sched.

[38] *Id.* long title.

[39] *Id.* §§ 3, 4(1)(f)–(h), 4(3).

[40] *Id.* §§ 6, 10(4).

[41] *Id.* § 19(1).

[42] *Id.* § 20(1)–(2).

[43] *Id.* § 20(5) & proviso; CoSS, *supra* note 1, § 114(4).

the worker's right to refuse tasks and that changes in terms are announced fourteen days in advance.[44] Section 13 requires that aggregators inform workers, in simple language and in an appropriate scheduled language, of the procedure for obtaining information about the automated monitoring and decision-making parameters that affect earnings and working conditions and guard against discrimination by such systems.[45] Section 14 prohibits termination or deactivation without written reasons, fourteen days' notice and compliance with the principles of natural justice.[46] Section 15 regulates deductions and the periodicity of payment, and section 16 requires that safe and reasonable working conditions be imposed.[47] Sections 17 and 18 require that grievance mechanisms are made public and that a human point of contact is designated.[48] They are not enabling provisions. They impose immediate, enforceable obligations on aggregators backed by interest and monetary penalties under section 23.[49]

The dispute resolution architecture closes the picture. Section 22 provides for a two-tier grievance mechanism. A worker can complain to an Internal Dispute Resolution Committee constituted by the aggregator that must act within fourteen days, and if not satisfactory redressed, can appeal to the Board.[50] Grievances concerning social security entitlements lie before a grievance redressal officer, with an appeal to an appellate authority.[51] The CoSS contains no analogous mechanism for gig and platform workers .[52]It is necessary to acknowledge the limits of the contrast. The Karnataka Act is not wholly free of delegation. The Board is empowered to notify general and sector-specific social security benefits as and when necessary, and a worker's right of access to schemes under section 7 is correspondingly dependent on notified schemes.[53] On the benefit side, therefore, the Karnataka Act too awaits executive implementation. The difference between the two enactments is not that one is complete and the other empty. It is that the Karnataka Act contains an operative layer of enforceable rights and duties, namely registration, fair contracts, notice before termination, timely payment, algorithmic transparency and grievance redress, whereas the CoSS has none in relation to gig and platform workers. The two enactments coincide in one respect only, the

[44] Karnataka Act, *supra* note 4, § 12.
[45] *Id.* § 13.
[46] *Id.* § 14.
[47] *Id.* §§ 15–16.
[48] *Id.* §§ 17–18.
[49] *Id.* § 23.
[50] *Id.* § 22(1)–(5).
[51] *Id.* § 22(7), (10).
[52] *See* Singh, *supra* note 13.
[53] Karnataka Act, *supra* note 4, §§ 3(2), 7(b).

financing of social security through an aggregator levy, and on that point the Karnataka Act explicitly allows for reconciliation. Section 26 further declares that the Act is in addition to, and not in derogation of any other law in force.[54]

The point may be phrased functionally. The CoSS responds to the question of how social security for platform workers is to be financed and administered at the national level, and responds by granting powers to the Central Government. The Karnataka Act answers a wider question, namely on what terms platform work is to be conducted within the State and what institutional machinery is to govern it. Where the CoSS has so far enabled the Central Government to act, the Karnataka Act has acted. The Karnataka Act is therefore best understood not as a parallel framework in conflict with a functioning central scheme but as the substantive implementation of an area that the central statute leaves largely unimplemented, together with regulation of issues that the central statute does not address at all.

The Federalism Challenge: Repugnancy Under Article 254

Article 254(1) of the Constitution states that in case of conflict between a state law and a parliamentary enactment on a matter that falls under the concurrent list, the central law shall prevail and the state law shall stand void to the extent of such conflict.[55] The petition by the aggregators against the Karnataka Act is based on the proposition that any mention of a worker category in a central enactment completely excludes state legislatures from the domain.[56] To examine the challenge being raised against the state law on the basis of federalism, it is necessary to go beyond generic headings and assess whether the mechanisms embodied in the state enactment conflict irreconcilably with the central law.

The Aggregators' Argument

The challenge has four strands. The first and principal contention is that the CoSS is a comprehensive and uniform national framework for the social security of gig workers, platform workers and unorganised workers and therefore occupies the field. Petitioners have urged that virtually every provision of the Karnataka Act mirrors the central legislation[57] and the Union through the Additional Solicitor General has supported the contention that the State

[54] *Id.* § 26.
[55] India Const. art. 254, cl. 1.
[56] *See* James, *supra* note 6; Bar & Bench Report, *supra* note 8.
[57] Bar & Bench Report, *supra* note 8 (reporting the submissions of senior counsel for the petitioners).

law is in direct conflict with the Code.[58] The second strand alleges operational inconsistency. The welfare fee under the Karnataka Act is calculated as a percentage of the payout in each transaction whereas contribution under section 114(4) of the CoSS is calculated as a percentage of annual turnover within a prescribed range subject to a ceiling linked to payouts.[59] Though the Karnataka Act provides that the fee counts towards the central contribution, differing bases of computation are said to create uncertainty as to what an aggregator actually owes. The third strand is that the CoSS vests the power to frame rules concerning gig and platform workers exclusively in the Central Government so that a State statute in the same area intrudes upon a field reserved to the Centre.[60] The fourth strand comprises challenges under Article 14 and other fundamental rights and a contention that the Karnataka Rules travel beyond the parent Act.[61] The challenges raise distinct questions and are not addressed here. The first two strands are in tension with each other. If the Karnataka Act merely mirrors the CoSS then the two enactments are consistent and there is nothing to be repugnant. If, on the other hand, the State Act differs from the CoSS by imposing a fee calculated differently or by regulating matters the Code does not address, then it supplements rather than duplicates the central law which is the proposition for which this article contends. The aggregators cannot rely both on identity and on difference.

The Doctrinal Framework: Karunanidhi and the Tests of Repugnancy

The Supreme Court consolidated its principles in M. Karunanidhi v. Union of India,[62] extracting four propositions from prior authority. First, repugnancy arises only where inconsistent and irreconcilable provisions exist in the two enactments such that they cannot co-exist. Secondly, a repeal by implication is impermissible unless the two statutes exhibit inconsistency on their face. Thirdly, if the two statutes occupy a field but there is possibility of both operating in the field without conflict, there is no repugnancy. Lastly, if there is no inconsistency, but a statute occupying the same field creates distinct and separate obligations, then no question of repugnancy arises and both continue to operate.

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[58] *Id.*
[59] Karnataka Act, *supra* note 4, § 20(1), (5); CoSS, *supra* note 1, § 114(4) & proviso.
[60] CoSS, *supra* note 1, § 155.
[61] *Uber Moves Karnataka HC Against Gig Workers Act, Gets Interim Protection*, The News Minute (July 28, 2026), https://www.thenewsminute.com/amp/story/karnataka/uber-moves-karnataka-hc-against-gig-workers-act-gets-interim-protection; *Swiggy, Zepto Challenge Karnataka Gig Workers Act*, UNI (June 29, 2026), https://test.uniindia.com/news/business-economy/court-swiggy-zepto-karnataka-law/3892454.html (reporting the petitioners' contentions on arbitrariness and equality).
[62] *M. Karunanidhi v. Union of India*, (1979) 3 S.C.C. 431 (India).

Apply these tests to the present controversy and the results emerge.

Direct and irreconcilable conflict: None. The only point at which the two enactments intersect textually is in the field of financing social security through an aggregator levy. At this point of intersection, the Karnataka Act itself has anticipated the potential for overlap and provided in section 20(5) that the state fee shall count towards the central contribution, with any difference to be reconciled annually.[63] The maximum ceiling of five per cent is common to both. While the aggregators claim an operational conflict arising from the differing bases of computation viz. annual turnover under the CoSS vis-à-vis individual transactional payouts under the Karnataka Act, this is an administrative friction and not a constitutional one. True repugnancy in operation demands that adherence to one law will involve absolute disobedience to the other.[64] Since an aggregator is capable of mathematically discharging both liabilities through the year-end financial reconciliation where state fees are credited against central obligations, simultaneous compliance is entirely possible. The difference in computational mechanics is a mere accounting challenge to be dealt with through delegated rules,[65] and not a structural incompatibility under Article 254(1).

Intention to enact an exhaustive code: None. The CoSS expresses no intention to exclude state action.[66] For the reasons elaborated in Part II, it empowers the Central Government to frame schemes but prescribes no immediate benefit and creates no active entitlement. A statute which leaves the substance of welfare to future executive action cannot be said to have exhausted the subject matter. To occupy a subject heading in terms of having legislated on it is not to occupy the field in the sense relevant to Article 254 meaning an exhaustive code in respect of the specific matters on which the State has legislated.

The Different-Fields Doctrine: Tika Ramji v. State of U.P.

In Tika Ramji v. State of U.P. the Supreme Court upheld a State law regulating the supply and purchase of sugarcane against a challenge based on a central statute intended for development and regulation of industries. The Court held that the central enactment when properly construed was not applicable to the exact micro-matters for which the State law was created, and that where Parliament and a State legislature enact laws concerning distinct matters, even

[63] Karnataka Act, *supra* note 4, § 20(1), (5) & proviso; CoSS, *supra* note 1, § 114(4) & proviso.
[64] *Karunanidhi*, *supra* note 63.
[65] Karnataka Act, *supra* note 4, § 28(2)(xviii).
[66] CoSS, *supra* note 1, § 114(1)–(2), (4)–(5), (7); *cf. Deep Chand v. State of U.P.*, A.I.R. 1959 S.C. 648 (India) (identifying, as one inquiry, whether Parliament intended to lay down an exhaustive code displacing the State law).

though they may touch the same broad industry/activity/class of persons, no question of repugnancy arises.[67] The doctrine requires the "field" to be identified at the level of the matters actually regulated and not the generalized subject heading.

The challengers' contention conflates the two. At the level of the broad subject heading they both concern the welfare of platform-based gig workers. But at the level of the matters actually regulated the two diverge completely. The CoSS regulates macro-level registration on a national portal and enables future social security funding. The Karnataka Act regulates the micro-level conditions of work structural contract transparency algorithmic equity and immediate termination protections within the state.[68] Since the central framework is entirely silent on conditions of service and algorithmic transparency these specific matters are not occupied by the central legislation leaving the State entirely competent to act. Crucially even where both statutes textually refer to overlapping categories of social assistance (such as health or accident relief) they address them through distinct legal modes.[69] The CoSS operates as a macro-level funding enablement whereas the Karnataka Act creates localized actionable mandates directly governing the terms of daily employment.

The "Supplement, Not Replace" Argument

The unions which spoke in support of the State baseline framework maintain that the Karnataka Act supplements the CoSS and does not replace it.[70] The position is supported by the text of the Karnataka Act itself. Section 20(5) harmonises the fee with the central contribution. Section 7 preserves any benefit or protection accorded to gig workers under any other law, and Section 26 provides that the Act is in addition to and not in derogation of any other law in force.[71] These provisions evidence a legislative intention to act alongside the central framework and to fill the gaps that it leaves open. The argument is reinforced by the constitutional preference for reconciliation over conflict. Indian courts have consistently held that every statute enjoys a presumption of constitutionality and repugnancy is not to be lightly inferred. The burden is on the party alleging repugnancy to demonstrate that the two

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[67] *Tika Ramji v. State of U.P.*, A.I.R. 1956 S.C. 676 (India).
[68] CoSS, *supra* note 1, §§ 113–114; Karnataka Act, *supra* note 4, §§ 12–14.
[69] Karnataka Act, *supra* note 4, § 2(k); CoSS, *supra* note 1, § 114(1)(b)–(c).
[70] South First Desk, *IFAT, TGPWU and KAWU Condemn Platforms' Challenge to Karnataka Gig Workers Welfare Act, 2025*, The South First (June 29, 2026), https://thesouthfirst.com/karnataka/ifat-tgpwu-and-kawu-condemns-platforms-challege-to-karnataka-gig-workers-welfare-act-2025/.
[71] Karnataka Act, *supra* note 4, §§ 7 proviso, 20(5), 26.

enactments cannot stand together.[72] Reports of the interim hearing indicate that the High Court itself intends to examine whether the State law can coexist with the Code by providing additional benefits to gig workers through a harmonious construction.[73] This is precisely the approach that the Karunanidhi propositions require.[74]

The Fallback: Repugnancy Could Be Only Partial

Even if the High Court is to find an unavoidable operational friction within the fiscal interface of the welfare fee and the central contribution under section 20, Article 254(1) demands that a State law shall be held void only to the extent of the repugnancy.[75] The Karnataka Act is extremely severable. Chapters regulating direct conduct viz. Section 12 (fair contracts), Section 13 (algorithmic transparency), Section 14 (notice before termination) and Section 22 (the state-level dispute resolution architecture) have zero textual or conceptual counterparts in the CoSS.[76] In accordance with the established principles of severability set out in State of Bombay v. RM.D. Chamarabaugwalla[77] these employment-protection and data-rights provisions occupy a completely distinct regulatory plane. They are perfectly capable of surviving even if the fiscal welfare-fee architecture is to face partial judicial modification

Comparative Perspectives: Multi-Level Regulation of Platform Work

The aggregators' argument proceeds on the basis of an assumption that regulation of platform work is a matter on which only one legislature can speak. Comparative practice shows that this assumption is not always correct. The work of various jurisdictions in EU, the US and Australia is characterised by multi-layeredness, and in each case, the interaction between these layers has been resolved through the adoption of particular doctrinal and drafting solutions. The comparison is made with necessary reservations, as the differences in constitutional fundamentals bear significantly on the scope of the analogy.

The European Union: Minimum Harmonisation

[72] *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, A.I.R. 1958 S.C. 538 (India) (presumption of constitutionality; burden on the party challenging the statute).
[73] James, *supra* note 6; Bar & Bench Report, *supra* note 8.
[74] *Karunanidhi*, *supra* note 63.
[75] India Const. art. 254, cl. 1.
[76] Karnataka Act, *supra* note 4, §§ 12–14, 22.
[77] On severability, *see R.M.D. Chamarbaugwalla v. Union of India*, A.I.R. 1957 S.C. 628 (India).

Directive (EU) 2024/2831 on improving working conditions of platform workers entered into force on 1 December 2024, with a mandatory transposition deadline set for Member States on 2 December 2026. Moreover, under Article 5(3) of the Directive, this employment presumption does not apply to tax, criminal, or social security proceedings, unless an individual Member State chooses to extend its application under national law. It provides that for national labour law, there is a rebuttable presumption of an employment relationship if facts indicative of control and direction on the part of the platform operator are established. In addition, it contains provisions on algorithmic management, including transparency obligations in relation to monitoring and decision-making algorithms, and the involvement of human intervention in the processing of personal data in the algorithmic decision-making process. Of particular relevance to the current discussion is the fact that the Directive adopts the approach of minimum harmonisation: in its preamble it states that its essential objective is to protect workers, and it explicitly preserves the possibility for Member States to adopt more favourable provisions for workers.

This approach of laying down mandatory labour standards while leaving the door open for more extensive national legislation has important implications for the interpretation of Article 254. First, the comparison with the EU Directive highlights the fact that the Karnataka Act, by regulating algorithmic management of platform workers, addresses a matter on which national legislators have expressed a desire to intervene.[78] Second, it demonstrates that framework legislation and national-level provisions can complement each other in regulating the same area. The limitations of the analogy should also be noted: unlike the Directive, the CoSS does not explicitly refer to the possibility of adopting more extensive national legislation.[79] However, the absence of an express statement does not demonstrate exclusivity: under Article 254, the intention to occupy the field must be inferred from the entire text of the enactment.[80] A similar conclusion may be advanced in relation to the Karnataka Act: its provisions on platform work only provide a possibility for implementing more extensive measures at the state level.

The United States: AB5, Proposition 22 and the Layering of Authority

In the US, the regulation of platform work has so far been characterised by a lack of federal legislation and the dominance of state-level initiatives. Assembly Bill no. 5 that came into

[78] Karnataka Act, *supra* note 4, § 13; Platform Work Directive, *supra* note 79, arts. 7–15.
[79] *See generally* CoSS, *supra* note 1, §§ 113–114.
[80] *See Karunanidhi*, *supra* note 63; *Deep Chand*, *supra* note 67.

force in California in 2020 introduced the so-called ABC test designed to ensure worker classification as an employee.[81] This law was met with fierce opposition from the tech industry, which managed to get a proposition passed in November 2020 that effectively blocked AB5's application to app-based transportation and delivery workers.[82]

The California experiment does not directly relate to the issue of the interaction between state and federal law, as the conflict between AB5 and Proposition 22 occurred at the state level. However, the case highlights the extent to which regulation of platform work has become a battleground for political struggles at the state level. The broader context in which this issue should be considered is the attempt by the industry to challenge AB5 on the grounds of federal preemption. In particular, in the context of the Federal Aviation Administration Authorization Act of 1994, the Ninth Circuit Court declined to rule in favour of the industry, finding that a state law regulating motor carriers did not violate the Federal Aviation Administration Act.[83] In general, it is noteworthy that in the US, federal labour laws traditionally serve as a floor, and state laws often supplement them by providing additional protections.[84] The doctrine of federal preemption and the principle of federal labour standards acting as a minimum are not directly comparable to the situation with India's CoSS, but they are similar enough to justify analogies at the level of general principles. In particular, a law that does not explicitly state its exclusivity will not automatically block the adoption of state laws supplementing it.

Australia: Where the Federal Law Is Operative

By way of contrast, Australia is an example of a country where federal law fully occupies the field of regulation of platform work. The Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 amended the Fair Work Act 2009 (Cth) in order to explicitly cover "employee-like" workers on digital platforms.[85] As of 26 August 2024, new minimum standards orders may be made by the Fair Work Commission, including in relation to termination of employment contracts and collective bargaining. Violation of minimum

[81] Assemb. B. 5, 2019–2020 Leg., Reg. Sess. (Cal. 2019) (codified as amended at Cal. Lab. Code §§ 2775–2787); *see Dynamex Operations W., Inc. v. Superior Court*, 416 P.3d 1 (Cal. 2018) (adopting the ABC test).
[82] Cal. Bus. & Prof. Code §§ 7448–7467; *see Castellanos v. State*, 16 Cal. 5th 588 (2024) (rejecting a challenge to Proposition 22 under the California Constitution).
[83] *Cal. Trucking Ass'n v. Bonta*, 996 F.3d 644 (9th Cir. 2021); *see* 49 U.S.C. § 14501(c)(1).
[84] *See* 29 U.S.C. § 218(a).
[85] Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 (Cth) (Austl.); Fair Work Act 2009 (Cth) s 15P (Austl.).

standards orders may result in civil penalties.[86] If similar provisions had been adopted in India, Section 109 of the Australian Constitution would have the effect analogous to Article 254 of the Indian Constitution.[87] By virtue of Section 109, Commonwealth laws take precedence over state laws, with the result that, in the case of inconsistency, state legislation is simply inoperative.

Thus, the Australian example actually supports the formulation of the issue presented at the beginning of this section: as in Australia, where the central law contains operative provisions, the room for legislative activity at the state level remains significant under distinct statutory designs. On the other hand, the existence of minimum standards adopted at the federal level does not prevent states from supplementing them with additional measures at the level of workers' compensation, which in fact is also the case in Australia.[88] It is noteworthy that in Australia, as in the EU, the principle of federal-state law complementarity is also reflected in the fact that the discussion of platform work issues takes place at both levels.

Lessons and Limits

Three observations emerge from the comparison. First, multi-tier regulation of platform work is the norm rather than the exception in the US and Australia and is not unique to India. Second, the ability of higher-level legislation to exclude the sphere of action of lower-level norms depends on the content of the higher-level act. The clearer the operative provisions on the regulation of platform work, the more limited the opportunities for state-level interventions. Third, the tendency in recent legislation to adopt minimum harmonisation directives makes it possible to speak of the complementarity of regulation at different levels. Each of these conclusions allows for additional analysis from the perspective of the interaction between the CoSS and the Karnataka Act, but none of them eliminates the necessity of considering Article 254 in isolation.

Conclusion and Recommendations

[86] *Collective Agreements for Road Transport Contractors and Gig Workers*, Mondaq (Aug. 22, 2024), https://mondaq.com/australia/employment/1508840/back-to-the-future-collective-agreements-for-road-transport-contractors-and-gig-workers.
[87] Austl. Const. s 109.
[88] Safe Work Austl., *National Policy Approach to Workers' Compensation and the Gig Economy* (Oct. 2025), https://www.safeworkaustralia.gov.au/sites/default/files/2025-10/national_policy_approach_workers_comp_gig_economy_oct2025.pdf (noting that Western Australia and Queensland have amended their workers' compensation legislation to enable coverage of some gig workers).

This article's thesis is based on the claim that challenging the Karnataka Act on the grounds of 254 is founded on an incorrect assumption that the empowering framework fully encompasses the unique area of workers' rights and conditions. The CoSS is a regulatory floor that adds statutory definitions and macro-level funding allocation while delegating the implementation of protections to future executive action. Meanwhile, the Karnataka Act provides an immediate level of enforceable rights, contract fairness and algorithmic protections which work in conjunction with the central baseline. Therefore, since the two legislations have complementary regulatory regions and explicitly provide means for financial reconciliation, they represent cooperative federalism and not contradictory statutes. As such, the Karnataka High Court should reject the aggregators' petitions and uphold the validity of State legislation.

A. **A Proposed Judicial Approach**

The analysis suggests a roadmap for the Karnataka High Court. The Court should first apply the propositions in M. Karunanidhi coupled with the inquiries in Deep Chand, but to the provisions under its jurisdiction and not the general subject heading of gig worker welfare.[89] It should secondly identify the field by the specific micro-matters regulated by each enactment, as Tika Ramji requires.[90] Third, the CoSS needs to be examined whether it is manifesting an intent to create an exclusive, exhaustive code, taking into account its enabling structure. Fourth, the Court should recognize that the difference in computational mechanics between turnover and transactional payouts is an accounting problem to be resolved via administrative rules under Section 20(5)[91] and not a structural case of operational repugnancy under Article 254(1). Lastly, the doctrine of severability should be applied in ensuring that the Act's pioneering protections for algorithmic transparency and fair contracts survive independently of any fiscal disputes.[92]

B. **Recommendations for Legislative Reform**

[89] *Karunanidhi*, *supra* note 63; *Deep Chand*, *supra* note 67.
[90] *Tika Ramji*, *supra* note 68.
[91] Karnataka Act, *supra* note 4, § 20(5).
[92] *Chamarbaugwalla*, *supra* note 78.

The analysis also suggests recommendations for legislative change which are addressed to Parliament and also to State legislatures.

If Parliament wishes to genuinely occupy the field, it must confer enforceable rights and not merely enable schemes. Three amendments to the CoSS are recommended. First, section 114 should be amended to create a statutory entitlement to a defined minimum of benefits for registered gig and platform workers, so that access to protection does not depend solely on executive notification.[93] Secondly, the aggregator contribution should be made unconditionally operative, with a fixed commencement and an enforceable mechanism of assessment and recovery, so that the financing obligation does not depend on a future notification of commencement.[94] Thirdly, Chapter IX should provide a statutory dispute resolution mechanism through which gig workers can enforce their entitlements and challenge adverse decisions.[95] In addition, Parliament should consider inserting an express provision clarifying the relationship between the Code and State legislation on platform work, whether as a floor which State laws may exceed or as an exclusive code which they may not. Legislative clarity of this kind would remove the uncertainty that has given rise to the present litigation.

State legislatures, for their part, would be well advised to learn from the Karnataka experience. Where a State enacts supplementary legislation on a Concurrent List subject touching a central framework, it should consider reserving the legislation for the assent of the President in order to secure the protection of article 254(2),[96] and it should draft interface provisions, such as the reconciliation clause in section 20(5), with sufficient precision to avoid disputes about computation.[97] The Karnataka Act might itself be improved by the prompt prescription of the reconciliation procedure and by the timely notification of social security schemes by the Board,[98] since an Act that creates entitlements which remain unimplemented invites the criticism that it is no less dependent on executive action than the Code it is said to supplement.

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[93] CoSS, *supra* note 1, § 114; *see* Singh, *supra* note 13 (noting the absence of a minimum floor of guaranteed benefits).
[94] CoSS, *supra* note 1, § 114(4)–(5).
[95] *See* Singh, *supra* note 13 (noting the absence of a grievance-redressal mechanism for gig and platform workers under the Code).
[96] India Const. art. 254, cl. 2; *see* Karnataka Act, *supra* note 4, assent clause (reflecting assent of the Governor).
[97] Karnataka Act, *supra* note 4, §§ 20(5), 28(2)(xviii).
[98] *Id.* § 3(2).

C. **Broader Implications**

The doctrinal contribution of this article is not limited to gig work. The distinction between enabling and rights-conferring statutes provides a principled basis for applying the doctrine of repugnancy to any Concurrent List subject on which the Centre enacts framework legislation, and the States enact substantive schemes. It focuses attention on the content that the central enactment itself supplies rather than on the scope of the subject matter. It also reflects a sound constitutional intuition: that a State should not be deprived of a competence to safeguard its residents by a central law that has yet to choose to do so. The distinction is not without limits. It does not engage the separate question of legislative competence, and it is less compelling in cases where Parliament has expressed an intention to preclude State legislation or has itself adopted a detailed substantive regime. Nor can the analysis in this article anticipate the reasoning of the High Court, whose final judgment on the pending petitions remains awaited.

The future of platform labour regulation in India lies not in federal supremacy but in cooperative federalism. The Karnataka Act is not a threat to the CoSS. It is a model of how a State may fill the gaps left open by an enabling central statute and the Constitution, properly construed, permits and encourages it to do so.

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