

Right to Collective Bargaining in the Digital Age Challenges Faced by Trade Unions with the Rise of Remote Work and AI-Driven Workplaces

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Abstract—The right to collective bargaining has historically been a central pillar of labor law and industrial relations across the world. It functions as a means to rebalance the inherent inequality of bargaining power between workers and employers, giving employees a collective voice in shaping the terms and conditions of their labor. In India, this right flows from the constitutional guarantee of freedom of association under Article 19(1)(c) and is reinforced through statutes such as the Industrial Disputes Act, 1947.¹ Similarly, international labor standards, particularly the International Labor Organization's Convention No. 98, recognize collective bargaining as a fundamental right.² Yet, the digital transformation of work accelerated by the COVID-19 pandemic and driven by artificial intelligence (AI) and remote work has presented significant challenges to the effective realization of this right.

Remote work disrupts the physical congregation of workers, historically the bedrock of union organizing, and weakens solidarity by dispersing employees across geographies.³ Meanwhile, AI-driven management systems algorithmic scheduling, automated performance evaluation, and digital surveillance dilute the traditional employer-employee relationship and create opacity that undermines accountability.⁴ Trade unions now struggle not only with declining membership and restrictive labor laws but also with the technological barriers that hinder communication and organizing in the digital space. Courts and legislatures worldwide have started to address these issues, from the European Union's Platform Work Directive to rulings of the U.S. National Labor Relations Board on algorithmic surveillance.⁵ However, India has only partially addressed these developments through the Social Security Code, 2020, which provides for welfare measures but does not grant collective bargaining rights to gig and platform workers.⁶

Index Terms—Collective Bargaining, Digital Age, Remote Work, Artificial Intelligence (AI) in Workplaces, Trade Unions

Objectives

1. To explore the traditional foundations of collective bargaining as a legal and social right.
2. To analyze the challenges posed by remote work and AI-driven management systems to the functioning of trade unions.
3. To examine judicial and legislative responses in India and comparative jurisdictions regarding digital-age collective bargaining.
4. To propose reforms for strengthening collective bargaining mechanisms in technologically mediated workplaces.

Research Methodology

This study adopts a doctrinal legal methodology, grounded in the analysis of primary sources such as constitutional provisions, statutes, and judicial decisions, as well as secondary sources including scholarly articles, policy reports, and international labor standards. A comparative approach is employed to contextualize India's legal framework within global trends, particularly in the European Union, United Kingdom, and United States. The methodology is qualitative and analytical, aiming to critically evaluate the adequacy of current laws and institutions in protecting collective bargaining in the digital era. By blending doctrinal interpretation with comparative insights, the study seeks to generate normative recommendations for reforming labor law in response to the technological transformation of work.

I. INTRODUCTION

Collective bargaining represents one of the most significant achievements of the labor movement. At its core, it embodies the idea that workers, by negotiating collectively rather than individually, can counterbalance the disproportionate power of

employers and secure fairer working conditions. In India, the right to form unions flows from Article 19(1)(c) of the Constitution, which guarantees the freedom of association, though courts have clarified that this right does not automatically extend to recognition of collective bargaining.⁷ The Industrial Disputes Act, 1947 further institutionalized the practice by requiring employers to negotiate with workers in certain circumstances.⁸ Internationally, the International Labour Organization (ILO) has repeatedly emphasized that collective bargaining is a cornerstone of social justice, enshrined in Convention No. 98.⁹

However, the nature of work has changed profoundly in the 21st century. The rise of remote work, accelerated by the COVID-19 pandemic, has scattered workers across geographies, weakening traditional forms of solidarity and reducing opportunities for union activity.¹⁰ At the same time, AI-driven management systems ranging from algorithmic allocation of tasks to automated performance evaluation have redefined the employer-employee relationship. Gig economy platforms such as Uber, Ola, Swiggy, and Zomato rely heavily on algorithms to control labor, often categorizing workers as “independent contractors” to deny them collective bargaining rights.¹¹ This raises pressing questions about the continued relevance and enforceability of collective bargaining in the digital age.

This article situates these challenges in the Indian context while also drawing insights from international developments. It begins by tracing the traditional foundations of collective bargaining, before examining the evolution of its recognition in India. It then analyzes the dual challenges posed by remote work and AI-driven workplaces, followed by a study of judicial and legislative responses worldwide. Finally, it proposes a reimagined framework for collective bargaining suited to the realities of the digital economy

II. TRADITIONAL FOUNDATIONS OF COLLECTIVE BARGAINING

Collective bargaining emerged during the industrial revolution as a response to the exploitative practices of unregulated capitalism. Early labor struggles in Europe and the United States were characterized by efforts to secure recognition of trade unions against

employers who sought to impose unilateral terms of employment. The central premise of collective bargaining is the inherent imbalance of power in the employment relationship, where individual workers lack meaningful negotiating capacity compared to employers.¹² By banding together, workers can collectively exert pressure and secure improved wages, working conditions, and protections.

In India, the right to collective bargaining is grounded in the constitutional guarantee of freedom of association. However, as the Supreme Court clarified in *All India Bank Employees' Ass'n v. National Industrial Tribunal*, while workers have the right to form associations, this does not automatically guarantee the right to collective bargaining or recognition by employers.¹³ The Court drew a distinction between the constitutional right to form associations and the statutory framework necessary for enforcing collective bargaining. Despite these limitations, collective bargaining became an established practice in industries such as banking, manufacturing, and transport, where unions played a critical role in securing favorable outcomes for workers.

The ILO has consistently underscored the centrality of collective bargaining. Convention No. 87 (Freedom of Association and Protection of the Right to Organize, 1948) and Convention No. 98 (Right to Organize and Collective Bargaining, 1949) establish the global standards in this regard.¹⁴ Although India has ratified Convention No. 98, it has not ratified Convention No. 87, reflecting a cautious approach toward full recognition of union rights.¹⁵ Nevertheless, collective bargaining has been widely accepted as a normative component of fair labor practices worldwide

III. EVOLUTION OF COLLECTIVE BARGAINING RIGHTS IN INDIA

The Indian legal framework for collective bargaining is primarily statutory, with the Industrial Disputes Act, 1947 serving as the cornerstone. The Act provides for the recognition of trade unions and the settlement of industrial disputes through conciliation, arbitration, and adjudication.¹⁶ Although the Act does not explicitly guarantee the right to collective bargaining, it institutionalizes the process by requiring employers and workers to engage in negotiations in certain situations.

Judicial interpretations have played a pivotal role in shaping the contours of collective bargaining in India. In *Bharat Iron Works v. Bhagubhai Balubhai Patel*, the Supreme Court emphasized that collective bargaining is not merely a matter of statutory compliance but also an essential feature of industrial democracy.¹⁷ Similarly, in *Balmer Lawrie Workers' Union v. Balmer Lawrie & Co.*, the Court underscored the significance of recognition of unions for effective collective bargaining.¹⁸ However, the judiciary has also placed limits, clarifying that the right to strike is not a fundamental right, even though it may be an instrument of collective bargaining.¹⁹

The post-liberalization era witnessed a decline in union density and a shift toward more flexible labor markets. Economic reforms of the 1990s encouraged privatization and contractualization, weakening traditional trade unions.²⁰ At the same time, the emergence of the gig economy and informalization of labor created a large segment of workers outside the scope of traditional collective bargaining mechanisms. The four new labor codes introduced in 2020 sought to consolidate existing laws, but critics argue that they fall short of adequately addressing the rights of platform and gig workers.²¹

Thus, while collective bargaining remains recognized in principle, its practical realization in India has been weakened both by structural changes in the economy and by gaps in the legal framework

IV. COLLECTIVE BARGAINING IN THE ERA OF REMOTE WORK

The COVID-19 pandemic accelerated the adoption of remote work, transforming it from a niche arrangement into a mainstream form of employment.²² While remote work offered flexibility and resilience for businesses, it created significant challenges for trade unions. Historically, unions thrived in factory floors, offices, and other physical workplaces where daily interactions fostered solidarity.²³ The absence of shared physical spaces under remote work reduces opportunities for workers to engage informally, weakening the social bonds that underlie collective action.²⁴

Remote work also complicates union organizing. Traditional methods of recruitment leafleting, workplace meetings, and face-to-face persuasion are far less effective in dispersed, digitally mediated

environments.²⁵ Employers, in turn, have increasingly leveraged digital monitoring tools to track productivity and communications, raising concerns about surveillance and retaliation against union activity.²⁶ The U.S. National Labor Relations Board (NLRB) has recently flagged algorithmic monitoring and data-driven discipline as chilling effects on the exercise of collective rights.²⁷

The European Union has recognized these concerns in its Directive on Improving Working Conditions in Platform Work (2022), which obliges employers to provide greater transparency about algorithmic decision-making and to ensure that workers' representatives are consulted in relation to digital monitoring systems.²⁸ India, however, has yet to enact comprehensive legislation addressing the intersection of collective bargaining and digital surveillance. While the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 regulate certain aspects of data governance, they do not extend to protecting workers' collective rights.²⁹

Remote work has thus shifted the terrain of collective bargaining. For unions to remain effective, they must adapt by employing digital tools, such as encrypted messaging, video conferencing, and online mobilization platforms. However, this requires not only technological capacity but also legal reforms that recognize digital organizing as a protected form of labor activity.³⁰

V. ALGORITHMIC MANAGEMENT AND COLLECTIVE BARGAINING

One of the most pressing challenges in the digital age is the rise of algorithmic management.³¹ In gig and platform economies, algorithms determine work allocation, pricing, ratings, and even termination.³² This "black box" governance leaves workers with little clarity about how decisions affecting their livelihoods are made, undermining the basic premise of bargaining: the ability to negotiate with a clearly identifiable employer.³³

The case of *Aslam v. Uber BV* in the United Kingdom highlighted this issue, where Uber drivers successfully argued that despite being labeled as "independent contractors," the algorithmic control exercised by the company rendered them "workers" entitled to collective bargaining protections.³⁴ Similarly, in

Glovo and Deliveroo cases across Europe, courts have increasingly scrutinized algorithmic systems that dictate the terms of employment.³⁵

In India, however, platform workers remain classified as “self-employed,” with no statutory right to collective bargaining.³⁶ The Social Security Code, 2020, recognizes gig and platform workers for welfare purposes but stops short of granting them labor rights equivalent to employees.³⁷ This gap has prompted calls from scholars and labor activists for a redefinition of the employment relationship in light of algorithmic management.³⁸

International labor standards have also started to adapt. The ILO’s World Employment and Social Outlook 2021 warned that algorithmic control in platform work risks creating a new “digital Taylorism,” where workers are subjected to continuous monitoring and performance tracking without corresponding protections.³⁹ In response, some countries, such as Spain through the Riders’ Law (2021), have enacted legislation granting platform workers the presumption of employee status and mandating algorithmic transparency.⁴⁰

Algorithmic management, therefore, not only challenges the enforceability of collective bargaining but also necessitates a rethinking of the legal definition of employment itself. Without addressing this foundational issue, trade unions will remain structurally disadvantaged in negotiating with algorithmic employers.

VI. INTERNATIONAL PERSPECTIVES AND COMPARATIVE INSIGHTS

Comparative labor law reveals diverse approaches to adapting collective bargaining to digital-age challenges. In the United States, the NLRB has increasingly recognized that digital surveillance and algorithmic control can infringe on Section 7 rights under the National Labor Relations Act (NLRA), which protects the right to unionize and engage in collective bargaining.⁴¹ The recent *Stericycle, Inc.* decision underscored that employer rules restricting communication may unlawfully deter workers from organizing.⁴² However, the NLRA does not extend protections to independent contractors, leaving gig workers outside its ambit.⁴³

The European Union has taken a more proactive stance. The Platform Work Directive, expected to

come into force by 2025, establishes a presumption of employment for gig workers and obliges employers to disclose the logic of algorithmic decisions.⁴⁴ This enhances both collective bargaining and individual rights by addressing information asymmetries inherent in algorithmic management.

In the United Kingdom, the Supreme Court’s decision in *Uber BV v. Aslam* affirmed that gig workers are entitled to minimum labor protections, including union recognition.⁴⁵ The Trade Union and Labour Relations (Consolidation) Act, 1992 further institutionalizes collective bargaining mechanisms, although its effectiveness in digital contexts remains contested.

In India, the approach remains fragmented. While trade unions under the Trade Unions Act, 1926, continue to play a role in traditional industries, digital-age workers in the gig economy largely remain excluded.⁴⁶ This highlights the need for legislative reforms that extend bargaining rights to platform and remote workers.

Comparative analysis thus reveals a spectrum of responses: while the EU and UK have embraced reforms to integrate gig workers into collective bargaining frameworks, India and the U.S. continue to grapple with outdated categorizations of employment that hinder unionization in digital economies.

VII. JUDICIAL RESPONSES IN THE INDIAN CONTEXT

Judicial interpretation has always been pivotal in shaping the contours of labor rights in India, including collective bargaining. While the Constitution provides the foundation through Article 19(1)(c), courts have clarified its scope and limitations.

In *All India Bank Employees’ Ass’n v. National Industrial Tribunal*, the Supreme Court made it clear that while the right to form associations is fundamental, the right to collective bargaining or to strike is not constitutionally guaranteed.⁴⁷ Instead, these rights depend on statutory frameworks. This distinction reflects the judiciary’s cautious approach, balancing workers’ rights with the state’s interest in maintaining industrial peace.

The Supreme Court has, however, recognized collective bargaining as a vital component of industrial democracy. In *Bharat Iron Works v. Bhagubhai Balubhai Patel*, the Court emphasized that collective bargaining is not merely a procedural mechanism but

a substantive tool to achieve fair labor standards.⁴⁸ Similarly, in *Balmer Lawrie Workers' Union v. Balmer Lawrie & Co.*, the Court acknowledged the necessity of recognizing trade unions to make bargaining effective.⁴⁹

At the same time, courts have limited certain tools of collective action. In *Kameshwar Prasad v. State of Bihar*, the Supreme Court held that the right to strike is not a fundamental right, though it may be a statutory one.⁵⁰ This position has been reaffirmed in subsequent cases, reflecting judicial reluctance to elevate disruptive tactics to constitutional status. Such rulings have significant implications for collective bargaining in the digital age, where strikes may take new forms, including digital shutdowns or coordinated online protests.

The Indian judiciary has yet to directly confront the challenges posed by remote work or algorithmic management. However, given the increasing litigation by gig workers demanding recognition of employment rights, it is only a matter of time before these issues reach the higher courts.⁵¹ Judicial recognition of algorithmic management as a form of employer control, similar to the UK's *Uber* case, could significantly expand the scope of collective bargaining rights in India.

VIII. THE LEGISLATIVE FRAMEWORK AND ITS GAPS

India's legislative framework for collective bargaining remains anchored in the Industrial Disputes Act, 1947, and the Trade Unions Act, 1926.⁵² While these laws institutionalize union recognition and dispute resolution, they were designed for an industrial economy with large, centralized workplaces. They do not adequately address the dispersed, digital nature of modern work.

The new labor codes enacted in 2020—the Code on Wages, the Industrial Relations Code, the Occupational Safety, Health and Working Conditions Code, and the Social Security Code—were intended to modernize labor law.⁵³ However, critics argue that the Industrial Relations Code, in particular, tilts in favor of employers by raising thresholds for union recognition and making strikes more difficult.⁵⁴

The Social Security Code, 2020, marks a step forward by recognizing “gig” and “platform workers” as

distinct categories entitled to certain welfare benefits.⁵⁵ Yet, it stops short of granting them collective bargaining rights or employment protections. This exclusion is particularly significant, given that platform work is often mediated by algorithms that exercise substantial control over working conditions.⁵⁶

The lack of statutory recognition for digital organizing is another gap. The law does not explicitly protect workers using digital platforms such as encrypted messaging groups or social media for union activity. This creates uncertainty and leaves workers vulnerable to employer retaliation.⁵⁷

Thus, while India's legislative framework has evolved, it still falls short of responding to the realities of remote work, AI-driven management, and the gig economy.

IX. CHALLENGES FACED BY TRADE UNIONS IN THE DIGITAL AGE

Trade unions in India face multiple challenges in adapting to the digital economy:

1. **Declining Membership:** Union density has fallen sharply, with a growing share of the workforce in the informal and gig sectors.⁵⁸ This undermines unions' bargaining power.
2. **Technological Barriers:** Many unions lack the technological infrastructure to engage in effective digital organizing. Traditional leadership structures are not always equipped to mobilize dispersed workers.⁵⁹
3. **Employer Resistance:** Employers, particularly in the tech sector, often resist unionization, citing the need for flexibility and innovation. Digital surveillance tools also enable monitoring of organizing activities.⁶⁰
4. **Legal Exclusion:** Gig and platform workers remain outside the scope of core labor protections, including collective bargaining rights.⁶¹
5. **Fragmentation of Work:** The shift from permanent to contractual or freelance arrangements has fragmented worker identity, making collective solidarity harder to build.⁶²

These challenges collectively threaten the relevance of unions unless structural reforms are enacted.

X. PROPOSED REFORMS FOR STRENGTHENING COLLECTIVE BARGAINING

To address these challenges, both legal and institutional reforms are necessary.

1. Expanding the Definition of “Employee.”

The definition of “employee” in Indian labor law should be broadened to include gig and platform workers, similar to Spain’s Riders’ Law and the EU Platform Work Directive.⁶³ This would extend collective bargaining rights to a large section of digital-age workers.

2. Legal Recognition of Digital Organizing.

Statutes should explicitly recognize digital platforms such as messaging apps and online forums as legitimate spaces for union activity. This would protect workers from retaliation for engaging in online organizing.⁶⁴

3. Algorithmic Transparency.

Employers using AI-driven management should be legally required to disclose the logic of algorithmic decisions affecting workers.⁶⁵ This would enable unions to bargain over algorithmic systems, not just traditional conditions of work.

4. Strengthening Union Representation.

Thresholds for union recognition should be lowered to allow smaller, more flexible unions to represent dispersed workers. Multi-employer bargaining frameworks could also be introduced for platform-based industries.⁶⁶

5. Judicial Intervention.

Indian courts should adopt a purposive interpretation of labor laws, recognizing algorithmic control as employer control. Such an approach, aligned with international trends, would bridge statutory gaps until legislative reforms are enacted.⁶⁷

These reforms would revitalize collective bargaining by adapting it to the realities of the digital economy, ensuring that the fundamental principle of balancing power in labor relations is preserved.

XI. CONCLUSION

The right to collective bargaining has been one of the most powerful instruments of labor justice in history, securing fair wages, decent working conditions, and

industrial democracy. Yet, in the digital age, these right faces unprecedented challenges. Remote work has fragmented solidarity, while algorithmic management has blurred the boundaries of the employer-employee relationship. Trade unions must adapt technologically, while legislatures and courts must modernize the legal framework.

India stands at a critical juncture. With one of the world’s largest digital labor forces, the country cannot afford to leave gig and platform workers outside the scope of collective bargaining. Recognizing digital organizing, mandating algorithmic transparency, and expanding the definition of employment are urgent steps toward safeguarding workers’ rights in the 21st century.

The future of collective bargaining will depend on whether the law can evolve as quickly as technology. Without reforms, unions risk becoming relics of an industrial past. With timely adaptation, however, they can remain powerful guardians of worker justice in a digital future.

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