



From Exposure to Compensation: Rethinking the Evidentiary Burden in Asbestos-Related Occupational Disease Claims in India

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ABSTRACT

Asbestos-related diseases expose a structural weakness in occupational disease law. In an ordinary workplace accident, exposure, injury and the evidence of causation arise together. In asbestos disease they do not: the disease may emerge decades after exposure, by which time employment records may be lost, the enterprise may have closed, and exposure may never have been measured. Indian law recognises asbestos-related disease as an occupational disease and, since the decision in *Consumer Education and Research Centre v Union of India*, as a matter of the constitutional right to health. Yet recognition of the disease has not been matched by an evidentiary architecture capable of proving individual causation once the evidence has outlived the employment. This article identifies that gap as an 'evidentiary inversion': the longer the latency, the more remote the injury becomes from the evidence needed to establish its cause. It proposes an Exposure–Disease–Attribution (EDA) Framework under which proof of credible occupational exposure and a medically established asbestos-related disease raises a rebuttable presumption of occupational causation; a Lost Records Principle permitting an adverse inference where an employer has failed to create or preserve legally required exposure records; and a Long-Latency Rule providing for extended record retention, portable exposure histories and post-employment surveillance. Drawing on comparative experience from the United Kingdom, Australia, the United States and the International Labour Organization, the article argues that the proposals reallocate evidentiary responsibility according to institutional capacity rather than impose strict liability.

Keywords: asbestos; occupational disease; burden of proof; causation; mesothelioma; article 21; labour codes; evidentiary presumption

I. Introduction

The law of workplace injury is built on an intuitive sequence: exposure, injury, claim, compensation. In an industrial accident the stages are compressed into moments, and the evidence that proves each of them is generated at roughly the time the claim arises. Asbestos-related disease disrupts that sequence. Inhaled fibres may remain clinically silent for decades. The International Agency for Research on Cancer (IARC) classifies all forms of asbestos as carcinogenic to humans,¹ and the World Health Organization (WHO) reports that diseases such as mesothelioma may appear many decades after exposure has ceased.²

This temporal separation produces a legal difficulty more fundamental than the familiar observation that asbestos is dangerous. A worker who approaches a court or compensation authority long after exposure may be asked to prove that she was employed by the respondent, that asbestos was present in the workplace, that she was actually exposed, the duration and intensity of that exposure, that the disease was caused by it rather than by environmental or other occupational sources, and the resulting disability. Every one of these propositions concerns events in a workplace that may no longer exist. The employer may have closed or restructured, records may have been discarded, exposure may never have been monitored, and colleagues who could testify may have died. The legal system thus confronts a paradox: the longer the disease takes to manifest, the harder it is to prove the exposure that caused it.

Indian law has not been indifferent to asbestos. In *Consumer Education and Research Centre v Union of India* the Supreme Court held that the right to health and medical care of workers is part of the right to life under article 21 of the Constitution, and issued directions that included the long-term preservation of workers' health records.³ Statutory schedules identify asbestos-related diseases as occupational diseases, and the new labour codes, which the Government announced as having come into force on 21 November 2025, impose duties of hazard control, medical examination and disease notification. The question this article addresses is therefore not whether Indian law recognises asbestos as an occupational hazard. It plainly does. The question is whether it provides a means of *proving* asbestos-related occupational disease when the decisive evidence has disappeared before the disease became actionable.

¹International Agency for Research on Cancer, *Arsenic, Metals, Fibres and Dusts* (IARC Monographs on the Evaluation of Carcinogenic Risks to Humans vol 100C, IARC 2012).

²World Health Organization, 'Asbestos' (Fact sheet) <<https://www.who.int/news-room/fact-sheets/detail/asbestos>> accessed 6 October 2026.

³*Consumer Education and Research Centre v Union of India* (1995) 3 SCC 42.

The article argues that it does not, and that the difficulty lies in the architecture of proof rather than in the substantive entitlement. It makes three contributions. First, it names and analyses the evidentiary inversion that long latency produces. Second, it proposes an Exposure–Disease–Attribution (EDA) Framework, supported by a Lost Records Principle and a Long-Latency Rule. Third, it situates the proposals within Indian constitutional, statutory and evidence law and tests them against comparative experience. The method is doctrinal and comparative: it analyses Indian authorities and statutory materials, and draws on jurisdictions that have confronted the same problem through case law, legislation and specialist tribunals.

The argument proceeds as follows. Part II describes the temporal architecture of asbestos disease. Part III sets out the Indian legal framework, and Part IV analyses the anatomy of evidentiary failure. Part V draws comparative lessons. Part VI develops the EDA Framework, Part VII the Lost Records Principle and Long-Latency Rule, and Part VIII the hard cases of multiple employers, competing causes and vanished employers. Part IX addresses institutional design and privacy, Part X considers objections, and Part XI concludes.

II. The Temporal Architecture of Asbestos Disease

A. Latency and cumulative dose

Asbestos refers to a group of fibrous silicate minerals once prized for their tensile strength and heat resistance. Exposure occurs chiefly by inhalation of respirable fibres. The resulting diseases include asbestosis, a fibrotic lung disease associated with substantial cumulative exposure; lung cancer; mesothelioma, a malignancy of the pleura or peritoneum; and pleural disease.⁴ Two features matter for the law. The first is latency: the interval between first exposure and diagnosis commonly runs to decades, and in mesothelioma may exceed forty years. The second is that risk is cumulative and persists after exposure ends. Leaving the asbestos factory does not remove the fibres from the body, and it does not end the worker's biological risk.

A hypothetical illustrates the point. A worker is employed in an asbestos-cement unit from 1985 to 1992, then works elsewhere for twenty-five years in unrelated occupations, develops breathlessness in 2017, is diagnosed with mesothelioma in 2018, and claims compensation in 2019. At the time of exposure there was no disease. At the time of disease there may be no workplace. The evidence needed to link the two lies in the interval between them, and may not exist at all.

B. The evidentiary inversion

This pattern can be described as the *evidentiary inversion* of long-latency occupational disease. In conventional injury law the interval between injury and claim is short, so evidence of cause is fresh when the claim is made. In asbestos disease the evidence of cause is at its most perishable precisely when the injury becomes legally visible. The worker holds abundant evidence of the *consequence* (biopsy, imaging, pathology and clinical history) but little evidence of the *cause*. Rules of proof designed for contemporaneous injury therefore operate, in this setting, as rules that reward the disappearance of evidence.

C. Three distinct questions

A further source of confusion is the tendency to collapse three different inquiries into one. *Scientific causation* asks whether asbestos can cause the disease in question; for the recognised asbestos diseases this question is settled. *Exposure causation* asks whether the claimant was in fact exposed in the course of employment. *Attribution* asks whether the particular respondent should bear responsibility for that exposure.⁵ Claims often fail at the second and third stages not because the science is doubtful but because the historical record is incomplete. Separating the questions is the first step towards allocating the burden on each of them rationally.

III. The Indian Legal Framework

A. The constitutional foundation

The constitutional starting point is *Consumer Education and Research Centre v Union of India*. Reading article 21 with articles 39(e), 41, 43 and 48A, the Supreme Court held that the right to health and medical aid protects workers during service and after retirement, and that the State and employers are under a duty to secure it. Among its directions, the Court required that workers' health records in the relevant industries be maintained for a long period, calculated by reference to the commencement and cessation of employment, and provided for medical examination and compensation for workers found to be suffering from occupational disease.⁶ The judgment is significant for two reasons. It converted occupational health from a regulatory concern into a constitutional one, and it recognised, in the form of an extended retention period, that the evidentiary life of an occupational exposure must exceed the duration of the employment relationship.

⁴ IARC (n 1).

⁵ On the distinction between general and individual causation, see generally Jane Stapleton, 'Cause-in-Fact and the Scope of Liability for Consequences' (2003) 119 LQR 388.

⁶ *Consumer Education and Research Centre* (n 3).

The Court's approach built on earlier decisions treating the protection of workers' health and dignity as integral to article 21,⁷ and it has since returned to asbestos policy in later litigation.⁸ In the wider field of environmental harm, the Court has also been willing to allocate the burden of proof according to which party is better placed to discharge it. In *Vellore Citizens' Welfare Forum v Union of India* it adopted the precautionary principle and held that the burden of proving that an activity is environmentally benign lies on the person seeking to carry it on.⁹ That reasoning has not been systematically carried over into occupational disease proof, and this article suggests that it should be.

The constitutional right has a preventive and a remedial dimension. The preventive dimension requires the State and employers to avert exposure. The remedial dimension requires that a worker who develops disease has a meaningful route to care and compensation. A remedial right that cannot be proved is a formal right only. If the employer failed to preserve records the law required it to keep, and the worker is denied relief for want of proof, the system has transferred the consequence of institutional failure from the party responsible for the record to the party who suffered the injury.

B. The compensation statutes

The Employees' Compensation Act 1923 has long been the statutory route. Section 3(2) treats the contracting of a disease listed in Schedule III, in qualifying employment, as an injury by accident arising out of and in the course of employment, and the Schedule lists lung cancer and mesotheliomas caused by asbestos, and asbestosis, among the occupational diseases.¹⁰ This is an important legislative acknowledgment that some diseases are so closely tied to particular exposures that the ordinary burden of proving causation may be reduced. The employee-compensation provisions of the Code on Social Security 2020 now carry that scheme forward,¹¹ following the Government's announcement that the four labour codes took effect on 21 November 2025.¹²

The Schedule, however, solves classification rather than causation. It tells the claimant that the disease is of a recognised kind. It does not resolve whether the claimant was in qualifying employment for the prescribed period, whether exposure in fact occurred, how the contributions of several employers are to be treated, or what follows where the only evidence of exposure was in the employer's hands and is gone.

C. The Occupational Safety, Health and Working Conditions Code 2020

The OSH Code 2020 requires employers to maintain workplaces free from hazards likely to cause injury or occupational disease, provides for occupational safety and health standards and for medical examination of workers, and requires notification of the occupational diseases listed in its Third Schedule, which includes asbestosis and occupational cancer.¹³ It also contemplates medical examination after employment where a disease arises out of employment.

These provisions are a real advance: the law increasingly requires employers and doctors to *create* evidence. What it does not yet explain is how adjudicators should treat the situation in which such evidence was never created or has since been lost. The Code speaks to prospective compliance; it is largely silent on the evidentiary consequences of historical non-compliance for claims that crystallise decades later. That silence is the gap this article seeks to fill.

D. The general law of evidence

The general rules of Indian evidence law offer partial tools. The Bharatiya Sakshya Adhiniyam 2023, which replaced the Indian Evidence Act 1872, retains the principle that the burden lies on the party who would fail if no evidence were given, provides that the burden of proving a fact especially within a person's knowledge lies upon that person, and permits a court to presume that evidence which could have been produced but was withheld would be unfavourable to the party withholding it.¹⁴ These provisions are helpful but limited. The rule on facts within special knowledge has been held not to relieve a party of the burden of establishing the primary facts of her case.¹⁵ And the adverse-inference presumption has been developed for evidence that a party *withholds*;¹⁶ it sits uneasily with a case in which the employer did not withhold a record but never made or kept it. The doctrines capable of addressing the evidentiary inversion therefore exist in embryo, but have not been assembled into a coherent rule for long-latency disease.

IV. The Anatomy of Evidentiary Failure

A. Structural information asymmetry

⁷*People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235.

⁸*Kalyaneshwari v Union of India* (2011) 3 SCC 287.

⁹*Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCC 647.

¹⁰Employees' Compensation Act 1923, s 3(2) and sch III.

¹¹Code on Social Security 2020, ch VII.

¹²Press Information Bureau, Ministry of Labour and Employment, press release on the implementation of the labour codes (21 November 2025) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2192463>> accessed 6 October 2026.

¹³Occupational Safety, Health and Working Conditions Code 2020, including ss 6 and 12 and the Third Schedule.

¹⁴Bharatiya Sakshya Adhiniyam 2023, ss 104, 109 and 119 illustration (g) (corresponding to Indian Evidence Act 1872, ss 101, 106 and 114 illustration (g)).

¹⁵*Shambu Nath Mehra v State of Ajmer* AIR 1956 SC 404.

¹⁶*Gopal Krishnaji Ketkar v Mohamed Haji Latif* AIR 1968 SC 1413.

The worker and the employer hold different kinds of evidence. The worker typically holds evidence of disease: biopsy results, imaging, pathology reports and clinical records. The employer, and to some extent the State as regulator, holds or historically held evidence of exposure: employment registers, process descriptions, materials inventories, air-monitoring results, inspection reports, protective-equipment records and medical surveillance files. This is a structural asymmetry, not a contingent one, and it runs in the same direction in almost every case. The party able to create and preserve the evidence at the lowest cost is not the party asked to prove the fact at the end.

That allocation is difficult to defend on any theory of procedural fairness. A well-known insight of the economic analysis of accidents is that liability should fall on the party best able to avoid the loss at least cost.¹⁷ The same logic applies to evidence: the burden of producing information should lie, or at least shift, to the party best positioned to generate it. Evidentiary capacity is a legitimate criterion of burden allocation, quite apart from sympathy for claimants.

B. Three modes of failure

Three distinct failures should be distinguished, because they call for different responses. The first is *absence*: the exposure was never measured or recorded, perhaps because the regulatory regime of the time did not require it. The second is *loss*: records were created but destroyed, discarded or mislaid, whether on closure, restructuring or routine clearance. The third is *non-attribution*: records may exist in part, but the worker's career spans several employers, some defunct, and no single employer's records can show the cumulative picture. A rule that treats all three identically, by requiring proof the claimant cannot produce, will fail workers in every case.

C. The perverse incentive

The most troubling feature of the present position is its incentive effect. Under a conventional model, an employer who neglects to monitor exposure or preserve records improves its litigation position decades later, because the claimant cannot prove what the employer failed to document. The party that created the risk is rewarded for the loss of the very evidence that would establish it. Any workable reform must therefore reverse this incentive: non-compliance with duties to create and preserve evidence must carry evidentiary consequences for the party in default.

V. Comparative Lessons

Other jurisdictions have confronted the evidentiary inversion, and their responses fall into three groups: relaxation of causal tests, statutory presumption, and institutional substitution.

In the United Kingdom, the House of Lords in *Fairchild v Glenhaven Funeral Services Ltd* relaxed the 'but for' test for mesothelioma where a claimant had been negligently exposed by successive employers and could not show which exposure caused the disease, treating a material increase in risk as sufficient.¹⁸ *Barker v Corus UK Ltd* then apportioned liability by contribution to risk,¹⁹ a result Parliament reversed for mesothelioma in section 3 of the Compensation Act 2006, which makes responsible employers jointly and severally liable so that the claimant is not left bearing the risk of an insolvent defendant.²⁰ The Supreme Court later confirmed the approach in *Sienkiewicz v Greif (UK) Ltd*, treating negligent exposure as sufficient without proof of a minimum contribution.²¹ Where the employer or its insurer cannot be traced at all, the Mesothelioma Act 2014 establishes a payment scheme.²² The British industrial injuries scheme, moreover, contains a statutory presumption: a prescribed disease is, in the absence of evidence to the contrary, presumed to be due to the nature of the claimant's employment where the claimant has worked in the prescribed occupation.²³

Australia offers a more cautious precedent. The High Court in *Amaca Pty Ltd v Booth* accepted that a material contribution to the risk may suffice for mesothelioma but insisted that the claimant prove the contribution on the balance of probabilities.²⁴ Yet New South Wales has complemented the common law with a specialist Dust Diseases Tribunal, designed to hear dust-disease claims expeditiously and with medical expertise.²⁵

In the United States, the Supreme Court of California in *Rutherford v Owens-Illinois Inc* held that, once a plaintiff proves exposure to a defendant's asbestos-containing products and that it was a substantial factor in the disease, the burden shifts to the defendant to show that its product could not have contributed.²⁶ At the same time, federal courts have developed demanding frequency–regularity–proximity tests for exposure evidence, which illustrate

¹⁷Guido Calabresi, *The Costs of Accidents: A Legal and Economic Analysis* (Yale University Press 1970).

¹⁸*Fairchild v Glenhaven Funeral Services Ltd* [2002] UKHL 22, [2003] 1 AC 32.

¹⁹*Barker v Corus UK Ltd* [2006] UKHL 20, [2006] 2 AC 572.

²⁰Compensation Act 2006, s 3.

²¹*Sienkiewicz v Greif (UK) Ltd* [2011] UKSC 10, [2011] 2 AC 229.

²²Mesothelioma Act 2014.

²³Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985, SI 1985/967, reg 4.

²⁴*Amaca Pty Ltd v Booth* (2011) 246 CLR 36.

²⁵Dust Diseases Tribunal Act 1989 (NSW).

²⁶*Rutherford v Owens-Illinois Inc* 941 P 2d 1203 (Cal 1997).

the opposite risk: over-insistence on exposure proof.²⁷ Congress has also created statutory presumptions in analogous dust-disease contexts, such as the Black Lung Benefits Act's presumption of disease where a long-serving miner suffers a totally disabling respiratory condition.²⁸

At the international level, the ILO Asbestos Convention 1986 (No 162) requires measurement of airborne asbestos and monitoring of workers' exposure, requires that records be kept for a prescribed period and be accessible to workers, and provides for medical examination of workers who are or have been exposed.²⁹ India has not ratified the Convention,³⁰ but its architecture articulates the principle on which this article relies: the record of exposure must survive the employment relationship because the disease may survive it.

Three lessons follow. First, exposure-informed rules are compatible with respect for causation: *Fairchild* and *Rutherford* relieve the claimant of an impossible burden without abolishing the requirement of exposure. Second, presumptions are an established legislative technique in occupational disease law, and are not a radical departure. Third, where an employer cannot be found, evidence rules are not enough; institutional mechanisms of compensation are required. Each informs the framework below.

VI. The Exposure–Disease–Attribution Framework

The EDA Framework restructures the claimant's burden into three sequential stages, each matched to what the claimant can realistically prove.

A. Stage I: exposure

The claimant must establish credible occupational exposure. Exposure may be shown by any combination of employment records, wage or provident-fund records, job descriptions, testimony of the claimant and co-workers, trade-union records, factory-inspection records, industry or supplier records, photographs, expert reconstruction from the processes and materials used, and evidence of the use of asbestos-containing materials in the establishment. The standard is the civil one: credible and probable, not scientifically exact. The claimant should not be required to prove a fibre concentration, since such measurement was in most cases the employer's task, and is required only where it is genuinely necessary to distinguish occupational from non-occupational exposure.

B. Stage II: disease

The claimant must establish a medically recognised asbestos-related disease, such as asbestosis, mesothelioma or asbestos-related lung cancer, by qualified medical evidence. This stage is a safeguard against indiscriminate claims. It keeps the presumption confined to diseases for which asbestos is an established cause and ensures that the presumption cannot operate for illnesses lacking a recognised association with the exposure.

C. Stage III: attribution by presumption

Where the claimant proves credible occupational exposure and a medically recognised asbestos-related disease, the disease should be presumed to have arisen out of and in the course of employment, unless the employer establishes otherwise by cogent evidence. A statutory formulation might read:

Where an employee establishes that (a) she was employed in an establishment in which asbestos was used, processed, manufactured, handled or present in circumstances giving rise to a reasonable likelihood of exposure, and (b) she has been medically diagnosed with an asbestos-related occupational disease, the disease shall be presumed to have arisen out of and in the course of employment unless the employer proves otherwise.

The employer may rebut by showing, for example, that asbestos was not present in the relevant workplace, that no occupational exposure occurred, that the disease has a demonstrable alternative explanation, or that the claimant's occupational exposure was not materially connected to it. The presumption transfers the burden of persuasion, not merely of production, but only on attribution and only after the claimant has proved the foundational facts.

D. Why a rebuttable presumption and not strict liability

The proposal is not strict liability. It does not make an employer liable whenever a former worker develops cancer. The presumption arises only on proof of exposure and a recognised disease, applies only to recognised asbestos diseases, and leaves the employer free to disprove causation. What it changes is the consequence of uncertainty: where the uncertainty stems from the employer's inability to account for a workplace for which it was responsible, the employer, not the worker, bears it. That is consistent with the Supreme Court's allocation of the burden to the party better placed to discharge it in *Vellore*, and with the existing statutory technique of deeming under the compensation scheme.³¹ It is also consistent with the structure of the presumption in the British prescribed-disease regime and the Black Lung Act.³²

²⁷*Lohrmann v Pittsburgh Corning Corp* 782 F 2d 1156 (4th Cir 1986).

²⁸Black Lung Benefits Act, 30 USC § 921(c)(4).

²⁹Asbestos Convention 1986 (ILO C162) arts 20–21.

³⁰International Labour Organization, NORMLEX, 'Ratifications of C162 – Asbestos Convention, 1986 (No 162)' <<https://normlex.ilo.org>> accessed 6 October 2026.

³¹*Vellore* (n 9); Employees' Compensation Act 1923 (n 10).

³²Black Lung Benefits Act (n 28); Prescribed Diseases Regulations 1985 (n 23).

VII. The Lost Records Principle and the Long-Latency Rule

A. The Lost Records Principle

The second proposal addresses missing evidence directly. Under the Lost Records Principle, where an employer was legally required to create, monitor or preserve occupational exposure records, and those records are unavailable because of the employer's failure to create or preserve them, the adjudicator may draw an adverse inference against the employer as to the existence or extent of exposure.

The Principle extends the logic of existing doctrine. The Indian courts already permit an adverse inference where a party withholds evidence within its control.³³ The Principle recognises that a party who has *failed to create or keep* evidence it was obliged to hold stands in no better position than one who conceals it. The inference is not conclusive and is tied to a legal duty: it applies only where the record was required by law, so an employer cannot be penalised for failing to do what no regime of the time asked. Where the duty is statutory, as under the OSH Code, and where the Supreme Court has directed health records to be preserved,³⁴ there is a sound basis for the inference. The Principle reverses the incentive described in Part IV: instead of rewarding the loss of evidence, it ensures that the party responsible for the record bears the cost of its absence.

The Principle also changes the character of evidence law. By attaching consequences to non-compliance, it makes evidence rules a form of occupational-health regulation. An employer who knows that failure to monitor and preserve will have adverse consequences in a claim decades hence has a present incentive to monitor, retain records, provide protective equipment and conduct medical examinations. The evidentiary burden then does more than determine who wins after disease has occurred; it influences conduct before disease occurs.

B. The Long-Latency Rule

The third proposal is structural. A Long-Latency Rule would recognise a category of occupational diseases with unusually long latency and attach to it a specific regime comprising: (i) retention of exposure and health records for a period linked to scientifically recognised latency, and not simply to the duration of employment; (ii) extended medical surveillance of high-risk workers after employment ends; (iii) portability of occupational health records, so that they follow the worker; (iv) post-employment access by workers to their own records; (v) a national registry of occupational disease; and (vi) preservation of records, and of the identity of a responsible successor, on closure or restructuring.

The Supreme Court's directions in 1995 contain the germ of this idea in the form of an extended retention period tied to the start and end of employment. But a retention period calculated from the end of employment may still fall short of the latency of mesothelioma, and it is unclear that the present statutory scheme has consolidated it into an enforceable, uniform duty. A Long-Latency Rule would make the retention period a function of the disease, and not of the employment relationship.

VIII. The Hard Cases

A. Multiple employers and cumulative exposure

Most asbestos claimants have worked for more than one employer. A requirement that the claimant identify the employer whose exposure alone caused the disease asks an impossible question, because the disease results from cumulative dose. The better question is whether the respondent *materially contributed* to the claimant's occupational exposure. Material contribution is a recognised standard in the law of industrial disease,³⁵ and scholarship on causal overdetermination supports its use where multiple sufficient or contributory causes operate.³⁶

The framework therefore proposes that, where several employers contributed, the claimant may proceed against any of them on the presumption, and the responsible employers may seek contribution inter se. Following the British statutory experience, joint and several liability protects the claimant from the insolvency or disappearance of one defendant, while contribution proceedings allocate the burden among the responsible parties.³⁷ Apportionment is a matter between employers; it should not be a precondition of the worker's relief.

B. Smoking and competing causes

Lung cancer presents a distinct difficulty, since it has multiple causes. An employer will argue that because the claimant smoked, asbestos cannot be held responsible. The argument misunderstands the science: the WHO notes that co-exposure to tobacco smoke and asbestos substantially increases lung-cancer risk.³⁸ The presence of another risk factor does not negate occupational causation. The relevant inquiry is whether occupational exposure materially contributed to the disease. Smoking is properly relevant to rebuttal and to the assessment of quantum, but it should not by itself defeat the presumption.

C. Vanished employers and corporate succession

³³Ketkar (n 16); Bharatiya Sakshya Adhiniyam 2023 (n 14).

³⁴OSH Code 2020 (n 13); *Consumer Education and Research Centre* (n 3).

³⁵*Bonnington Castings Ltd v Wardlaw* [1956] AC 613 (HL).

³⁶Richard W Wright, 'Causation in Tort Law' (1985) 73 Cal L Rev 1735.

³⁷Compensation Act 2006 (n 20) s 3.

³⁸WHO (n 2).

An asbestos factory may close, merge, be acquired or become insolvent, while the disease endures. Indian law contains some tools for continuity: on an amalgamation the liabilities of the transferor pass to the transferee,³⁹ and in insolvency workmen's dues enjoy a statutory priority.⁴⁰ But these provisions are not designed for long-latency claims that crystallise after liquidation has concluded or a corporate group has been reorganised. A historical register of asbestos-using establishments, linked to successor entities, would assist in identifying a responsible party. Where no responsible employer can be found, evidentiary reform is insufficient, and the British experience of a state-backed payment scheme suggests a collectively funded fall-back.⁴¹

IX. Institutional Design

A. A National Asbestos Exposure Registry and portable records

The central institutional proposal is a national registry of workers engaged in identified asbestos-risk employment. Each record would contain the employer and establishment, job description, duration of employment, type of asbestos encountered, monitoring results, protective equipment supplied, medical examinations, any diagnosis and the date of cessation of exposure. It should be linked to occupational-health authorities rather than held only by employers, accessible to the worker for life, and portable across states, industries and employers, on the principle of one worker, one occupational exposure history. The registry would ensure that the evidence no longer disappears when the employment relationship ends.

B. Privacy

A registry of sensitive health information raises its own legal problem. The right to privacy is a fundamental right under article 21,⁴² and the Digital Personal Data Protection Act 2023 regulates the processing of personal data.⁴³ A registry should accordingly be built on purpose limitation, data minimisation, restricted access, worker control, security and independent oversight. Its object is not a permanent surveillance database; it is to prevent the destruction of evidence necessary to enforce recognised health rights. The solution to an evidentiary deficit should not create a privacy deficit.

C. Specialist adjudication

Finally, ordinary litigation is ill-suited to long-latency disease claims, which require legal and medical expertise and speed, since mesothelioma claimants often have a short life expectancy. A specialist occupational disease tribunal, on the model of the New South Wales Dust Diseases Tribunal,⁴⁴ could combine medical and legal members, apply the EDA Framework, and deliver determinations promptly.

X. Objections

Four objections should be addressed. The first is fraud: that decades-old claims are vulnerable to fabricated histories. The EDA Framework requires proof of credible exposure and medical certification before any presumption arises, and the employer retains the right to rebut. The second is that employers become insurers. The presumption is rebuttable, confined to recognised asbestos diseases and dependent on proof of exposure; it reallocates the risk of evidentiary uncertainty, not the whole risk of disease. The third is cost. Long-term record-keeping and surveillance are expensive, but so are the human and fiscal costs of undetected and uncompensated disease, which the WHO attributes to more than 200,000 deaths each year worldwide from occupational exposure.⁴⁵ The policy question is who should bear the cost of documenting a risk created by industrial activity, and the economic logic of least-cost avoidance supports the answer that it should be those who create it.⁴⁶ The fourth is retrospectivity: that the presumption penalises employers for historical non-compliance. The Lost Records Principle is tied to duties that existed when the records should have been kept, and the presumption concerns the allocation of proof in current proceedings, not the creation of new substantive liability. Clear transitional provisions can address residual concerns.

XI. Conclusion

Asbestos exposes a weakness in conventional occupational disease law. The law assumes that evidence of injury and evidence of cause exist at about the same time. Asbestos shows otherwise: the disease survives, but the evidence may not. Indian law has taken important steps, from the constitutional recognition of workers' health in *Consumer Education and Research Centre* to the schedules of occupational disease and the duties in the OSH Code. Yet substantive recognition does not of itself yield substantive justice, and the remaining problem is evidentiary.

This article has proposed a reallocation, not an expansion, of responsibility. Under the EDA Framework, a worker who proves credible occupational exposure and a medically recognised asbestos-related disease benefits from a rebuttable presumption of occupational causation. Under the Lost Records

³⁹Companies Act 2013, s 232.

⁴⁰Insolvency and Bankruptcy Code 2016, s 53.

⁴¹Mesothelioma Act 2014 (n 22).

⁴²*Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

⁴³Digital Personal Data Protection Act 2023.

⁴⁴Dust Diseases Tribunal Act 1989 (NSW) (n 25).

⁴⁵WHO (n 2).

⁴⁶Calabresi (n 17).

Principle, an employer who failed to create or preserve legally required records cannot profit from their absence. Under the Long-Latency Rule, record retention, surveillance, portable histories and a national registry are designed around the biology of the disease and not the length of the employment contract. The reforms are sustained by comparative experience, consistent with existing Indian evidence doctrine, and respectful of employers' right to rebut and of workers' privacy.

The principle underlying them is evidentiary justice: the party who creates the risk should not benefit from the disappearance of the evidence needed to prove it. The question for Indian law is not only whether an asbestos-exposed worker has a right to compensation. It is whether the rules of evidence will let the worker realistically prove the right the law has already recognised. Closing that gap between exposure and compensation should be an important objective of Indian health and occupational law.