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Uncapped and Locked-In: The Constitutional Fate of ‘International Workers’ under Indian Provident Fund Law after SpiceJet (Delhi HC, 2025), LG Electronics (Supreme Court, 2026) and the EPF Scheme, 2026

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ABSTRACT :

India's provident fund system treats foreign nationals working in Indian establishments, and Indian workers posted to countries with which India has a social security agreement (SSA), as a distinct category of ‘International Workers’. Since 2008, Paragraph 83 of the Employees' Provident Fund Scheme 1952 has required such workers to contribute on their entire wages, with no ceiling, and has restricted withdrawal of accumulations. This article examines the constitutionality of that framework under Article 14 in light of three conflicting High Court decisions: Bombay (2019), Karnataka (2024) and the Delhi High Court's Division Bench in SpiceJet (4 November 2025). It then analyses the developments of 2026: the Supreme Court's notice in *LG Electronics v Union of India* (12 March 2026), the commencement of the Code on Social Security 2020, the notification of the Employees' Provident Funds Scheme 2026, which supersedes the 1952 Scheme but carries the International Worker framework forward, and the increase of the wage ceiling to ₹25,000. Using a doctrinal method, the article argues that the Delhi High Court's ‘economic duress’ rationale is a defensible justification for the absence of a contribution ceiling, although the passport-based class is imperfectly aligned with it. The same rationale, however, does not support the withdrawal restriction applied to workers from non-SSA countries, which the 2026 Scheme makes harder to defend by allowing domestic members to withdraw at 55 and on migration abroad. The article proposes that the Supreme Court uphold the contribution rule while reading down the withdrawal restriction, and identifies legislative options for the Union.

Keywords: *International Workers; Employees' Provident Fund; Article 14; Social Security Agreements; Code on Social Security 2020*

1. Introduction

The cross-border movement of workers forces national social security systems to decide whether, and on what terms, they will cover employees who work outside their home jurisdiction. India's principal answer for the organised sector is the Employees' Provident Funds and Miscellaneous Provisions Act 1952 (EPF Act) and the Employees' Provident Fund Scheme 1952 (1952 Scheme) framed under it. For over five decades this machinery was applied without regard to the nationality of the employee. That changed in 2008, when the Central Government, acting under sections 5 and 7(1) of the EPF Act, inserted Paragraph 83 into the 1952 Scheme and created a new category, the ‘International Worker’, whose provident fund coverage is mandatory.¹ A notification of 2010 substituted and refined the paragraph.²

The significance of the change lies in a contrast. A domestic employee whose wages exceed the statutory ceiling is an ‘excluded employee’ and sits outside mandatory coverage. An International Worker who is not shielded by a social security agreement (SSA) has no ceiling: contributions are payable on the entire salary, and accumulations cannot be withdrawn until the age of 58 or permanent incapacity. Employers and workers have argued that this is an

¹ Employees' Provident Funds and Miscellaneous Provisions Act 1952, ss 5, 7(1); Employees' Provident Fund Scheme 1952, para 83, inserted by Notification GSR 706(E) (Ministry of Labour and Employment, 1 October 2008).

² Employees' Provident Fund Scheme 1952, para 83, substituted by Notification GSR 148 (Ministry of Labour and Employment, 3 September 2010).

unreasonable classification offending Article 14 of the Constitution.³

Courts have answered that argument in three different ways. The Bombay High Court upheld the framework in 2019; the Karnataka High Court struck it down in 2024; and a Division Bench of the Delhi High Court upheld it on 4 November 2025, expressly declining to follow Karnataka. The dispute has since moved faster than the commentary on it.

On 12 March 2026 the Supreme Court issued notice on LG Electronics' challenge to the Delhi decision and directed that no final orders be passed in the pending proceedings against the petitioners. In the same period the Code on Social Security, 2020 (Code) came into force; the Employees' Provident Funds Scheme, 2026 (2026 Scheme) was notified on 29 June 2026, superseding the 1952 Scheme but carrying the International Worker framework forward; and on 17 September 2026 the wage ceiling for provident fund purposes was raised from ₹15,000 to ₹25,000. The Article 14 question that arose under Paragraph 83 therefore now arises, in substantially the same form, under the 2026 Scheme.

1.1 Research problem, questions and hypothesis

The **research problem** is whether a regime that compels International Workers to contribute on their entire wages, and restricts withdrawal of their accumulations, rests on a reasonable classification and, if only partly, which part.

The article asks four **questions**:

1. Who is an International Worker in Indian law?
2. What obligations and entitlements attach to that status under the 1952 Scheme and the 2026 Scheme?
3. Is the classification constitutional, given the divergent judicial responses?
4. What is the way forward for the Supreme Court and the Union Government?

The **working hypothesis** is that the classification originates in a legitimate attempt to align the provident fund framework with treaty obligations and with the typically short duration of foreign employment in India, but that it imposes disproportionate burdens because the regime does not separate the justification for the contribution rule from the justification for the withdrawal rule. The analysis below suggests that the hypothesis is largely, though not wholly, borne out: the contribution rule is defensible, whereas the withdrawal rule for workers from non-SSA countries is not.

2. Literature Review and Legal Context

2.1 Existing literature

The literature on the International Worker provisions is thin and mostly practitioner-authored. The official starting point is the Employees' Provident Fund Organisation's (EPFO) *Handbook on Social Security Agreements*, which explains certificates of coverage, detachment and totalisation, and presents the International Worker category as linked to reciprocity and the avoidance of double contribution rather than as an arbitrary carve-out.⁴ Its limitation is that it is an administrative document: it describes the regime and does not test it.

Law-firm commentary supplies most of the analysis. Early notes read the Karnataka decision as a landmark ruling on the limits of subordinate legislation.⁵ Later notes on the Delhi decision, including KPMG's flash alert and Trilegal's quarterly update, concentrate on the economic duress rationale and on compliance exposure.⁶ A critical piece in LiveLaw argues that the Delhi Bench did not meaningfully examine the withdrawal restriction.⁷ Lakshmikumaran & Sridharan's September 2026 analysis of the 2026 Scheme observes that the new instrument preserves the disputed design, so that the

³Constitution of India, art 14.

⁴Employees' Provident Fund Organisation, *Handbook on Social Security Agreements* (Ministry of Labour, Government of India) <https://www.epfindia.gov.in/site_docs/PDFs/Operating_SSAs_PDFs/Hand_Book.pdf> accessed 7 October 2026 (Handbook).

⁵JSA, 'Karnataka HC strikes down the applicability of employees' provident fund benefits to international workers' (JSA Prism, 2024) <<https://www.jsalaw.com/newsletters-and-updates/karnataka-hc-strikes-down-the-applicability-of-employees-provident-fund-benefits-to-international-workers/>> accessed 7 October 2026.

⁶KPMG, 'India – Delhi High Court Upholds Constitutional Validity of Provident Fund Contribution for International Workers' (Flash Alert 2025-257) <<https://kpmg.com/xx/en/our-insights/gms-flash-alert/flash-alert-2025-257.html>> accessed 7 October 2026; Trilegal, 'Labour and Employment Quarterly Milestones (October–December 2025)' (Lexology, 12 February 2026) <<https://www.lexology.com/library/detail.aspx?g=3a2e4c71-cada-4f32-8aa3-d306feadd932>> accessed 7 October 2026.

⁷Expat PF Rules: Balanced in Law, Unbalanced in Effect' (LiveLaw) <<https://www.livelaw.in/articles/expat-pf-rules-balanced-in-law-unbalanced-in-effect-312065>> accessed 7 October 2026.

constitutional objection carries forward.⁸

Two gaps remain. First, the commentary tends to treat the contribution ceiling and the withdrawal restriction as one problem, although they rest on different justifications. Second, it does not compare the withdrawal rules for International Workers with those for domestic members under the 2026 Scheme, a comparison that, as Part 7 shows, sharpens the Article 14 difficulty. This article addresses both gaps.

2.2 Legal context: Article 14 and the SSA framework

Under Article 14 the State may classify, provided the classification rests on an intelligible differentia and the differentia bears a rational nexus with the object of the law.⁹ The guarantee extends to 'any person' within Indian territory, whether or not a citizen.¹⁰ Since *Royappa*, arbitrariness has also been treated as a facet of equality, and *Shayara Bano* recognised 'manifest arbitrariness' as a ground for invalidating legislation.¹¹ A Scheme framed under a statute can be attacked on both grounds and, in addition, as exceeding its parent statute. These three strands (classification, arbitrariness and ultra vires) structure the judicial disagreement examined below.

India's SSAs are bilateral instruments that avoid double coverage and allow totalisation of contribution periods; the EPFO is the nodal agency.¹² EPFO told the Supreme Court in March 2026 that India has concluded nearly twenty SSAs and had recently finalised one with the United Kingdom.¹³ The agreement countries identified in the Karnataka litigation included Belgium, Germany, Switzerland, Denmark, Luxembourg, France, South Korea and the Netherlands.¹⁴

3. Methodology

This article uses the doctrinal method. The primary materials are the EPF Act, the 1952 Scheme and the 2026 Scheme, the relevant notifications, and the judgments and orders of the High Courts and the Supreme Court. The secondary materials are the EPFO's Handbook and published legal commentary. The law is stated as at 7 October 2026. Two limitations should be noted. The Supreme Court's order of 12 March 2026 is known to the author through reported accounts rather than the order text, and the record of any appeal against the Karnataka decision is not publicly accessible. Statements on those two points are therefore framed with corresponding caution.

4. The Statutory Framework: Who Is an 'International Worker'?

4.1 The pre-2008 position

Before 2008 neither the EPF Act nor the 1952 Scheme recognised a separate category of foreign or international workers. The definition of 'employee' in section 2(f) applied irrespective of nationality, and the salary ceiling excluded higher earners.¹⁵ Class-specific adaptation of the Scheme was not new: separate paragraphs already addressed newspaper employees (para 80), cine-workers (para 81) and persons with disabilities (para 82).¹⁶ Paragraph 83 followed this practice of modifying the Scheme for a defined class and was therefore not an unprecedented departure from the architecture of the Act, whatever its merits.

⁸Asish Philip Abraham, Astha Sinha and Priyanshi Rachchh, 'EPF Scheme, 2026 and International Workers: New Framework – Old Questions' (Lakshmikumaran & Sridharan, Legal 500, 21 September 2026) <<https://www.legal500.com/intelligence/global/employment-and-hr/epf-scheme-2026-and-international-workers-new-framework-old-questions>> accessed 7 October 2026 (L&S).

⁹*State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75; *Ram Krishna Dalmia v Justice S R Tendolkar* AIR 1958 SC 538; *Union of India v N S Rathnam and Sons* (2015) 10 SCC 681.

¹⁰*Chiranjit Lal Chowdhuri v Union of India* AIR 1951 SC 41.

¹¹*E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3; *Shayara Bano v Union of India* (2017) 9 SCC 1.

¹²Handbook, para 12.

¹³Bhavini Mishra, 'SC to hear challenge against EPF rules governing international workers' *Business Standard* (12 March 2026) <https://www.business-standard.com/finance/news/sc-to-hear-challenge-to-epf-rules-governing-international-workers-126031201080_1.html> accessed 7 October 2026 (Business Standard).

¹⁴'EPF Contribution for Foreign Workers Struck Down as Unconstitutional' (Chambers and Partners, 24 May 2024) <<https://chambers.com/articles/epf-contribution-for-foreign-workers-struck-down-as-unconstitutional>> accessed 7 October 2026.

¹⁵EPF Act, s 2(f).

¹⁶Employees' Provident Fund Scheme 1952, paras 80–82.

4.2 The definition

Paragraph 83, as substituted in 2010, inserted clause (ja) into paragraph 2 of the 1952 Scheme. An International Worker is, first, an Indian employee who has worked or is going to work in a foreign country with which India has an SSA and who is eligible for benefits under that country's social security programme by virtue of eligibility gained or to be gained under the agreement; or, second, an employee other than an Indian employee, holding other than an Indian passport, working for an establishment in India to which the Act applies.¹⁷ Nepalese nationals (by virtue of the 1950 Treaty of Peace and Friendship) and Bhutanese nationals (by virtue of the India–Bhutan Friendship Treaty of 2007) are deemed Indian workers.¹⁸ The 2026 Scheme re-enacts the definition in materially identical terms.¹⁹

Two features of the definition matter for what follows. The definition turns on the passport held and not on the length of stay, so a foreign passport holder resident in India for decades falls within the second limb exactly as a three-year secondee does. And the first limb captures Indian nationals, who are not 'international' in any ordinary sense, but only while they are eligible for benefits abroad; the EPFO has clarified that an Indian who returns home after working abroad is an International Worker only if both conditions are met.²⁰

4.3 Excluded employees and the role of SSAs

Paragraph 83 substituted a special definition of 'excluded employee' for International Workers. An International Worker is excluded in only two situations. The first is where the worker contributes to the social security programme of a home country with which India has an SSA on a reciprocity basis and holds a detachment certificate for the period specified in the agreement.²¹ The EPFO Handbook explains that the certificate issues on a joint application by employer and employee to the jurisdictional Regional Provident Fund Commissioner.²² The second is where the worker contributes to the social security programme of a country with which India has a bilateral comprehensive economic agreement, containing a social security clause, concluded before 1 October 2008, which specifically exempts natural persons of either country from host-country contributions.²³ A worker from any other country is not an excluded employee and must become a member on the entire salary. The 2026 Scheme preserves both exclusions alongside the general exclusion of employees whose wages exceed the ceiling prescribed under the Code, and commentary reads it as continuing to require contribution from International Workers on their entire wages.²⁴

4.4 Contributions, membership and withdrawal under the 1952 Scheme

Every International Worker who is not excluded had to become a member from 1 November 2008 if already employed in a covered establishment, and from the date of joining thereafter.²⁵ Contributions are payable by both employer and employee on total pay, without the ceiling that applies to domestic employees.²⁶ The statutory ceiling of ₹15,000, which had risen progressively from ₹3,500 and ₹6,500, therefore did not apply to this class.

Withdrawal was equally restricted. Substituted Paragraph 69 allowed an International Worker to withdraw accumulations only on retirement after 58 or on permanent and total incapacity for work.²⁷ Workers covered by an SSA could withdraw on ceasing to be an employee in a covered establishment, and membership continued until withdrawal or settlement under the agreement.²⁸ A worker from a non-SSA country, whose Indian posting might last two to five years, had no early exit. This is the second axis of constitutional challenge.

¹⁷Employees' Provident Fund Scheme 1952, para 83(2), cl (ja), as substituted by Notification GSR 148 (3 September 2010).

¹⁸ibid, proviso.

¹⁹Employees' Provident Funds Scheme 2026, G.S.R. 525(E) (Ministry of Labour and Employment, 29 June 2026), para 2(1)(j) (2026 Scheme).

²⁰S&A Law Offices, 'International Worker Under EPF Scheme 1952' (Legal 500, 26 July 2017)

<<https://www.legal500.com/intelligence/india/employment-and-hr/international-worker-under-epf-scheme-1952>> accessed 7 October 2026, reporting EPFO's clarificatory circular of 8 June 2017.

²¹Employees' Provident Fund Scheme 1952, para 83(1), cl (f), as substituted.

²²Handbook, para 6.

²³1952 Scheme, para 83(1), cl (f).

²⁴2026 Scheme, para 2(1)(f); L&S.

²⁵Employees' Provident Fund Scheme 1952, para 83(3), substituted para 26.

²⁶Handbook, paras 8–9.

²⁷Employees' Provident Fund Scheme 1952, para 83(6), substituted para 69.

²⁸Handbook, para 7.

4.5 Employer obligations and dispute resolution

Employers were required to file a consolidated return identifying International Workers within fifteen days of the Scheme applying to the establishment, and to file monthly returns.²⁹ Disputes about whether an International Worker must become or remain a member go to the Regional Provident Fund Commissioner, who decides after hearing both sides.³⁰ The 2026 Scheme retains the reference to the Commissioner, requires the hearing to be held in India, and bars proceedings initiated more than five years after the dispute is alleged to have arisen.³¹

5. The Judicial Divergence

5.1 The governing standard and the three grounds of challenge

The challenge to Paragraph 83 proceeded on three planes. The first was classification under Article 14: domestic employees earning above the ceiling fall outside the Scheme, while International Workers from non-SSA countries have no corresponding ceiling. The second was the withdrawal grievance under Paragraph 69. The third was ultra vires: section 2(f) of the EPF Act defines 'employee' without nationality-based distinctions, and it was argued that a Scheme cannot, by modification, alter who the Act covers.³² The *N S Rathnam* two-part test supplied the standard for the first.³³

5.2 The Bombay High Court: Sachin Vijay Desai (2019)

The Bombay High Court was the first to rule. The petitioner, an Indian employee, challenged the differential treatment of domestic employees and International Workers. The Court dismissed the petition, holding that International Workers form a distinct class: Indian employees going abroad, who will be governed by the host country's regime, and non-Indian passport holders in India, who ordinarily work on short-term, limited-period assignments.³⁴ It concluded that this was not a case of a homogeneous group artificially divided, but of two genuinely distinct classes treated differently.³⁵ The reasoning is brief. It does not engage with the position of non-SSA workers or with Paragraph 69, but its core finding became the foundation on which Delhi later built.

5.3 The Karnataka High Court: Stone Hill Education Foundation (2024)

A single judge of the Karnataka High Court disposed of a batch of writ petitions by employers and employees and struck down Paragraph 83 of the 1952 Scheme and Paragraph 43A of the Employees' Pension Scheme 1995 as unconstitutional and arbitrary, declaring orders passed under them unenforceable.³⁶ The Court rested its decision on four grounds.

First, the object of the Act. The Statement of Objects and Reasons showed a welfare measure for industrial workers in lower salary brackets, and the ceiling's progressive revision reflected a consistent legislative intent to confine mandatory coverage to those who need protection. Employees drawing lakhs of rupees a month, the profile of most International Workers, could not be said to require it.³⁷ Second, subordinate legislation made under sections 5 and 7 must operate within the framework and spirit of the parent Act and cannot create a classification inconsistent with its coverage logic. Third, the reciprocity justification failed on examination: it applies only to SSA countries, yet the uncapped contribution and withdrawal restriction apply equally to workers from non-SSA countries, where there is neither reciprocal obligation nor reciprocal benefit.³⁸ Fourth, Article 14 protects 'any person', including foreign nationals, and the classification lacked intelligible differentia and rational nexus.³⁹

The judgment is significant for its grounding in legislative history. Its limitation is that it did not consider the argument that the absence of a ceiling is

²⁹Employees' Provident Fund Scheme 1952, para 83(5), substituted para 36(1).

³⁰ibid, para 83(3), substituted para 26-B.

³¹2026 Scheme, para 11(2)–(3).

³²EPF Act, ss 2(f), 7.

³³*N S Rathnam and Sons* (2015) 10 SCC 681, paras 13–14, 18.

³⁴*Sachin Vijay Desai v Union of India* WP No 1846 of 2018 (Bombay HC, 7 August 2019) paras 11–12.

³⁵ibid.

³⁶*Stone Hill Education Foundation v Union of India* WP No 18486/2012 and connected matters (Karnataka HC, 25 April 2024) (*Stone Hill*), Order.

³⁷*Stone Hill*, para 22.

³⁸*Stone Hill*, paras 25–26.

³⁹*Stone Hill*, para 28.

justified by the short tenure of International Workers. That argument had not been pleaded, and its absence became the point of distinction for Delhi.

5.4 The Delhi High Court: *SpiceJet* (4 November 2025)

A Division Bench of the Delhi High Court (Chief Justice Devendra Kumar Upadhyaya and Tushar Rao Gedela J) heard petitions by *SpiceJet*, which challenged the 2008 and 2010 notifications and an EPFO demand under section 7A, and by LG Electronics India. It dismissed both and upheld Paragraph 83.⁴⁰ Applying the *NS Rathnam* test, the Court made three moves.⁴¹

The first and most important was the economic duress rationale. A domestic employee contributes from joining until retirement, perhaps for decades, and the ceiling exists to prevent that sustained burden from becoming oppressive. An International Worker is in India for two to five years, so contributing on full salary for that short period does not impose comparable hardship. Short duration was therefore the intelligible differentia, and it bore a rational nexus with the Act's social security object.⁴² The Court also treated the EPF Act as welfare legislation whose benefits are not confined to low-income workers, and the wage ceiling as a legislative construct and not a constitutional command.⁴³

Second, on Paragraph 69, the Court observed that Paragraph 83 was introduced in part to implement India's bilateral SSAs, that treaty-making is a sovereign prerogative, and that striking down the paragraph would undermine the legal basis for SSA compliance.⁴⁴ Third, it declined to follow Karnataka because the economic duress rationale had not been pleaded or considered there, and it relied on Bombay's finding that International Workers are a distinct class.⁴⁵

The Delhi decision is more carefully reasoned than its predecessors. But, as Part 7 argues, the economic duress rationale justifies removing the contribution ceiling and says nothing about why a non-SSA worker should be unable to withdraw on leaving India. The Court's answer on Paragraph 69 rests on treaty obligations that, by definition, do not govern workers from countries with no SSA.

6. Developments in 2026

6.1 The Supreme Court takes notice

On 12 March 2026 a Bench of Justices P S Narasimha and Alok Aradhe issued notice to the Union on a petition by LG Electronics challenging the validity of Paragraph 83, and directed that final orders not be passed in proceedings against the petitioners under section 7A of the EPF Act while the matter is pending.⁴⁶ LG's counsel submitted that divergent High Court views required authoritative resolution. The EPFO responded that it is the nodal agency for India's SSAs and cautioned that striking down Paragraph 83 could have international implications and might amount to a 'material breach' under the Vienna Convention on the Law of Treaties. The Court directed the EPFO to place a compilation of the relevant treaties on record.⁴⁷

Three points follow. The matter is now before the Supreme Court and no longer merely a High Court conflict. The interim protection, on the reported terms, is confined to the petitioners, so other employers remain exposed to section 7A proceedings, particularly outside Karnataka. And the EPFO's treaty argument has become the State's lead justification, which makes its soundness central, a question taken up in Part 7.

⁴⁰*Spice Jet Ltd v Union of India* 2025:DHC:9670-DB, WP(C) 2941/2012 and WP(C) 6330/2021 (Delhi HC, 4 November 2025) (*SpiceJet*), paras 64, 74.

⁴¹*SpiceJet*, citing *NS Rathnam and Sons* (2015) 10 SCC 681, paras 13–14, 18.

⁴²*SpiceJet*, paras 51–53.

⁴³'EPF Contributions for International Workers: Delhi High Court Upholds Validity of 2008 & 2010 Notifications' (Lexology) <<https://www.lexology.com/library/detail.aspx?g=eee4b840-96c5-4d60-8dd6-e01072914201>> accessed 7 October 2026.

⁴⁴*SpiceJet*, para 62.

⁴⁵*SpiceJet*, paras 57–61.

⁴⁶Business Standard; Bar & Bench, 'Should foreign employees in India contribute to EPF? Supreme Court to examine' (12 March 2026) <<https://www.barandbench.com/news/litigation/should-foreign-employees-in-india-contribute-to-epf-supreme-court-to-examine>> accessed 7 October 2026 (*LG Electronics v Union of India*).

⁴⁷Business Standard.

6.2 The Code on Social Security and the 2026 Scheme

The substantive provisions of the Code came into force on 21 November 2025.⁴⁸ The Social Security (Central) Rules, 2026 followed on 8 May 2026.⁴⁹ On 29 June 2026 the Government notified the 2026 Scheme under section 15(1)(a) of the Code, superseding the 1952 Scheme except as to things done or omitted before supersession.⁵⁰ The 2026 Scheme refers to the 1952 Act as the 'Repealed Act'.⁵¹

For International Workers, the 2026 Scheme is notable for continuity. Every International Worker who was a member under the 1952 Scheme remains a member, and every International Worker employed in a covered establishment must join from the date of joining.⁵² Employers must file International Worker returns indicating nationality.⁵³ Contributions are subject to the wage ceiling except where the employee and employer jointly opt to contribute on higher wages, and an employee may voluntarily contribute more.⁵⁴ The ceiling therefore operates as a default that domestic employees may waive, while International Workers have no ceiling to waive. Withdrawal is addressed in Part 7.4.

6.3 The ₹25,000 ceiling and the India–UK convention

By a notification of 17 September 2026 the Central Government fixed ₹25,000 per month as the wage ceiling for the purposes of the Code's provident fund provisions, the first revision since 2014, when it rose from ₹6,500 to ₹15,000.⁵⁵ The revision does not affect existing members above the ceiling who are voluntarily enrolled. It matters here for two reasons. It shows that the ceiling is a policy lever adjusted by executive notification, which supports Delhi's view that it is a legislative construct and not a constitutional line. But it also widens the gap between the treatment of a domestic employee earning ₹30,000 a month, who is outside mandatory coverage, and an International Worker earning the same, who is inside it.

The India–UK Agreement on Social Security Contributions, a Double Contributions Convention, was signed on 10 February 2026 and entered into force with the India–UK Comprehensive Economic and Trade Agreement on 15 July 2026.⁵⁶ The 2026 Scheme names the United Kingdom in a table in paragraph 9(6), in the context of detachment under a bilateral agreement.⁵⁷ The convention enlarges the class of workers who can avoid the Indian regime, and thereby enlarges the class who cannot: workers from countries without an agreement.

7. Discussion and Analysis

7.1 The contribution ceiling: Delhi's rationale is defensible

The economic duress rationale is, on balance, a sound basis for the absence of a ceiling. The *N S Rathnam* test requires a real and substantial difference with a rational relation to the object of the law. The difference between a career-long contributor and a two-to-five-year contributor is real, and it correlates directly with the burden that the ceiling exists to moderate. Equality does not demand identical treatment of unlike situations, and a classification need not be mathematically precise.

The Karnataka Court's strongest point, that the Act was conceived for lower-wage workers, is historically accurate but does not amount to a legal bar. The ceiling is itself a product of subordinate legislation and has been revised by notification, most recently on 17 September 2026. A government that

⁴⁸Ministry of Labour and Employment, S.O. 5319(E) (21 November 2025); see 'Corrigendum to Code on Social Security, 2020 Enforcement Dates: Clarity on EPS, EPF Provisions' (SCC Online Blog, 24 December 2025) <<https://www.sconline.com/blog/post/2025/12/24/corrigendum-to-code-on-social-security-2020-enforcement-dates/>> accessed 7 October 2026.

⁴⁹Social Security (Central) Rules 2026, G.S.R. 344(E) (Ministry of Labour and Employment, 8 May 2026).

⁵⁰2026 Scheme, preamble. The Scheme comes into force on publication in the Gazette (para 1(2)); some commentary gives 1 July 2026 as the effective date.

⁵¹2026 Scheme, para 2(1)(m).

⁵²2026 Scheme, para 9(5).

⁵³2026 Scheme, para 24(3).

⁵⁴2026 Scheme, paras 9(4), 18(3), 19.

⁵⁵AZB & Partners, 'Enhancement of PF Wage Ceiling to INR 25,000' (Legal 500, 23 September 2026) <<https://www.legal500.com/intelligence/india/employment-and-hr/enhancement-of-pf-wage-ceiling-to-inr-25000>> accessed 7 October 2026.

⁵⁶India Briefing, 'India–UK Social Security Pact Takes Effect July 15, 2026' <<https://www.india-briefing.com/news/india-uk-social-security-pact-takes-effect-july-15-2026-what-employers-and-indian-professionals-need-to-know-45762.html>> accessed 7 October 2026; the CETA was signed on 24 July 2025.

⁵⁷2026 Scheme, para 9(6). The drafting is not free from ambiguity as to how contribution on total wages interacts with detachment.

can set and raise the ceiling can, within Article 14, apply a different rule to a genuinely distinct class. *Stone Hill* conflates the original policy orientation of the Act with a constitutional limit.

7.2 Over- and under-inclusion: a weakness the Delhi Bench did not address

The rationale does, however, have a fit problem. It assumes short tenure, but the class is defined by passport, not tenure. A foreign passport holder who has worked in India for twenty years faces exactly the sustained burden the ceiling is meant to relieve, yet is treated as an International Worker. The first limb is more awkward still: Indian employees eligible for benefits under an SSA are not short-term visitors to anything. The Delhi Bench accepted that fixed-term expatriate employment is no ground for exemption, but that is a different point from whether the classification is tailored to its stated rationale.⁵⁸

Article 14 does not require perfect congruence, and courts commonly accept some over-inclusion where the class is administratively workable. A passport test is easy to apply. The weakness is therefore not fatal to the contribution rule, but it is a reason why the Delhi rationale is better understood as justifying a presumption of short tenure than as a finding about each class member. It also shows why a tenure-sensitive mechanism, such as a withdrawal right on leaving India, is the natural complement to the rule: it aligns the burden with the facts for the individual worker.

7.3 The treaty argument and its limits

The State's lead justification is that Paragraph 83 is part of the machinery implementing the SSAs. That argument has force for the SSA limb: certificates of coverage, detachment and totalisation need a legal basis, and the exclusion in the definition of 'excluded employee' gives effect to them. But three observations limit it.

First, SSAs exist to prevent double contribution. Their function is to exempt detached workers from the host-country regime, which is the opposite of an uncapped, compulsory contribution. Nothing in the logic of an SSA requires that a worker from a non-agreement country contribute on full wages and be locked in until 58. Second, the objection concerns the non-SSA worker, who stands outside any treaty. A ruling that read down the application of the withdrawal restriction to such workers would leave the SSAs untouched. Third, the Vienna Convention point needs care. India is not itself a party to the Convention, although some of its rules are treated as customary international law, and material breach concerns the consequences of a party's violation of a treaty, which is hard to map onto a ruling that leaves every SSA in place. The State has not, on the reported record, explained how a ruling confined to non-SSA workers could breach any agreement.

7.4 The withdrawal restriction: the weakest point in the regime

The 2026 Scheme sharpens the problem. Under paragraph 49, a domestic member may withdraw the full amount on retirement after 55, on permanent and total incapacity, immediately before migrating from India for permanent settlement or for employment abroad, on retrenchment, on voluntary retirement, and, with the Commissioner's permission, on ceasing to be an employee in a covered establishment after twelve months out of such employment.⁵⁹ Paragraph 51, for International Workers, allows withdrawal only on retirement after 58 or permanent and total incapacity, with an exception for members covered by an SSA, whose accumulations are payable on ceasing to be an employee in a covered establishment.⁶⁰ Paragraph 53 adds that for SSA-covered members the amount is payable to the payee's bank account, while in all other cases it is payable to the credit of a bank account in India.⁶¹

Three asymmetries follow. First, a domestic employee may withdraw before leaving India for work abroad, but a non-SSA International Worker leaving India at the end of a posting may not, though the circumstance is identical. Second, the retirement age is 55 for domestic members and 58 for International Workers. Third, a non-SSA worker's funds, even once payable, can only be credited to an Indian account. Each of these is a differential treatment of International Workers, and none is explained by the economic duress rationale, which is about the burden of contributing and not about the right to retrieve what has been contributed.

Delhi's answer, that treaty obligations preclude striking down Paragraph 69, does not reach these facts. A rule that compels a non-SSA worker to contribute

⁵⁸Delhi High Court upholds EPF Contributions on Actual Wages for 'International Workers'; Fixed-Term Expat Employment no ground for exemption' (SCC Online Blog, 18 December 2025) <<https://www.sconline.com/blog/post/2025/12/18/del-hc-upholds-epf-scheme-international-workers/>> accessed 7 October 2026.

⁵⁹2026 Scheme, para 49(1)–(2). This summary is drawn from the Scheme text as published in the Gazette notification; the paragraph numbering should be verified against the official copy.

⁶⁰2026 Scheme, para 51(1), (4).

⁶¹2026 Scheme, para 53(10).

on full wages for a short posting and then hold the accumulations in India until 58 serves the objective of social security only on the assumption that the worker will stay or return. For a short-tenure worker the withdrawal restriction defeats the premise of the economic duress rationale: if the worker's short stay lightens the burden of contribution, it also makes the lock-in more severe. On the *Shayara Bano* standard this is a plausible case of manifest arbitrariness.

7.5 The ultra vires ground after the Code

Karnataka's ultra vires reasoning was premised on the relationship between a Scheme under sections 5 and 7 of the EPF Act and the parent Act's definition of 'employee'. The 2026 Scheme is framed under section 15(1)(a) of the Code, and the wage ceiling is a ceiling 'prescribed under the Code'. Whether the Code's text supplies the nationality-based distinction that the 1952 Act lacked is a question for separate study, and this article does not resolve it. What can be said is that the ultra vires ground must be re-argued against a different parent statute, which gives the Supreme Court an opportunity to decide the classification and withdrawal questions on Article 14 without needing to reach it.

7.6 Assessment of the hypothesis

The hypothesis in Part 1.1 is largely confirmed. The framework originates in treaty alignment and the short-tenure pattern of foreign employment; the Delhi rationale makes the contribution rule defensible. But the regime does not separate the rationales: the contribution rule and the withdrawal rule are justified, if at all, by different considerations, and only the first is supported by the reasoning the courts have given. The hypothesis is qualified in one respect. It attributed the burden to the absence of a coherent distinction in the parent statute; the more accurate diagnosis is that the burden lies in the withdrawal rule, which survives whichever statute is the parent.

8. Findings, Recommendations and Conclusion

8.1 Findings

First, an International Worker is defined by passport (non-Indian employees in covered establishments) or by SSA eligibility (Indian employees posted to agreement countries), and is excluded from coverage only where detached under an SSA or a pre-October 2008 bilateral economic agreement. Second, the contribution rule, an uncapped obligation, rests on a defensible classification supported by the economic duress rationale, though the passport-based class is imperfectly aligned with the rationale. Third, the withdrawal restriction for non-SSA workers is not supported by that rationale or by the treaty argument and is vulnerable under Article 14, a vulnerability the 2026 Scheme makes more pronounced by allowing domestic members to withdraw at 55 and on migration abroad. Fourth, the 2026 Scheme has changed the instrument but not the problem.

8.2 Recommendations

The Supreme Court can reconcile the competing High Court positions by upholding the contribution rule, following Delhi's reasoning, while reading down the withdrawal restriction as applied to non-SSA International Workers so that they may withdraw on ceasing employment in India, as SSA-covered members can. This would address the inequity identified in Karnataka without disturbing the contribution architecture that Delhi validated and without touching any treaty. The Court could also direct interim protection for similarly placed employers, so that the pendency of the case does not itself generate arrears for those outside Karnataka.

The Union can resolve much of the problem without waiting for judgment. It can amend paragraph 51 to give non-SSA International Workers a right of withdrawal on departure from India, mirroring paragraph 49. It can accelerate the conclusion of SSAs, since agreement coverage is the only route to exclusion. And it can consider a tenure-sensitive mechanism, such as a ceiling that applies after a prescribed period of residence, to align the classification with its stated rationale.

8.3 Conclusion

Paragraph 83 and its successor in the 2026 Scheme extend India's provident fund system to a class defined by nationality or treaty status. The objective is legitimate, but the means have produced a constitutional dispute that three High Courts resolved differently and the Supreme Court now has before it. The Delhi High Court's economic duress rationale is a sound defence of the absence of a contribution ceiling. It is not a defence of a withdrawal rule that locks short-tenure workers from non-agreement countries out of their own funds, and the 2026 Scheme has widened the gap between those workers and domestic members. The most principled resolution is a split one: uphold the contribution rule, and read down or amend the withdrawal rule. Until the Supreme Court speaks, employers and workers must operate under a framework whose constitutional status is genuinely uncertain, and where the answer

depends in practice on the jurisdiction in which the establishment sits.

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