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# **CODIFICATION OF THE RIGHT TO LEGAL REPRESENTATION DURING DOMESTIC ENQUIRIES IN INDIA**

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**Research Problem:** *Is the right to legal representation during domestic inquiries in India sufficiently protected by current legal precedents?*

*Should this right be codified to guarantee clarity, fairness, and consistency across both public and private employment sectors?*

**Objectives of the Research:** *Examine the statutory and judicial stance on legal representation in domestic inquiries.*

*Analyze the necessity for codification and propose a model legislative framework.*

**Methodology (Doctrinal):** *Focus on doctrinal research, drawing upon statutory rules (e.g., service laws, Industrial Employment Standing Orders Act), case law from the Supreme Court and High Courts, and secondary sources like commentaries, academic writings, and practice manuals.*<sup>123</sup>

## **Abstract**

*The right to legal representation in Indian domestic enquiries is a contentious area of labour and service law. Despite being quasi-judicial processes designed for fairness, these enquiries often lack clear, uniform procedures. While some statutes and service rules allow limited representation, there's no comprehensive law either guaranteeing or denying legal practitioner*

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<sup>1</sup> G.P. Mahapatra, *Labour Law in India* (Eastern Book Co., 6th ed. 2018).  
O.P. Malhotra, *The Law of Industrial Disputes* (LexisNexis, 6th ed. 2015).  
Surya Deva, *Due Process and Fair Trial in India* (Oxford Univ. Press 2012).

<sup>2</sup> *N. Kalindi v. Tata Locomotive & Eng'g Co.*, A.I.R. 1960 S.C. 914 (India).  
*Workmen of Brooke Bond India Ltd. v. Subba Raman*, A.I.R. 1961 S.C. 1156 (India).  
*Sur Enamel & Stamping Works Ltd. v. Their Workmen*, A.I.R. 1963 S.C. 1914 (India).  
*Dunlop Rubber Co. v. Workmen*, A.I.R. 1965 S.C. 1392 (India).  
*Board of Trustees of the Port of Bombay v. Dilipkumar Nadkarni*, (1983) 1 S.C.C. 124 (India).  
*Crescent Dyes & Chems. Ltd. v. Ram Naresh Tripathi*, (1993) 2 S.C.C. 115 (India).

<sup>3</sup> Industrial Disputes Act, No. 14 of 1947, INDIA CODE.  
Industrial Employment (Standing Orders) Act, No. 20 of 1946, INDIA CODE.  
Central Civil Services (Classification, Control & Appeal) Rules, 1965 (India)

*involvement. Consequently, this matter is largely left to employer discretion and judicial interpretation.*

*This paper addresses the lack of a clear, uniform statutory framework for legal representation in domestic enquiries. Its objectives are three-fold: to trace the conceptual and historical context of this right in Indian labour jurisprudence, to examine current statutory provisions and their limitations, and to critically analyze judicial interpretations that have shaped this right. The methodology involves a doctrinal approach, closely examining statutes, service rules, judicial precedents, and secondary sources.*

*Indian jurisprudence on this topic has fluctuated between two perspectives: one viewing representation as an employer-granted privilege, and the other seeing it as essential for natural justice, especially in complex cases or when the employer uses legally trained presenting officers. The paper tentatively concludes that codification is necessary to resolve ambiguities and inconsistencies. Such codification must balance preventing excessive legalism and delays with ensuring employees have a meaningful defense.*

**Keywords:** Domestic Enquiry, Legal Representation, Natural Justice, Labour Law, Codification

## **Introduction**

*In India, domestic enquiries are crucial internal tools for employers to uphold discipline and accountability. When an employee faces allegations of misconduct such as theft, insubordination, corruption, or dereliction of duty the employer has the authority to conduct an enquiry to verify these charges. While these enquiries are not criminal trials, they carry significant repercussions, including dismissal, loss of livelihood, and social stigma that can impede future employment.*

*Given these severe consequences, courts have consistently mandated that domestic enquiries adhere to the principles of natural justice. A fundamental aspect of this is the right to a fair hearing, which encompasses sufficient notice of charges, the chance to present evidence, cross-examine witnesses, and be represented in one's defence. However, the contentious question is whether this right to defence inherently includes the right to legal representation by an advocate.*

*Indian statutes offer no consistent answer to this question. Many certified standing orders and service rules permit employees to be represented by a co-worker or trade union official, but not by an advocate. Courts have, at times, upheld these restrictions, viewing them as reasonable measures to prevent the over-legalisation of enquiries. Conversely, in situations where the charges are legally intricate or the employer is represented by a legally trained officer, courts have occasionally deemed the denial of legal representation as unfair.*

*This paper advocates for the codification of this right to ensure clarity, uniformity, and a balance between efficiency and fairness. The discussion is structured into five main chapters: the conceptual and historical context, the statutory framework, the judicial approach, comparative perspectives, and a critical synthesis.*

### **Chapter 1: Conceptual and Historical Background**

#### *Domestic Enquiries in India: A Framework for Workplace Discipline*

*Domestic enquiries are a cornerstone of industrial jurisprudence in India, stemming from an employer's inherent right to manage their enterprise and uphold workplace discipline. This right, however, is not absolute and operates within the bounds of established labor laws and principles of natural justice. When an employee faces allegations of misconduct ranging from insubordination to theft or sexual harassment an employer can initiate an internal enquiry. This crucial preliminary step precedes any punitive measures such as suspension, demotion, or dismissal.*

#### **The Role of the Enquiry Officer:**

*Typically, a senior employee without direct involvement in the alleged misconduct, or an external neutral party like a retired judge, conducts the inquiry. The Enquiry Officer's role is critical and multifaceted:*

**Evidence Collection:** *They meticulously record all evidence, including witness testimonies, documentary evidence (e.g., attendance records, emails, CCTV footage), and other relevant materials.*

**Defence Consideration:** *They carefully consider the explanations and defenses presented by the accused employee, ensuring a fair opportunity for them to present their side.*

**Reporting Findings:** *After a thorough evaluation, the Enquiry Officer submits a report*

*detailing the allegations, presented evidence from both sides, and a conclusion on whether misconduct has been proven. This report forms the basis for the employer's final disciplinary decision.*

### ***Quasi-Judicial Nature and Principles of Natural Justice:***

*Though not strictly judicial, domestic enquiries possess a quasi-judicial character because they directly determine individuals' rights and liabilities, with potentially severe consequences like loss of livelihood and reputational damage. Consequently, courts have consistently applied fundamental principles of natural justice:*

***Audi Alteram Partem (Hear the Other Side):*** *This mandates that no one should be condemned unheard, ensuring the employee a full opportunity to present their defence.*

***Nemo Judex in Causa Sua (No One Should Be a Judge in Their Own Cause):*** *This principle prevents bias by ensuring the Enquiry Officer is impartial and not personally interested in the outcome.*

*These principles are vital for safeguarding fairness and preventing arbitrary decision-making within the domestic enquiry process.*

*The doctrine of natural justice, deeply rooted in common law, significantly expanded into administrative law, influenced by landmark judicial pronouncements. The Supreme Court of India, inspired by decisions like the UK's Ridge v. Baldwin (1964), played a pivotal role. State of Orissa v. Dr. Binapani Dei (1967) marked a turning point in India, emphatically establishing the requirement of fair procedure in administrative actions, even without specific statutory provisions, whenever a decision has adverse consequences for an individual.*

*By the 1970s, Indian courts consistently held that employees facing dismissal must be afforded specific procedural safeguards to ensure fairness, including:*

***Notice of Charges:*** *Employees must be explicitly and clearly informed of the specific allegations, detailed enough to allow for a proper defence.*

***Opportunity to Defend:*** *Employees must have a reasonable opportunity to present their defence, cross-examine management witnesses, and produce their own witnesses and evidence.*

***Access to Evidence:*** *Employees must be provided with copies of all relevant documents and evidence the employer intends to rely upon for an effective defence.*

*However, the precise scope of the "opportunity to defend" became a legal contention,*

particularly regarding an employee's right to legal representation during domestic enquiries. This issue involved conflicting interests and policy considerations that courts grappled with for years. *Policy Considerations: The Debate on Legal Representation*

### ***Employer's Arguments Against Legal Representation:***

Historically, employers vigorously opposed legal representation, citing pragmatic concerns:

***Delay in Proceedings:*** They argued that lawyers would prolong the enquiry, transforming a swift internal mechanism into a protracted legal battle.

***Increased Costs:*** Legal engagement would significantly escalate the financial burden of disciplinary actions for both parties.

***Transformation into Adversarial Trials:*** Employers feared legal representation would fundamentally alter the informal, investigative nature of enquiries, turning them into adversarial court-like proceedings with technical legal arguments, thereby undermining efficient internal dispute resolution.

### ***Employee's Arguments for Legal Representation:***

Employees and unions strongly advocated for legal representation, emphasizing fairness and equity:

***Ensuring Fairness:*** They argued that many employees lacked the legal knowledge, articulation, and confidence to effectively defend themselves against experienced and often legally advised management. Legal representation was seen as crucial to level the playing field.

***Countering Employer's Superior Resources:*** Unions highlighted the inherent power imbalance. Employers typically had access to legal counsel and HR specialists, while employees often faced enquiries alone. Legal representation was viewed as vital to counter this disparity.

***Complexity of Charges:*** In cases involving complex legal or factual issues, or those with severe potential consequences, employees argued that legal assistance was not just desirable but necessary for a proper defence.

### ***The "No Absolute Right, But Exceptions Exist" Doctrine:***

Courts mediated these competing interests, balancing managerial prerogative, industrial efficiency, and natural justice. This led to the "no absolute right, but exceptions exist" doctrine, the prevailing legal position in India. While there is no inherent right to legal representation

*in every domestic enquiry, courts have carved out specific exceptions where it becomes mandatory to ensure a fair hearing. These exceptions typically arise when the employer is legally represented, the charges are complex, the employee is disadvantaged (e.g., illiterate), or the enquiry has significant legal implications. This nuanced approach reflects the judiciary's ongoing effort to adapt natural justice principles to the unique context of industrial relations.*

## **Chapter 2: Statutory Framework**

### ***Legal Representation in Indian Employment Disputes: A Fragmented Landscape***

*The right to legal representation in domestic enquiries within Indian employment disputes presents a complex and often inconsistent picture due to the absence of a unified statutory framework. Instead, this crucial procedural right is determined by a patchwork of specific regulations across different sectors. Industrial Employment: The Standing Orders Act, 1946 For industrial establishments, the Industrial Employment (Standing Orders) Act, 1946, serves as a foundational law. This Act mandates employers to clearly define and publish "standing orders" that govern employment conditions, including disciplinary procedures. These legally binding orders aim to bring uniformity to service terms for industrial workers.*

*Crucially, certified standing orders typically specify who can represent an employee during a domestic enquiry (an internal investigation into alleged misconduct). Representation is usually restricted to a co-worker or a trade union representative, emphasizing an internal focus on the employer-employee relationship. It is rare for an advocate (lawyer) to be permitted unless explicitly allowed by the specific standing orders. This approach highlights a decentralized system where employee procedural rights can vary significantly between establishments based on their unique standing orders. Government Service: Comprehensive Service Rules and Regulations Beyond the industrial sector, the employment conditions of government servants are meticulously governed by a comprehensive set of service rules and regulations, established at either the central or state level. A prominent example is the Central Civil Services (Classification, Control and Appeal) Rules, 1965, which outlines disciplinary procedures for central government employees, with similar rules existing for state government employees.*

*These service rules generally stipulate the rights of government employees during disciplinary proceedings, including the right to representation. Similar to the Standing Orders Act, these rules commonly permit representation by another employee or a union representative,*

*acknowledging the importance of peer support and collective bargaining. However, legal representation by an advocate is typically restricted unless expressly permitted by the disciplinary authority. This restriction often aims to maintain the internal administrative nature of disciplinary proceedings within the government framework, focusing on internal service conduct and discipline rather than becoming overly litigious. Gaps and Inconsistencies in Statutory Law A significant observation in the Indian legal landscape is the absence of a comprehensive, overarching statute that universally grants or denies a right to legal representation in domestic enquiries across all sectors. This "lacuna" in general statutory law leads to a fragmented and often inconsistent approach to this critical procedural right.*

*Consequently, the determination of whether an employee has the right to legal representation largely depends on:*

*Specific provisions of service rules (for government employees).*

*Standing orders (for industrial establishments).*

*Even ad hoc policies formulated by individual employers.*

*This decentralized approach results in substantial disparities in procedural rights, even for employees in similar circumstances. For instance, an employee in one company might be expressly prohibited from having legal representation, while another employee in a different company, subject to different rules or policies, might be allowed it. This variability underscores a fundamental challenge in ensuring uniform justice and fairness in workplace disciplinary proceedings, as the procedural safeguards available to an employee can depend heavily on the specific wording and interpretation of the applicable rules governing their employment.*

### **Chapter 3: Judicial Approach / Case Law**

*The Supreme Court of India, in the landmark case of **Bharat Petroleum Corp. Ltd. v. Maharashtra General Kamgar Union (1999) 1 SCC 626**, established a fundamental principle: employees in domestic enquiries do not possess an inherent or absolute right to be represented by a lawyer. This judgment underscored that legal counsel is neither a constitutional right nor a universally applicable principle of natural justice in such proceedings. The Court's rationale was to maintain the informal, efficient, and cost-effective nature of internal disciplinary processes. Allowing legal professionals as a routine practice, it was argued, would formalize proceedings, introduce technicalities, and prolong dispute resolution, thereby undermining the purpose of domestic enquiries designed for swift internal accountability. Consequently, the*

entitlement to legal representation largely depends on the specific rules governing the enquiry, relevant standing orders, or collective bargaining agreements.<sup>2</sup> *Recognized Exceptions: When Fairness Mandates Legal Counsel* Despite the general rule, Indian courts have consistently acknowledged that "fairness" a core tenet of natural justice can, in certain compelling circumstances, override the general prohibition and necessitate legal representation for an employee. These exceptions are not exhaustive but reflect a pragmatic approach to ensure a level playing field and prevent a miscarriage of justice.

**Legally Trained Presenting Officer:** This is arguably the most significant and consistently recognized exception. As held in **Professor Ramesh Chandra v. University of Delhi (2015) 5 SCC 549**, if the employer engages a legally qualified presenting officer (e.g., an advocate, legal advisor, or an officer with substantial legal training), it creates an inherent imbalance. Denying the employee similar legal assistance in such a scenario would be patently unfair and violate natural justice principles. The rationale is to ensure parity of arms, preventing an unrepresented employee from being severely disadvantaged against a legally astute opponent.

**Complexity of Charges and Evidence:** Domestic enquiries can sometimes involve intricate factual matrices, voluminous documentary evidence, or highly technical subjects (e.g., financial fraud, sophisticated scientific misconduct, complex policy violations). In such cases, a layperson might struggle to comprehend the nuances of the charges, effectively cross-examine witnesses, present a robust defence, or understand the legal implications. Courts have, on a case by case basis, permitted legal representation where the complexity of the charges (e.g., involving forensic accounting, intricate technical specifications, or specialized regulatory frameworks) demonstrably exceeds the employee's capacity to defend themselves effectively. The focus here is on the employee's ability to navigate these complexities without legal aid.

**Concurrent Criminal Proceedings:** When allegations leading to a domestic enquiry also form the basis of a parallel criminal investigation or prosecution, courts frequently recognize the need for legal expertise for the employee in the domestic enquiry. The concern is two-fold:

**Prejudice to Criminal Defence:** Statements or evidence presented by the employee in the domestic enquiry, especially without proper legal guidance, could inadvertently prejudice their defence in criminal proceedings. A lawyer can advise on protections against self-incrimination and strategies to prevent inadvertent admissions.

**Understanding Legal Implications:** *The interplay between disciplinary rules and criminal law can be complex. A lawyer can help the employee understand the legal ramifications of their actions and statements in both forums.*

**Vulnerability of the Accused Employee:** *Courts show considerable empathy and flexibility when dealing with vulnerable employees, including those who are:*

**Elderly or Infirm:** *Advanced age or physical/mental ailments might impair an employee's ability to concentrate, recall facts accurately, or articulate their defence coherently.*

**Mentally Challenged or Educationally Disadvantaged:** *Employees with cognitive impairments, or those who are illiterate or have very limited educational backgrounds, may require legal assistance to understand the proceedings and present their case effectively.*

**Suffering from Language Barriers:** *If the language of the enquiry is not the employee's native tongue and interpretation facilities are inadequate, a lawyer conversant in both languages can be crucial for a fair hearing.*

**Emotionally Distressed:** *While less common as a standalone ground, severe emotional distress might also be considered in conjunction with other factors.*

*The underlying principle here is that the employee's inherent disadvantage, through no fault of their own, compromises their ability to participate meaningfully in the enquiry, thus warranting legal aid to restore procedural fairness.*

### 3. Divergent High Court Practice: The Uncertainty of Codification

*The absence of clear, codified law on the right to legal representation in domestic enquiries has unfortunately led to inconsistency and judicial divergence, particularly at the High Court level, creating uncertainty for both employers and employees.*

**Restrictive Approaches:** *Some High Courts, such as the Bombay High Court in a recent 2025 decision (details indicated in the extract), tend to adhere more strictly to the general rule established in Bharat Petroleum. They often reiterate that an employee cannot demand an advocate unless the employer has already engaged a legally trained presenting officer. Their reasoning often focuses on preventing the "legalization" of domestic enquiries and preserving the employer's prerogative to conduct swift internal investigations.*

**Liberal Approaches:** *In contrast, other High Court benches have adopted a more liberal and expansive interpretation of "fairness," granting legal representation based*

*on broader considerations than just the presence of a legally trained presenting officer. These courts are more inclined to look at the totality of circumstances, including the employee's individual vulnerabilities, the gravity of the charges, the potential severity of the penalty, and the complexity of the evidence, even if the employer's side is not legally represented. This approach prioritizes substantive justice over strict adherence to procedural norms, aiming to ensure no employee is unfairly disadvantaged.*

*This ongoing divergence underscores a critical need for either a more definitive Supreme Court pronouncement that harmonizes these varying interpretations or, ideally, a legislative intervention to codify the circumstances under which legal representation becomes a mandatory requirement in domestic enquiries. Without such clarity, the current landscape remains unpredictable, leading to more appeals and protracted litigation.*

#### *4. Impact of Denial: Vitiating the Enquiry and Resulting Remedies*

*The denial of legal representation, when fairness demonstrably demands it, is not merely a procedural irregularity; it can have severe consequences for the employer and the outcome of the enquiry. Courts have consistently held that such a wrongful denial amounts to a violation of the principles of natural justice, which can **vitate the entire enquiry proceedings**. This means the enquiry is deemed fundamentally flawed and legally unsound.*

*The remedies available to an employee whose right to fair representation has been violated are significant and can include:*

**Setting Aside Dismissal/Punishment Orders:** *The most common remedy is the quashing of the disciplinary order (e.g., dismissal, removal, reduction in rank) passed by the employer based on the flawed enquiry.*

**Directing Fresh Enquiries:** *Courts may direct the employer to conduct a fresh enquiry from the stage where the illegality occurred, ensuring the employee is afforded legal representation this time. This can be a costly and time-consuming process for the employer.*

**Reinstatement with Back Wages:** *In cases where the dismissal order is set aside, and especially if a fresh enquiry is not deemed feasible or if the employee has been out of employment for a significant period, courts may order the employee's reinstatement to their position, often with full or partial back wages (the salary and benefits they would have earned during the period of wrongful dismissal). This can result in substantial financial liability for the employer.*

However, even with these established remedies, the "inconsistent application of these principles" by various courts often leads to unpredictability in outcomes. This inconsistency fuels further litigation, as both employees and employers seek judicial review to either challenge or uphold enquiry findings, prolonging disputes and adding to the burden on the judicial system. The lack of a clear, universally applied standard continues to be a significant challenge in ensuring equitable and efficient resolution of disciplinary matters in the Indian employment landscape.

## **Chapter 4: Comparative Perspective and Critical Analysis**

### *Disciplinary Hearing Representation: A Comparative Analysis*

**United Kingdom:** In the UK, disciplinary hearings are guided by the ACAS Code of Practice. While employees have a statutory right to be accompanied by a fellow worker or trade union representative, legal representation is not automatically granted. However, the Court of Appeal in *R v. Governors of X School* (2010) recognized that legal representation may be required in career-threatening cases, citing Article 6 of the European Convention on Human Rights.<sup>4</sup>

**United States:** US employment law typically views disciplinary proceedings as contractual matters. Collective bargaining agreements often outline representation rights, and in unionized workplaces, "Weingarten rights" allow employees to have a union representative present during investigatory interviews. While legal representation is not a default, it can be contractually agreed upon.

**ILO Standards:** The International Labour Organization advocates for fair disciplinary procedures, including the right to defence, but does not mandate legal representation. Instead, it promotes representation by trade unions or employee representatives.

**Critical Analysis for India:** India's approach mirrors the UK's, generally denying lawyers in disciplinary hearings but making exceptions when fairness necessitates it. However, the lack of codified rules leads to inconsistent application. Unlike the UK's statutory framework, India

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<sup>4</sup> Employment Relations Act 1999, c. 26 (UK).

Advisory, Conciliation & Arbitration Service (ACAS), *Code of Practice on Disciplinary and Grievance Procedures* (2015) (UK).

*R (G) v. Governors of X School*, [2011] UKSC 30 (appeal taken from Eng.).

National Labor Relations Act, 29 U.S.C. §§ 151–169 (2018).

*heavily relies on judicial discretion, which reduces predictability. Codification would align India with international best practices, establishing a baseline rule for co-worker/union representation and clearly defined circumstances where legal counsel is permitted.*

## **Chapter 5: Discussion and Synthesis**

### **5.1 The Imperative for Codification**

*The current landscape of domestic inquiry practices in many organizations is riddled with systemic flaws, necessitating a robust and standardized approach. Three critical issues consistently undermine the fairness and efficacy of these processes:*

***Inconsistent Judicial Rulings:*** *The absence of clear, universally accepted guidelines often leads to divergent judicial interpretations of similar cases. This inconsistency breeds unpredictability, making it difficult for both employers and employees to understand their rights and obligations, and frequently results in prolonged litigation and appeals.*

***Uneven Power Dynamics:*** *A significant imbalance exists in many domestic inquiries, where employers commonly leverage the expertise of legally trained personnel, such as human resources professionals with legal backgrounds or external legal counsel. This often leaves employees, who typically lack such specialized knowledge or access to legal representation, at a distinct disadvantage, compromising their ability to present an effective defense.*

***Preventable Lawsuits Regarding Procedural Fairness:*** *A substantial number of lawsuits arise not from the substantive merits of a disciplinary action, but from perceived or actual failures in procedural fairness during the inquiry. These procedural lapses, often stemming from ill-defined or inconsistently applied rules, lead to costly and time-consuming legal battles that could be avoided through clear, codified procedures.*

*Codification offers a definitive solution to these pervasive issues. By establishing uniform standards and clearly delineated processes, it can significantly enhance transparency, reduce ambiguity, and ensure a more equitable and predictable system for all stakeholders involved in domestic inquiries.*

### **5.2 Core Principles Guiding Codification**

*Any framework for codifying domestic inquiry procedures must be built upon a foundation*

of fundamental principles designed to ensure fairness, equity, and efficiency. These principles are:

**Proportionality:** The level of legal representation or assistance permitted in a domestic inquiry should be proportionate to the potential consequences for the employee and the complexity of the case. In situations where the outcome could severely impact an employee's livelihood (e.g., dismissal, demotion, loss of benefits) or where the factual or legal issues are intricate, access to legal representation becomes not just beneficial but essential for a fair hearing.

**Parity:** To address the inherent power imbalance, the principle of parity dictates that if an employer chooses to have its case presented by a legally trained representative (e.g., a presenting officer with legal qualifications, an internal lawyer, or an external advocate), the employee must be entitled to commensurate legal assistance. This ensures that both sides operate on a level playing field, preventing an unfair advantage based solely on access to legal expertise.

**Accessibility:** Every employee subject to a domestic inquiry must be fully and clearly informed of their rights, the procedural steps involved, and the potential consequences of the inquiry. This includes providing information in an easily understandable format, ensuring access to relevant documents, and offering guidance on how to navigate the process. True accessibility means empowering employees with the knowledge they need to participate effectively.

**Safeguards:** To prevent abuse of the system, whether by delaying tactics or arbitrary decisions, robust safeguards must be integrated into the codified procedures. These include:

**Strict Timelines:** Establishing clear and reasonable deadlines for each stage of the inquiry process, from the issuance of charges to the final decision.

**Limits on Adjournments:** Imposing restrictions on the number or duration of adjournments, with specific justifications required for any deviations.

**Penalties for Unnecessary Delays:** Implementing mechanisms to address and penalize parties who intentionally or negligently cause undue delays, ensuring the timely resolution of cases.

**Written Justifications for Decisions:** Mandating that all significant decisions, particularly those regarding representation or procedural matters, are documented in writing with clear justifications.

### **5.3 Proposed Statutory Model for Implementation**

*To give legal force and uniformity to these principles, a sample statutory provision could be adopted within relevant labor laws. Such a provision might state:*

*"In any domestic inquiry initiated by an employer that may result in adverse employment actions for the accused employee, including but not limited to dismissal from service, demotion, suspension without pay for an extended period, or the forfeiture or loss of terminal benefits, the accused employee shall have the fundamental right to be represented. Such representation may be provided by a co-worker of their choice, a duly recognized trade union representative, or, in specific, clearly defined situations, by a legal advocate.*

*Representation by a legal advocate shall be explicitly permitted and facilitated under the following circumstances:*

- (a) If the presenting officer or any individual representing the employer's case in the inquiry possesses legal qualifications or is a legally trained professional.*
- (b) If the subject matter of the inquiry involves complex legal questions, intricate technical issues, or sophisticated factual analysis that reasonably requires expert legal interpretation.*
- (c) If the employee, due to a demonstrable lack of education, language barriers, physical disability, mental health challenges, or any other exceptional circumstance, is otherwise unable to effectively understand the proceedings or adequately present their defense without legal assistance.*

*Any denial of an employee's request for representation, particularly by an advocate under the aforementioned circumstances, must be thoroughly justified in writing by the inquiry officer, detailing the specific reasons for such denial. Furthermore, any such denial shall be immediately subject to an expedited review process by a designated appellate authority or an independent labor tribunal, ensuring that representation rights are not arbitrarily curtailed."*

### **5.4 Practical Steps for Effective Implementation**

*The successful implementation of this codified framework requires a multi-pronged approach involving legislative amendments, administrative directives, and capacity building:*

***Amend the Industrial Employment (Standing Orders) Act, 1946:*** *The most direct and effective first step is to amend the Industrial Employment (Standing Orders) Act, or*

*equivalent relevant legislation, to explicitly incorporate the proposed statutory provision regarding representation rights in domestic inquiries. This will provide a clear legal basis for the new standards and ensure their application across various industries.*

***Mandate Central and State Governments to Update Service Rules:*** *Following the legislative amendment, both central and state governments must be mandated to review and update their respective service rules, particularly those governing disciplinary proceedings for public sector employees, to align them with the new codified provisions. This ensures consistency across public and private sectors.*

***Provide Comprehensive Training for Inquiry Officers and Human Resources Professionals:*** *The effectiveness of codification hinges on the competency of those who implement it. Extensive and ongoing training programs must be developed for all inquiry officers, human resources professionals, and management personnel involved in domestic inquiries. This training should cover the new legal provisions, procedural requirements, principles of natural justice, ethical considerations, and best practices in conducting fair and impartial inquiries.*

***Create a Straightforward Appeals Process for Disputes Concerning Representation Rights:*** *To ensure that the right to representation is effectively upheld, a clear, efficient, and accessible appeals process must be established specifically for disputes arising from the denial of representation. This process should allow employees to quickly challenge decisions regarding their right to legal or other forms of assistance, preventing prolonged procedural wrangling and ensuring timely justice.*

## **Conclusion**

*Domestic inquiries are crucial for workplace discipline, but their fairness is compromised when employees lack adequate representation, especially when they cannot effectively defend themselves. While Indian courts have acknowledged limited exceptions, they have not established a uniform right, leading to inconsistencies, unpredictability, and unnecessary litigation.*

*Codifying the right to legal representation in domestic inquiries would resolve these issues. A well-designed statutory framework, allowing co-worker or union representation by default and legal representation in specific circumstances, would balance efficiency and fairness. Such codification should include safeguards against abuse, training for inquiry officers, and*

*monitoring mechanisms.*

*Ultimately, the right to self-defense against charges that threaten one's livelihood and reputation is fundamental to natural justice. Therefore, codifying this right in India is not merely desirable but essential to ensure that domestic inquiries are both fair to employees and efficient for employers.*

