www.ijarp.com ISSN 2456-9992 Page: 01-12

Review Article

International Journal Advanced Research Publications

Volume: 02
Issue: 11

GIG WORKERS AND LABOUR RIGHTS IN INDIA: A CRITICAL ANALYSIS OF LEGAL PROTECTION AND SOCIAL SECURITY

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Article Received: 02 October 2026, Article Revised: 21 October 2026, Published on: 11 November 2026

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Doi: https://doi-doi.org/101555/ijarp.7282

ABSTRACT

India's gig economy has grown at a pace that has outstripped the capacity of its labour law to keep up. Millions of workers now earn a living through platform-mediated, task-based work rather than through the fixed hours and fixed employer of a conventional job, and this shift has created genuine livelihood opportunities even as it has left the legal status of gig and platform workers deeply unsettled. Most such workers currently sit outside the protective reach of established labour legislation, treated in law as independent contractors rather than employees. This paper examines the labour rights and social security available to gig workers in India, with particular attention to the Code on Social Security, 2020. Using a doctrinal and analytical method, it asks whether the Code's recent statutory recognition of gig workers amounts to meaningful legal protection, or whether it merely acknowledges their existence. The argument advanced here is that the Code marks an important legislative milestone in naming gig workers as a distinct occupational category, but stops short of creating enforceable labour rights: it avoids the underlying classification question altogether and offers a social security framework that is both conditional and underfunded. Drawing on comparative experience from other jurisdictions, the paper concludes that India's legal framework needs structural reform rather than incremental adjustment.

KEYWORDS: Gig Economy, Platform Workers, Labour Rights, Social Security, Code on Social Security 2020, Algorithmic Subordination, Employment Classification, Indian Labour Law.

1. INTRODUCTION

Employment, in its traditional form, has long rested on a fixed workplace, regular hours, statutory social security, and a straightforward relationship between an employer and an employee. That model is now being reshaped by the rise of the gig economy — a labour market built on short-term contracts, freelance arrangements, and task-based work carried out through digital platforms. The shift has been especially pronounced in India, where growing internet penetration and digital infrastructure have driven rapid expansion of the sector. The NITI Aayog projects that India's gig workforce will reach 23.5 million workers by 2029–30, a figure that underscores just how many livelihoods now depend on these platforms.[1]

Ride-hailing, food and grocery delivery, logistics, domestic services, and professional digital freelancing dominate the Indian gig economy. Platforms sit at the centre of these markets, using algorithms to set prices, assign tasks, and monitor performance, connecting service providers to consumers at scale. This arrangement has produced a genuine legal puzzle over how to characterise the relationship between worker and platform. Aggregators draft their contracts carefully to label workers as "independent contractors" or "partners," a choice of words designed to keep them outside the categories of "employee" or "workman."[2]

This question of classification sits at the heart of the regulatory problem. Rights that workers ordinarily take for granted — minimum wages, occupational safety, collective bargaining, protection from arbitrary dismissal — are all legally conditioned on the existence of an employer-employee relationship. The problem this paper addresses is that India's existing legal framework has not found a workable balance between the flexibility on which the gig economy depends and the basic labour rights and social security that gig workers need. The analysis that follows is confined to the legal framework governing platform-based, location-dependent gig work in India.

2. Meaning and Types of Gig Workers

Gig work departs from the standard employment relationship that took shape during the industrial revolution and was later formalised through twentieth-century labour legislation. Where conventional employment rests on a contract of service, gig work is built on a contract

[1] *NITI Aayog, India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work* (Government of India 2022) 12.

[2] Valerio De Stefano, 'The Rise of the "Just-in-Time Workforce": On-Demand Work, Crowdwork, and Labor Protection in the "Gig-Economy"' (2015) 37 Comp Lab L & Pol'y J 471, 474.

for services — an arrangement centred on discrete deliverables rather than any ongoing mutual obligation.[3]

The Code on Social Security, 2020 introduces statutory definitions that attempt to capture this shift. Section 2(35) defines a "gig worker" as a person who takes up work outside the traditional employer-employee relationship and earns from that activity.[4] Section 2(61), by contrast, defines a "platform worker" more narrowly, as someone engaged in a form of work in which organisations or individuals use an online algorithmic matching platform to source specific services or solve specific problems.[5]

The trouble with these categories becomes apparent once they are measured against how gig work actually functions. The employee/independent-contractor divide no longer captures reality with any precision. A genuine independent contractor has room to run their own business: they can set their own price, build their own client base, and take on entrepreneurial risk. An Indian food-delivery worker can do none of these things — unable to negotiate a delivery fee, unable to cultivate an independent client base, and operating under close algorithmic surveillance throughout every shift. To call such a worker an independent entrepreneur is a legal fiction that obscures a relationship of real economic dependence.

3. Indian Legal Framework

India's legal architecture for gig workers is still taking shape. It is defined, at present, by the partial inclusion of gig workers within the new labour codes on one hand, and their continuing exclusion from the older protective statutes on the other.

A. The Code on Social Security, 2020

The Code on Social Security, 2020 (the "CSS") is India's first legislative attempt to formally recognise gig and platform workers. It folds nine separate central labour statutes into a single framework, and its most significant contribution is Section 114, which empowers the Central Government to design social security schemes for gig and platform workers covering life and disability cover, accident insurance, health and maternity benefits, and protection in old age.[6]

The CSS also gives formal recognition to "aggregators" under Section 2(2), defined as digital intermediaries,[7] with Schedule VII listing the categories of aggregator covered — ride-

[3]Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (Oxford University Press 2018) 32.
[4]The Code on Social Security 2020, s 2(35).
[5]The Code on Social Security 2020, s 2(61).
[6]The Code on Social Security 2020, s 114(1).
[7]The Code on Social Security 2020, s 2(2) read with Schedule VII.

sharing, food and grocery delivery, logistics, and e-marketplaces among them. To fund the schemes envisaged under the Code, Section 114(4) requires aggregators to contribute between 1% and 2% of their annual turnover to a dedicated Social Security Fund, capped at 5% of what they pay their gig and platform workers.[8]

These inclusions are genuine progress, but the CSS still carries serious structural weaknesses. Much of it operates through delegated legislation, meaning the benefits it promises are not guaranteed statutory rights so much as outcomes contingent on the government actually framing the relevant schemes. Section 113 compels gig workers to register in order to access any benefits at all, which in practice means possessing an Aadhaar card and self-declaring one's details on government portals such as e-Shram.[9] Perhaps the deeper problem is conceptual: the CSS treats social security as a stand-alone welfare measure, cut off from the wider question of labour rights. Collective bargaining and minimum wage guarantees remain entirely out of reach for platform workers under this framework.

B. Traditional Labour Laws

Before the new labour codes arrived, Indian labour jurisprudence turned on the concept of the "workman," defined under Section 2(s) of the Industrial Disputes Act, 1947 (the "IDA").[10] The IDA requires an express or implied contract of employment, generally established through the "control and supervision" test. Because platforms classify their workers as independent contractors and keep their distance from direct physical supervision, gig workers routinely fail to meet the threshold for "workman" status.

The consequences follow directly. Gig workers fall outside the Minimum Wages Act, 1948, leaving platforms free to cut piece-rates unilaterally.[11] They are also excluded from the Factories Act, 1948, and from the various state Shops and Establishments Acts, which together regulate working hours, overtime pay, and occupational safety. Without "workman" status, gig workers cannot access the statutory dispute-resolution mechanisms the IDA provides either.

C. Constitutional Perspective

Statutory labour law may exclude gig workers, but the Constitution offers a wider frame for their protection. Article 14's guarantee of equality before the law is arguably breached

[8]The Code on Social Security 2020, s 114(4).
[9]The Code on Social Security 2020, s 113(1); Ministry of Labour and Employment, *Report on the e-Shram Portal for Unorganised Workers* (Government of India 2021).
[10]The Industrial Disputes Act 1947, s 2(s).
[11]The Minimum Wages Act 1948, s 12.

whenever workers performing functions identical to those of traditional employees are denied comparable legal protection purely on the strength of contractual technicalities.[12]

Article 21's guarantee of the right to life has, in the Supreme Court's hands, grown to include the right to livelihood — a reading established in *Olga Tellis v Bombay Municipal Corporation*.[13] Read against this precedent, the arbitrary deactivation of a platform worker's account is, in effect, the termination of a livelihood without due process, and raises a genuine Article 21 concern.

The Directive Principles of State Policy add a further obligation on the state to build a social order that promotes the welfare of the people. Article 38 calls on the state to minimise income inequality, while Article 43 directs it to secure a living wage and decent working conditions.[14] These principles are not directly enforceable in court, but they supply the philosophical foundation on which labour legislation is meant to rest.

4. Labour Rights and Social Security

In practice, the gap between the flexibility gig work promises and the basic dignity it delivers shows up in two distinct ways: violations of labour rights, and a serious shortfall in social security.

Labour Rights Issues

Income instability is the most immediate problem gig workers face. Platform algorithms set piece-rates and incentives, and change them without warning. Task allocation, route monitoring, and performance evaluation through customer ratings are all handled by software rather than a human manager — a form of "algorithmic management" that leaves workers with very little visibility into how decisions affecting their income are actually made.[15]

To earn anything close to a survival wage under these conditions, platform workers are often pushed into excessively long hours. Job security fares no better: arbitrary deactivation functions as the platform equivalent of summary dismissal, and workers can be permanently locked out of an application because of a fluctuating rating or an algorithmic flag, often with no warning at all. Collective bargaining, meanwhile, is practically unavailable. Unions do

[12]The Constitution of India 1950, art 14.
[13]*Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545 (Supreme Court of India).
[14]The Constitution of India 1950, arts 38, 43.
[15]Nicola Countouris and Valerio De Stefano, *New Trade Union Strategies for New Forms of Employment* (European Trade Union Institute 2019) 45.

exist, but platforms decline to recognise them for bargaining purposes, arguing that no legal obligation to negotiate arises with "independent contractors."[16]

Social Security Deficits

The physical risks built into location-based gig work make social security something closer to a necessity than an amenity. Delivery workers and ride-hailing drivers face constant exposure to road accidents. A traditional employee facing the same risk would be covered by the Employees' State Insurance Act, 1948, and the Employees' Compensation Act, 1923, which together provide health insurance, accident compensation, and disability protection.[17]

Gig workers have no real equivalent. They depend instead on the voluntary insurance schemes platforms occasionally offer, which tend to come with heavy conditions attached and are notoriously hard to claim against. Maternity benefits, old-age protection, and income support during illness are effectively absent. And even where the Code on Social Security formally recognises gig workers, that recognition does not, on its own, translate into meaningful protection unless the schemes behind it are actually implemented.

5. Case Laws

Indian courts have a long history of looking past the wording of a contract to determine what an employment relationship actually is, and that history speaks directly to the gig economy debate today.

In *Dharangadhara Chemical Works Ltd v State of Saurashtra* (1957), the Supreme Court set out the "supervision and control" test for distinguishing a workman from an independent contractor.[18] Where an employer retains the right to control not just what work gets done but how it gets done, the Court held, the relationship is one of employment. Platforms will argue that they do not dictate how a driver drives or how a delivery is made, but their algorithms exercise an arguably more granular form of control — real-time GPS tracking and behavioural nudges — that would seem to clear this threshold just as easily.

Justice Krishna Iyer went further in *Hussainbhai, Calicut v Alath Factory Thezhilali Union* (1978), formulating what has come to be known as the "economic reality" test.[19] The real test

[16]See generally K R S Sundar, 'COVID-19 and the Crisis of the Indian Labour Law: The Urgency for Universal Social Security' (2020) 55(34) Economic and Political Weekly 31.
[17]The Employees' State Insurance Act 1948; The Employees' Compensation Act 1923.
[18]*Dharangadhara Chemical Works Ltd v State of Saurashtra* AIR 1957 SC 264 (Supreme Court of India).
[19]*Hussainbhai, Calicut v Alath Factory Thezhilali Union* (1978) 4 SCC 257 (Supreme Court of India).

of an employment relationship, on this approach, is economic dependence: where a worker's livelihood depends on the employer's business, neither intermediate contractors nor careful contractual drafting can override the protective purpose of labour law. Applied to the gig economy, the economic reality is unambiguous — platform workers depend entirely on aggregators for their livelihood.

A writ petition currently pending before the Supreme Court, *The Indian Federation of App-based Transport Workers (IFAT) v Union of India*, puts this argument to the test directly.[20] The petitioners contend that denying social security to gig workers violates Article 21 (right to life) and Article 14 (right to equality), and ask that gig workers be declared "unorganised workers" with access to statutory welfare boards.

Comparative case law is instructive here. In *Uber BV v Aslam* (2021), the UK Supreme Court held unanimously that Uber drivers are "workers" — an intermediate category under UK law — rather than independent contractors.[21] The Court's reasoning turned on Uber's control over fares, its unilateral setting of contract terms, its control over the information reaching drivers, and its practice of penalising drivers who declined rides; statutory employment protections, the Court held, cannot be contracted out of through artificial clauses. The Supreme Court of California reached a similarly stringent conclusion in *Dynamex Operations West, Inc v Superior Court* (2018), adopting the "ABC test" and placing the burden on the hiring entity to prove that a worker is genuinely free of its control before that worker can be classified as an independent contractor.[22] Taken together, these decisions point to a judicial consensus, well beyond India, against the independent-contractor fiction on which digital platforms rely.

6. Challenges and Legal Gaps

India's legal framework for gig work has several structural gaps that stand in the way of anything approaching equitable treatment. The most basic is the unresolved question of employment status itself. By introducing "gig worker" as a category solely within the Code on Social Security, without any corresponding amendment to the Code on Wages or the

[20] *The Indian Federation of App-based Transport Workers (IFAT) v Union of India*, Writ Petition (Civil) No 434 of 2021 (pending before the Supreme Court of India). **[VERIFY SOURCE — confirm current status of this petition]**

[21] *Uber BV and others v Aslam and others* [2021] UKSC 5 (Supreme Court of the United Kingdom).

[22] *Dynamex Operations West, Inc v Superior Court* 4 Cal 5th 903 (Supreme Court of California, 2018).

Industrial Relations Code, the legislature has produced an odd result: a worker recognised for the purpose of a contingent welfare scheme, yet denied any right to a minimum wage.[23]

Enforcement is thin on the ground. Even where a state like Rajasthan has passed dedicated legislation to set up welfare boards, implementation is held back by platforms' reluctance to share proprietary algorithmic data or accurate worker registries.[24]

There is also a deeper gap between the control platforms exercise and the responsibility they accept for it. Algorithmic decision-making lets platforms hire, monitor, evaluate, and deactivate workers — the substance of managerial authority — while sidestepping the vicarious liability, tax contributions, and statutory dues that would normally accompany the status of employer.

Fragmented income compounds these problems. As per-task compensation has fallen with an oversupply of labour, workers increasingly log into several applications at once simply to assemble a living wage. The risks fall unevenly, too: women working in the domestic services segment of the gig economy report particular concerns around occupational safety and sexual harassment, without any grievance mechanism resembling what a standard workplace would offer.[25]

7. Comparative Analysis

Measuring India's framework against how other jurisdictions have approached the same problem reveals a range of alternative regulatory paths.

The United Kingdom operates a tripartite system — Employee, Worker, and Independent Contractor. “Workers” are entitled to minimum wage, paid annual leave, and protection from discrimination without needing to establish full employee status.[26] *Uber v Aslam* confirmed this status for ride-hailing drivers, though reaching that outcome still required protracted, case-by-case litigation.

The European Union's proposed Platform Work Directive takes a different route, creating a legal presumption of employment once certain indicators of platform control and direction

[23]International Labour Organization, *World Employment and Social Outlook 2021: The Role of Digital Labour Platforms in Transforming the World of Work* (ILO 2021) 50.
[24]The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act 2023. **[VERIFY SOURCE — confirm implementation and rules status]**
[25]NITI Aayog (n 1) 22–25.
[26]Employment Rights Act 1996 (UK), s 230(3).

are satisfied.[27] This is a meaningful shift: it moves the burden of proof off the vulnerable worker and onto the far better-resourced platform.

California took a third path. Assembly Bill No 5 (AB5) sought to classify gig workers as employees using the ABC test, but platforms responded by funding Proposition 22, a ballot initiative that carved app-based drivers out as contractors while guaranteeing a wage floor and limited health subsidies.[28] Proposition 22 is a useful illustration of how platforms can use their capital to draft legislation that keeps them outside comprehensive employment law.

None of these models can simply be imported wholesale into India, given the scale of its informal economy. The UK's intermediate "worker" category is appealing for the core protections it provides, but introducing a third category in India risks giving employers in conventional sectors an incentive to reclassify existing employees downward to capture the same savings. The more useful tool for India is probably the EU's presumption of employment, which reverses the burden of proof and requires platforms — rather than workers — to show that a relationship is genuinely independent.

8. Critical Analysis

Has Indian law actually protected gig workers, or has it simply acknowledged that they exist without giving them enforceable rights? On the evidence gathered here, the state has chosen symbolic recognition over the harder work of regulation.[29] The Code on Social Security is a positive first step, but it rests on a flawed premise: it treats gig work purely as a welfare question rather than a labour rights question. Placing gig workers in a separate chapter devoted only to social security quietly accepts the platforms' own position — that these workers are not employees.

Creating a distinct "gig worker" category without attaching fundamental rights to it weakens existing employment protections rather than strengthening the position of gig workers. The legal framework still defers to the contractual language platforms draft unilaterally, rather than looking to the economic substance of the relationship. Denying employment status simply because supervision is exercised by code rather than by a human manager is, in the end, a failure of legal imagination. Indian law has not genuinely protected gig workers on this

[27]European Commission, Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work COM(2021) 762 final. **[VERIFY SOURCE — confirm current legislative status]**

[28]Assembly Bill No 5 (AB5), California Labor Code § 2750.3; Proposition 22 (App-Based Drivers as Contractors and Labor Policies Initiative 2020).

[29]Jeremias Prassl (n 3) 85–88.

account; a fragmented social security fund cannot stand in for fair wages, safe working conditions, and a genuine right to collective representation.

9. Suggestions and Reforms

If gig workers are to receive protection that matches their economic reality, the following reforms are worth pursuing:

1. **Statutory Presumption of Worker Status:** Following the EU's lead, India's labour codes should be amended to include a rebuttable presumption of employment for platform workers, shifting the burden onto the aggregator to prove genuine independence.
2. **Extension of the Code on Wages:** The Code on Wages, 2019 should be extended explicitly to cover gig and platform workers,[30] with government establishing a method for calculating a minimum piece-rate that accounts for waiting time, fuel, and vehicle maintenance.
3. **Transparent Algorithmic Management:** Legislation should require algorithmic transparency, giving workers a right to an explanation of how tasks are allocated and prices set.
4. **Protection Against Arbitrary Deactivation:** Summary deactivation without cause runs against basic principles of natural justice. The law should require platforms to give prior notice and a genuine right of appeal to an independent human grievance officer.
5. **Mandatory Platform Contributions:** The 1–2% cess already provided for under the CSS 2020 should be enforced with immediate effect, with the resulting funds directed into a portable, national social security account tied to the worker's e-Shram profile.

10. CONCLUSION

The gig economy has changed the shape of the Indian labour market, bringing a scale and flexibility that were unavailable before. But the legal framework built around traditional employment has not kept pace with platform-mediated work. Treating gig workers as independent contractors is a legal fiction that lets platforms sidestep basic labour obligations. The Code on Social Security, 2020 is a genuine, historic acknowledgment of this workforce, but its structure is deficient: it offers conditional welfare while withholding minimum wage protection, job security, and collective bargaining rights, so that the law recognises gig workers without actually shielding them from algorithmic subordination. Flexibility in how

[30]The Code on Wages 2019 (Act No 29 of 2019).

work is organised is not, and cannot be, a justification for stripping workers of dignity and basic labour rights.

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