
BETWEEN FLEXIBILITY AND EXPLOITATION: LEGAL CHALLENGES IN INDIA'S GIG WORK REGIME

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ABSTRACT

Rapid technological development, increased use of digital technology, and a growing need for various types of work have driven the growth of the gig/platform economy in India over the past couple of years. The estimated number of gig workers currently stands at about 10 million, up from 7.7 million in 2020-21, and is projected to reach 23.5 million by 2029-30. Despite this growth, workers engaged in ride-hailing, food delivery, and home-based services are not recognized as traditional employees. They are typically paid on a per-task basis and remain largely outside the scope of established labor law protections. This paper examines the extent to which Indian labor laws, particularly the Code on Social Security, 2020, recognize and protect gig workers. In addition, it identifies important gaps in the legal and regulatory system. The main argument is that the current law is deficient because it fails to provide sufficient clarity on the employment status of gig workers, leaving them with very limited legal protections. Using current statistics, policy reports, and recent legal rulings, this research will explore the issues of platform control of workers, harassment in the workplace, discrimination based on sex, and the absence of adequate complaint systems in cases of abuse. A comparison is not only made among the laws of the United Kingdom, the European Union, and the United States, but also offers recommendations on how India can further develop its gig economy. The results of this research show that although the legal and policy frameworks in India have begun to extend social security protections for gig workers, they are not fully functional and are unable to adequately protect gig workers from algorithmic bias or exploitation, particularly through the use of algorithms and leading platforms to determine their income and other factors. The conclusion of this paper recommends the Algorithmic and Economic Dependency (AED) Test to recognize gig workers, a mixed-method approach to legal oversight of gig workers, and flexibility & fairness. These include: Recognizing gig workers as legal entities by enacting a specific statute, not just defining who they are; Providing greater transparency into how platforms operate, especially regarding the computer-generated algorithms; Enforcing stronger anti-harassment protections for female workers under POSH; Building social safety net programs that include gig workers.

Keywords: Gig economy, platform work, social security, algorithmic management, harassment in the workplace, grievance mechanism.

INTRODUCTION

A major change is happening in the global labour market.¹ The old ways of working in traditional "bricks and mortar" jobs are giving way to more flexible, decentralized "on-demand" or gig-economy jobs. Digital labour platforms enable this change by connecting workers and employers through high-speed internet and smartphones. In other words, office work is being replaced by tasks tailored to a consumer's needs, determined by an algorithm that links the two groups to create an instant connection between supply and demand for labor. This transformation signifies both a shift in technology and the complete elimination of traditional models of work, thereby removing the protections that used to accompany conventional employment practices, including unemployment benefits and workers' compensation. The gig economy provides a two-fold experience for workers. On one hand, it offers flexibility by allowing individuals to choose their working hours and making it easier for many, including marginalized groups, to enter the workforce. On the other hand, this flexibility comes with significant risks.

The Code on Social Security (CoSS)² introduces specific definitions to differentiate between gig workers and platform workers. Section 2(35)³ defines a gig worker as

“Gig worker” means a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer–employee relationship.⁴

This intentionally broad definition covers any app-based freelance worker (delivery agent, driver, online freelancer, etc.).

And Section 2(61)⁵ defines a platform worker as:

Platform work” is defined as a “work arrangement outside of a traditional employer-employee

¹ International Labour Organization, *The Role of Digital Labour Platforms in Transforming the World of Work* (Feb. 23, 2021), <https://www.ilo.org/publications/flagship-reports/role-digital-labour-platforms-transforming-world-work>.

² Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India).

³ Code on Social Security, 2020, No. 36, Acts of Parliament, 2020, § 2(35) (India).

⁴ *The Code on Social Security, 2020*, Bill No. 121 of 2020, as introduced in Lok Sabha (India), available at <https://labour.gov.in/sites/default/files/ss_code_as_introduced_in_lok_sabha.pdf>.

⁵ Code on Social Security, 2020, No. 36, Acts of Parliament, 2020, § 2(61) (India).

relationship” mediated by an online platform

The NITI Aayog Report 2022⁶ identifies gig workers as people who are working outside the traditional employer-employee relationship and has two classes of gig workers: platform workers and non-platform workers. Platform workers obtain customers from online algorithmic matching platforms, such as Amazon or Uber. Non-platform workers are individuals in the construction sector, day laborers, or other temporary workers who are technology-independent. NITI Aayog estimates that India’s gig workforce numbered 7.7 million in 2020-21 and is projected to exceed 23.5 million by 2029-30⁷. These workers comprise a significant fraction of the economy, accounting for roughly 4-6% of the non-agricultural labor force, and fill roles across various skill levels. For example, nearly half of gig tasks are “medium-skilled” jobs (such as driving), while the rest are roughly split between high- and low-skilled work⁸. Although these definitions are an important development, they are based on what gig workers are not, rather than clearly stating what rights they have. By not recognizing them as employees, the law allows platform companies to continue treating them as independent contractors or partners. Companies do not have to provide minimum wages, overtime pay or gratuity to gig workers. Therefore, legal protection for gig workers remains ambiguous, as does their ability to negotiate better working conditions, since they are excluded from legislation governing collective bargaining.

The code has yet to be fully implemented, especially related to the proposed social security fund and aggregate contributions. The majority of gig workers are still vulnerable due to intense platform control through non-discriminatory and obscure algorithmically managed systems, arbitrary opportunities for ratings and incentives, sudden termination or deactivation, and heavy performance pressures. Many gig workers report workplace harassment, sexual exploitation, and discrimination based on gender and/or sexual orientation, but there are few, if any, mechanisms for filing complaints or receiving redress. The issue of algorithmic bias exacerbates those challenges; women and other underrepresented workers are often placed at a disadvantage when it comes to task assignment and earnings because of their gender and/or other characteristics. Courts in India have begun addressing these challenges; however, they

⁶ NITI AAYOG, GOV’T OF INDIA, *INDIA’S BOOMING GIG AND PLATFORM ECONOMY* (2022), https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf.

⁷ Press Release, Press Info. Bureau, *Social Security Boost for India’s Gig Workers* (Aug. 30, 2025), <https://www.pib.gov.in/PressNoteDetails.aspx?NoteId=155119&ModuleId=3>.

⁸ Press Release, Press Info. Bureau, *NITI Aayog Launches Report on India’s Gig and Platform Economy* (June 27, 2022), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1837277>.

have generally done so in isolated instances. In *IFAT v. Union of India*⁹, the Supreme Court of India directed the Indian government to provide continued welfare of gig workers. The High Court of Karnataka has ruled that app-based taxi drivers can be classified as employees or workers under relevant laws governing sexual harassment, thereby requiring companies to establish mechanisms for filing sexual harassment complaints. However, companies have yet to implement meaningful changes in response to these legal rulings¹⁰.

Worldwide, other countries have enacted much tougher measures against workers in this global network. For example, courts (including the UK Supreme Court) have ruled that Uber drivers are classified as "workers" and therefore entitled to basic wages and other entitlements¹¹. Similarly, new legislation across the European Union provides that gig workers will be presumed to be employees and requires companies to disclose any algorithms used to decide how to hire or terminate workers.¹² The United States, on the other hand, does not have a single national standard that applies across all states of this union, as separate jurisdictions follow separate legal paths. The International Labor Organization (ILO) and other international entities provide a framework for gig workers to have access to reasonable working conditions and protections.

This research paper examines the extent to which Indian labor laws, particularly the Code on Social Security, 2020, recognize and protect the rights of gig and platform workers. It identifies major deficits in the current legal and regulatory structure that result in a lack of protection for workers from abuse. Using recent numerical data, policy reports, and new court cases, this paper will examine how platform control, algorithmic management/bias, sexual harassment/discrimination, and the lack of effective grievance systems have created inequitable working conditions for workers. A comparison will also be made with regulatory frameworks in the UK, EU, and US to identify best practices and lessons that may be useful for application in India. This paper's main thesis is that although the Social Security Code of 2020 will be a significant step forward in recognizing gig workers' employment status under

⁹ *Indian Fed'n of App-Based Transport Workers v. Union of India*, W.P.(C) No. 1068/2021 (Sup. Ct. India filed Sept. 20, 2021)

¹⁰ Karnataka High Court Stays Verdict That Ola Has to Act Against Drivers Under POSH Act Treating Them as Employees of the Company, *The Hindu* (Oct. 4, 2024), <https://www.thehindu.com/business/karnataka-high-court-stays-verdict-that-ola-has-to-act-against-drivers-under-posh-act-treating-them-as-employees-of-the-company/article68716878.ece>.

¹¹ *Uber BV v. Aslam* [2021] UKSC 5 (appeal taken from Eng)

¹² European Trade Union Institute, *EU Platform Work Directive* (ETUI Publications, 2024), <https://www.etui.org/publications/eu-platform-work-directive>.

social security, it does not offer sufficient protections or clarity regarding employment status, nor does it provide any enforceable protections against exploitation or algorithmic managerial control. The study advocates for a balanced, mixed-method regulatory approach that ensures both flexibility and fairness for gig workers.

LITERATURE REVIEW

Researchers who have examined India's gig market note that existing labor regulations do not align well with gig workers' actual working conditions. Because gig workers exist outside the usual employer-employee relationship, they have little legal protection while being subject to substantial control by the platform providers. The key question in the literature is whether gig workers are entitled to rights such as minimum pay and grievance redress, and whether the digital nature of gig work can circumvent traditional protections for workers.

A significant strand of literature focuses on the conceptual and legal uncertainty surrounding worker status. In *Humans as a Service*, Jeremias Adams Prassl¹³ provides a valuable theoretical framework for understanding how digital platforms are reshaping labor by allocating, supervising, and evaluating work through algorithms. The implications of his work are very significant, as it challenges the assumption that platform work is unaided or a genuine form of contractor work, even if the work is labeled as independent. The importance of this scholarship lies in its argument that substantive control, not merely the contract used to define it, should determine whether work is legally defined from the perspective of workers. This type of analytical framework is helpful for us in India, as companies that operate digital platform-based business models often classify their workers in a way that allows them to avoid complying with what would be otherwise owed to their employees.

Indian scholarship has developed this critique further by focusing on the inadequacy of domestic labour law. According to the report titled "The Gig Is Up! Worker Rights for Digital Day Labor in India" by Anita Gurumurthy, Nandini Chami, and Sadhana Sanjay¹⁴, platform work has expanded faster than legal reforms and enforcement of institutions have developed to protect gig workers' rights. This report highlights many of the vulnerabilities of gig workers, including low and unstable income, limited access to grievance resolution, limited social

¹³ Jeremias Adams-Prassl, *Faculty Profile*, Univ. of Oxford Fac. of L., <https://www.law.ox.ac.uk/people/jeremias-adams-prassl> (last visited Oct. 12, 2025).

¹⁴ Anita Gurumurthy et al., *The Gig Is Up! Worker Rights for Digital Day Labour in India* (Friedrich-Ebert-Stiftung India Office, Sept. 2020), <https://library.fes.de/pdf-files/bueros/indien/16516.pdf>.

security, and an imbalance in bargaining power. The value of this report is that it does not view the gig economy as only being a technological issue; it also examines it as an issue of labour rights that must be given statutory protections, regulatory oversight, and institutional accountability. The perspective of this report reinforces the opinion that recognizing gig work will not create enforceable rights for gig workers unless those rights are also protected by enforceable laws.

Recent academic work has expanded the analysis by examining both the economic and the social dimensions of platform work in India. Koley¹⁵ examines the growth, challenges, and policy implications of the gig economy in light of broader trends in digitalization and increased labor-market flexibility. This study helps us understand that gig work is not just a small part of the economy; instead, it is affecting livelihoods across many sectors and at many skill levels. The study also identifies long-standing inequities, particularly with respect to women and other groups that have been historically disadvantaged. This is an important contribution because it connects labour regulation to distributive justice, rather than treating platform work merely as an efficiency question.

Collectively, these studies highlight the significant gaps in India's legal and institutional responses to gig and platform work. In sum, these studies highlight these serious shortcomings in India's legal and institutional narratives in relation to gig and platform work and demonstrate the challenges of conditional labor, technologies of mediation, and inadequate statutory protections in analyzing the etiologies of the Code of Social Security, 2020, as it relates to the rights and dignities of gig workers. By linking regulatory deficiencies to the constitutional principles outlined in Articles 14 (equality), 19 (livelihood), and 21 (dignity)¹⁶, this paper extends the existing body of literature by exploring the relationship between algorithmic governance, gendered vulnerabilities, and enforcement gaps. Additionally, the research situates the gig economy in India within the context of broader debates on rights-based and global perspectives, while also demonstrating that the current regulatory framework continues to perpetuate the precarious nature of gig work, even after some formal recognition of it.

¹⁵ Dr. R. S. Deshpande, *The Gig Economy in India: Growth, Challenges, and Policy Implications*, 9 Int'l J. Recent Innovations Acad. Res. [insert page number] (2023), <https://rsisinternational.org/journals/ijrias/articles/the-gig-economy-in-india-growth-challenges-and-policy-implications>.

¹⁶ Arts. 14, 19 & 21, Const. of India

LEGAL RECOGNITION UNDER INDIAN LAW

a. The Code on Social Security, 2020

The CSS 2020 is India's principal social security legislation, consolidating nine older laws. Crucially, it defines "gig worker" and "platform worker" in *Section 2*. These new categories are included in Chapter IX ("Social Security for Unorganized Workers, Gig Workers and Platform Workers") of the Code. For the first time in Indian law, gig workers have formal recognition. The Code instructs governments to formulate welfare schemes for this group, covering benefits such as life/disability cover, accident insurance, health/maternity benefits, pension, and more. It also mandates an IT-based registry and a Social Security Fund (with contributions from state, central, and platform aggregators) to finance such schemes.¹⁷

The Code specifies that workers engaged in unorganized, gig, and platform work can receive benefits such as life insurance, accident insurance, health and maternity benefits, and old-age benefits through social security schemes tailored to them. This fund is financed by contributions from the central and state governments, funds contributed through corporate social responsibility (CSR) spend, and contributions from aggregators or digital platforms that use gig workers. As a prerequisite for classification as an aggregator, one requirement will be to pay a small percentage, capped at 5% of annually payable compensation, to their gig workers associated with that digital platform. This small percentage is a financial commitment to ensure the aggregators' participation in the welfare system. To oversee and recommend suitable schemes for these workers, the National Social Security Board has been set up to monitor and guide the effective implementation of such initiatives¹⁸.

While this funding architecture appears progressive, it remains "functional on paper only." As of 2025, the specific rates and rules for aggregator contributions remain unnotified in many contexts, leading to a situation where the legislative intent has outpaced administrative execution. Furthermore, the Code empowers the Central Government to exempt certain aggregators from these requirements, potentially creating loopholes that favor platform

¹⁷ Abhiramy S M, *Algorithmic Blindness and Gender Sensitivities in Gig Work*, SPRF (Aug. 6, 2025), <<https://sprf.in/algorithmic-blindness-and-gender-sensitivities-in-gig-work>>.

¹⁸ Corrida Legal, *Gig Workers Under Social Security Code: Employer Obligations, Benefits & Legal Framework in India* (Aug. 2023), <<https://corridalegal.com/gig-workers-under-social-security-code-employer-obligations-benefits-legal-framework-in-india>>.

innovation over worker welfare.

b. Constitutional provisions

The rights and protections of gig and platform workers can be understood through the lens of Articles 14, 19(1)(g), and 21¹⁹ of the Indian Constitution, as well as the Directive Principles of State Policy (DPSPs) under Articles 39, 41, and 43²⁰.

Article 14²¹ guarantees equality before the law and equal protection under the law. It mandates that the state must not discriminate and should ensure fairness in labour and employment policies. In the context of gig work, it implies that such workers should not be treated unequally or denied basic protections available to other categories of workers.

Article 19(1)(g)²² guarantees the right to practice any profession or to carry on any occupation, trade, or business. The right, however, is subject to reasonable restrictions under Article 19(6)²³ in the interest of the general public. Therefore, ensuring fair wages, safety, and social security by state regulation of gig platforms would be constitutionally valid as it is for the welfare of workers and in the public interest.

Article 21²⁴, which guarantees the right to life and personal liberty, has been interpreted expansively by the judiciary to include the right to livelihood and dignity. In *Olga Tellis v. Bombay Municipal Corporation* (1985)²⁵, the Supreme Court held that the right to life includes the right to livelihood. This principle extends to gig workers, affirming that their economic security and working conditions are integral to a life of dignity.

The Directive Principles further guide the state's responsibility toward social and economic justice. Article 39²⁶ calls on the state to ensure that all people have sufficient means to make a living and to safeguard against the economic exploitation of all citizens. Article 41²⁷ requires the state to provide the right to work, to receive an education, and to receive public assistance

¹⁹ India Const. arts. 14, 19(1)(g), 21

²⁰ India Const. arts. 39, 41, 43.

²¹ India Const. art. 14.

²² India Const. art. 19(1)(g).

²³ India Const. art. 19(6).

²⁴ India Const. art. 21.

²⁵ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 SCC 545 (India).

²⁶ India Const. arts. 39.

²⁷ India Const. arts. 41

in the case of unemployment or old age. Article 43²⁸ calls for the state to secure a living wage and decent working conditions for all workers. All these principles, while non-justiciable, provide the moral and constitutional underpinning of labour welfare legislation, including the Code on Social Security (2020)²⁹.

There has been a consistent judicial trend in India expanding the right to livelihood and dignity. In various judicial decisions the Supreme Court, through cases like *Bandhua Mukti Morcha v. Union of India* (1984)³⁰, *People's Union for Democratic Rights v. Union of India* (1982)³¹, reiterated that humane conditions of work, fair wages and protection from exploitation are all part and parcel of Article 21³². The Supreme Court of India, in its various judgments, collectively exemplifies that the judiciary has accepted the connection between livelihood, dignity, and constitutional morality.

Thus, while gig workers are not yet classified as “employees,” constitutional principles and judicial precedents provide a strong basis for expanding their social and economic rights, ensuring they are not left outside the ambit of justice, equality, and dignity guaranteed by the Constitution.

c. Other Laws and Policies

Before the CSS 2020, there were some related provisions. The Unorganized Workers' Social Security Act (UWSSA) 2008³³ covered many informal workers (street vendors, home-based, etc.) but did not explicitly mention gig workers. Conceptually, gig workers could avail themselves of benefits under UWSSA since they are workers in the “unorganized sector”; however, implementation was poor, and the definitions were unclear. The 2020 Code repealed UWSSA, folding its (modest) mandates into the new Code's Chapter IX.³⁴

Code on Wages, 2019: This code abolished different minimum wages for men and women and extended minimum wage guarantees to all wage workers. However, it explicitly excludes self-

²⁸ India Const. arts.43.

²⁹ *The Code on Social Security, 2020*, Bill No. 121 of 2020, as introduced in Lok Sabha (India), available at <https://labour.gov.in/sites/default/files/ss_code_as_introduced_in_lok_sabha.pdf>.

³⁰ *Bandhua Mukti Morcha v. Union of India*, A.I.R. 1984 S.C. 802.

³¹ *People's Union for Democratic Rights v. Union of India*, A.I.R. 1982 S.C. 1473.

³² Id

³³ Unorganised Workers' Social Security Act, 2008, No. 33, Acts of Parliament, 2008 (India).

³⁴ Sakshi Sadashiv K, *SC Hears Plea Seeking Social Security Rights for Gig and Platform Workers*, MediaNama (Nov. 20, 2024), <<https://www.medianama.com/2024/11/223-supreme-court-hears-plea-social-security-rights-gig-platform-workers>>.

employed persons. Since platforms classify workers as contractors, gig workers fall outside wage-code coverage³⁵.

Industrial Relations Codes³⁶: No new provisions address gig workers. Workers' ability to unionize or engage in collective bargaining remains governed by laws like the Industrial Disputes Act 1947³⁷, which only applies to "employees" in registered establishments. Gig workers, who are not employees, generally have no statutory right to organize under these laws.

India's post-2020 legal framework is the first to mention gig work, but its protections are largely within the domain of "social security" (insurance and welfare), rather than core labour rights. The law acknowledges the existence of gig workers, but leaves open how far contractual freedom must give way to labour standards.

LIMITATIONS UNDER THE INDIAN CODE

Worker rights as outlined in the Code on Social Security, 2020 (CSS 2020)³⁸, demonstrate strides in India's developing labour jurisprudence, but serious loopholes remain, especially with the gig economy underlying longstanding struggles for social justice, the possibility of exploitation, and suppression of workers. Many schemes exist only on paper due to delayed or inadequate rule-making, making registration and benefits largely aspirational rather than practical. Workers in the gig economy and platform economy generally do not fall within the definition of a traditional employee and therefore escape the eligibility for basic labour protections typically available to employees, such as minimum wage, regulated hours, job security, and guaranteed mechanisms for resolving disputes (e.g., Minimum Wages Act, Employees' State Insurance Act, Industrial Disputes Act). The main argument against the current regulatory framework is that it fails to provide sufficient clarity on the employment status of gig workers, leaving them with extremely limited legal protections. This ambiguity is not accidental; it is a strategic byproduct of a legal framework that prioritizes platform flexibility. Because gig workers are not recognized as "workmen" or "employees" under the other three major labor codes, the Code on Wages (2019), the Industrial Relations Code (2020), and the Occupational Safety, Health and Working Conditions Code (2020)-they are denied the

³⁵ Abhiramy S M, *Algorithmic Blindness and Gender Sensitivities in Gig Work*, SPRF (Aug. 6, 2025), <<https://sprf.in/algorithmic-blindness-and-gender-sensitivities-in-gig-work>>.

³⁶ Industrial Relations Code, 2020, No. 35, Acts of Parliament, 2020 (India).

³⁷ Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947 (India).

³⁸ Code on Social Security, 2020, No. 36, Acts of Parliament, 2020

right to statutory minimum wages and the right to collective bargaining³⁹. Protections against arbitrary deactivation, sudden termination, algorithmic management, and harassment are mostly absent; grievance redressal is weak. A 2024 NITI Aayog report found that 90% of gig workers have little to no savings, with over 70% facing financial strain and almost 80% working excessive hours (over 10 hours/day)⁴⁰

Thus, Indian law still treats platform workers as self-employed unless a tribunal says otherwise. For example, if an Ola driver sues under the Minimum Wages Act, he would likely be dismissed for lack of employee status. In contrast, the UK Supreme Court has held that Uber drivers are “workers” (a status between employee and independent contractor), entitling them to minimum wage and holiday pay⁴¹. In India, no court has definitively categorized gig drivers or delivery agents as employees. Courts tend to scrutinize contracts on a case-by-case basis; so far, few landmark cases have overturned platform labels. A pending case before the Supreme Court (filed by gig workers’ unions) explicitly asks whether gig workers should be considered “workmen” under social security laws⁴². The government’s final stance on employment status is awaited. Because gig workers are generally exempt from wage laws, wages and commissions are entirely determined by the platforms. This leads to volatility and disputes: delivery agents have gone on strike demanding higher per-order rates, drivers complain of fluctuating fares, etc. Some informal norms (like floor wages for drivers in certain city agreements) exist, but they are not legally enforceable. The Code on Wages (2019) would cover gig workers if they were deemed employees, but as things stand, it does not apply to the self-employed. Thus, wage security is a major weakness in the present framework: there is no statutory minimum and no guarantee of prompt payment for time and effort.

Another major issue is that they depend heavily on algorithms for worker management; gig platforms automatically assign jobs, determine the prices to be paid, and rank their workers' performance. While this efficiency is convenient, it raises questions about fairness and accountability. Workers are routinely subjected to the platform algorithm's discretion without

³⁹ Tanmay Satvik, *Logged In, Left Out: How Code on Social Security, 2020 Only Mentions About India's Gig Workers*, LiveLaw (Mar. 26, 2026, 4:33 AM), <https://www.livelaw.in/articles/code-on-social-security2020-india-gig-workers-527945>.

⁴⁰ *Code on Social Security 2020 and Gig Workers*, Drishti IAS (Apr. 27, 2023), <<https://www.drishtias.com/daily-updates/daily-news-analysis/code-on-social-security-2020-and-gig-workers>>.

⁴¹ Daniel Ferguson, *Uber at the Supreme Court: Who Is a Worker?*, UK Parliament House of Commons Library (Feb. 22, 2021), <<https://commonslibrary.parliament.uk/uber-at-the-supreme-court-who-is-a-worker>>.

⁴² Sakshi Sadashiv K, *SC Hears Plea Seeking Social Security Rights for Gig and Platform Workers*, MediaNama (Nov. 20, 2024), <<https://www.medianama.com/2024/11/223-supreme-court-hears-plea-social-security-rights-gig-platform-workers>>.

any human supervisors or any explanations of the rules behind access to their accounts. For instance, there have been reports of riders being blocked for having too few job acceptances or too many ratings below 4 stars, without any warnings or appeal options. The transition to a digital economy has replaced human supervisors with "digital machines", computational algorithms that assume traditional managerial functions. This shift toward "algorithmically mediated work" introduces new forms of discipline and control that are often opaque to the worker. Algorithmic management uses computer-programmed procedures to coordinate labor input, including extensive surveillance, automated task allocation, and rating-based performance evaluation. The lack of transparency in these two dimensions of algorithmic decision-making has the potential to obscure bias (such as algorithms sending away-from-female drivers at night for "safety") and administer workplace discipline without procedural protections. There is currently no law in India regulating algorithmic management of work. The Industrial Employment (Standing Orders) Act⁴³ and ID Act⁴⁴ protect "employees" from arbitrary dismissal, requiring notice and a hearing; however, gig workers fall outside this protection. The rise of "10-minute delivery" programs for rapid product delivery exposes how algorithms can lead to what's called "algorithmic cruelty." With quick commerce delivery models setting estimated timeframes for deliveries, the model forces workers to break road rules to avoid penalties. The result is a situation where the algorithm acts like a "ghost mandate," encouraging unsafe behavior while the platform maintains a separate legal relationship for any injuries that may result from that behavior. Workers are now unable to properly challenge the collection or processing of their data, which inhibits their ability to organize themselves collectively.

For women gig workers, the gap is acute. The POSH Act (2013)⁴⁵, which mandates workplace sexual harassment prevention, technically covers only employees. In 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, also known as the "POSH Act," was introduced to create an environment in which women can work safely and with dignity. However, the way that much gig work has been organized has exposed major gaps in how the POSH Act applies to gig workers. Many platforms classify gig workers as 'independent contractors', which means they do not need to establish Internal Committees (ICs) where complaints can be made against the platform for their employees' actions. If gig workers

⁴³ Industrial Employment (Standing Orders) Act, 1946, No. 20, Acts of Parliament, 1946 (India)

⁴⁴ Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947 (India).

⁴⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, India Code (2013).

were treated as “employees,” they would fall under POSH’s protection, but as self-employed contractors, platforms claim no statutory obligation. Analysts note that “companies continue to benefit from legal ambiguity, evading responsibility for ensuring safe working conditions.” Women service providers may face harassment or safety risks at customer sites, yet have no clear legal forum under POSH to address these issues⁴⁶. Platforms often set up internal help lines or chatbots to address grievances, but these are often unregulated and can be easily overlooked.

Those who work on the street (like female drivers) risk harassment and violence in public spaces, especially at night. Many female gig workers also juggle domestic duties, making erratic app schedules untenable. As clients or bystanders, women on platforms can also suffer: there have been reports of female delivery agents facing sexual harassment by customers or local intermediaries. Studies indicate that gig algorithms may inadvertently discriminate. For example, if a platform’s rating system penalizes cautious drivers for slightly slower service, female drivers (who may take detours for safety or avoid late-night zones) could be penalized more severely. There is also anecdotal evidence that customers refuse rides from women drivers, citing “safety” reasons. One of the landmark legal cases in this area was *Tanvi Sinha v. Internal Complaints Committee & Ors. (Ola Case)*⁴⁷ where Ola argued that the POSH Act did not apply to its driver because they are independent contractors. The Karnataka High Court ruled that there was a relationship of employer/employee for purposes of the POSH Act because of the “control and supervision” exerted by the aggregator and determined that cab aggregators must create a safe working environment for their drivers and therefore could not dismiss a complaint made to their IC based on a “legal fiction” of partnership. However, many platforms have continued to dismiss serious complaints made by gig workers based on external legal advice rather than by examining the allegations reasonably and according to law, thereby leaving millions of female gig workers unprotected.

THE ENFORCEABILITY GAP: STRUCTURAL BARRIERS TO IMPLEMENTATION

Even though the Code on Social Security, 2020 aims to create a welfare system for gig workers, its implementation has been weak. The gap between what the law promises and what actually

⁴⁶ Abhiramy S M, *Algorithmic Blindness and Gender Sensitivities in Gig Work*, SPRF (Aug. 6, 2025), <<https://sprf.in/algorithmic-blindness-and-gender-sensitivities-in-gig-work>>.

⁴⁷ *Tanvi Sinha v. Internal Complaints Comm. & Ors.*, W.P. No. 8127/2019 (Karnataka HC Aug. 9, 2024).

happens on the ground is caused by four major structural problems.

- First, institutional weakness. India's labour enforcement system is not equipped to deal with digital platforms. Labour authorities often lack the technical skills and digital tools needed to monitor algorithms or ensure compliance. As a result, systems like worker registration and benefit delivery remain largely ineffective.
- Second, federal coordination issues. Labour is a subject shared between the central and state governments. This means both levels must frame rules for the law to work. In practice, this has caused delays and inconsistencies, since different states have varying resources and levels of commitment to implementing these schemes.
- Third, platform influence and regulatory gaps. The uncertainty in gig worker classification is partly shaped by platform companies, which favour flexibility over regulation. The law also allows the central government to exempt certain platforms from contributing to welfare funds, creating room for lobbying and selective enforcement.
- Fourth, deep-rooted informality in labour markets. India has a long history of informal employment with limited legal protection. Gig work fits easily into this existing structure. Instead of transforming labour conditions, digital platforms often continue the same pattern of insecure and unregulated work under a new technological model.

INTERNATIONAL COMPARATIVE INSIGHTS

The global landscape for gig work regulation is currently defined by a struggle between three distinct regulatory philosophies: the Reclassification Model (EU/Spain), the Hybrid Model (UK/Australia), and the Contractual Exceptionalism Model (USA/India). The European Union has established the highest global standards with the adoption of the 2023 Directive on the Improvement of Working Conditions in Platform Work. This Directive represents a significant advancement as it establishes a legal presumption of employment (i.e. if a Platform exerts sufficient control over a worker (via digital surveillance/control mechanisms or restricting their ability to determine how/when they will work)), the burden of proof shifts to the Platform to demonstrate that the worker is not an employee. Additionally, the EU will be the first legal entity to require algorithm(s) and metrics to provide transparency, wherein the

platform/providers must disclose the role of artificial intelligence in influencing the allocation of work to workers and rating workers and allow workers the right to contest automated "dismissals" or deactivations. Rather than being based solely on the financial impact on the worker and the Platform, this will now focus on the worker's right to a fair process⁴⁸.

Australia and the UK are both exploring a middle ground between employee status and independent contractor status. The UK has established a 'worker' category through the *Uber v. Aslam* case⁴⁹ (decided by the UK Supreme Court). The *Uber* case is significant because even though Uber drivers do not meet the legal definition of 'employee', they are classified as 'workers' (by the UK Supreme Court). 'Workers' are entitled to earn at least the minimum wage and receive holiday pay/paid time off. Australia has also taken steps to create similar protections for 'employee-like' workers through the Closing Loopholes Act (2024), which gives the Fair Work Commission power to set minimum standards for 'employee-like' workers⁵⁰. These developments in the UK and Australia can help inform India and other countries as they work to create protections for gig workers without compromising the flexibility that is fundamental to the gig economy.

Proposition 22 in California⁵¹ offers a glimpse of a marketplace-driven model of employment in the U.S., providing a "safety net" through health stipends and guaranteed minimum earnings but not recognizing workers as "employees." This leads to a fragmented system in which protection is offered based on a platform's ability to profit, and workers lack the rights typically found in an employee relationship. For India, which also implements a "benefit only" model through the Code on Social Security (2020), the experience of the U.S. shows that without reclassifying or recognizing gig workers as "workers," gig work will continue to be structurally precarious and workers will be unable to negotiate with their platform employer collectively for improved conditions as the cost of living increases. To move beyond a basic understanding of gig work, one must examine the shifting balance of power between platforms and workers through four critical lenses: algorithmic accountability, Global South parity, gendered impacts, and the portability of social protections

⁴⁸ *From Gig to Guarantee: How the EU Is Transforming Platform Work*, CMS (Mar. 26, 2024), <https://cms.law/en/bel/legal-updates/from-gig-to-guarantee-how-the-eu-is-transforming-platform-work>.

⁴⁹ *Uber BV v. Aslam* [2021] UKSC 5

⁵⁰ HR Legal, *Fair Work Act 2024: Gig Worker Unfair Deactivation Protections*, HR Legal: Insights (Mar. 15, 2024), <https://hrlegal.com.au/insights/fair-work-act-2024-gig-worker-unfair-deactivation-protections/>.

⁵¹ CAL. BUS. & PROF. CODE §§ 7448-7467 (West 2021).

- a. First, many rules only talk about wages and social security, but they miss the real power of algorithms. In the gig economy, the algorithm acts like the boss. Spain's Rider Law from 2021 is a good example because it forces platforms to explain their algorithm rules to unions. This includes how tasks are given or why a worker gets blocked. Without this right to explanation, workers in India face hidden problems like sudden pay cuts or unfair deactivations. India's Code on Social Security from 2020 does not cover these algorithmic issues at all.
- b. Second, India should compare itself more with other Global South countries like Brazil and South Africa instead of only looking at Europe or America. Brazil brought in a new law package in 2024-2025 that keeps some worker freedom but sets a minimum hourly pay and requires fixed social security payments. In South Africa, courts in 2024 started treating delivery riders as employees when platforms control prices and how the work is done. These countries are moving away from treating gig workers as completely independent and are creating mixed rules that accept the real dependence on platforms.
- c. Third, gig work has special effects on women that rules often ignore. Platforms say flexibility helps women, but algorithms actually punish them. For example, in beauty and home services like Urban Company, women who take time off for family or childcare get fewer tasks from the app. This creates a hidden penalty for mothers and can make gender pay gaps worse. Good regulations must include rules against such indirect bias in algorithms.
- d. Fourth, social benefits should not stay stuck with one platform or fund. India's current plan links benefits to a central fund that may not grow well. France has a better system called the Individual Activity Account. In this model, rights to training, insurance, and pension follow the worker personally. Even if a person switches between apps like Uber, Swiggy, or others, all benefits remain in a single portable account. This helps avoid the trap of insecure work

While the European Union's Reclassification Model and the UK's Hybrid Model offer robust blueprints for worker protection, India's reluctance to adopt these frameworks is rooted in deep structural barriers. The EU and UK models rely on strong judicial traditions of piercing the corporate veil to identify substantive employer control. In contrast, India has defaulted to a "Contractual Exceptionalism Model" largely due to its macroeconomic

realities. Indian policymakers frequently view the gig economy primarily as a vital "employment generator" needed to absorb the country's demographic dividend and massive informal sector. Consequently, there is a structural hesitancy to impose strict employment reclassification or stringent minimum standards, driven by the fear that such regulatory burdens might cause platforms to withdraw capital or reduce job creation. This has resulted in regulatory paralysis, with the state opting for superficial welfare measures rather than confronting the fundamental legal imbalance of power between platforms and workers.

RECOMMENDATIONS: PROPOSED DOCTRINAL SHIFTS

To remove confusion about whether gig workers are employees, Indian courts and lawmakers need to move beyond outdated legal tests designed for traditional workplaces. This paper proposes a new approach, the Algorithmic and Economic Dependency (AED) Test, that better reflects how digital platforms actually operate.

Under this test, a gig worker should be treated as an employee if the following conditions are present:

- First, algorithmic control. The platform controls how the work is done through its app or algorithm. It decides who gets work, how much they are paid, and can even penalize or remove workers based on ratings or automated decisions.
- Second, economic dependence. The worker depends mainly on the platform for income, and the work they do is central to the platform's business. In reality, they are not running an independent business with their own customers.
- Third, lack of real independence. The worker cannot freely set prices, negotiate terms, or increase profits through business decisions. The platform largely controls earnings and working conditions.
- Fourth, information imbalance. The platform does not fully share important information, such as how pricing works or how tasks are assigned. Because of this, workers cannot make truly independent or informed choices.

If these conditions are met, the worker should not be treated as an independent contractor but as an employee entitled to legal protections. Other recommendations include:

1. Statutory Recognition and Clarity:

Gig and platform work should be legally and statutorily defined in clear terms as a distinct category, with corresponding rights and protections. The Code on Social Security (CSS) 2020 is a step in that direction, but India could strengthen it further by creating tests or presumptions (as in the UK and EU) for gig workers to be treated as employees in certain situations. For example, in situations where there is managerial control, workers are required not to refuse work, or there are restrictions on substituting gig workers.

2. Minimum Earnings Guarantee:

A statutory floor wage should be guaranteed for gig workers. The platforms should be required to guarantee a minimum earnings threshold for gig workers, at least equal to the local minimum wage, for all active time, to ensure gig workers cannot be underpaid and maintain a minimum level of financial security.

3. Social Security and Insurance:

CSS schemes should be completely funded and expanded. Platforms must mandatorily contribute to a provident fund, pension, and health insurance, with government matching. Universal old-age pension pilots and e-Shram should be integrated to facilitate benefit delivery.

4. Algorithmic Transparency and Grievance Redressal: The platforms need to be transparent in the ways in which algorithms inform the decisions that affect the distribution of work, pay, and deactivation of individuals from the platforms. Workers must have the right to have their case reviewed by a human being and the opportunity to appeal. Digital Labour Authority, which is independent from the platform itself, should be established to provide compliance, fairness and accountability in the context of being a digital worker.

5. Anti-Harassment and Gender Related Measures: The POSH Act (2013) must be amended to directly include the gig economy by extending 'workplace' definition. Additionally, platforms should be responsible for instituting safety policies, keeping records on gender pay equity, and considering incentives to promote women workers in the gig economy including programs targeting women and subsidies.

6. Minimum Living Benefits: Platforms should ensure that gig workers have access to

portable benefits for paid leave, maternity and health insurance. Safety net provisions like Pradhan Mantri Shram Yogi Maan-Dhan and PMSBY / PMJJBY for gig workers allows prorated coverage for when gig workers move to different platforms, creating continuity and safety against these risk associated with being a gig worker.

7. Labour Inspections and Enforcement Mechanism: There should be a strengthening of the labour inspectorate for gig economy as they experience similar risks of working without protections. A possible tool for inspections would be to use online audits on platforms to check that statutory wages, other payments, and any minimum benefits defined by law are being delivered. Compliance and enforcement regimes need to establish greater mandates convenience for poor compliance by the platforms.

8. Social Dialogue:

Encourage tripartite engagement among the government, platform companies, and worker unions through a Gig Economy Council at both the central and state levels. This will foster collaboration and align policies with on-ground realities.

9. Research and Data:

Ongoing data collection with both the PLFS (Periodic Labor Force Survey) for surveys and the e-Shram database for evidence-based policymaking must be taken into account under the headings of gender, income and working conditions. And with transparent reports, such data can allow for progress and accountability evaluations.

CONCLUSION

The rapid growth of the gig economy in India has changed the relationship between labour and employers, but the legal framework around this has not kept up with this change. The 2020 Code on Social Security has a welfare-based framework but does not centralise the employment status of gig workers and therefore is limited in the benefits it can provide for them. Therefore, workers are recognised by law, but they do not have rights, which is known as 'recognition without rights'. This enables service-providers to exert far more control over gig workers than they would face under Brazilian labour law, but there are no equivalent legal obligations placed on those service providers. In that sense, there is a significant mismatch between traditional labour laws and the way gig work is performed via algorithms. The main way to remedy this

is by developing the Algorithmic and Economic Dependency (AED) Test, which takes into consideration both algorithm-based control and economic dependency as indicators of employment. This provides a basis for clarification of any ambiguity surrounding the classification of gig workers. A key finding from this analysis is that the current benefits-based model of classification that is used in India is inadequate because, due to weak enforcement and structural barriers to enforcement, workers cannot obtain significant benefits. Comparative examples from both the UK and the EU demonstrate that there are strong, viable frameworks and systems of legal protections in place that are rights-based rather than benefits-based. In addition, by omitting gig workers from critical protections provided by the Constitution, principles of equality, dignity, and livelihood also suffer as a result; therefore, an enforceable rights-based, and clearly defined hybrid regulatory environment must be instituted. If these reforms are not undertaken, gig work will further exacerbate the conditions of precarity and exploitation associated with this form of labour. If these reforms are undertaken, India would gain the ability to develop a well-balanced labour regime that incorporates new technology and supports social justice.

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