

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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GIG WORKERS AND THE LEGAL VACUUM: ANALYSING THE NEED FOR STATUTORY PROTECTION UNDER INDIAN LABOUR LAW

AUTHORED BY - TANUSHREE PANDEY

Designation: Second year Law student

Affiliated organisation: Maharashtra National Law University, Nagpur.

Abstract

The gig economy has emerged as a defining feature of contemporary labour markets, propelled by technological advancements, widespread smartphone usage, and evolving consumer preferences. In India, this shift has been particularly rapid, given its youthful workforce, increasing digital penetration, and growing demand for on-demand services. Platforms such as Zomato, Swiggy, Ola, Uber, and Urban Company have created new avenues of employment for millions, offering flexibility, low entry barriers, and the promise of autonomy. However, this model has also introduced a critical legal and regulatory dilemma. Gig workers, often termed as independent contractors, occupy an ambiguous space between traditional employment and self-employment. As a result, they are excluded from the protections available under core labour laws, such as minimum wage guarantees, social security entitlements, and collective bargaining rights.

This paper critically examines the existing Indian legal framework governing gig and platform workers, with a particular focus on the Code on Social Security, 2020. While the Code marks a progressive step by recognising the terms "gig worker" and "platform worker," it stops short of granting them enforceable rights. The paper explores how this legislative approach fails to address the realities of digital labour and leaves workers vulnerable to exploitation, precarity, and algorithmic control. In addressing this vacuum, the paper draws on comparative legal developments in the United Kingdom (e.g., *Uber v. Aslam*), California (Proposition 22), and Australia's evolving Fair Work laws. These jurisdictions reveal diverse approaches to regulating platform labour and offer instructive lessons for India. Ultimately, this paper argues for a rights-based legal framework that balances innovation with equity, ensuring that the digital economy does not come at the cost of workers' dignity, safety, and economic justice.

1. Introduction: The Rise of the Gig Economy in India

The gig economy refers to a labour market characterised by short-term, task-based, and flexible employment arrangements, where workers typically operate on a freelance or contractual basis rather than through traditional, permanent employment relationships. It thrives on digital platforms that act as intermediaries between service providers and consumers. In India, the gig economy has witnessed unprecedented growth in the past decade, driven by widespread digitalisation, increased smartphone penetration, and changing consumer behaviour. According to a 2022 NITI Aayog report, the gig workforce in India was estimated at around 7.7 million in 2021 and is projected to increase to 23.5 million by 2029–30, forming a significant segment of the urban informal workforce.¹

Platform-based services, including food and grocery delivery (Swiggy, Zomato, Blinkit), ride-hailing and mobility services (Uber, Ola, Rapido), home-based services (Urban Company), and e-commerce logistics (Amazon Flex, Flipkart Quick, Dunzo), dominate this sector. These platforms classify workers as "independent contractors" or "partners," a categorisation that strategically absolves companies of employer responsibilities under Indian labour law.² This includes obligations such as contributions to Employees' Provident Fund (EPF), Employee State Insurance (ESI), provision of maternity benefits, fixed working hours, or paid leave.³ As a result, gig workers operate in a legal grey zone, often deprived of even the most basic employment rights and protections.

A key issue in this framework is the false dichotomy between flexibility and labour protection. Flexibility, often touted as the principal advantage of gig work, is in many cases illusory. Gig workers face unpredictable work hours, fluctuating demand, algorithmic control over assignments, and pay structures that do not account for waiting time or cancellations.⁴ The lack of job security, institutional support, or social protections renders them economically vulnerable. This precarity was starkly exposed during the COVID-19 pandemic, when thousands of gig workers were left without income, access to healthcare, or protective

¹ NITI Aayog, *India's Booming Gig and Platform Economy*, at 9 (2022), <https://www.niti.gov.in/sites/default/files/2022-06/Executive-Summary-Report.pdf>.

² Aditi Surie, Algorithmic Control and Labour Rights in India, *Econ. & Pol. Wkly.*, Oct. 2022, at 44.

³ Code on Social Security, *supra* note 2, §§ 45, 46.

⁴ International Labour Organization, *Digital Labour Platforms and the Future of Work*, at 28 (2018), https://www.ilo.org/global/publications/books/WCMS_645337/lang--en/index.htm.

equipment.⁵ Many were forced to continue working during lockdowns without insurance coverage or risk allowances, demonstrating the urgent need for a statutory framework that safeguards their rights while accommodating the evolving nature of work in the digital economy.

2. Legal Status of Gig and Platform Workers in India

Traditional Indian labour laws, such as the *Industrial Disputes Act, 1947*, the *Factories Act, 1948*, and the *Minimum Wages Act, 1948*, are fundamentally structured around the binary of employer and employee.⁶ These laws presume a formalised relationship involving direct supervision, fixed working hours, and an obligation to provide welfare benefits. Gig workers, however, do not fall within this traditional framework due to their classification as "independent contractors."⁷ As a result, they are excluded from crucial labour protections, including:

- Regulation of fixed working hours and mandatory weekly rest
- Statutory minimum wage guarantees
- Access to health, accident, and safety benefits
- Grievance redressal and dispute resolution mechanisms
- Maternity and paternity leave entitlements
- Legal safeguards against arbitrary termination or dismissal

The *Code on Social Security, 2020* represents a modest yet incomplete legislative advancement by officially recognising "gig workers" and "platform workers" under Sections 2(35) and 2(61), respectively.⁸ However, this recognition is primarily definitional and does not translate into enforceable rights or substantive benefits. While the Code provides for the creation of a National Social Security Board tasked with formulating welfare schemes for gig workers, participation by platform companies remains largely voluntary.⁹ There is no binding statutory obligation on aggregators to contribute to welfare funds unless the central government issues specific notifications. This results in a discretionary, charity-based model rather than a rights-based legal entitlement, leaving gig workers vulnerable to state inertia and policy ambiguity.

⁵ Shaik Zakeer Hussain, COVID-19 Pushes Gig Workers into Vulnerability, *The Hindu* (Apr. 10, 2020), <https://www.thehindu.com/opinion/op-ed/covid-19-and-gig-workers/article31291019.ece>.

⁶ See generally *Industrial Disputes Act, No. 14 of 1947, India Code*; *Factories Act, No. 63 of 1948, India Code*; *Minimum Wages Act, No. 11 of 1948, India Code*.

⁷ Aditi Surie & Aashish Mehta, Technological Change and Labour Regulation in the Indian Platform Economy, *EPW*, Jan. 2022, at 39.

⁸ *Code on Social Security, No. 36 of 2020, §§ 2(35), 2(61), India Code (2020)*.

⁹ *Id.* § 114.

Moreover, inconsistent interpretation and weak enforcement across states further dilute the Code's intended impact.

3. Key Challenges and Gaps in the Legal Framework

Despite the partial statutory recognition of gig and platform workers under the *Code on Social Security, 2020*, multiple legal and operational challenges continue to compromise their rights and welfare:

- (i) **Precarity and Income Insecurity:** Gig workers experience high levels of financial instability. Their earnings are subject to dynamic pricing algorithms, fluctuating consumer demand, location-based job allocation, and user ratings.¹⁰ Incentive structures are often non-transparent and heavily performance-based. A day of poor ratings or low demand can lead to negligible earnings. These workers lack paid sick leave, accidental insurance coverage, and legal entitlement under employment injury compensation laws.¹¹ As a result, they bear the full burden of economic risk, with no income floor or social safety net to fall back on.
- (ii) **Lack of Collective Bargaining Rights:** India's trade union framework, under laws like the *Trade Unions Act, 1926*, does not currently accommodate platform workers. Organised attempts at unionisation, such as by the All-India Gig Workers Union (AIGWU), have faced pushback from companies.¹² Several platforms have allegedly resorted to punitive actions such as deactivation of accounts, reducing job allocations, or termination of services for those participating in protests or voicing grievances.¹³ The absence of recognised bargaining mechanisms strips workers of collective voice and negotiating power.
- (iii) **Ambiguity in Employment Status:** Indian courts have largely reinforced the "independent contractor" model, focusing on the contractual terms rather than the nature of control exerted by platforms. Unlike courts in the UK or California that apply functional or economic dependency tests, Indian jurisprudence lacks a settled criterion to determine when gig workers may be treated as employees.¹⁴ This legal ambiguity perpetuates vulnerability and denies workers access to basic rights.

¹⁰ Ajay Shah & Susan Thomas, Policy Lessons from India's Platform Work Sector, NIPFP Working Paper (2022).

¹¹ KPMG, The Platformization of Work (2021).

¹² Trade Unions Act, No. 16 of 1926, India Code.

¹³ Ayesha Venkataraman, The Fight for Fairness: Indian Gig Workers Seek a Voice, *The Wire* (Jan. 3, 2023), <https://thewire.in/labour/gig-workers-india-rights>.

¹⁴ See Aditi Surie, *supra* note 2.

- (iv) **Gendeed Disparities:** Women face additional vulnerabilities in platform work. On platforms like Urban Company, they often perform domestic tasks in private homes, heightening risks of sexual harassment and safety concerns.¹⁵ Maternity benefits are absent, and women workers face discrimination in access to higher-paying or night-time tasks. The gender pay gap remains stark, reflecting deeper systemic inequities.¹⁶
- (v) **Opaque Algorithmic Management:** Platform workers are managed by algorithms that control work assignments, payment structures, and visibility, often without transparency or accountability.¹⁷ Workers are rated, tracked, and penalised through digital metrics without any mechanism for appeal or correction. This lack of algorithmic transparency and procedural fairness increases stress, erodes job security, and strips workers of autonomy.

4. Comparative Legal Approaches

Several jurisdictions across the globe have proactively addressed the ambiguities surrounding gig work, offering insightful legislative and judicial models that India could draw upon to build a more inclusive legal regime for platform workers.

- (i) **United Kingdom:** In the landmark case *Uber BV v. Aslam* [2021] UKSC 5, the UK Supreme Court ruled that Uber drivers qualify as "workers" under domestic law, entitling them to core employment rights such as minimum wage, holiday pay, and rest breaks.¹⁸ Crucially, the court disregarded the formal contractual designation of drivers as "independent contractors" and instead focused on the functional realities of the work relationship—particularly the significant control exercised by Uber over fares, routes, and user ratings. This decision has strengthened labour protections for gig workers and encouraged similar litigation across the UK and EU, setting a precedent for interpreting platform-mediated labour through the lens of economic dependence and control.¹⁹
- (ii) **California, USA:** California's Assembly Bill 5 (AB5), passed in 2019, sought to reclassify gig workers as employees unless companies could meet the stringent

¹⁵ Rituparna Chatterjee, The Gig Economy is Thriving—But Workers are Suffering, *The Hindu* (Apr. 2023).

¹⁶ ILO, Ensuring Decent Work in the Platform Economy, Geneva (2022).

¹⁷ International Labour Organization, *supra* note 4.

¹⁸ *Uber BV v. Aslam*, [2021] UKSC 5.

¹⁹ Valerio De Stefano & Antonio Aloisi, European Legal Responses to Platform Work, *Comp. Lab. L. & Pol'y J.*, 2021.

“ABC test” to prove otherwise.²⁰ While progressive in its scope, the legislation faced significant opposition from tech giants like Uber and Lyft. In response, Proposition 22 was passed in 2020 via a ballot initiative, creating a distinct category of “app-based drivers” with limited but codified benefits like health stipends and insurance coverage.²¹ However, parts of Prop 22 were later deemed unconstitutional by a California court, exposing the legal volatility surrounding gig worker classification and the influence of corporate lobbying.²²

- (iii) **Australia:** The Australian government passed the Fair Work Legislation Amendment (Closing Loopholes) Act, 2023, which introduced a statutory test to determine employment status based on factors such as economic dependency, degree of control, and the ability to negotiate terms.²³ The Act also empowered the Fair Work Commission to resolve disputes and examine unfair platform practices.²⁴ This legislation marks a shift away from the rigid binary of “employee” versus “contractor,” reflecting the fluid nature of gig work.

5. Towards a Rights-Based Framework in India

To ensure meaningful and enforceable protections for gig workers, India must transition from a fragmented and discretionary model to a hybrid regulatory framework that balances flexibility with social security. Recognising the distinct nature of platform-mediated work, the following reforms are proposed to build a rights-based and inclusive labour regime:

- (i) **Statutory Contributions by Platforms:** Legislation should mandate digital labour platforms to make financial contributions to a centralised welfare fund or board. These contributions could be calculated as a fixed percentage (e.g., 1–2%) of each transaction or service rendered.²⁵ The accumulated fund can finance essential benefits for gig workers, including health insurance, retirement pensions, disability cover, and accident compensation. This shared-responsibility model ensures platforms participate in social protection rather than externalising risks onto workers.

²⁰ Assembly Bill No. 5, Cal. Lab. Code § 2750.3 (2019).

²¹ Cal. Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative (2020).

²² *Castellanos v. State of California*, No. RG21088725 (Cal. Super. Ct. Aug. 20, 2021).

²³ Fair Work Legislation Amendment (Closing Loopholes) Act 2023 (Cth) (Austl.).

²⁴ Australia Department of Employment and Workplace Relations, *Closing Loopholes: Fairer Workplace Laws* (2023).

²⁵ Ministry of Labour and Employment, *Annual Report 2022–23*, Government of India, at 67.

- (ii) **Portable Benefits Framework:** Gig workers often engage with multiple platforms, making continuity of benefits a challenge. A universal social security number should be introduced, enabling seamless portability of benefits such as health cover, maternity support, and pension entitlements.²⁶ Contributions from all platforms could be credited into a centralised, worker-owned account, accessible across employments, thereby ensuring long-term financial security.
- (iii) **Dispute Resolution Mechanisms:** Platforms often unilaterally suspend or deactivate worker accounts, leaving them without remedy. Independent dispute resolution bodies—such as digital labour ombudsman systems or tribunals—should be established with the power to hear complaints related to pay disparities, wrongful deactivation, or non-payment.²⁷ These bodies must be worker-friendly, time-bound, and capable of ordering reinstatement or compensation.
- (iv) **Algorithmic Transparency:** Platforms must disclose the logic and implications of algorithms used to assign tasks, determine pay, and rank performance.²⁸ Workers should have the right to explanation and the ability to challenge unfair digital decisions. Regulatory audits should be conducted to prevent algorithmic discrimination, manipulation, or opaque bias.
- (v) **Collective Bargaining Rights:** The legal right to unionise and engage in collective bargaining must be extended to platform workers. Platforms should be obligated to negotiate with officially registered workers' collectives to establish minimum work conditions and sectoral standards.²⁹ Legislative protection against retaliatory deactivation is crucial to preserve these rights.
- (vi) **Gender-Sensitive Measures:** Women in gig work, especially in domestic and beauty services, are vulnerable to gender-based violence and exploitation. There is an urgent need for gender-specific safety guidelines, including in-app SOS buttons, real-time tracking, grievance redressal systems, and protocols for handling sexual harassment complaints.³⁰ These protections must be supported by awareness campaigns and periodic safety audits.

²⁶ ILO, *Decent Work in the Platform Economy: Key Issues and Policy Options*, Geneva (2022).

²⁷ Souvik Chatterji, *Regulating Platform Work: Comparative Insights for India*, *Indian J. Emp. L.* (2023).

²⁸ Deeksha Sharma, *Algorithmic Management and Labour Rights in India's Gig Economy*, *Oxford Hum. Rts. Hub Blog* (2022).

²⁹ Trade Unions Act, *supra* note 12.

³⁰ Ayesha Venkataraman, *supra* note 17.

6. Judicial and Policy Perspectives

The Indian judiciary has yet to deliver a definitive ruling on the employment status of gig workers. Nonetheless, a foundational precedent exists in *People's Union for Democratic Rights v. Union of India* (1982), where the Supreme Court ruled that the economic reality of the relationship—such as dependence and control—can override contractual classifications. The Court asserted that mere nomenclature in contracts cannot defeat workers' substantive rights. This progressive interpretation supports the argument that gig workers, though labelled as "independent contractors", often function under conditions akin to traditional employment, and therefore deserve similar protections.³¹ Future litigation concerning platform work can build upon this jurisprudence to challenge exploitative practices masked under flexible work models. At the policy level, the *NITI Aayog* report (2022) represents an important milestone. It recognises the growing informalisation of labour in the digital economy and the resulting vulnerabilities faced by gig workers.³² The report recommends the adoption of a tripartite governance structure involving the state, platform companies, and gig workers. This participatory model seeks to ensure accountability and facilitate the formulation of inclusive welfare schemes that are both need-based and rights-oriented.

Significantly, the *Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023*, marks India's first state-level legislation aimed specifically at the gig workforce.³³ It establishes a Gig Workers Welfare Board responsible for formulating and implementing social security schemes. The Act mandates the registration of both workers and aggregators, and includes provisions for accident insurance, emergency assistance, and data protection. While its scope is limited to Rajasthan, it serves as a replicable legislative model for other Indian states and possibly for a central framework. It signals a promising move towards institutionalising protections for this growing workforce.

7. Conclusion

The gig economy is no longer a marginal or transitory phenomenon—it is a central feature of India's modern labour landscape. Gig workers are integral to the functioning of key services such as transportation, food delivery, logistics, and home-based support. Yet, the absence of comprehensive and enforceable legal protections has rendered these workers structurally

³¹ *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

³² *NITI Aayog*, *supra* note 1, at 18.

³³ *Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023* (Act No. 32 of 2023).

vulnerable and largely invisible within the formal labour regime. The existing legal framework, including the *Code on Social Security, 2020*, while commendable for recognising gig and platform workers, stops short of conferring enforceable rights and mandates. Without statutory obligations on platforms or guaranteed benefits for workers, the code remains aspirational rather than transformative.

The path forward must be guided by the principles of the Indian Constitution—especially Articles 14, 19(1)(c), 21, and 39—which uphold equality, the right to livelihood, freedom of association, and just and humane conditions of work. Global best practices, such as those in the UK, Australia, and even some US states, show that it is possible to protect gig workers without compromising flexibility or innovation. India must adopt a hybrid legal model that blends the entrepreneurial independence of gig work with baseline labour protections such as social security, accident insurance, fair pay, and redressal mechanisms.

Importantly, this framework must be gender-sensitive, technologically transparent, and worker-centric. Legislative inertia could allow the gig economy to evolve into a digital form of feudalism—where platforms exert complete control without bearing any responsibility. With the right judicial interpretations and legislative will, gig workers can be brought into the protective fold of India’s labour jurisprudence, not as an exception but as a modern extension of the workforce. Ensuring justice and equity in the gig economy is not merely a labour issue—it is a constitutional imperative. A regulated and dignified gig economy will strengthen both worker welfare and the digital economy’s long-term viability.

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