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EMPLOYEE OR INDEPENDENT CONTRACTOR? **EXAMINING GIG WORKER CLASSIFICATION UNDER** **THE CODE ON SOCIAL SECURITY, 2020**

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ABSTRACT

The swift growth of the digital, platform-driven economy has reshaped the landscape of work in India, leading to the emergence of a large workforce engaged in gig-based employment through online platforms such as ride-sharing services, food delivery applications, and freelance marketplaces. Although gig work provides flexibility and supplementary earning opportunities, it simultaneously exposes the limitations of India's traditional labour law framework, which is largely premised on a well-defined employer-employee relationship. Gig workers occupy a grey area within this framework, as they do not neatly fall into existing legal categories, resulting in ambiguity regarding their legal status and entitlement to labour protections.

Acknowledging these evolving forms of employment, the Indian legislature introduced the Code on Social Security, 2020, which expressly identifies gig workers and platform workers as separate categories of workers. However, despite this formal recognition, the Code deliberately avoids categorizing gig workers as either employees or independent contractors. Rather than imposing clear obligations on digital platforms, it adopts a welfare-based model that envisages social security schemes without establishing concrete employer responsibility. This raises an important question as to whether mere recognition, in the absence of clear legal classification, is sufficient to protect the rights and interests of gig workers in India.

This paper first examines the development and expansion of gig work within the platform economy and highlights the fundamental legal challenge posed by the uncertain employment status of gig workers. It then undertakes a close analysis of the provisions of the Code on Social Security, 2020, strictly focusing on what the legislation expressly includes and, equally importantly, what it leaves unaddressed. The study further explores the implications of this legislative ambiguity, particularly with respect to access to social security benefits, the accountability of platform companies, and the continuing risk of worker misclassification.

For comparative insight, the paper briefly considers the approach adopted in the United Kingdom, where the introduction of an intermediate category of “worker” has enabled the extension of certain labour protections while preserving the flexible nature of gig work. Finally, the paper offers recommendations aimed at striking a balance between technological innovation and labour welfare, stressing the importance of clearer statutory classification and well-defined platform obligations to ensure effective and meaningful social security protection for gig workers in India.

Keywords: *Gig Workers; Platform Economy; Worker Classification; Code on Social Security, 2020; Social Security Rights; Employer Liability.*

INTRODUCTION

The global landscape of employment has experienced a seismic shift over the last ten years, catalyzed by the relentless march of technological innovation and the ubiquity of digital infrastructure. The rise of application-based business frameworks has birthed the “gig economy,” a domain characterized by ephemeral, project-specific tasks that replace the traditional paradigm of long-term, stable employment. In the Indian context, the proliferation of digital platforms spanning ride-sharing, logistics, food delivery, and specialized freelance hubs has radically scaled, opening vast new revenue streams for millions. However, this transition has done more than just reorganize operational logistics; it has fundamentally destabilized the core tenets upon which conventional labor jurisprudence was originally constructed.

The Paradox of the Gig Worker

Central to this industrial evolution is the “gig worker,” a figure who delivers services via digital intermediaries that facilitate consumer connections. These platforms often characterize their role as mere facilitators or brokers rather than employers. Unlike the traditional workforce, gig participants lack the safety net of guaranteed earnings, long-term job stability, or consistent task availability. Conversely, they are distinct from autonomous independent contractors because they are frequently subjected to intense oversight. This is achieved through “algorithmic management” a system where performance metrics, rating-based incentives, and automated work distribution dictate the worker’s daily reality. This “hybrid” status creates a friction point where current labor classifications fail to capture the reality of the work, leading to a vacuum in legal and regulatory oversight.

The Binary Breakdown in Indian Jurisprudence

Indian labor law, mirroring many global legal systems, has historically functioned on a strict binary: one is either an employee or an independent contractor.

Employees: Benefit from a robust suite of statutory safeguards, including comprehensive social security, mandated minimum earnings, and access to formal grievance redressal.

Independent Contractors: Are largely excluded from these protections, based on the legal fiction that they possess total autonomy and assume their own commercial risks.

The gig worker sits uncomfortably between these poles. While digital platforms dictate the primary conditions and methods of labor, they simultaneously disclaim any employer-employee nexus to circumvent the attendant legal liabilities. This strategic ambiguity remains the primary obstacle in crafting effective regulations for the contemporary platform economy.

Legislative Responses: The Code on Social Security, 2020

In an attempt to modernize the legal architecture, the Indian Parliament introduced the Code on Social Security, 2020. This legislation represents a pivot in policy, as it provides the first explicit statutory acknowledgment of “gig workers” and “platform workers” as unique legal entities in India. The Code intends to provide a safety net through government-curated welfare schemes, acknowledging the inherent precariousness of platform-reliant labor.

However, the Code stops short of a definitive revolution. It intentionally avoids designating gig workers as “employees,” nor does it anchor clear employer-side accountability to the digital platforms. By opting for a welfare-centric model rather than a rights-based employment model, the Code leaves the fundamental power dynamic largely untouched and fails to bridge the gap between “recognition” and “enforceability.”

The Implications of Regulatory Ambiguity

The lack of a precise legal identity under the 2020 Code creates significant ripples. Because they are not categorized as employees, gig workers are denied a broad spectrum of enforceable labor rights. This leaves platforms in a position of power without the corresponding statutory duties. The consequences of this gap are manifold:

Inadequate Security: Social security coverage remains discretionary and scheme-based rather than a fundamental right.

Lack of Accountability: Issues such as workplace injuries, occupational hazards, or arbitrary account deactivation (unfair termination) lack a clear path for legal recourse.

Power Asymmetry: The structural imbalance between a massive tech entity and an individual

worker is exacerbated by the absence of collective bargaining or protection.

Global Perspectives: The UK Model

While India navigates these hurdles, other nations offer potential templates for reform. The United Kingdom has pioneered a “middle-way” through the judicial creation of a third category: the “worker” status. This intermediate classification allows gig participants to claim essential rights such as the national minimum wage and pro-rated holiday pay—without requiring the platform to grant them full-time employment status. Such international precedents provide a critical lens through which India might refine its own legal definitions to protect labor without stifling the flexibility inherent in the digital age.

Conclusion and Research Objectives

This analysis scrutinizes the pivotal debate of whether Indian gig workers should be legally rebranded as employees or remain classified as independent contractors, specifically within the nuances of the Code on Social Security, 2020. By tracing the trajectory of digital labor, highlighting the current legal gray areas, and examining the fallout of the present regulatory stance, this study evaluates the efficacy of India’s legislative response. Through a comparative analysis with the United Kingdom and a rigorous assessment of existing statutes, this paper contributes to the vital conversation of building a coherent, just, and sustainable legal framework for the future of work in India.

Identifying the Core Legal Problem: Classification of Gig Workers

The central legal challenge in regulating the gig economy lies in determining the appropriate classification of gig workers within labour law frameworks that were designed for traditional forms of employment. Worker classification is not merely a terminological exercise; it determines the allocation of rights, responsibilities, and liabilities between workers and those who engage their services. In the context of gig work, this question assumes heightened importance because classification directly affects access to social security, workplace protections, and legal remedies. The absence of a clear and coherent classification standard has therefore emerged as the most significant obstacle in extending meaningful labour protections to gig workers in India.

Conventional labour jurisprudence in India is built upon a binary distinction between employees and independent contractors. Employees are characterised by the existence of a contract of service, under which the employer exercises control and supervision over the

manner of work, and in return assumes statutory obligations relating to wages, social security, and working conditions. Independent contractors, by contrast, operate under a contract for service and are presumed to retain autonomy over how work is performed, bearing the associated economic risks. Gig workers, however, occupy a grey zone between these two categories. While they are formally labelled as independent contractors by digital platforms, the functional realities of gig work suggest a far more complex relationship.

Digital platforms exercise significant control over gig workers through technologically mediated mechanisms that do not resemble traditional managerial supervision but are equally effective in shaping work behaviour. Algorithmic management systems determine work allocation, pricing, incentives, and penalties, leaving gig workers with limited bargaining power. Performance rating systems and customer feedback directly influence continued access to work, while unilateral changes in platform policies can alter working conditions without consultation. Despite this degree of control, platforms strategically deny an employer–employee relationship by characterising themselves as neutral intermediaries connecting service providers with consumers. This duality allows platforms to benefit from labour flexibility while avoiding the costs associated with employment obligations.

The legal difficulty arises because existing tests used to determine employment relationships, such as the control test, integration test, and economic dependency test, were developed in a pre-digital context. These tests often struggle to capture the nuanced forms of control exercised through algorithms and data-driven decision-making. As a result, gig workers frequently fail to satisfy the formal thresholds required to be recognised as employees, even when they are economically dependent on a single platform for their livelihood. This misalignment between legal doctrine and technological realities enables systematic misclassification, whereby workers performing employee-like functions are deprived of corresponding legal protections. In India, the problem of classification is further complicated by the structure of labour law reforms under the Code on Social Security, 2020. While the Code acknowledges gig workers and platform workers as distinct categories, it deliberately avoids resolving the classification question. By neither recognising gig workers as employees nor providing an alternative rights-based category, the Code creates a legal vacuum where recognition exists without enforceability. Consequently, gig workers remain excluded from core labour rights, and platforms are not clearly designated as employers responsible for social security contributions or workplace welfare.

This ambiguity has tangible consequences. Gig workers face uncertainty regarding income stability, lack protection against arbitrary deactivation, and have limited access to grievance redressal mechanisms. The absence of employer liability also raises concerns regarding occupational safety, insurance coverage, and long-term social security. From a broader perspective, the failure to address classification risks normalising precarious work arrangements and undermining the objectives of labour welfare legislation.

The classification debate is therefore not about imposing rigid employment models on the gig economy, but about ensuring that legal frameworks evolve to reflect contemporary forms of work. Without a clear classification standard or an intermediate category that balances flexibility with protection, the regulatory response to gig work remains fragmented and insufficient. Addressing this core legal problem is essential to developing a labour law regime that is capable of responding to the realities of the platform economy while safeguarding the dignity and security of gig workers.

Legal Framework Governing Gig Workers under the Code on Social Security, 2020

The Code on Social Security, 2020 represents a significant legislative development in Indian labour law, as it consolidates multiple social security enactments and seeks to extend coverage to categories of workers previously excluded from statutory protection. Notably, the Code is the first Indian legislation to formally recognize gig workers and platform workers within a statutory framework. This recognition reflects the legislature's acknowledgment of the changing nature of work and the increasing prevalence of platform-based employment arrangements. However, the approach adopted by the Code is limited to social security provisioning and does not fundamentally alter traditional employment classifications.

Section 2 of the Code on Social Security, 2020 defines a “gig worker” as a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer–employee relationship. A “platform worker” is defined as a person engaged in or undertaking platform work, which in turn refers to work arrangements outside the traditional employment relationship where organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or provide specific services in exchange for payment. These definitions make it clear that the legislature

has consciously located gig and platform workers outside the scope of conventional employment relationships. By doing so, the Code avoids bringing gig workers within the ambit of laws that apply exclusively to employees.

The Code introduces a framework for extending social security benefits to gig workers and platform workers primarily through Chapter IX. Section 114 empowers the Central Government to frame and notify social security schemes for gig workers and platform workers relating to life and disability cover, accident insurance, health and maternity benefits, old age protection, and other benefits as may be determined. The provision uses enabling language, granting discretionary authority to the government rather than creating an automatic entitlement. Consequently, the existence and scope of social security benefits for gig workers are contingent upon the formulation and implementation of such schemes.

In terms of financing these social security measures, Section 114(3) provides that the funding of schemes may be sourced from contributions made by aggregators, the Central Government, State Governments, or beneficiaries of the schemes. The Code defines an “aggregator” as a digital intermediary or marketplace for buyers or users of a service to connect with the seller or service provider. While the inclusion of aggregators as potential contributors is noteworthy, the Code does not impose a fixed or mandatory contribution rate. Instead, it leaves the quantum, manner, and conditions of contribution to be prescribed by the appropriate government through delegated legislation. This approach reflects a regulatory preference for flexibility rather than imposing uniform statutory obligations on platforms.

Importantly, the Code does not designate aggregators as employers of gig or platform workers. There is no provision establishing vicarious liability or extending employer-specific duties, such as provident fund contributions or gratuity obligations, to digital platforms. The absence of such provisions reinforces the legislative intent to treat gig workers as a distinct category, separate from employees, rather than reclassifying them within existing employment structures. The Code also does not provide mechanisms for determining the employment status of gig workers on a case-by-case basis, nor does it adopt any test to assess control, dependency, or integration.

The enforcement architecture under the Code further reflects its limited scope. While the Code provides for registration of gig workers and platform workers for the purpose of accessing

notified schemes, it does not establish specialised dispute resolution mechanisms or grievance redressal forums tailored to the unique issues faced by gig workers. Compliance and enforcement largely depend on administrative processes rather than adjudicatory oversight. As a result, the protection offered under the Code remains primarily welfare-oriented and administrative in nature.

Overall, the Code on Social Security, 2020 marks an incremental shift in Indian labour law by formally recognizing gig workers and platform workers and envisaging social security coverage for them. However, it deliberately refrains from addressing the broader question of employment classification and employer liability. By limiting its intervention to the creation of discretionary social security schemes without reconfiguring the legal relationship between platforms and workers, the Code preserves the traditional distinction between employment and independent contracting. The framework thus reflects a cautious legislative response that acknowledges the existence of gig work while leaving its deeper structural implications for labour law largely unaddressed.

Consequences of Ambiguous Classification of Gig Workers

The lack of a definitive legal taxonomy for gig participants within the Code on Social Security, 2020 produces extensive repercussions for both the labour force and digital enterprises, fundamentally compromising the efficacy of regulatory oversight in the platform-driven market. Although the Code introduces a formal acknowledgment of “gig workers” and “platform workers,” its reluctance to anchor their identity within the established architecture of employment law creates a profound disconnect between statutory recognition and actual, enforceable safeguards. This conceptual haze carries practical, fiscal, and jurisprudential weights that actively dilute the core mission of social welfare legislation.

The Uncertainty of Welfare Access

A primary fallout of this non-classification is the persistent volatility regarding social security entitlements. Under the current Code, the government is granted the authority to devise welfare frameworks for gig labourers; however, these provisions are not inherently automatic or claimable as a fundamental legal right. Because these individuals are not legally designated as employees, they are systematically barred from time-tested social security structures such as the Provident Fund (PF), Gratuity entitlements, and Employee State Insurance (ESI) which are reserved for the formal labour sector. Consequently, the gig workforce remains trapped in a

cycle of financial instability, lacking long-term retirement safeguards and facing a total absence of meaningful protection against illness, physical impairment, or sudden workplace mishaps.

The Erasure of Employer Liability

The current legislative architecture also leads to a critical vacuum regarding employer accountability. Since digital platforms are not categorized as “employers” under the 2020 Code, they are essentially absolved of the legal duty to maintain occupational safety, provide financial redress for injuries sustained on the job, or adhere to the tenets of natural justice when terminating a worker’s access. Decisions driven by the platform such as the sudden suspension of an account or punitive algorithmic adjustments can instantly jeopardize a worker’s ability to earn a living. Despite this, the worker is left with virtually no legal recourse because the “employment relationship” is not legally recognized. This creates a deeply entrenched structural asymmetry, where the platform wields total control while assuming zero responsibility.

The Risk of Systematic Misclassification

The persistence of vague classification provides a fertile ground for “strategic misclassification.” By branding these workers as independent contractors, platforms effectively externalize their labour overheads onto the workers themselves while maintaining rigid functional authority over the labour process. This allows corporations to optimize operational speed and profit margins without the burden of mandatory welfare contributions. From a strictly regulatory standpoint, this practice of misclassification subverts the foundational intent of labour law, which is designed to protect those who are economically reliant and vulnerable, rather than simply honouring the labels found in a digital contract.

Constraints on Collective Bargaining Power

Furthermore, the absence of a clear legal status severely inhibits collective labour rights. In the Indian legal tradition, the rights to organize into trade unions and participate in collective bargaining are tethered to the status of an “employee.” Gig workers, excluded from this category, find themselves unable to negotiate for more equitable terms, challenge systemic platform biases, or impact corporate policy changes. The long-term trajectory of this exclusion is the normalization of “precarious work” and the gradual degradation of national labour standards, as workers lose their primary tool for resisting exploitation.

Socio-Economic Implications and the Informality Trap

Looking through a wider socio-economic lens, the ambiguous status of gig workers threatens to solidify informality within the national labour market. This contradicts the primary goals of recent labour reforms, which were intended to promote formalization and inclusive economic expansion. While the Code on Social Security, 2020 is undeniably a milestone in identifying modern work formats, its narrow execution fails to resolve the structural frailties inherent in platform-based labour. In the absence of a more precise legal classification or a clearly defined set of platform responsibilities, the current framework remains an inadequate shield against the evolving challenges of the digital labour frontier.

Comparative Perspective: Gig Worker Classification in The United Kingdom

The United Kingdom provides a useful comparative framework for understanding how legal systems can respond to the classification challenges posed by the gig economy without undermining flexibility. Unlike India, where gig workers are recognized primarily through welfare-oriented legislation, the UK approach has evolved through judicial interpretation, particularly in response to disputes involving digital labour platforms. The central feature of the UK model is the recognition of an intermediate category of workers, which operates between traditional employees and independent contractors.

Under UK labour law, individuals are classified into three categories: employees, workers, and self-employed persons. The “worker” category is especially relevant to gig workers. Workers are not full employees but are entitled to certain basic labour protections, including the national minimum wage, paid annual leave, and protection against unlawful wage deductions. This classification acknowledges economic dependency and control without requiring a strict employer–employee relationship.

A landmark development in this context was the UK Supreme Court’s decision in *Uber BV v Aslam* (2021). In this case, the Court held that Uber drivers qualified as “workers” under UK law, rather than independent contractors. The decision was based on factual indicators such as Uber’s control over fares, contractual terms, performance standards, and the restriction on drivers’ ability to build independent customer relationships. Importantly, the Court emphasized that contractual labels are not determinative; instead, the actual nature of the working relationship must be examined. This reasoning allowed gig workers to access limited labour

rights without being classified as full employees.

The UK model is significant because it avoids an all-or-nothing approach to worker classification. Rather than forcing gig workers into existing rigid categories, it recognizes the unique characteristics of platform-based work and adapts legal protections accordingly. Platforms retain operational flexibility, while workers receive a baseline level of protection against exploitation. This approach also enhances accountability, as platforms cannot entirely disclaim responsibility by relying on formal contractual terms.

In comparison, the Indian framework under the Code on Social Security, 2020 does not provide for any intermediate classification. While the Code acknowledges gig and platform workers, it does not confer enforceable labour rights or establish standards for determining platform responsibility. The UK experience demonstrates that legal clarity in classification need not eliminate flexibility and can instead promote fairness and predictability. Although the UK model cannot be transplanted directly into the Indian context, it highlights the importance of aligning legal classification with the realities of control and dependency in gig work. This comparative insight underscores the limitations of India's current approach and illustrates a possible direction for future legal development.

CONCLUSION

The rapid expansion of the gig economy has fundamentally altered the structure of work in India, creating new opportunities while simultaneously exposing significant regulatory gaps within existing labour law frameworks. As this paper has demonstrated, the core challenge lies not in the recognition of gig workers as a distinct category, but in the absence of a clear and enforceable legal classification that meaningfully allocates rights and responsibilities between workers and digital platforms. The Code on Social Security, 2020 represents an important first step in acknowledging the realities of platform-based work; however, its limited, welfare-oriented approach falls short of addressing the structural vulnerabilities faced by gig workers. One of the most pressing reforms required is the development of clearer statutory standards for determining the legal status of gig workers. Rather than relying solely on traditional employment categories, Indian labour law could benefit from adopting a more nuanced approach that recognizes degrees of control and economic dependency. Introducing an intermediate classification, similar in principle to the United Kingdom's "worker" category, would allow gig workers to access basic labour protections without imposing the full

obligations associated with formal employment. Such a model would strike a balance between flexibility and protection, which is essential in the context of innovation-driven labour markets. Further, there is a need to clearly define the role and responsibility of digital platforms within the social security framework. While the Code on Social Security, 2020 envisages platform contributions towards social security schemes, it does not prescribe clear parameters regarding the extent or manner of such contributions. Greater regulatory clarity in this regard would enhance compliance and ensure that social security schemes are not merely aspirational. Establishing predictable contribution obligations for platforms would also reduce ambiguity and prevent the shifting of welfare responsibilities entirely onto the state or workers themselves.

Strengthening enforcement mechanisms is another critical area for reform. Recognition without enforceability undermines the purpose of social security legislation. The creation of accessible grievance redressal mechanisms and dispute resolution forums specifically designed for gig workers would enhance accountability and ensure that workers are not left without remedies in cases of unfair deactivation, denial of benefits, or arbitrary platform practices. Administrative registration alone is insufficient unless accompanied by effective oversight and implementation.

From a broader policy perspective, reforms in gig work regulation should be guided by the principle that labour law must evolve in response to changing forms of work rather than remain confined to outdated employment models. The objective is not to stifle technological innovation or platform-based entrepreneurship, but to ensure that economic progress does not come at the cost of worker dignity and social security. Comparative experiences, particularly from jurisdictions such as the United Kingdom, demonstrate that it is possible to design regulatory frameworks that protect workers while preserving operational flexibility for platforms.

In conclusion, the classification of gig workers remains the central unresolved issue in India's response to the platform economy. The Code on Social Security, 2020 marks a legislative acknowledgment of this emerging workforce, but its cautious approach leaves critical gaps in protection and accountability. Without clearer classification standards and defined platform responsibility, gig workers will continue to occupy a precarious position within the labour market. Addressing these concerns through targeted legal reforms is essential for ensuring that

the future of work in India is not only flexible and innovative, but also fair, inclusive, and socially sustainable.

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