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# **THE CODE AND CLOUD: ENSURING SOCIAL SECURITY TO THE GIG WORKERS IN INDIA**

AUTHORED BY - ANKUSH MORE & ABHIJIT MORE

*Labour legislations are being framed across world to ensure that person employed will get good working conditions, fair wages, timely wages and also social security. The main objectives of this legislation is to ensure that working class are in position to fulfill their basic needs and protect their human dignity. The advancement of technology and needs of consumers are creating new form of employment. The new form of employment has no fix working hour, no fix wages and no fix duration. Those who are involve in such kind of employments and employed by digital e-commerce platform or digital intermediary are being called as Gig worker in modern terminology. The employer is under no obligation to comply with many labour laws as work done by Gig worker does not fit into traditional employment concept. This has deprived Gig workers from enjoying the benefits under many social security legislations. The government in that case has obligation to step in and create comprehensive social security umbrella for Gig workers. In this chapter the author will discuss the concept of Gig workers and challenges related to them regarding social security.*

*Keywords: Social Security, Fair wages, e-commerce, Gig worker, digital intermediaries, human dignity*

## **1. Introduction**

The advancement of technology and increase in the needs of consumers across world brings changes into the way people purchase and consume goods. The e-commerce platforms become worldwide trading place for various kinds of products and services. They become the middleman in the traditional marketing channel. Initially, people were hesitating to relay on internet-based platforms however over the period of time people started gaining confidence in online purchases due to various schemes offered by digital intermediaries like cash on delivery and appealing discounts on the product to capture the market.<sup>1</sup> Now digital intermediaries are

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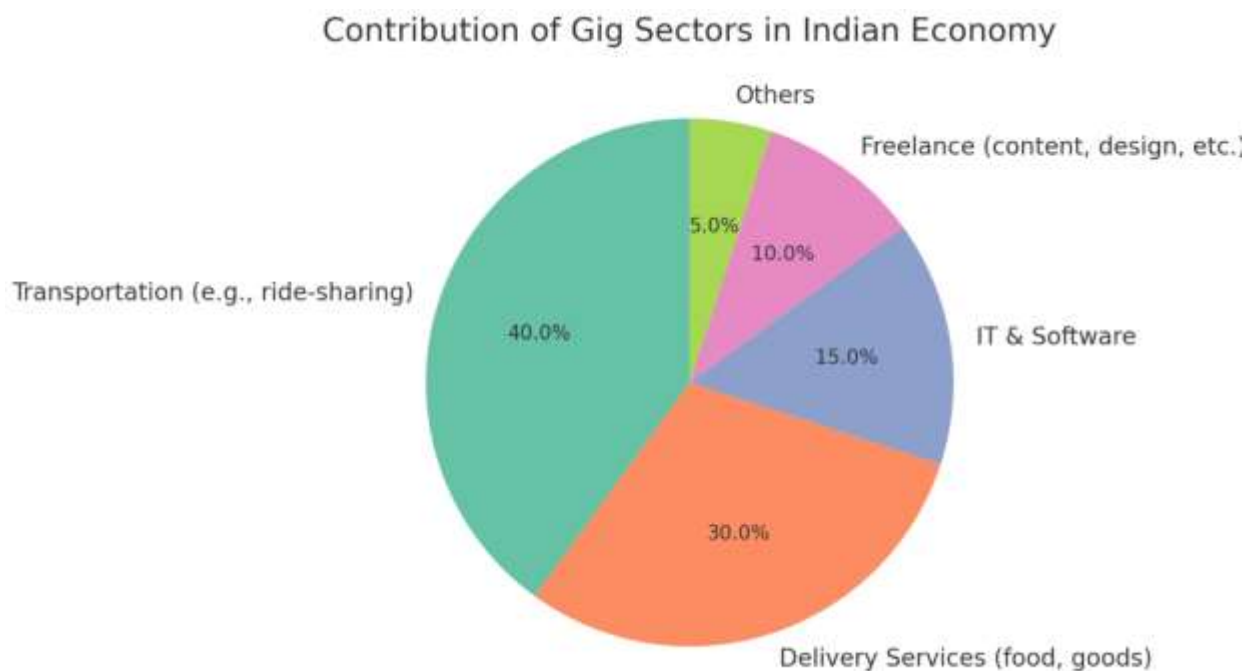
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<sup>1</sup> Wei Rong, 'The Evolution of the Intermediaries in E-Commerce Environment' (2014) 5(5) Int J Bus & Soc Sci [https://ijbssnet.com/journals/Vol\\_5\\_No\\_5\\_1\\_April\\_2014/5.pdf](https://ijbssnet.com/journals/Vol_5_No_5_1_April_2014/5.pdf) accessed 26 December 2024.

in position to provide efficient services due to their capacity to invest huge amount in creating infrastructure required for customer satisfaction. The e-commerce platform is trying to compete with each other. They are providing cost-effective services to their customer so that they can keep their competitors out of their market share.<sup>2</sup> In order to provide cost-effective services digital intermediaries are trying to reduce their operational cost.<sup>3</sup>

## 2. Contribution of Gig Sector in Indian Economy (Year 2025)

**Table No. 1 – Contribution of Gig Sector in Indian Economy <sup>4</sup>**



The Indian gig economy has experienced unprecedented growth over the past decade, with an estimated 7.7 million gig workers in 2020, projected to expand to 23.5 million by 2030, accounting for nearly 4.1% of India's total workforce. The gig economy accounts for a large share of India's GDP, estimated to be around \$455 billion by 2024, driven by industries such as ride-sharing at 40%, delivery services at 30%, IT and software at 15%, freelancing at 10%, and others at 5%. This sector offers flexible employment and plays a very important role in providing services to urban and semi-urban consumers. Notably, gig workers contribute to cost optimization, which enhances productivity in multiple industries, and enables technology-driven innovations that reshape traditional employment models. Challenges include job

<sup>2</sup> Wei Rong, 'The Evolution of the Intermediaries in E-Commerce Environment' (2014) 5(5) *Int J Bus & Soc Sci* [https://ijbssnet.com/journals/Vol\\_5\\_No\\_5\\_1\\_April\\_2014/5.pdf](https://ijbssnet.com/journals/Vol_5_No_5_1_April_2014/5.pdf) accessed 26 December 2024..

<sup>3</sup> S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2nd edn, OUP 2015) 186..

<sup>4</sup> NITI Aayog, India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work, NITI AAYOG (June 2022), <https://www.niti.gov.in/gig-platform-economy>, last seen 19/12/2024.

insecurity, lack of social security benefits, and limited access to skill development programs. Policymakers have to address these issues to realize the full potential of the gig economy in supporting India's vision of becoming a \$5 trillion economy and achieving inclusive growth.<sup>5</sup>

### 3. Historical Evolution of Concept of Social Security

The concept of social security originated in Germany in the late 1880s, when an old-age social insurance scheme for workers was established. Later, this scheme was expanded to include disability benefits and sickness and unemployment insurance in addition to workers' compensation. As of 1925, nearly two-thirds of all working Germans, mostly blue-collar workers, enjoyed various social security provisions, which were even financed by all three parties: the employers, employees, and the government.<sup>6</sup>

In 1935, the United States enacted the Social Security Act, establishing a federal framework for providing old-age benefits and incorporating provisions for the elderly, visually impaired individuals, dependent children, those with disabilities, maternal and child welfare, as well as public health initiatives. In contrast to the European approach, the U.S. developed an alternative model of social security characterized as "insurance," which is financed through tax contributions levied on the wages of individuals and the payrolls of employers, rather than being derived directly from government resources.<sup>7</sup>

Based on these developments, the International Labour Organization (ILO) adopted its first Convention on Social Security in 1952 ("C102"). The convention outlined basic social security principles and established globally accepted minimum standards for nine branches of social security, ranging from medical care to unemployment benefits. C102 also provided flexibility clauses, allowing ratifying member states to gradually achieve universal coverage in accordance with their respective economic development and capacity. The Indian legal framework is imbedded with the principle of social security in the Constitution where its architects have underlined the need for the "maintenance of workers by the community." The Directive Principles of State Policy (DPSPs) as outlined in the Constitution require the State

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<sup>5</sup> Deloitte, *Unlocking the Potential of the Gig Economy in India*, DELOITTE INDIA (2021), <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/human-capital/in-hc-future-of-work-noexp.pdf>, last seen 24/10/2024.

<sup>6</sup> Wilbur J Cohen, 'Social Security in India' (1953) *Social Security Bulletin* (May 1953) <https://www.ilo.org/global/reports/WSSR/lang--en/index.htm> accessed 5 September 2020.

<sup>7</sup> *Ibid.*

to provide social security and public assistance to workers in cases of unemployment, aging, illness, disability, and maternity support. It further obligates the State to provide for a reasonable standard of living for all workers. However, DPSPs, being principles incorporated under Part IV of the Indian Constitution, are not judicially enforceable as they happen to be State "goals" rather than "mandates." That means the even though the State is committed to enact such principles in its legislative measures, it is not compulsorily bound to achieve their realization at once. Thus, social security is achieved only when there are economic capabilities and proper development of the State.<sup>8</sup>

In legal proceedings, litigants have frequently sought to assert social security as a "socio-economic right" under the "right to life" provision of Part III of the Constitution. However, judicial success in such cases has been limited, with courts often ruling that the right to social security is not an absolute fundamental right that is directly enforceable.<sup>9</sup>

India is the first country in Southeast Asia to have enacted a flagship social security scheme, therefore, with the passage of the Employees' State Insurance Act in 1948 ("ESI Act"). In its form at the time of enactment, it covered almost 2.5 million workers and afforded a wide range of social security benefits, including medical care, sickness benefits, maternity benefits, disability benefits, and survivor benefits for dependents. Alongside the ESI Act, the Employees' Provident Funds and Miscellaneous Provisions Act of 1952 (hereafter referred to as the "EPF Act") established a framework for retirement and survivor benefits targeted at workers within designated sectors. At its inception, the EPF system encompassed approximately 1.6 million employees, facilitating a retirement savings program that required contributions from both employees and their employers to the fund. However, these programs were specifically for the workers of the formal sector of employment, which stood at less than 10% of the entire workforce of the country at the time. Therefore, these programs remained very restricted towards the benefit of that small section of society and did not extend to almost all the workers of the informal sectors. All these issues go a long way in making the social security structure in India cumbersome in its spread and coverage.<sup>10</sup>

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<sup>8</sup> The Constitution of India 1950, Part IV – Directive Principles of State Policy, Arts 38, 39, 41, 42, 43, 47, <https://legislative.gov.in/sites/default/files/COI.pdf> accessed 3 September 2024.

<sup>9</sup> S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2nd edn, OUP 2015) 186.

<sup>10</sup> *Ibid.*

#### 4. Social Security to Gig Worker under Unorganized Workers' Social Security Act, 2008

The Gig workers are treated as independent contractor being paid based on quality and quantity of services they provide. The person delivering your parcel from Flipkart, Amazon, Zepto or delivering food from Zomato, Swiggy or food panda is Gig workers similarly the cab driver working with Ola and Uber are also categorize in that category.<sup>11</sup>

The term “Social Security” has been defined by International Labour Organization in its conventions and also in various United Nation instruments as a fundamental right that protects human dignity – a right which is being enjoyed by only small proportion of the people on our planet. In India, 94% of the total working population has no social security protection. Social security is a protection to ensure access to health, pension, maternity and unemployment protection, along with tax-financed social benefits, social security has become a universal challenge in a globalizing world.<sup>12</sup>

Under various labor welfare acts, providing for social security is conditional only if there is a traditional relationship of employer-employee. For those categorized under gig workers, contractual workers, self-employed, and casual workers, social security remains out of bounds because their situation does not exist within the relationship of employer-employee. The term “Gig worker” was not defined in any labour legislations of India however, the definition of Gig worker has been given in Section 2 (35) of newly enacted Social Security Code 2020. According to the section "gig worker means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship". The company do not need to pay for their social security if they use casual worker, contract or self-employed worker. Niti Aayog Report stated that “the gig workers are generally engaged in income-earning activities outside of a traditional employer-employee relationship, as well as in the informal sector.”<sup>13</sup>

The Unorganised Workers' Social Security Act, 2008, provides social security and welfare for unorganized workers in the country. Under Section 2(m) of the Act, "unorganised worker" would mean a home-based worker or a self-employed person or earning member who

<sup>11</sup> International Labour Office, *World Social Security Report 2010/11: Providing Coverage in Times of Crisis and Beyond* <https://www.ilo.org/global/reports/WSSR/lang--en/index.htm> accessed 10 November 2024.

<sup>12</sup> Facts on Social Security, International Labour Organization, assessed on November 12, 2024.

<sup>13</sup> International Labour Office, *Supra* 11.

indirectly earns his income as a member of a household or as an employee in some unorganised sector, where the number of employees is less than ten persons.<sup>14</sup>

Section 5 of the Act creates the National Social Security Board. The NSSB shall consist of:

- The Chairperson shall be the Union Minister for Labour and Employment, ex officio.
- The Director General (Labour Welfare) as the Member-Secretary (ex-officio).
- Thirty-four nominated members, including representatives of unorganized workers, employers, civil society, Members of Parliament, Central Government Ministries, and State Governments.

The NSSB is meant to advise the Central Government of suitable social security schemes for the different types of unorganised workers, give advice on matters concerning the implementation of the Act and supervise social security schemes for unorganised workers under the administration of the Central Government. Yet, the composition of NSSB was criticized for not providing proper representation to gig workers and thus there was a deficiency of the policies which were tailor-made to meet their needs. Gig economy in India has significantly soared up as it now employs 90 million workers and is projected at USD 455 billion for the year 2024.<sup>15</sup>

To this identified deficiency, the Union Labour Ministry announced the establishment of a specialized committee that will propose a social security framework specifically for gig workers. This is an initiative that will integrate gig and platform workers into the informal workforce by enrolling them on a national portal and providing access to social security benefits, including health insurance and pension plans. Besides, state level initiatives, which can be seen through the Karnataka Platform-based Gig Workers (Social Security and Welfare) Bill, 2024, also seek to institutionalize the rights and social entitlements of the gig workers by creating a welfare fund and a governing board that advocates for their rights. These developments underscore the need for a comprehensive legal and social security framework that addresses the unique challenges of gig workers in the evolving labor market of India.<sup>16</sup>

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<sup>14</sup> The Unorganised Workers' Social Security Act 2008, No 33 of 2008, available at [https://labour.gov.in/sites/default/files/unorganised\\_workers\\_social\\_security\\_act\\_2008.pdf](https://labour.gov.in/sites/default/files/unorganised_workers_social_security_act_2008.pdf) accessed 30 October 2024.

<sup>15</sup> *Ibid*

<sup>16</sup> Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill 2024 (Proposed Draft), Karnataka State Labour Welfare Board, <https://ksuwssb.karnataka.gov.in/info->

## 5. Social Security for Gig workers under Social Security Code 2020

The Code on Social Security, 2020, hence, remains the most significant Labour law reform undertaken in India by the new Central Government, particularly with regard to gig and platform workers. It amalgamates and modifies extant social security legislation to bring more workers into the ambit of protection across organized and unorganized sectors, bringing gig and platform workers within it.

### *I. Definition and Inclusion:*

The Code defines a 'gig worker' and a 'platform worker' as those workers involved in work arrangements outside the traditional employer-employee model, usually mediated by digital platforms. Official recognition of this trend is important as it acknowledges the growing gig economy and the accompanying workforce.<sup>17</sup>

### *II. Social Security Schemes:*

Under the Code, the government is empowered to formulate specific social security schemes for gig and platform workers. These schemes may encompass:

- Life and disability cover
- Health and maternity benefits
- Old age protection
- Provident fund
- Employment injury benefits
- Housing
- Educational schemes for dependents
- Skill upgradation
- Funeral assistance
- Other benefits as determined by the government<sup>18</sup>

### *III. Funding Mechanisms:*

According to the Code, financing for such social security schemes can be obtained through contributions from:

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4/Acts/The%2BKarnataka%2BPlatform%2BBased%2BGig%2BWorkers%2B%28Social%2BSecurity%2Band%2BWelfare%29%2BBill%2B2024/en accessed 1 January 2025.

<sup>17</sup> Gig Workers in India: Analyzing the Legal Framework, Lawrbit (Dec 2020) <https://www.lawrbit.com/article/gig-workers-in-india-analyzing-the-legal-framework/> accessed 31 December 2024.

<sup>18</sup> Issues for Consideration: Labour Codes, PRS India (2020) <https://prsindia.org/billtrack/prs-products/issues-for-consideration-labour-codes-3580> accessed 30 December 2024.

- Federal and Regional Governments
- Aggregators (digital platform companies)
- Inputs from the beneficiaries themselves

Importantly, Schedule VII of the Code outlines several heads of aggregators such as ride-sharing services, food and grocery delivery services, content and media services, besides e-marketplaces among other classes.<sup>19</sup>

#### ***IV. Constitution of the National Social Security Board (NSSB):***

The Code mandates the reconstitution of the National Social Security Board to ensure representation from all sectors, including gig and platform workers. The Board's composition includes:

- A Chairperson (appointed by the Central Government)
- Five representatives of aggregators (nominated by the Central Government)
- Five representatives of gig workers and platform workers (nominated by the Central Government)
- Other members representing employers, employees, and civil society

The purpose of this comprehensive representation is to foster the development of all-rounded social security systems that directly address the unique challenges faced by gig and platform workers. Until January 2025, the Code on Social Security, 2020, had been enacted, but its implementation has faced several setbacks. The government is working on finalizing the necessary rules and regulations required for the effective implementation of the provisions regarding gig and platform workers.<sup>20</sup>

## **6. State-Level Policies for Gig Workers: Ensuring Social Security and Welfare Benefits**

The government such as India is undergoing the initial proactive response for legislation to collect necessary measures to face various challenges with gig and platform workers; for instance, legislation and policies will be implemented in the structure that ensures social security or welfare of this section. In this regard, Karnataka has proposed the Karnataka

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<sup>19</sup> National Labour Codes: Human Resources and Payroll in India, India Briefing (Mar 2022) <https://www.india-briefing.com/doing-business-guide/india/human-resources-and-payroll/india-new-labor-codes> accessed 1 January 2025.

<sup>20</sup> Reuters, 'Thousands Protest Across India Seeking Repeal of Labour Codes' (23 September 2024) <https://www.reuters.com/world/india/thousands-protest-across-india-seeking-repeal-labour-codes-2024-09-23/> accessed 31 December 2024..

Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024, which is in the process of giving diverse welfare benefits to gig workers through establishment of a welfare board and a state-level social security fund. The fund is designed to meet basic health insurance, maternity leave, disability, and pension plans for gig workers.<sup>21</sup> The welfare board will also be empowered to promote the rights of gig workers, monitor the working conditions, and deal with grievances, thus providing a marketplace for collective representation. More states such as Rajasthan, Kerala, and states which have introduced schemes covering social security benefits such as accidental insurance, educational support for dependents, and skill development programs at the state level, are coming under the veil of existing state labor welfare boards. Gig workers come now under the Awas Health Insurance Scheme of Kerala, ensuring healthcare services access for these workers working on platforms. Many other states are also signing memoranda of understanding with digital platforms and private partners to co-finance and avail benefits for gig workers, even subsidized training to enhance their skills and income opportunities. These state-level initiatives reflect how seriously the economy takes these workers and how much importance they place in recognizing the fact that protection policies are needed for their benefit. Thus, closing the gaps in coverage left by central legislation, it plays an important role in ensuring that gig workers access the social security net and work in a more secure and dignified environment.<sup>22</sup>

## 7. Conclusion and Suggestions

The upcoming trend of technology and the demand by consumers in combination with e-commerce platforms have caused an upheaval in the format of the labor market-it actually brings the term gig economy into everyone's mind. Now gig and platform workers are making significant contributions to the GDP of India, besides providing critical services in various sectors of industry. There are, however, several pressuring problems, such as job insecurity, lack of social security, and inadequate representation in policymaking, faced by gig workers. Historical attempts worldwide concerning and in India about social security have always favored formal workers, thereby leaving completely unprotected, informal workers like gig workers who function outside organic employment relationships. The Code on Social Security, 2020, new reforms, are quite a big push towards these improvements. The formal identification

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<sup>21</sup> Karnataka State Labour Welfare Board, 'Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024 (Proposed Draft)' <https://ksuwssb.karnataka.gov.in/info-4/Acts/The%2BKarnataka%2BPlatform%2BBased%2BGig%2BWorkers%2B%28Social%2BSecurity%2Band%2BWelfare%29%2BBill%2B2024/en> accessed 1 January 2025

<sup>22</sup> The Hindu, 'Karnataka Plans Social Security Law for Gig Workers' (January 2025).

of gig and platform workers, along with the power given to the government to formulate separate schemes for them are important steps. Besides, it has reconstituted the National Social Security Board, which was an effort to get representation for gig workers in it, making a way towards bringing equal social security coverage to them. However, there are some delays, and even some implementation plans are lacking, which creates a barrier towards their full potential realisation.

To address these gaps and enhance the social security framework for gig workers, the following suggestions are proposed:

## **Suggestions**

### ***I. Prompt Implementation of the Social Security Code 2020***

The government needs to quickly finalize the rules and guidelines enabling effective implementation of the Code on Social Security, 2020, with well-defined timelines, so that gig and platform workers can enjoy the benefits envisaged by the Code.

### ***II. Compulsory Contributions by Digital Intermediators***

Aggregators and digital platform companies must contribute to social security funds but will base such contributions on revenues or workforce size, as defined under Schedule VII of the Code.

### ***III. Creating National Portal for Registration of Gig Worker and Awareness about it***

It is equally important to create national portal for registering gig and platform workers so that government will know exact number of Gig worker and Platform worker. This will help to decide on policy. Thus, the accessibility should be friendly to enable the worker to register, claim, or redefine their information.

### ***IV. State-Level Initiatives***

Such complementary legislation should be made obligatory for state governments, like the Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024, to lead the way in making region-specific provisions and ensuring that needs are holistically covered.

### ***V. Skill Development and Upskilling***

Target-specific skill development programs can enhance employability and income opportunities of gig workers. Training programs must be developed by the government, together with the aggregators so that they can be specific according to the industry requirements.

### ***VI. Representation in Policymaking***

Policy formulation and decision-making processes at the national and state levels should include more gig workers. In doing so, these workers' specific challenges and concerns will be more considered.

### ***VII. Awareness and Advocacy Campaigns***

Awareness campaigns must focus around the rights of the gig workers on the social security schemes available to them. NGOs, trade unions, and civil society organizations can be very instrumental in this regard.

### ***VIII. International Collaboration and Best Practices***

For instance, India may partner with countries that already have successful social security schemes for gig workers, such as the Platform Work Directive of the European Union. Incorporating international best practices can improve the social security architecture of India.

### ***IX. Periodic Review and Monitoring***

Establish a periodic procedure for review of monitoring mechanisms assessing the effectiveness of social security schemes for gig workers by the government. Policy improvement should also be based on feedback from stakeholders who include workers, aggregators, and civil society, among others.

### ***X. Building Public-Private Partnerships (PPP)***

Collaborative engagements between public and private sectors can catalyze creative and enduring solutions for social security. As another example, aggregators may partner with insurance companies in providing affordable health and life insurance cover for gig workers. Example-public-private partnerships: Aggregators can partner with an insurance company to market affordable health and life insurance products to gig workers.

By addressing these concerns through a comprehensive and inclusive approach, India can ensure that gig and platform workers are not only protected but also empowered to contribute more effectively to the economy. The gig economy's potential to drive inclusive growth and support India's journey toward becoming a \$5 trillion economy can be fully realized with a robust social security framework in place.