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# **FROM FLEXIBILITY TO EXPLOITATION: A STUDY OF LEGAL RECOGNITION, PROTECTION, AND ENFORCEMENT OF GIG WORKERS LABOUR RIGHTS**

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## **Abstract:**

Promising flexibility and autonomy, digital platforms like Uber, Zomato, Rapido and Swiggy have drawn millions of people into the gig economy. Yet, this often masks a harsh reality of precarity and exploitation. By classifying workers as "independent contractors," these platforms exclude them from the safety net of traditional labour laws. This creates a profound constitutional crisis, denying gig workers fundamental rights to minimum wages, social security, and collective bargaining.

While the new labour codes Social Security Code,2020 has recognised the Gig Workers and has explained under section 35 of the said act as "A person who performs work or participants in a work and earns from such activities outside of traditional employer- employee relationship" the other codes has effectively excluded Gig workers from labour rights such as Collective Bargaining, Right to form Unions and so on as they are not under the definition of Employee nor have been under the umbrella of Unorganised workers.

This gap between legal theory and ground reality leaves workers vulnerable. This paper argues that the new labour codes have recognised the gig workers as a new category of workers but has failed to grant their rights this silence of Labour codes shall be broken to protect one of the India's most vulnerable and growing workforces.

**Keywords:** Gig Workers, Exploitation, Labour Codes, Labour Rights,

## **Introduction:**

In the rapidly changing work landscape, digital platforms have redefined the relationship between capital, labour, and technology. The rise of companies such as Uber, Swiggy, Zomato, and Urban Company has created what is popularly termed the gig economy a model that

promises autonomy and flexibility while simultaneously eroding traditional notions of job security and labour protection.<sup>1</sup> Beneath this surface of innovation lies a growing constitutional dilemma: the reclassification of workers as “independent contractors” rather than “employees,” or “unorganised workers” effectively excluding them from the protection of India’s labour and social security laws.

This evolving form of labour raises constitutional question like how its changing dynamics of work will adhere with principles of equality and social justice embedded in Constitution? The Constitution envisions a welfare state through its Directive Principles of State Policy, mandating the state to secure livelihood and human working conditions for all.<sup>2</sup> However, gig workers despite their economic contribution remain outside this constitutional safety net.

It has been noted that initiatives such as e-SHRAM and the Social Security Code, 2020, while progressive, fail to address the structural vulnerabilities of gig workers.<sup>3</sup> Courts too have remained largely silent, which is been observed from pendency of case namely IFAT v. Union of India, resulting into injustice with millions of platform workers in the nation.<sup>4</sup>

This paper adopts a doctrinal, analytical, and reform-oriented approach to examine whether India’s constitutional and legislative framework adequately protects gig workers’ rights. It argues that constitutional silence in this domain perpetuates economic inequality, calling for the reinterpretation of fundamental rights in light of the realities of the digital economy.

### **Constitutional Protections and Their Applicability to Gig Workers:**

The Indian Constitution envisions a welfare-oriented state committed to ensuring social and economic justice. The Directive Principles of State Policy particularly Articles 38, 39, 41, and 43 direct the State to secure adequate means of livelihood, equitable distribution of resources, and humane working conditions. It also envisages Indian vision of welfare state, although these principles are non-justiciable, they have profoundly shaped judicial interpretation of

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<sup>1</sup> Christopher Deeming, *Guy Standing* (2011), *The Precariat: The New Dangerous Class*. London: Bloomsbury Academic. £19.99, Pp. 198, Pbk, 42 *Journal of Social Policy* (2013).

<sup>2</sup> The Constitution of India of 1950.

<sup>3</sup> S. Harish Kumar, *Gig Workers and The Constitution Redefining Employment Rights In The 21st Century*, 5 *IJLR* 986 (2025).

<sup>4</sup> *The Indian Federation of App Based Transport Workers (IFAT) v Union of India*, Supreme Court Observer, <https://www.scobserver.in/cases/gig-workers-access-to-social-security-the-indian-federation-of-app-based-transport-workers-ifat-v-union-of-india/> (last visited Nov. 5, 2025).

fundamental rights.

### **A. Labour Rights and Constitutional Vision**

Article 34 in the Draft Constitution, which is Article 43 of the Directive Principles of State Policy stipulated that the State would provide to all workers work, a living wage, conditions of work ensuring a decent standard of life, and full enjoyment of leisure and social and cultural opportunities. In the draft Article the words “all workers, industrial or otherwise” were used. The Constituent Assembly debates reflect a consciously inclusive and progressive understanding of labour. During the drafting process, the insistence of S. Nagappa on expressly including agricultural labour, accepted by Dr. B.R. Ambedkar.<sup>5</sup> It demonstrated the framers’ awareness that vague or residual categories could lead to exclusion. Labour was envisaged broadly, encompassing all forms of work vulnerable to exploitation, rather than being confined to industrial employment alone.

This inclusive approach was reiterated in the adoption of Article 23 on December 3, 1948, which prohibited forced labour. Soon after, in December 1949, questions raised in the Constituent Assembly (Legislative) and private Members’ Bills, particularly by R.K. Sidhwa, highlighted the need for detailed legislation to operationalise constitutional guarantees.<sup>6</sup> These initiatives directly influenced the enactment of comprehensive labour welfare laws, most notably the Employees’ Provident Fund Act, 1952, reflecting the belief that constitutional ideals must evolve through legislation responsive to social realities.

This reveal that the framers did not view labour rights as static or exhaustively defined at the moment of constitutional adoption. Instead, they envisaged progressive constitutionalism, where new forms of labour and exploitation would require renewed legal recognition. The present condition of gig workers mirrors earlier concerns regarding their exclusion. Much like agricultural labourers once risked being subsumed under ambiguous categories, gig workers today operate in a legal grey zone despite their economic indispensability.

Thus, not only recognising gig workers’ labour rights but also granting those rights is not an innovation but a constitutional necessity. It represents a continuation of the framers’

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<sup>5</sup> Constituent Assembly Debates Vol 7, 23 Nov 1948, (1948), <https://www.constitutionofindia.net/debates/23-nov-1948/>.

<sup>6</sup> Constituent Assemble Debate Art 23, (1948), <https://www.constitutionofindia.net/articles/article-23-prohibition-of-traffic-in-human-beings-and-forced-labour/>.

progressive outlook, one that treated dignity of labour, social security, and protection from exploitation as evolving constitutional imperatives rather than closed historical achievements.

### **B. Legal Marginalisation of Gig Workers: New Labour Codes**

The Supreme Court has repeatedly expanded the meaning of Article 21, transforming the right to life into a guarantee of dignified existence. In *Olga Tellis v. Bombay Municipal Corporation*, the Court held that “the right to life includes the right to livelihood”.<sup>7</sup> Extending this reasoning, gig and platform workers who depend on app-based employment for subsistence should logically fall within the protective scope of Article 21.

Further, Article 14 of the Constitution guarantees equality before the law and equal protection of the laws. The systematic exclusion of gig workers from statutory protections available to formal employees arguably violates this principle. Likewise, Article 23 prohibits forced labour, a provision that gains significance when digital workers are subjected to algorithmic control, economic dependence, and lack of collective bargaining power.

India’s labour law regime, despite undergoing consolidation through four major labour codes, fails to provide meaningful coverage to gig workers. The Code on Social Security, 2020 marks the first statutory recognition of “gig” and “platform” workers, defining them as persons engaged in work outside the traditional employer-employee relationship.<sup>8</sup> Yet, this recognition is largely symbolic. The Code provides for welfare schemes but omits binding obligations on platforms to contribute to such funds or ensure minimum income guarantees. Moreover, gig workers remain excluded from the Industrial Relations Code, 2020 and the Code on Wages, 2019, thereby depriving them of collective bargaining rights, minimum wages, and protection against unfair termination.

The Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023 represents a pioneering state-level initiative that seeks to create a welfare fund for gig workers and mandate registration of both platforms and workers.<sup>9</sup> While this legislative experiment signifies progress, its limited scope and reliance on voluntary compliance mechanisms reveal a continued reluctance to redefine employment in the digital age.

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<sup>7</sup> *Olga Tellis & Ors vs Bombay Municipal Corporation & Ors. Etc* AIR 180 (SC 1986).

<sup>8</sup> The Code of Social Security, 2020 of 2020, 36 Of 2020, ACT 36 Of 2020.

<sup>9</sup> Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023, of 2023, Act No. 29 of 2023, Act No. 29 of 2023.

The Code on Social Security, 2020 and The Rajasthan Platform Based Gig Worker Act thus occupies an uneasy constitutional space. While it symbolically includes gig workers, it fails to operationalize the principles of equality and dignity under Articles 14 and 21. By not granting enforceable rights-such as fair wages, job security, or representation the law risks perpetuating structural inequality. It is “recognition without rights” which creates a facade of inclusion while maintaining systemic exclusion.<sup>10</sup> As the Unorganised workers under the Unorganised workers act has been recognised as workers under the Industrial Relations Code, 2020.<sup>11</sup>

Therefore, a transformative reading of the Constitution demands not only recognition but also substantive empowerment of gig workers through enforceable socio-economic entitlements.

### **Niti Ayog Report, 2022: Need of Gig workers recognition<sup>12</sup>**

The data published by NITI Aayog demonstrates the question of gig workers’ rights has moved from the margins to the centre of India’s labour discourse. In numerical terms, the gig workforce expanded from 68 lakh workers in 2019–20, accounting for 2.4% of the non-farm workforce and 1.3% of total employment, to 77 lakh workers in 2020–21, constituting 2.6% of the non-agricultural workforce and 1.5% of India’s total workforce. This growth is projected to accelerate sharply, with estimates indicating 2.35 crore (23.5 million) gig workers by 2029–30, who would represent 6.7% of the non-agricultural workforce and 4.1% of total livelihoods in the country. Sectoral data further reveals the embedded nature of gig work, with 26.6 lakh workers in retail trade, 13 lakh in transportation, and over 12 lakh combined in manufacturing, finance, and insurance, alongside steady expansion in education. At the skill level, nearly 47% of gig work is medium-skilled, 31% low-skilled, and 22% high-skilled, with trends pointing towards growing polarisation. These figures underline a stark reality: millions of workers across sectors and skill categories remain excluded from basic labour protections. In this context, extending enforceable rights relating to wages, social security, safety, and collective representation is not merely desirable but imperative to prevent the normalisation of precarity within India’s evolving labour market.

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<sup>10</sup> Animesh Kumar Sharma Rahul Sharma, The Gig Economy and the Evolving Nature of Work in India: Employment, Policy, and Platform Realities in the Age of Convenience, *JOURNAL OF DIGITAL ECONOMY* (2025).

<sup>11</sup> Industrial Relations Code, 2020.

<sup>12</sup> NITI AAYOG. (2022), *INDIA’S BOOMING GIG AND PLATFORM ECONOMY PERSPECTIVES AND RECOMMENDATIONS ON THE FUTURE OF WORK* (2022).

### **Judicial Development in India:**

Recent judicial developments in India reveal an emerging contest over the legal identity and entitlements of gig workers, reflecting a shifting terrain where courts are increasingly required to confront the ambiguities of platform-mediated labour. In *IFAT v. Union of India*, the Supreme Court has been urged to recognise gig workers as “unorganised workers” entitled to social security benefits under existing welfare legislation, a demand that challenges the long-standing classification of platform workers as independent contractors.<sup>13</sup> Adding further complexity is the Karnataka High Court’s decision in *X v. ICC, ANI Technologies Pvt. Ltd.*, which treated a gig worker as an “employee” for the limited purpose of the POSH Act; a ruling that, although presently stayed, nevertheless signals a judicial willingness to interrogate platform-imposed classifications.<sup>14</sup> Together, these proceedings reveal a judiciary grappling with the inadequacies of traditional employment frameworks when applied to digital labour markets. While the courts’ emergent approach marks an important constitutional moment for gig worker rights, the fragmented and case-specific nature of judicial intervention underscores the urgent need for a comprehensive statutory redefinition of “employment” that aligns with the realities of platform work.

### **Recognition of Gig Worker’s Rights in USA, UK and EU**

As the gig economy expands across the world, countries have grappled with how to classify and protect platform-based workers. Comparative experience offers valuable insights into how India might bridge its constitutional silence with responsive legal reform. The debate everywhere revolves around one central question: Are gig workers employees, independent contractors, or a new category altogether?

#### **A. The United States and the ABC Test<sup>15</sup>**

The United States has been a major testing ground for determining the employment status of gig workers, particularly through the ABC Test. This test, first codified in California through the *Dynamex Operations West, Inc. v. Superior Court* (2018) decision<sup>16</sup>, establishes a three-

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<sup>13</sup> *Indian Federation of App-Based Transport Workers (IFAT) v. Union of India* (SC 2021) Pending.

<sup>14</sup> *X v. Internal Complaints Committee (ICC), ANI Technologies Pvt. Ltd* W.P. No. 15041/2020 (High Court of Karnataka 2024).

<sup>15</sup> Abigail S. Rosenfeld, *ABC to AB 5: The Supreme Court of California Modernizes Common Law Doctrine in Dynamex Operations West, Inc. v. Superior Court*, 61 *bclawreview* (2020), <https://bclawreview.bc.edu/articles/252>; California Litigation Review Publishes Rachel Terp’s Article on Proposition 22, *TerpLaw*, <https://www.terplaw.com/blog/rachel-terp-article-on-proposition-22-published-the-california-litigation-review> (last visited Nov. 5, 2025).

<sup>16</sup> *Dynamex Operations West, Inc. v. Superior Court*, 3d 1 *Pacific Reporter* 416 (California Supreme Court 2018).

part standard for classifying workers:

- A. **Autonomy:** The worker must be free from the control and direction of the hiring entity in performing the work.
- B. **Business:** The work performed must be outside the usual course of the hiring entity's business.
- C. **Customary Engagement:** The worker must be customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

If any of these criteria are not satisfied, the worker is presumed to be an employee, ensuring access to labour protections such as minimum wage, unemployment benefits, and collective bargaining. This test was later codified in California's Assembly Bill 5 (AB5), which extended employee protections to platform-based workers.

However, major gig companies Uber, Lyft, and DoorDash launched an unprecedented \$200 million campaign supporting Proposition 22, a 2020 ballot initiative that exempted app-based drivers from AB5 by classifying them as independent contractors under specific conditions. Shortly after its passage, the Service Employees International Union (SEIU) and rideshare drivers filed a constitutional challenge in *Castellanos v. Uber Technologies, Inc.* (2021), arguing that Proposition 22 unlawfully limited the legislature's authority to extend worker protections.<sup>17</sup>

In a landmark decision, Judge Frank Roesch of the Alameda County Superior Court ruled that Proposition 22 was unconstitutional, holding that it improperly restricted the legislature's future power to classify app-based drivers as employees under workers' compensation law. Although this ruling is under appeal, it illustrates the persistent contest between corporate interests and worker rights in the platform economy.

Despite its ongoing legal uncertainty, the ABC Test remains a powerful tool for protecting gig workers' rights by presuming employment rather than exclusion. For India, adopting a similar framework would reflect the constitutional values of equality (Article 14), social justice (Article 38), and the right to livelihood (Article 21), ensuring that flexibility does not come at the cost of fundamental dignity.

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<sup>17</sup> CASTELLANOS v. Protect App-Based Drivers and Services et al., Interveners and Appellants (Court of Appeal, First District, Division 4, California 2023).

## **B. The United Kingdom: The “Worker” Classification**

The United Kingdom has developed a third, intermediate category known as “workers,” distinct from both “employees” and “independent contractors.” The landmark *Uber BV v. Aslam* (2021) case before the UK Supreme Court recognized Uber drivers as “workers,” entitled to minimum wage and paid leave.<sup>18</sup> The Court emphasized that contractual labels cannot override the economic reality of dependence and control exercised by the platform.

This flexible categorization acknowledges the hybrid nature of gig work, striking a balance between flexibility and protection. For India where platform work operates in a similarly informal and precarious environment the “worker” model offers a pragmatic path to inclusivity without dismantling the flexibility central to gig work.

## **C. European Union: Towards a Presumption of Employment**

The European Union’s proposed Directive on Platform Work (2021) seeks to address misclassification by establishing a presumption of employment whenever a platform exerts control over working conditions, performance monitoring, or pricing.<sup>19</sup> This approach shifts regulatory focus from contractual definitions to algorithmic control a defining feature of the gig economy. By acknowledging that platforms exercise employer-like power through technology, the EU approach redefines the employment relationship for the digital era.

## **D. Comparative Insights for India:**

India’s legal framework, while recognizing gig workers under the Social Security Code, 2020, stops short of conferring enforceable rights. The international experience underscores the importance of reversing the burden of proof and recognizing economic dependence as the key determinant of employment status.

1. Like the **ABC Test**, India could adopt a presumption of employment for gig workers, compelling platforms to justify deviations.
2. The UK “worker” model offers a balanced framework, where gig workers can retain flexibility while gaining protection under minimum wage and welfare laws.
3. The EU approach provides a forward-looking template to regulate algorithmic control, data transparency, and fairness in digital labour.

Adapting these frameworks to the Indian context would align national labour law with the

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<sup>18</sup> *Uber BV and Others v Aslam and Others*, 5 (UKCS 2021).

<sup>19</sup> Directive of the European Parliament and of The Council on Improving Working Conditions in Platform Work, (2021), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021PC0762>.

transformative vision of the Constitution, particularly the State's duty under Articles 38 and 43 to secure a social order based on justice and equitable welfare.

### **Reformative Measures Towards the Gig Workers**

In my view, India has reached a constitutional moment where the regulation of platform labour can no longer remain tentative or symbolic. While judicial interpretation has steadily expanded the scope of Articles 14, 21, and 43 to include dignity, livelihood, and fair working conditions, the platform economy exposes the ease with which these guarantees are diluted through contractual classifications. Addressing this disconnect requires a shift from formal recognition to substantive protection.

The Code on Social Security, 2020 is an indispensable beginning, yet its welfare-centric approach does not secure minimum wages, job stability, formation of Unions or collective bargaining rights for gig workers. Targeted legislative reform is therefore essential. Measures such as a rebuttable presumption of employment, wage parity with comparable offline work, effective grievance redressal mechanisms, and gender-sensitive safety protections would bring statutory frameworks closer to constitutional commitments.<sup>20</sup> The Rajasthan Platform-Based Gig Workers Act, 2023<sup>21</sup> signals progress, yet its impact remains limited without addressing misclassification and wage regulation.

Reforms must also prioritize collective bargaining. Gig workers' unions such as AIGWU and GIPSWU,<sup>22</sup> have shown how constitutional rights under Article 19(1)(c),<sup>23</sup> can be leveraged to demand recognition. However, the absence of statutory frameworks for digital unionization leaves them vulnerable to retaliation and platform deactivation.

A National Council for Platform Labour Relations could institutionalize dialogue among gig workers, platform companies, and government representatives. This aligns with the Recommendation No. 198 on employment relationships, emphasizing the right to organize and bargain collectively in non-traditional work settings of the International Labour Organization's

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<sup>20</sup> Id.

<sup>21</sup> Act No. 29 of 2023.

<sup>22</sup> The All India Gig Workers' Union (AIGWU) advocates for app-based delivery and service workers in India, while the Gig and Platform Services Workers' Union (GIPSWU) is India's first women-led union pushing for better rights and recognition for platform workers, demanding legal protections and social security.

<sup>23</sup> The Constitution of India, 1950

(ILO).<sup>24</sup>

Judicial intervention is equally crucial. Constitutional courts must interpret Articles 14, 21, and 23 in light of economic dependency and algorithmic control, recognising that indirect coercion and denial of minimum wages undermine dignity and equality. Strengthening collective representation under Article 19(1)(c) and ensuring algorithmic transparency would further align labour regulation with contemporary work realities.

Finally, the reform process must recognize that algorithmic governance is the new workplace discipline. Platforms exercise control through ratings, data-driven incentives, and automated penalties effectively functioning as digital employers. Transparency requirements should therefore be incorporated into data protection and labour regulations, compelling platforms to disclose algorithmic decision-making processes that affect pay or job access.

Algorithmic audits and Right to Explanation provisions, similar to those under the EU's General Data Protection Regulation (GDPR), could ensure due process and fairness in digital employment.<sup>25</sup>

Ultimately, these reforms are not merely policy choices but expressions of the Constitution's transformative promise, one that must evolve to protect digital labour as a core component of social justice.

### **Conclusion:**

The rise of platform-based labour has forced a re-examination of the very foundations of India's constitutional promise of justice and equality. Gig workers today embody the paradox of the digital age flexibility without security, autonomy without rights. While the Constitution of India enshrines equality, dignity, and the right to livelihood under Articles 14, 21, and 23, aspiring millions engaged in the gig economy.

The Code on Social Security, 2020, though a progressive step in recognising gig workers, falls

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<sup>24</sup> Recommendation R198 - Employment Relationship Recommendation, 2006 (No. 198), [https://normlex.ilo.org/dyn/nrmlx\\_en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312535](https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535) (last visited Nov. 5, 2025).

<sup>25</sup> REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 2016.

short in guaranteeing core entitlements such as minimum wages, health insurance, and collective bargaining rights. State-level developments, such as the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023, represent a significant effort to institutionalise welfare mechanisms, but their enforcement capacity and coverage remain uncertain. In this context, the Draft Telangana Gig and Platform Workers (Registration, Social Security, and Welfare) Bill, 2025 assumes particular significance. By mandating registration, establishing a welfare board and fund, introducing platform contributions, and recognising workers' right to seek information on algorithmic decision-making, the Bill reflects an emerging awareness of the distinctive vulnerabilities of digital labour. At the same time, its broad definitions, indeterminate welfare entitlements, and shared funding model raise unresolved questions regarding responsibility, adequacy, and enforcement.

Comparative experiences, such as the ABC test in the United States, the Uber BV v. Aslam judgment in the United Kingdom, and judicial scrutiny of Proposition 22 in California, reveal that worker classification is not merely a matter of policy but of constitutional identity. They demonstrate that constitutional democracies must evolve to ensure that technology does not dilute hard-won labour protections.

Ultimately, transformative constitutionalism demands a reinterpretation of India's legal framework one that redefines "work" and "worker" in light of contemporary realities. Breaking the constitutional silence on gig workers is not only a matter of legal reform but a moral imperative. Only by embracing this constitutional transformation can India truly uphold its founding promise of justice, dignity, and equality for all who labour.