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## **GIG WORKER AND THE LAW: ARE PLATFORM WORKERS STILL LEFT OUTSIDE LABOUR PROTECTION?**

**-Atulya Srivastava**

### **INTRODUCTION**

The rise of the digital economy has transformed labour markets across the world. Companies such as Uber, Swiggy, Zomato, Ola, Urban Company, and Amazon Flex rely heavily on gig workers and platform workers to deliver services quickly and efficiently. These workers are now an essential part of urban economic life. Food delivery agents, ride hailing drivers, warehouse workers, and freelance digital workers have become the invisible engine of modern convenience. Yet, despite their economic significance, many of them remain outside the scope of traditional labour protection.

The legal issue is fundamentally one of classification. Companies that use the gig economy classify their workers as "independent contractors" rather than as employees. By classifying workers this way, platform companies can escape from many of their obligations towards the worker: minimum wage; contributions to the provident fund; insurance; paid leave; maternity benefits; protection from unfair dismissal. This means the legal status of gig workers is often in a grey area - they may do the same work as an employee, yet do not have the rights that accompany this formal relationship with the company.

The gig economy has seen rapid growth in India over recent years, with estimates suggesting that millions rely on app-based employment for their livelihoods.<sup>1</sup> Despite this growth, there is still a fragmented and unregulated legal framework governing the gig economy, and thus little or no labour rights for gig workers. The Code on Social Security, 2020 has provided legal recognition to gig and platform workers; however, the disparity between the law and the actual implementation of the law creates continued concern regarding the lack of labour rights for gig workers.<sup>2</sup>

This article will explore the extent to which platform workers are outside of labour protections, looking at gig work as a form of work, the legal standing of platform workers in India, recent legislation, judicial outcomes, and comparative approaches from other countries. The article will conclude that while the legal status of platform workers has been improved by existing laws; platform workers in India continue to exist outside of all labour legal protections and, thus, are subject at all times to all forms of exploitation by platform companies.

## **DEFINITION OF GIG AND PLATFORM WORK**

Gig workers are those people that perform temporary, flexible jobs. They can perform jobs based upon the nature of the work required, instead of being employees of a company; they are compensated for each assignment they complete. Platform workers fall under gig workers but work through digital applications/online platforms, through which they are paid for completing their job duties.

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1. International Labour Organization, Providing Adequate and Sustainable Social Protection for Workers in the Gig and Platform Economy (2023).
  2. Code on Social Security, No. 36 of 2020, §§ 2(35), 2(61), 109-114, India Code (2020).

The Code on Social Security 2020 defines gig workers as people who are employed on tasks outside of traditional employer-employee relationships; the Code defines platform workers as persons whose employment conditions are not identical to traditional employer-employee relationships<sup>3</sup> using digital technology to complete job tasks. The importance of these definitions is that historically, labour laws in India only recognized the relationship between employer and employee; in addition, there has been a shift in how the term "gig worker" has been applied to retail payment transactions in both India and abroad.<sup>4</sup>

The way in which gig jobs are different from conventional jobs can be described in 5 different ways:

- 1) Often independent contractors for all intents and purposes;
- 2) Gig worker's income varies based on the supply and demand that is present for gig jobs, as well as the algorithms used by an app platform to allocate work;
- 3) The app's firm has indirect control through ratings, bonuses and penalties, and online tracking;
- 4) Gig workers do not have job security or bargaining power
- 5) Most employment contracts are written such that they are one-sided and non-negotiable

While gig job companies describe their jobs as being flexible and entrepreneurial, the reality of both an independent contractor's experience is that many gig workers rely entirely on app platforms for income as opposed to having much autonomy with respect to assigning their own prices, receiving their own work, and determining their own performance standards. Algorithms ultimately determine when someone will see their work, when a job will be offered, when a worker will be eligible for bonuses, and if a worker will be deactivated from a platform. These work experiences for gig workers have developed without actually creating a legal relationship that is in any way associated with traditional employment.

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3. Id. § 2(35).

4. Id. § 2(61).

## **WHY ARE LABOUR PROTECTION MATTERS?**

The reason why there are labour protection laws is that, in many situations, workers do not have a level playing field when compared to their employers. This is the reason for the existence of labour laws for fair wages, safe working conditions, social security, collective bargaining, and protection from unfair dismissal.

The group of people significantly affected by any sort of lack of labour protection is gig workers. Platform workers have additional vulnerabilities in the area of working conditions. These are as follows:

### **NO SOCIAL SECURITY**

Most gig workers do not qualify for any sort of provident fund, pension plan, medical insurance or paid leave. Because of the lack of structure in the gig economy, their ability to earn an income is unpredictable and varies depending on different demand durations. Therefore, when they experience an accident, illness, or old age, they usually do not have the ability to access any institutional benefit.

### **ALGORITHMIC CONTROL**

Digital platforms monitor workers constantly through GPS tracking, customer ratings, and performance metrics. Algorithms influence work allocation and income generation. Yet workers usually have no transparency regarding how these systems operate.

### **UNILATERAL DEACTIVATION**

Platforms can suspend or deactivate worker accounts without prior notice or effective grievance mechanisms. Since access to the platform is often the worker's sole source of livelihood, deactivation functions similarly to termination of employment.

### **LONG WORKING HOURS**

Many delivery workers and ride hailing drivers work excessively long hours to meet incentive targets. Since they are treated as independent contractors, labour regulations concerning working hours and overtime generally do not apply.

### **LACKS OF COLLECTIVE BARGAINING**

Gig workers are fragmented and dispersed. Platforms discourage unionisation and maintain that workers are self employed individuals rather than employees. This weakens workers' ability to negotiate fair conditions collectively.

These issues demonstrate why labour protection remains central to the debate surrounding platform work.

### **TRADITIONAL LABOUR LAW AND THE PROBLEM OF CLASSIFICATION**

Indian labour law traditionally relies on the employer employee relationship. Courts historically used tests such as control and supervision, integration into business operations, and economic dependency to determine employment status.

However, gig economy companies strategically structure contracts to avoid employee classification. Workers are labelled “partners” or “independent contractors.” Agreements usually state that workers retain flexibility and are free to choose working hours. Companies argue that they merely provide technological platforms connecting service providers and consumers.

This approach allows platforms to escape obligations under laws relating to wages, industrial disputes, social security, and workplace safety.

The issue of how to classify gig workers is one that the courts have also been grappling with globally; across the globe and within many courts, there is ongoing uncertainty as to whether a gig worker will be classified as an employee, independent contractor or somewhere in the middle. This issue is complicated by the fact that platform work/contractor work (gig work)

contains aspects of both autonomy and dependency, which makes determining how to classify them difficult.

In many cases, however, gig platform workers exhibit forms of economic dependence on the gig platform provider, and receive significant amounts of control over their work activities (including the amount of work that they receive) through algorithmic processes and rating systems. Formal contractual language that is used to document the gig platform worker's work for the gig platform provider may often be designed to obfuscate this economic dependence.

## **INDIA'S LEGAL FRAMEWORK**

### **CODE ON SOCIAL SECURITY 2020**

As far as legislation goes in India, the most significant piece of legislation was passed was the Code on Social Security, 2020 which is the first piece of legislation in India to explicitly define gig workers or “platform workers”.<sup>5</sup> Under this law, the Indian Government has the power to promulgate social security programs; the social security programs that can be promulgated by the Indian Government under this Law include life and disability insurance, accidental insurance, healthcare benefits, maternity benefits, and older age protections and other welfare programs.<sup>6</sup>

The Code allows for the potential funding of the schemes via contributions from aggregators to the social security fund, with the amount ranging from 1 to 2 percent of an aggregator's annual turnover.<sup>7</sup>

While this is a significant first step in recognising that the state has an obligation to protect gig workers, this framework is very limited.

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5. Social Security Code 2020 as Amended by Code on Social Security Amendment Act 2022/2023, International Labour Organization Digital Labour Platform Tracker.
  6. Code on Social Security, No. 36 of 2020, § 114, India Code (2020).
  7. Ministry of Labour & Employment, Government of India, Implementation of Provisions for Gig and Platform Workers (Mar. 21, 2022).

Firstly, gig workers are not classified as employees under the Code so they do not have access to any core protections (minimum wage, industrial disputes and collective bargaining) typically given to employees.

Secondly, a large portion of the Code is dependent on the Government notifying their implementation of specific features; therefore, the delivery of the features has been delayed because of the time taken to develop the rules.<sup>8</sup>

Thirdly, although workers will receive limited amounts of social security under this code, they will be treated as welfare beneficiaries rather than as individuals with rights, as they do not have access to other core labour rights as well.

There have been efforts made by the Government to provide a framework to operationalise the Code. These include requiring aggregators to register workers for official portals during specific timeframes to assist with social security funding,<sup>9</sup> and proposals that require aggregators to contribute to the welfare fund and penalties for failing to do so.<sup>10</sup> However, implementation still remains inconsistent.

## **INITIATIVES AT THE STATES**

Numerous Indian states have tried to create independent regulations through their own legislation.

### **RAJASTHAN'S PLATFORM-BASED GIG WORKERS**

Rajasthan made history as the first Indian state to create a separate law for gig workers.<sup>11</sup> This Act created a welfare board, required registering gig workers, and developed a welfare fund financed through platform contributions.

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8. Ministry of Labour & Employment, Government of India, Implementation of Provisions for Gig and Platform Workers (Mar. 21, 2022).

9. Id.

10. Govt Mandates Aggregators to Register Gig Workers on Portal Within 45 Days, Economic Times, May 11, 2026.

11. Aggregators to Be Charged Interest at 12% per Annum if They Fail to Contribute Toward Social Security of Their Gig Workers, Economic Times, May 10, 2026.

This law is important because it establishes the need for institutionalized processes to address the specific needs of platform workers. It also establishes grievance redressal procedures and social security programs for platform-based workers.

However, the Act does not provide for the legal recognition of gig workers being treated as employees. Currently, the focus is on welfare as opposed to providing gig workers with their rights as workers.

### **KARNATAKA AND OTHER STATES**

Karnataka has put forth proposals for a welfare cess for aggregators to provide funds for the protection of gig workers; Jharkhand and Gujarat have also considered using similar welfare systems.<sup>12</sup>

These developments provide evidence that there is growing recognition of the problem at the political level. However, because of the varying state level laws/guidelines there may be quality inconsistencies across the jurisdictions.

### **JUDICIAL APPROACHES IN INDIA**

While Indian Courts have not yet ruled on the issue of whether gig workers are to be classified as employees, there exists a broader understanding of labour law to gain insight into this issue.

The courts have typically looked to substance over form in determining employment status. So it cannot be concluded that an individual is an independent contractor simply because that is how they are described by their platform.

If a platform exercises a significant degree of control over a worker's ability to earn as well as how the worker earns, courts may infer that there is an employment relationship.

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12. Platform Based Gig Workers (Registration and Welfare) Act 2023, International Labour Organization Digital Labour Platform Tracker

Lawsuits from workers within the gig economy are underdeveloped compared to jurisdictions like California or the United Kingdom, largely due to workers' lack of resources to pursue lengthy legal battles against large corporations. This is further exacerbated by the absence of statutory definitions or standards that apply to work performed on platforms.

Thus, there remains a great deal of uncertainty around gig workers and their legal classifications.

## **COMPARATIVE INTERNATIONAL APPROACHES**

### **UNITED KINGDOM**

The United Kingdom has taken a more worker-friendly approach than India; in *Uber BV v. Aslam*, the United Kingdom Supreme Court found that Uber drivers were "workers" under the British system of law<sup>13</sup>. The Court noted that Uber exercises a significant degree of control over drivers through uniform pricing systems, platforms' contractual terms, and driver's performance monitoring systems.

This determination allowed Uber drivers to benefit from the rights associated with minimum wage protection, paid leave, and protection related to hours worked.

### **EUROPEAN UNION**

The European Union has moved toward stronger regulation of platform work. Proposed directives create presumptions of employment when platforms exercise control over workers.<sup>14</sup>This shifts the burden onto companies to prove genuine self employment.

The EU approach recognises that algorithmic management can create employment like dependency even without traditional supervision.

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13. *Uber BV v. Aslam*, [2021] UKSC 5.

14. European Commission, Proposal for a Directive on Improving Working Conditions in Platform Work, COM (2021) 762 final.

## **CALIFORNIA**

California has put in place Assembly Bill 5 which has established that many gig workers will be classified as employees using the "ABC test". Subsequently, however, companies like Uber and Lyft were able to successfully advocate for Proposition 22 creating a new independent classification for them, providing very limited protections compared to traditional employees.<sup>15</sup>

This serves as an example of how political and economic strength of platform companies is creating their own labour regulation.

## **ARE PLATFORM WORKERS STILL OUTSIDE OF LABOUR PROTECTION?**

For the most part, yes.

India has progressed in that it has legally established gig workers and platform workers but they continue to be treated by the basic framework of the labour code as outside of it.

## **RECOGNITION WITHOUT FULL RIGHTS**

The Code on Social Security acknowledges gig workers but does not provide full employment rights. Recognition alone does not ensure substantive protection.

## **LABOUR JUSTICE V. WELFARE**

Current labour law frameworks are more concentrated on providing a welfare scheme than protecting structural labour rights. There is a huge difference between receiving limited insurance coverage and having enforceable rights with regards to wages, collective bargaining and protection from dismissal.

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15. Veena Dubal, *The Drive to Precarity: A Political History of Work, Regulation, and Labor Advocacy in San Francisco's Taxi and Uber Economies*, 38 *Berkeley J. Emp. & Lab. L.* 73 (2017)

### **WEAK ENFORCEMENT OF LABOUR LAWS**

Although there are existing legal protections, enforcement of these protections is weak. The problem of weak enforcement of labour laws in India has existed long before the rise of the gig economy; gig workers are now faced with even more problems because digital platforms are operating across multiple jurisdictions and creating new ways of working at a pace that is difficult to monitor or regulate globally.

### **ALGORITHMIC EXPLOITATION OF GIG WORKERS**

Historically, laws regulating labour in India were predominantly designed for large industrial workplaces and did not take into consideration the advent of algorithm-based management systems, therefore, these laws do not address important issues related to gig workers, such as automated surveillance by employers; opacity of rating systems and algorithms used to evaluate performance; and algorithmic discrimination.

### **ECONOMIC DEPENDENCY OF GIG WORKERS ON PLATFORMS**

Although many gig workers would argue they are economically dependent on the digital platforms on which they work; and despite their claims to have the flexibility to set their own schedules; the legal system treats them as independent contractors; despite the fact that gig workers are typically vulnerable employees who need specific protections.

### **NEED FOR REFORM**

To achieve meaningful reform, we must go past latching onto the symbolic recognition of labour rights to make them a reality in substantive form.

### **THE PRESUMPTION OF EMPLOYMENT**

The country of India should consider the IGF (Indian Government Federation) creating a rebuttable presumption of employment for gig workers employed by platforms who have a substantial amount of control. This would stop companies launder their labour obligations simply through using the contract to shield/limit obligations.

### **UNIVERSAL SOCIAL SECURITY**

Gig workers need to have access to universal social security protection independent from their formal classification as an employee. Health insurance, accident compensation, maternity, and pension benefits should not only be dependent on whether employee status is assigned.

### **TRANSPARENCY IN ALGORITHMIC MANAGEMENT**

Platforms should have a legal duty to disclose how their algorithms determine the allocation of tasks to workers, create incentives for the completion of tasks, and assess penalties for being late on the completion of tasks. Gig workers should have access to fair grievance procedures and be able to dispute automated decisions made by the platforms.

### **COLLECTIVE BARGAINING RIGHTS**

Gig workers must possess the right to join together to negotiate their terms of employment without fear of retaliation from or deactivation by their employers.

### **MINIMUM STANDARDS**

Regardless of the fact that gig workers will remain self-employed, there should be legislation that provides minimum standards related to gig workers' compensation, working hours, and occupational safety.

### **CONCLUSION**

The rise of the gig economy has uncovered major fractures in the traditional model of labour law as digital gig platforms have relied upon gig workers without taking any employer responsibility. This creates a situation where gig workers hold the economic risk but have no legal recourse to protect themselves.

India has made significant strides through the Code of Social Security, 2020 and developing state-level legislation. These laws have begun to recognise that gig workers cannot continue to have their existence ignored within the workforce. However, recognition without legally protected rights is insufficient.

Insecure earnings, domination by algorithms, lengthy or indefinite working time, unilateral termination from work sites, and no collective bargaining rights are characteristic of platform workers. Furthermore, platform workers are usually excluded from the labour law framework which provides historical protections to workers.

The main question is no longer whether gig workers should have protection but if the legal / regulatory structure of Labour legislation can keep pace with the need to regulate digital capitalism without allowing tech companies the means to later redefine gig workers as disposable forever.

If there is no substantial change to create stronger protections for gig workers, they will continue to be under-protected, economically dependent and without a legal framework despite being critical to our global economy.