

Gig workers in India- A legal perspective.

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1. Introduction.

In recent years, India has seen a rapid rise in the gig economy, driven by digital platforms, widespread smartphone use, and the growing demand for flexible, on-demand services. Apps like Ola, Uber, Swiggy, Zomato, Urban Company, and various freelance websites have changed how services are delivered in urban areas, from food delivery and transportation to household repairs and online freelancing.

The people powering these platforms are gig workers, individuals who take up short-term, task-based jobs through digital apps rather than working in traditional, long-term employment. Understanding who these workers are and how they fit into today's workforce is essential as they now play a key role in India's urban economy.

Despite their importance, many of these workers face significant challenges. They often work without job security, health insurance, paid leave, or regular wages. Since they are not classified as formal employees, they are usually left out of important labour protections. As a result, gig workers frequently deal with low and unpredictable incomes, long hours, and lack of support in times of illness or injury.

Although there have been efforts to improve their situation, such as new labour codes and social security schemes, the legal and policy framework remains unclear and incomplete. Many workers are still excluded from basic rights such as fair pay, workplace dignity, and protection from exploitation.

As India moves toward a more digital and formal economy, it becomes increasingly important to understand who gig workers are, what problems they face, and whether current laws and policies are enough to protect them and ensure their rights. Hence, in view of this the researcher poses the following research questions.

1.1 Research questions.

1. Who are GIG workers.
2. What are the challenges faced by such workers?
3. What are the laws and policies for their protection?

To collect data for this research work the researcher is going to use the following methodology.

1.2 Research Methodology

This study adopts a doctrinal research methodology, which involves a systematic examination of legal principles, statutes, judicial decisions, and academic commentary relating to gig workers and their constitutional rights in India.

2. Who are Gig Workers?

Gig workers are individuals who engage in income-earning activities outside of the traditional employer-employee relationship, often through short-term, task-based, or freelance arrangements. The Code on Social Security, 2020 was the first Indian legislation to define gig workers legally, describing them as those who perform work “outside the traditional employer-employee relationship.” This broad category includes platform-based delivery workers for services like Swiggy and Zomato, drivers associated with ride-hailing apps such as Ola and Uber, freelance professionals offering digital services, and domestic or on-demand service providers connected via platforms like Urban Company. While these workers enable seamless services in India's urban economy, they are usually designated as “independent contractors” by the platforms they work for. This classification exempts companies from offering employee benefits such as fixed wages, insurance, health care, and legal protections. As a result, gig workers remain in a precarious position, highly dependent on platforms for their livelihood, yet largely invisible in the eyes of the law when it comes to rights and entitlements.

3. Fundamental Rights Under the Indian Constitution – An Overview

The Constitution of India provides a robust framework of Fundamental Rights that apply to all individuals, regardless of their job status. These rights, enshrined in Part III of the Constitution, are intended to protect human dignity, equality, and freedom, values that are particularly crucial in the context of gig work, where power asymmetries between platforms and workers are stark. Article 14, which guarantees *equality before the law* and *equal protection of the laws*, is relevant where gig workers face arbitrary deactivations, biased algorithmic decisions, or differential treatment without accountability. Article 15, which prohibits discrimination on various grounds, becomes significant in instances where platform practices indirectly exclude workers based on gender, caste, or location, such as biased customer rating systems or unsafe work conditions disproportionately affecting women.

Article 16, though it speaks of equality in public employment, reflects a broader constitutional principle that all citizens should have equitable access to livelihood opportunities. Article 19(1)(c) guarantees the *freedom to form associations and unions*, yet gig workers face numerous challenges in organising themselves, partly due to their categorisation as non-employees. Platforms often resist collective bargaining, and without legal recognition, gig worker unions lack negotiating power. Article 21, which assures the *right to life and personal liberty*, has been interpreted by courts to include the right to livelihood, dignity, health, and safe working conditions. Given the long working hours, absence of health insurance, and the risk of accidents, particularly for delivery and transport workers, gig workers' lived realities often contradict this constitutional promise.

Another crucial provision is Article 23, which prohibits *forced labour*. Though gig work is not forced in the traditional sense, many gig workers are economically coerced to work in exploitative conditions due to lack of alternatives, low earnings, and algorithmic penalties for refusal or non-performance. In such contexts, the line between voluntary work and compulsion begins to blur. While not justiciable in court, Article 39(a) of the Directive Principles of State Policy directs the State to ensure that all citizens have the right to an adequate means of livelihood. This principle underscores the constitutional obligation of the State to address the vulnerabilities of the gig workforce through both policy and legal reforms.

Together, these rights and principles form a constitutional foundation that can and should be extended to India's gig workers. While the law has begun to recognise them through the Code on Social Security, the broader and deeper protection offered by fundamental rights remains an unfulfilled promise. As the nature of work evolves, so must our understanding of who the Constitution protects, and how.

4. Existing Legal and Regulatory Framework

National-Level Legislation

India took a significant step toward formalising the status of gig and platform workers with the introduction of The Code on Social Security, 2020. This is the first central legislation to explicitly recognise gig and platform workers as distinct categories under labour law. Chapter IX of the Code empowers the central government to frame welfare schemes specifically for these workers. Under Section 114, the government may create schemes providing benefits such as life and disability insurance, accident insurance, health and maternity coverage, old-age protection, crèche facilities, and other social security measures. This legal recognition is a crucial first move in acknowledging that gig workers, though outside traditional employment structures, are an integral part of India's labour force and require targeted protections.

However, the Code still falls short in several important respects. It does not equate gig workers with formal employees for the purpose of essential entitlements such as minimum wages, gratuity, provident fund (PF), or Employees' State Insurance (ESI). This is largely because many of these benefits are rooted in laws that require a clear employer–employee relationship, such as the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Gig workers, often labelled as “independent contractors,” do not fit within this traditional framework and are therefore excluded from many of these protections. This legal ambiguity continues to leave them vulnerable to exploitation, with limited recourse to labour courts or industrial tribunals.

State-Level Developments and Recent Initiatives Recognising the limitations of central labour legislation in adequately addressing the unique vulnerabilities of gig workers, certain Indian states have taken pioneering steps to introduce dedicated legal frameworks. Most notably, The Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023 represents a landmark effort in this direction. Under Section 2(k), the Act formally defines *platform-based gig workers*, thereby establishing a legal identity for a previously unrecognised category of labour. Section 4 provides for the constitution of the *Rajasthan Platform-Based Gig Workers Welfare Board*, tasked with administering welfare measures and overseeing worker entitlements.

A key feature of the Act is the imposition of a welfare cess on platform aggregators, ranging from 1% to 2% of the aggregator's annual turnover in the state, as stipulated under Section 8. The proceeds from this cess are directed to a dedicated *Welfare Fund* (Section 9), which will finance social security and other benefits. In addition, Sections 10 and 11 mandate the registration of both platform companies and individual gig workers, while Section 13 lays out a time-bound grievance redressal mechanism. The Act also introduces provisions for payment tracking and data mapping (Section 14), aimed at enhancing transparency and accountability within the platform economy.

Karnataka has followed suit with policy proposals and draft ordinances aimed at establishing its own *Gig Workers Welfare Board* and levying a similar cess on platform transactions. While Karnataka's legislative initiative is still in preliminary stages and not yet codified into law, it signals a broader state-led momentum toward regulating platform-based labour. These decentralised approaches mark a significant shift toward state-level experimentation in labour governance, allowing regional governments to tailor protections according to local workforce demographics and industry dynamics. Collectively, such efforts underscore an emerging consensus that the gig economy requires a robust regulatory framework to ensure fairness, transparency, and basic social protection for workers.

5. Key Rights and Benefits Available (or Proposed) for Gig Workers

Based on the Social Security Code and emerging state laws, a number of rights and benefits have been proposed or partially implemented for gig and platform workers:

- **Legal Recognition and Registration:** Gig workers are now recognised as a separate labour category, allowing them to be included in targeted welfare schemes. For example, under the Rajasthan Act, workers must be registered with the Gig Worker Welfare Board, which is a prerequisite for accessing benefits.
- **Social Security Coverage:** The Code provides for coverage under schemes related to accident insurance, disability support, health and maternity benefits, and old-age protection. These benefits aim to create a basic safety net similar to what is available for formal-sector employees.
- **Welfare Funds and Platform Contributions:** State-level laws like Rajasthan's have introduced mandatory platform contributions, such as a cess or levy on platform revenues, to fund welfare initiatives. This model helps shift part of the financial burden to the companies profiting from gig labour.
- **Grievance Redressal Mechanisms and Transparency:** Some laws propose a time-bound system for resolving worker grievances and improving platform transparency, including the tracking of payment histories, work assignments, and algorithmic decisions that affect income.
- **Flexibility with Protection:** One of the core attractions of gig work is flexibility in choosing work hours and assignments. However, legal frameworks now attempt to balance this flexibility with protection, ensuring that it does not come at the cost of worker safety, security, or fairness.

6. Major Gaps and Challenges.

Despite these advances, several critical gaps remain in the legal and regulatory landscape for gig workers in India:

- **Ambiguity Around Employment Status:** One of the most persistent issues is the unclear employment status of gig workers. While platforms treat them as independent contractors, in practice they are subject to high degrees of control, such as through app algorithms, deactivation risks, and disciplinary policies. This "dual standard" denies them the benefits of employees while still holding them accountable as if they were.
- **Lack of Core Labour Rights:** Fundamental protections such as minimum wages, paid leave, provident fund, gratuity, and job security are not guaranteed for gig workers. These are basic entitlements for formal employees but remain optional or unavailable under current legal frameworks for gig workers.
- **Implementation and Enforcement Gaps:** While the Code on Social Security is enacted, the detailed rules and schemes required to operationalise its promises are still pending. Similarly, state laws, even when passed, often face delays in implementation, weak institutional support, and lack of clarity on how benefits will be delivered.
- **Lack of Transparency in Algorithmic Management:** Gig workers are increasingly subject to algorithmic systems that determine their task assignments, earnings, ratings, and even terminations. These automated decisions often lack transparency and offer no meaningful opportunity for appeal, leaving workers in a state of uncertainty and disempowerment.
- **Occupational Health and Safety (OHS):** Gig workers, particularly those involved in delivery or transport, frequently operate in unsafe environments, whether due to traffic, long working hours, or poor weather. Traditional OHS laws often don't apply to them, and there is no clear mechanism to ensure safe working conditions.
- **Barriers to Collective Bargaining and Unionisation:** Legal frameworks remain silent or weak on the right of gig workers to unionise or engage in collective bargaining. Without these rights, gig workers have limited power to negotiate better conditions or resist exploitative practices.
- **Inter-State Variation and Inequity:** As different states pursue their own legislative approaches, gig workers' rights may vary significantly depending on location. Some states have advanced laws and welfare boards; others have no protections at all, creating unequal access to rights and benefits.
- **Low Awareness and Coverage:** A large proportion of gig workers are unregistered and unaware of their legal rights or available schemes. Many also fall outside the scope of welfare boards due to lack of documentation, mobile nature of work, or exclusion by platforms themselves.

While India has made important initial strides in recognising and supporting gig workers, there remains a long road ahead in translating this recognition into real, enforceable rights. The existing legal framework, though evolving, continues to lag behind the realities of platform-based work. Bridging these gaps requires not only stronger laws and better implementation, but also a constitutional reimagining of who deserves protection and dignity in the world of work. Gig workers, as vital participants in India's economy, must

not be left in a legal limbo, they deserve nothing less than full recognition of their status, rights, and humanity.

7. Judicial Perspectives and Case Law

The Indian judiciary has played a pivotal role in expanding the scope of fundamental rights to protect vulnerable and informal workers, although its engagement with gig work specifically remains nascent. In the landmark case *People's Union for Democratic Rights v. Union of India* (1982), the Supreme Court broadened the interpretation of Article 23 by holding that any labour extracted without proper remuneration, even when consented to due to economic compulsion, constitutes *forced labour*. This case laid the foundation for recognising economic coercion as a form of constitutional violation, a concept highly relevant for gig workers who often work under exploitative conditions without guaranteed income or protection.

Another seminal decision came in *Olga Tellis v. Bombay Municipal Corporation* (1985), where the Supreme Court recognised the right to livelihood as an integral part of the right to life under Article 21. The court emphasised that the denial of livelihood amounts to the denial of life itself, reinforcing the idea that economic rights are central to human dignity. This precedent is particularly pertinent for gig workers who face sudden “deactivation” by platforms, often without any due process or explanation, effectively stripping them of their sole source of income.

In more recent years, gig worker organisations have turned to the judiciary to seek enforcement of their rights. Notably, the Indian Federation of App-based Transport Workers (IFAT) has filed public interest litigations (PILs) before the Supreme Court demanding inclusion of gig workers under social security schemes and labour protections. These cases, while still pending or in preliminary stages, signal a growing reliance on the judiciary to bridge the protection gap created by outdated or inadequate legislation. However, despite these positive signals, the judiciary has yet to fully extend constitutional protections to gig workers in the manner it has for other informal sectors. Judicial recognition of the constitutional status of gig workers remains an evolving frontier, requiring stronger, more direct engagement from the higher courts.

8. International Standards and Comparisons

India is not alone in grappling with the legal implications of platform-based work. In *Uber BV v. Aslam* (2021), the UK Supreme Court ruled that Uber drivers are not independent contractors but “workers”, entitling them to statutory rights such as minimum wage, paid holidays, and rest breaks. The court noted that the level of control exercised by the platform over workers indicated a *subordinate relationship*, rejecting the fiction of autonomy.

Similarly, the European Union is in the process of finalising its Platform Work Directive, which will set minimum standards for working conditions in the gig economy. Among other things, it aims to ensure that platform workers have transparent contracts, are protected against unfair algorithmic decisions, and have the right to collective representation.

These developments highlight a growing international consensus that gig work is still work, and workers, regardless of contractual form, deserve rights. India can draw upon these global models to develop a framework that not only reflects the constitutional values of equality and dignity but also aligns with international labour and human rights standards.

9. Recommendations for Ensuring Fundamental Rights of Gig Workers

To bridge the gap between recognition and enforcement, India must adopt a rights-based approach to gig work. Key recommendations include:

- **Legislative Clarity:** Amend national labour laws to clearly define gig workers as a protected category, ensuring they receive rights at par with other workers.
- **Recognition Under Article 21:** The right to livelihood, dignity, and workplace safety should be explicitly extended to gig workers under the ambit of Article 21, ensuring judicial recourse against unjust platform practices.
- **Algorithmic Accountability:** Introduce legal requirements for transparency in platform algorithms that affect task assignment, pay, and deactivation, including a right to explanation and appeal.
- **Unionisation and Collective Bargaining:** Recognise gig worker organisations under Article 19(1)(c), and require platforms to engage in collective bargaining processes where legitimate unions or associations exist.
- **Minimum Wage Protection:** Enforce minimum earnings standards for gig work under Article 23, especially in cases where economic coercion forces workers to accept substandard pay.
- **Judicial Intervention:** The Supreme Court should consider issuing guidelines recognising gig workers' constitutional protections, drawing from past precedents that expanded rights for informal and unorganised workers.

10. Conclusion

Gig workers in India are not just economic agents enabling the convenience of the urban middle class; they are citizens with rights, and the Constitution of India applies to them no less than to any other worker. The country's digital economy has been built on their labour, yet their legal invisibility persists. The Constitution, through its guarantee of fundamental rights to all persons, provides the moral and legal foundation for recognising their entitlements to equality, dignity, livelihood, and justice.

India now stands at a critical crossroads. One path leads to greater informalisation and insecurity, where the gig economy operates outside constitutional norms. The other leads toward a just and inclusive future of work, where innovation is matched by accountability, and flexibility is balanced by fairness. The choice lies not only with lawmakers and judges, but with the collective will of society to uphold the values of the Constitution in a rapidly changing world of work.

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