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GIG ECONOMY AND LABOUR LAW IN INDIA: CHALLENGES AND LEGAL PROTECTION

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ABSTRACT

The emergence of the gig economy has fundamentally altered the traditional contours of employment, giving rise to a new class of workers engaged through digital platforms such as Uber, Swiggy, and Zomato. In India, this model of work has expanded rapidly, driven by technological advancements, changing consumer preferences, and the demand for flexible labour arrangements. While the gig economy offers opportunities for income generation, autonomy, and labour market inclusivity, it simultaneously challenges the existing legal framework governing labour and employment relations.

This research paper seeks to critically examine the evolving nature of gig work in India, with particular emphasis on the legal status of gig workers and the adequacy of labour law protections available to them. A central issue addressed in this study is the classification of gig workers as independent contractors rather than employees, which effectively excludes them from key labour rights such as minimum wages, social security benefits, and protection against unfair termination. The paper further analyses the provisions of the Code on Social Security, 2020, which represents a significant legislative attempt to extend certain benefits to gig and platform workers, while also highlighting its limitations in ensuring comprehensive protection. In addition, the study explores the multifaceted challenges faced by gig workers, including economic insecurity, absence of collective bargaining rights, and the increasing role of algorithmic management in regulating work conditions. Through a comparative analysis of legal developments in jurisdictions such as the United Kingdom and the United States, the paper identifies best practices and regulatory approaches that may inform Indian policy.

The research concludes that although India has taken initial steps towards recognizing gig workers within its legal framework, the current regime remains fragmented and insufficient. It emphasizes the need for a balanced and progressive legal approach that reconciles flexibility

with fairness, ensuring dignity, security, and equitable treatment for gig workers in the digital economy.

INTRODUCTION

The twenty-first century has witnessed a paradigm shift in the nature and organization of work, primarily driven by rapid technological innovation, digitalization, and the globalization of economic activities. Traditional models of employment, characterized by long-term, stable, and hierarchical relationships between employers and employees, are increasingly being replaced by more flexible, decentralized, and technology-driven arrangements. One of the most prominent manifestations of this transformation is the emergence and expansion of the gig economy, which has redefined labour relations and challenged the foundational assumptions of labour and employment law.¹

The gig economy, often referred to as the “on-demand economy” or “platform economy,” is characterized by the prevalence of short-term, task-based engagements facilitated through digital platforms. These platforms act as intermediaries connecting service providers with consumers, thereby enabling a wide range of services, including transportation, food delivery, logistics, and freelance professional work. In India, the rapid proliferation of smartphones, affordable internet access, and digital payment systems has accelerated the growth of this model, leading to the widespread adoption of platform-based services offered by companies such as Uber, Swiggy, and Zomato.² These platforms rely on a large and dynamic workforce of gig workers who perform services on a per-task basis, often without any formal employment contract.

At its core, the gig economy represents a departure from the conventional employer–employee relationship, giving rise to a new category of workers who operate in a legal and regulatory grey area. Unlike traditional employees, gig workers are typically classified as independent contractors, which allows platform companies to avoid the legal obligations associated with employment, including the payment of minimum wages, provision of social security benefits, and adherence to labour welfare standards.³ This classification has significant legal implications, as it effectively excludes gig workers from the protective ambit of most labour legislations in India, which are premised on the existence of a clear employer–employee relationship.

The distinction between employees and independent contractors has long been a central issue in labour law, with courts and legislatures across jurisdictions developing various tests—such as the control test, integration test, and economic dependency test—to determine the nature of the relationship.⁴ However, the gig economy has blurred these distinctions, as platform companies exercise a considerable degree of control over workers through algorithmic management systems, while simultaneously denying the existence of an employment relationship. For instance, digital platforms determine pricing, allocate tasks, monitor performance through ratings and reviews, and may even deactivate workers' accounts based on predefined criteria.⁵ Despite this level of control, gig workers are denied the rights and protections typically associated with employment, thereby creating a regulatory paradox.

In the Indian context, the inadequacy of the existing labour law framework in addressing the realities of gig work has become increasingly evident. Historically, Indian labour laws have been fragmented and sector-specific, focusing primarily on the formal sector while leaving a significant portion of the workforce in the informal economy without adequate protection.⁶ The rise of the gig economy has further exacerbated this issue, as gig workers often fall outside the scope of traditional definitions of “workman” or “employee” under various statutes. Consequently, they are deprived of essential benefits such as job security, minimum wage guarantees, health insurance, maternity benefits, and protection against arbitrary termination. In response to these challenges, the Indian government undertook a comprehensive reform of labour laws, culminating in the enactment of four labour codes, including the Code on Social Security, 2020.⁷ Significantly, this Code represents the first legislative attempt in India to formally recognize gig workers and platform workers as distinct categories within the labour law framework. It envisages the formulation of social security schemes for such workers, funded through contributions from the government, aggregators, and workers themselves. However, the provisions relating to gig workers remain largely enabling in nature and lack enforceable rights, thereby raising concerns about their practical effectiveness.⁸

Furthermore, the gig economy raises critical issues relating to fairness, equity, and the future of work in a rapidly digitalizing society. One of the most pressing concerns is the precarious nature of gig work, which is characterized by income instability, absence of long-term security, and lack of bargaining power.⁹ Gig workers are often subject to fluctuating demand, dynamic pricing mechanisms, and performance-based incentives, which can result in unpredictable and inadequate earnings. Additionally, the absence of collective representation mechanisms limits

their ability to negotiate better terms and conditions of work, thereby reinforcing their vulnerability.

Another significant dimension of the gig economy is the increasing reliance on algorithmic management, wherein digital platforms use automated systems to control and regulate the work process. This includes the allocation of tasks, determination of remuneration, monitoring of performance, and imposition of penalties. While such systems enhance efficiency, they also raise concerns regarding transparency, accountability, and fairness.¹⁰ Gig workers often have limited understanding of how these algorithms operate and may face arbitrary decisions, such as sudden deactivation from platforms, without access to effective grievance redressal mechanisms.

At the same time, the gig economy offers certain advantages, particularly in a country like India with a large and diverse workforce. It provides opportunities for flexible work arrangements, enables individuals to supplement their income, and facilitates the integration of marginalized groups into the labour market.¹¹ However, this flexibility must not come at the cost of basic labour protections and human dignity.

In this context, comparative legal developments in jurisdictions such as the United Kingdom and the United States provide valuable insights into the regulation of gig work. Courts and legislatures in these countries have increasingly recognized the need to extend certain protections to gig workers, thereby challenging the traditional binary classification of employment.¹²

Against this backdrop, the present research paper seeks to undertake a comprehensive analysis of the legal status of gig workers in India and the adequacy of the existing labour law framework in addressing their needs. It aims to analyse the challenges faced by gig workers, evaluate the effectiveness of recent legislative initiatives, and propose recommendations for a more inclusive and equitable legal framework. Ultimately, the regulation of the gig economy presents a complex challenge that requires a careful balancing of flexibility and protection, ensuring that economic progress is aligned with principles of social justice and fair labour standards.

CONCEPT AND EVOLUTION OF GIG ECONOMY

The concept of the gig economy is rooted in the idea of short-term, flexible work arrangements where individuals engage in temporary or freelance jobs, often facilitated through digital platforms. The term “gig” originally emerged from the music industry, where artists were hired for single performances rather than long-term engagements. Over time, this concept has expanded into a broader economic framework encompassing various forms of contingent work, including freelancing, independent contracting, and platform-based employment.¹³

In contemporary times, the gig economy has evolved into a significant segment of the global labour market, largely driven by advancements in information and communication technology. Digital platforms have played a pivotal role in this transformation by acting as intermediaries that connect service providers with consumers in real time. These platforms utilize sophisticated algorithms to match demand with supply, thereby enabling efficient allocation of tasks and resources. Companies such as Uber, Swiggy, and Zomato exemplify this model, where workers perform discrete tasks or “gigs” without entering into traditional employment relationships.¹⁴

The evolution of the gig economy can be traced through multiple phases. In its early stage, gig work primarily consisted of informal and unregulated activities, often limited to sectors such as construction, domestic work, and small-scale services. However, with the advent of the internet and digital platforms in the late twentieth and early twenty-first centuries, gig work underwent a structural transformation. The introduction of smartphones, mobile applications, and digital payment systems further accelerated this shift, making it easier for individuals to access work opportunities and for businesses to outsource tasks on a flexible basis.¹⁵

A key feature of the modern gig economy is the emergence of platform-based work, which differs significantly from traditional forms of employment. In this model, platform companies do not directly employ workers but instead classify them as independent contractors who provide services to customers through the platform. This arrangement allows companies to maintain operational flexibility while minimizing legal and financial obligations associated with employment. However, it also raises important questions regarding the nature of control exercised by platforms and the extent to which gig workers can be considered truly independent.¹⁶

The distinction between traditional employment and gig work is particularly significant in understanding the evolution of labour relations. In a conventional employment relationship, the employer exercises direct control over the employee, including supervision, working hours, and conditions of work, and is obligated to provide statutory benefits such as wages, social security, and workplace protections. In contrast, gig workers operate in a decentralized and digitally mediated environment, where control is exercised indirectly through algorithms, performance ratings, and contractual terms.¹⁷ This shift from direct supervision to algorithmic management represents a fundamental change in the nature of work and has significant implications for labour law.

In India, the growth of the gig economy has been remarkable, driven by demographic factors, economic conditions, and technological adoption. With a large and youthful workforce, coupled with increasing urbanization and demand for convenience-based services, India has become one of the fastest-growing markets for gig and platform-based work. According to recent estimates, millions of workers are engaged in gig work across sectors such as transportation, food delivery, logistics, and freelance services.¹⁸ This rapid expansion has not only contributed to economic growth but has also provided employment opportunities to individuals who may otherwise find it difficult to secure formal employment.

Despite these advantages, the evolution of the gig economy has exposed significant gaps in the existing legal framework. Traditional labour laws were designed to address standard employment relationships and are often ill-equipped to deal with the complexities of gig work. As a result, gig workers remain largely excluded from legal protections, leading to concerns regarding job security, fair wages, and access to social security benefits.¹⁹ The classification of gig workers as independent contractors further complicates the issue, as it places them outside the scope of most labour welfare legislations.

Recognizing the growing importance of the gig economy, policymakers in India have begun to acknowledge the need for regulatory intervention. The enactment of the Code on Social Security, 2020 marks a significant step in this direction, as it formally recognizes gig and platform workers and provides for the formulation of social security schemes.²⁰ However, the effectiveness of these measures remains a subject of debate, particularly in light of the challenges associated with implementation and enforcement.

From a global perspective, the evolution of the gig economy has prompted diverse regulatory responses. Countries such as the United Kingdom have recognized an intermediate category of workers entitled to certain protections, while others have adopted stricter approaches to worker classification. These developments highlight the need for a balanced and context-specific approach to regulating gig work, taking into account both the benefits of flexibility and the necessity of protecting workers' rights.²¹

LEGAL STATUS OF GIG WORKERS IN INDIA

The legal status of gig workers in India remains one of the most contentious and unresolved issues within the framework of labour and employment law. At the heart of this debate lies the fundamental question of classification—whether gig workers should be treated as “employees” entitled to statutory protections or as “independent contractors” governed primarily by contractual arrangements. This distinction is crucial, as it determines the applicability of labour laws and the extent of rights and benefits available to workers engaged in the gig economy.²²

Traditionally, Indian labour law has been structured around the binary classification of workers as either employees or independent contractors. Employees are entitled to a wide range of statutory protections, including minimum wages, social security benefits, and protection against unfair dismissal, whereas independent contractors are largely excluded from such protections.²³ Gig workers, however, do not fit neatly into either category, thereby creating a legal grey area that existing laws struggle to address.

Platform companies typically classify gig workers as independent contractors, emphasizing the flexibility and autonomy associated with gig work. Workers are generally free to choose their working hours, accept or reject tasks, and work for multiple platforms simultaneously. On the surface, these characteristics suggest a lack of control by the employer, which is a key factor in determining the existence of an employment relationship.²⁴ However, a closer examination reveals that platform companies exercise significant control over various aspects of work through digital and algorithmic means.

The traditional tests used to determine the nature of employment relationships—such as the “control test,” “integration test,” and “economic dependency test”—offer valuable insights in this context. The control test examines the degree of supervision exercised by the employer

over the worker, while the integration test assesses whether the worker is an integral part of the organization. The economic dependency test focuses on whether the worker is financially dependent on the employer.²⁵ Applying these tests to gig workers often yields mixed results. While gig workers may appear independent in terms of flexibility, they are frequently subject to indirect control through algorithmic systems that determine task allocation, pricing, and performance evaluation.

For instance, companies such as Uber, Swiggy, and Zomato use sophisticated algorithms to assign tasks, monitor worker performance through customer ratings, and impose penalties or deactivate accounts based on predefined criteria.²⁶ This form of “algorithmic control” raises serious questions about the purported independence of gig workers and suggests that the relationship may, in substance, resemble that of employment rather than independent contracting.

Indian courts have historically adopted a pragmatic approach in determining the existence of an employer–employee relationship, focusing on the substance of the relationship rather than its formal classification. In *Dharangadhara Chemical Works Ltd. v. State of Saurashtra*, the Supreme Court emphasized the importance of control and supervision in establishing an employment relationship.²⁷ Similarly, in *Bangalore Water Supply and Sewerage Board v. A. Rajappa*, the Court adopted a broad interpretation of the term “industry,” thereby extending labour law protections to a wider category of workers.²⁸ However, these judicial principles have yet to be comprehensively applied to gig workers in India, leaving their legal status largely uncertain.

Recognizing the limitations of the existing legal framework, the Indian legislature has attempted to address the issue through the enactment of the Code on Social Security, 2020. The Code introduces, for the first time, statutory definitions of “gig worker” and “platform worker,” thereby acknowledging their distinct status within the labour market.²⁹ It also provides for the formulation of social security schemes for such workers, including benefits related to life and disability cover, health and maternity benefits, and old-age protection.

Despite these developments, the Code does not alter the fundamental classification of gig workers as independent contractors. Instead, it creates a separate category that exists outside the traditional employer–employee framework. While this approach represents a step forward

in recognizing the unique nature of gig work, it has been criticized for failing to provide comprehensive and enforceable rights. The provisions relating to gig workers are largely discretionary, leaving their implementation dependent on government notifications and policy measures.³⁰

Another critical issue in determining the legal status of gig workers is the role of contractual agreements between platforms and workers. These agreements typically include terms that explicitly deny the existence of an employment relationship and limit the liability of the platform. However, it is well established in law that the substance of a relationship prevails over its form, and courts may disregard contractual terms if they do not reflect the वास्तविक nature of the arrangement.³¹ This principle is particularly relevant in the context of gig work, where the imbalance of bargaining power often compels workers to accept unfavorable terms. From a comparative perspective, several jurisdictions have begun to move beyond the traditional binary classification of workers. For example, in the United Kingdom, courts have recognized an intermediate category of “workers” who are entitled to certain employment rights, even if they are not classified as full employees. The landmark decision in *Uber BV v. Aslam* held that Uber drivers are “workers” entitled to minimum wage and other protections, thereby challenging the classification of gig workers as independent contractors.³² Such developments underscore the need for a more nuanced and flexible approach to worker classification in India.

APPLICABILITY OF LABOUR LAWS TO GIG WORKERS IN INDIA

The applicability of labour laws to gig workers in India remains a complex and evolving issue, primarily due to the unique nature of gig work and the traditional structure of labour legislation. Indian labour laws have historically been designed to regulate standard employment relationships characterized by clear employer–employee dynamics. However, gig workers, who operate as independent contractors within platform-based ecosystems, often fall outside the scope of these laws, resulting in significant gaps in legal protection.³³

Most existing labour legislations in India—including laws relating to wages, industrial relations, and social security—are predicated on the existence of a formal employment relationship. For instance, statutes such as the Minimum Wages Act, 1948 and the Industrial Disputes Act, 1947 extend protections only to individuals who qualify as “employees” or

“workmen.”³⁴ Since gig workers are typically classified as independent contractors by platform companies such as Uber, Swiggy, and Zomato, they are effectively excluded from the ambit of these protections.

One of the key consequences of this exclusion is the denial of minimum wage protection to gig workers. Unlike traditional employees, gig workers are paid on a per-task basis, with their earnings determined by factors such as demand, distance, time, and customer ratings. This payment structure often leads to income instability and, in many cases, earnings that fall below statutory minimum wage levels.³⁵ Furthermore, gig workers are not entitled to overtime pay, paid leave, or other benefits that are typically guaranteed under labour laws.

Another significant limitation of the existing legal framework is the lack of social security coverage for gig workers. Traditional social security schemes in India, such as provident fund, employee state insurance, and gratuity, are available only to employees in formal employment relationships. As a result, gig workers are deprived of essential protections related to health insurance, disability benefits, maternity benefits, and old-age security.³⁶ This absence of social protection exposes gig workers to considerable economic risks, particularly in situations involving illness, accidents, or loss of income.

In an effort to address these gaps, the Indian legislature introduced the Code on Social Security, 2020, which marks a significant step towards recognizing the rights of gig and platform workers. The Code defines “gig workers” and “platform workers” and provides for the formulation of social security schemes tailored to their needs.³⁷ It also envisages the creation of a welfare fund, financed through contributions from aggregators, the government, and workers themselves.

Despite these progressive features, the Code on Social Security, 2020 has been subject to considerable criticism. One of the primary concerns is that the provisions relating to gig workers are largely enabling rather than mandatory. The implementation of social security schemes is contingent upon government notification, and there is no clear timeline or mechanism for enforcement.³⁸ Moreover, the Code does not guarantee specific benefits or minimum standards, leaving the extent of protection uncertain. This lack of enforceability undermines the effectiveness of the legislation and raises questions about its ability to address the vulnerabilities of gig workers.

Another important aspect of labour law applicability is the issue of industrial relations and collective bargaining. Under traditional labour laws, employees have the right to form trade unions and engage in collective bargaining to negotiate better wages and working conditions. However, gig workers, being classified as independent contractors, are generally excluded from these rights.³⁹ This exclusion limits their ability to organize and advocate for improved conditions, thereby reinforcing the imbalance of power between workers and platform companies.

The role of technology and algorithmic management further complicates the applicability of labour laws. Digital platforms exercise control over workers through automated systems that determine task allocation, pricing, and performance evaluation. While this form of control resembles that of an employer, it is often not recognized as such under existing legal frameworks.⁴⁰ Consequently, gig workers remain subject to significant control without the corresponding legal protections, highlighting a fundamental mismatch between law and reality. From a judicial perspective, Indian courts have yet to develop a comprehensive approach to addressing the applicability of labour laws to gig workers. While earlier decisions have emphasized substance over form in determining employment relationships, there has been limited judicial intervention specifically in the context of gig work.⁴¹ This lack of judicial clarity further contributes to the uncertainty surrounding the rights and status of gig workers in India.

In contrast, several international jurisdictions have adopted more proactive approaches. For example, courts in the United Kingdom have extended certain labour protections to gig workers by recognizing them as a distinct category entitled to minimum wage and other benefits. Such developments highlight the possibility of reinterpreting existing legal principles to accommodate new forms of work.⁴²

CHALLENGES FACED BY GIG WORKERS IN INDIA

The rapid expansion of the gig economy in India has created significant employment opportunities; however, it has also exposed gig workers to a wide range of structural, economic, and legal challenges. Despite their growing contribution to the economy, gig workers remain one of the most vulnerable segments of the workforce, largely due to the absence of comprehensive legal protection and the inherent nature of platform-based work.⁴³

One of the most pressing challenges faced by gig workers is the lack of job security. Unlike traditional employees who benefit from long-term contracts and statutory protections against unfair dismissal, gig workers operate on a task-by-task basis and can be removed from platforms at any time without prior notice or justification. Companies such as Uber, Swiggy, and Zomato retain the power to deactivate worker accounts based on performance ratings, customer complaints, or algorithmic assessments, often without providing an opportunity for appeal.⁴⁴ This lack of procedural safeguards creates a highly precarious working environment. Another significant issue is income instability and unpredictability. Gig workers are typically paid on a per-task basis, with earnings fluctuating depending on demand, time, location, and platform-specific algorithms. This variability often results in inconsistent and insufficient income, making it difficult for workers to maintain financial stability.⁴⁵ Moreover, the absence of guaranteed minimum wages further exacerbates this problem, as workers may end up earning less than the statutory minimum despite working long hours.

The lack of social security protection is another critical challenge. Traditional employment provides access to benefits such as health insurance, provident fund, gratuity, and maternity benefits. In contrast, gig workers are generally excluded from these protections, leaving them vulnerable to financial hardship in cases of illness, injury, or old age.⁴⁶ Although the Code on Social Security, 2020 seeks to extend certain benefits to gig workers, its implementation remains limited and uncertain, thereby failing to provide effective coverage.

Additionally, gig workers face significant issues related to the absence of collective bargaining power. As independent contractors, they are not recognized as employees under labour laws and are therefore unable to form trade unions or engage in collective negotiations.⁴⁷ This lack of representation limits their ability to advocate for better wages, working conditions, and dispute resolution mechanisms, further reinforcing the imbalance of power between workers and platform companies.

A unique and emerging challenge in the gig economy is the role of algorithmic management. Digital platforms rely heavily on algorithms to allocate tasks, determine pricing, evaluate performance, and enforce discipline. While these systems enhance efficiency, they also create a lack of transparency and accountability. Gig workers often have little understanding of how these algorithms operate and may be subject to arbitrary decisions, such as sudden reductions in pay or account deactivation.⁴⁸ This “black box” nature of algorithmic control raises serious

concerns regarding fairness and due process.

Another critical concern is the issue of occupational safety and working conditions. Gig workers, particularly those engaged in delivery and transportation services, are exposed to significant risks, including road accidents, long working hours, and adverse weather conditions. Unlike traditional employees, they are not provided with adequate safety equipment, insurance coverage, or compensation for work-related injuries.⁴⁹ The absence of regulatory oversight in this regard further exacerbates their vulnerability.

Gender-based challenges also persist within the gig economy. Although gig work is often promoted as inclusive and flexible, female workers face barriers such as safety concerns, lack of maternity benefits, and limited access to opportunities in certain sectors.⁵⁰ These issues highlight the need for gender-sensitive policies that address the specific challenges faced by women in the gig workforce.

Furthermore, the contractual nature of gig work often places workers at a disadvantage. Standard form contracts imposed by platform companies typically contain terms that limit workers' rights and absolve the company of liability. Given the unequal bargaining power between workers and corporations, gig workers are often compelled to accept these terms without negotiation.⁵¹ This imbalance undermines the principle of fairness in contractual relationships and raises concerns about exploitation.

The absence of effective grievance redressal mechanisms further compounds these challenges. Gig workers often lack access to formal dispute resolution systems and may find it difficult to challenge unfair practices or decisions by platforms. While some platforms provide internal support systems, these are often inadequate and lack transparency.⁵²

JUDICIAL APPROACH AND CASE LAWS ON GIG WORKERS

The role of the judiciary in shaping labour jurisprudence has historically been significant, particularly in interpreting the nature of employment relationships and extending protections to vulnerable workers. In the context of the gig economy, courts across jurisdictions have been increasingly called upon to determine the legal status of gig workers and the applicability of labour rights to them. While India is still in the early stages of developing a judicial approach

to gig work, international case law provides valuable insights into emerging legal trends.⁵³

In India, the judiciary has traditionally adopted a substance-over-form approach in determining whether a worker qualifies as an employee. Courts have emphasized that the true nature of the relationship must be assessed based on the degree of control, supervision, and economic dependence, rather than the terms of the contract. This principle was firmly established in *Dharangadhara Chemical Works Ltd. v. State of Saurashtra*, where the Supreme Court held that the existence of control and supervision is a key determinant of an employer–employee relationship.⁵⁴

Similarly, in *Hussainbhai v. Alath Factory Thezhilali Union*, the Supreme Court adopted a broader and more realistic interpretation of employment, focusing on the economic realities of the relationship.⁵⁵ The Court emphasized that where a worker is economically dependent on an entity and performs work that is integral to its business, the relationship may be construed as one of employment, regardless of the contractual label. This principle is particularly relevant in the gig economy, where workers often rely heavily on a single platform for their livelihood.

Despite these foundational principles, Indian courts have not yet delivered a landmark ruling directly addressing the status of gig workers. The absence of definitive judicial pronouncements has contributed to legal uncertainty and has allowed platform companies such as Uber, Swiggy, and Zomato to continue classifying workers as independent contractors without substantial challenge.⁵⁶ However, given the increasing number of disputes and the growing importance of the gig economy, it is likely that Indian courts will soon be required to address these issues more directly.

In contrast, courts in other jurisdictions have taken a more proactive approach in addressing the legal status of gig workers. One of the most significant decisions in this regard is *Uber BV v. Aslam*, where the United Kingdom Supreme Court held that Uber drivers should be classified as “workers” rather than independent contractors.⁵⁷ The Court emphasized that Uber exercised significant control over drivers, including setting fares, determining contractual terms, and managing performance through ratings. As a result, drivers were entitled to minimum wage, paid leave, and other statutory protections. This judgment marked a major shift in the legal treatment of gig workers and underscored the importance of examining the वास्तविक nature of the relationship.

Similarly, in the United States, the classification of gig workers has been a subject of intense legal debate. In *Dynamex Operations West, Inc. v. Superior Court*, the California Supreme Court introduced the “ABC test” to determine whether a worker should be classified as an employee or an independent contractor.⁵⁸ Under this test, a worker is presumed to be an employee unless the employer can demonstrate that the worker is free from control, performs work outside the usual course of the business, and is engaged in an independently established trade. This approach places a higher burden on employers and has significant implications for gig economy platforms.

Another notable development is the increasing recognition of an intermediate category of workers in several jurisdictions. This category, which falls between employees and independent contractors, allows for the extension of certain labour protections without imposing the full range of obligations associated with employment. The recognition of such a category reflects an attempt to adapt legal frameworks to the evolving nature of work in the digital age.⁵⁹

From a comparative perspective, these judicial developments highlight the growing willingness of courts to look beyond formal contractual arrangements and to prioritize the protection of workers’ rights. They also demonstrate the importance of adopting a flexible and context-specific approach to worker classification, taking into account the realities of platform-based work.

In the Indian context, these international developments provide valuable guidance for future judicial interpretation. Indian courts have a strong tradition of adopting purposive and progressive interpretations of labour laws, particularly in cases involving vulnerable workers. By applying established principles such as the control test and economic dependency test to gig work, the judiciary has the potential to bridge the gap between existing legal frameworks and the realities of the gig economy.

However, judicial intervention alone may not be sufficient to address the challenges posed by the gig economy. Given the scale and complexity of the issue, there is a need for comprehensive legislative reform that clearly defines the status and rights of gig workers. The judiciary can play a crucial role in interpreting and enforcing such laws, but the primary responsibility lies with the legislature to create a coherent and inclusive legal framework.

COMPARATIVE ANALYSIS OF GIG WORKER REGULATIONS: INDIA AND GLOBAL PERSPECTIVES

The regulation of gig workers has emerged as a critical issue across jurisdictions, prompting diverse legal responses aimed at balancing flexibility with worker protection. While India is still in the nascent stages of developing a comprehensive framework, several countries have adopted innovative approaches to address the challenges posed by the gig economy. A comparative analysis of these approaches provides valuable insights into the strengths and limitations of the Indian legal framework and highlights potential pathways for reform.⁶⁰

In India, the legal recognition of gig workers has been primarily achieved through the Code on Social Security, 2020, which introduces the categories of “gig workers” and “platform workers.”⁶¹ While this represents a significant step forward, the Indian approach remains limited in scope, as it does not fundamentally alter the classification of gig workers as independent contractors. The Code focuses primarily on extending social security benefits through government-notified schemes, but it does not guarantee enforceable rights such as minimum wages, job security, or collective bargaining.⁶² Consequently, the Indian framework has been criticized for being largely aspirational rather than rights-based.

In contrast, the United Kingdom has adopted a more progressive and nuanced approach by recognizing an intermediate category of workers who are entitled to certain statutory protections. This approach was firmly established in *Uber BV v. Aslam*, where the UK Supreme Court held that Uber drivers qualify as “workers” rather than independent contractors.⁶³ This classification entitles them to rights such as minimum wage, paid leave, and protection against unfair working conditions. The decision reflects a shift towards examining the वास्तविक (vāstavik) nature of the relationship, particularly the degree of control exercised by the platform.

Similarly, the European Union has taken steps towards strengthening protections for gig workers through legislative initiatives aimed at improving working conditions in platform-based work. The EU approach emphasizes transparency in algorithmic management, fair working conditions, and access to social protection.⁶⁴ By addressing issues such as automated decision-making and data rights, the EU framework recognizes the unique challenges posed by digital labour platforms and seeks to ensure accountability.

In the United States, the regulatory approach has been more fragmented, with different states

adopting varying standards. A notable development is the decision in *Dynamex Operations West, Inc. v. Superior Court*, which introduced the “ABC test” for determining worker classification.⁶⁵ This test presumes that workers are employees unless the employer can prove otherwise, thereby shifting the burden of proof onto companies. While this approach enhances worker protection, it has also faced resistance from gig economy companies, leading to legislative responses that seek to preserve the flexibility of gig work.

Another significant example is the approach adopted in countries such as Canada and Australia, where courts and policymakers have increasingly recognized the need for hybrid or intermediate categories of workers. These approaches aim to strike a balance between the rigidity of traditional employment classifications and the flexibility of independent contracting.⁶⁶ By extending limited protections without imposing full employment obligations, these models offer a pragmatic solution to the challenges of gig work.

A key point of divergence between India and these jurisdictions lies in the extent of enforceability of rights. While countries like the United Kingdom and members of the European Union have moved towards granting enforceable labour rights to gig workers, India’s framework remains largely policy-driven and lacks binding obligations.⁶⁷ This difference underscores the need for India to transition from a welfare-oriented approach to a rights-based framework that ensures minimum standards of protection.

Another important aspect of comparative analysis is the treatment of algorithmic management. International frameworks, particularly in the European Union, have begun to address the implications of algorithmic decision-making by introducing requirements for transparency and accountability.⁶⁸ In contrast, Indian law has yet to adequately address this issue, leaving gig workers vulnerable to opaque and potentially arbitrary decision-making processes.

Despite these differences, it is important to recognize that the Indian approach reflects certain contextual realities, including the need to promote employment generation and maintain economic flexibility. The gig economy plays a crucial role in providing livelihood opportunities to a large segment of the population, particularly in the informal sector. Therefore, any regulatory framework must carefully balance the need for worker protection with the need to sustain economic growth and innovation.

CONCLUSION AND SUGGESTIONS

The emergence of the gig economy represents a significant transformation in the nature of work, driven by technological innovation, digital platforms, and evolving economic dynamics. In India, the rapid growth of platform-based services such as Uber, Swiggy, and Zomato has created substantial employment opportunities and contributed to economic development. However, this transformation has also exposed critical gaps in the existing labour law framework, particularly with respect to the legal status and protection of gig workers.

As this research has demonstrated, gig workers in India occupy a precarious position within the labour market, characterized by limited legal recognition, absence of social security, and lack of enforceable rights. The traditional binary classification of workers as either employees or independent contractors has proven inadequate in addressing the complexities of gig work. Although the Code on Social Security, 2020 marks an important step towards recognizing gig and platform workers, its provisions remain largely enabling in nature and fail to guarantee comprehensive protection.

The challenges faced by gig workers—including job insecurity, income instability, lack of collective bargaining power, and exposure to algorithmic control—underscore the urgent need for legal and policy reform. Furthermore, the absence of clear judicial guidance in India has contributed to continued uncertainty, allowing platform companies to maintain the classification of workers as independent contractors without significant legal scrutiny. In contrast, international developments, such as the decision in *Uber BV v. Aslam*, highlight a growing trend towards recognizing the rights of gig workers and adopting more flexible approaches to worker classification.

The comparative analysis undertaken in this study reveals that jurisdictions such as the United Kingdom, the United States, and the European Union have made significant progress in addressing the challenges of gig work through judicial intervention and legislative reform. These developments provide valuable lessons for India, particularly in terms of adopting a rights-based approach and ensuring enforceable protections for gig workers.

In light of the foregoing analysis, it is evident that while the gig economy offers considerable benefits in terms of flexibility, innovation, and employment generation, it also raises serious

concerns regarding fairness, equity, and worker welfare. The existing legal framework in India is insufficient to address these concerns, necessitating a comprehensive and forward-looking approach to regulation.

SUGGESTIONS AND RECOMMENDATIONS

1. Recognition of an Intermediate Category of Workers

There is a need to move beyond the traditional binary classification of employment and recognize an intermediate category of workers who are entitled to certain basic protections without being classified as full employees. This approach would provide gig workers with essential rights while preserving the flexibility of gig work.

2. Strengthening the Code on Social Security, 2020

The provisions relating to gig workers under the Code should be made **mandatory and enforceable**, with clear guidelines regarding the nature and extent of benefits. A robust implementation mechanism, including dedicated authorities and monitoring systems, is essential to ensure effective coverage.

3. Extension of Minimum Wage Protection

Gig workers should be guaranteed a minimum level of income, either through the application of minimum wage laws or through the introduction of sector-specific wage standards. This would address the issue of income instability and ensure fair remuneration.

4. Regulation of Algorithmic Management

There is an urgent need to regulate the use of algorithms in managing gig work. Platforms should be required to ensure transparency in decision-making processes, provide reasons for adverse actions such as deactivation, and establish fair grievance redressal mechanisms.

5. Social Security and Welfare Measures

Comprehensive social security schemes should be developed to cover gig workers, including health insurance, accident coverage, maternity benefits, and old-age pensions. Contributions should be shared between the government, platform companies, and workers.

6. Recognition of Collective Rights

Gig workers should be granted the right to form associations or unions and engage in collective bargaining. This would enhance their bargaining power and enable them to

negotiate better working conditions.

7. Judicial Clarification and Activism

Indian courts should adopt a proactive approach in interpreting labour laws to address the realities of gig work. By applying principles such as economic dependency and control, the judiciary can play a crucial role in extending protections to gig workers.

8. Adoption of International Best Practices

India should draw upon global experiences, particularly from jurisdictions such as the United Kingdom and the European Union, to develop a more comprehensive and balanced regulatory framework.

¹ International Labour Organization, *World Employment and Social Outlook 2021: The Role of Digital Labour Platforms* (2021).

² NITI Aayog, *India's Booming Gig and Platform Economy* (2022).

³ Valerio De Stefano, *The Rise of the "Just-in-Time Workforce"*, 37 *Comp. Lab. L. & Pol'y J.* 471 (2016).

⁴ Dharangadhara Chem. Works Ltd. v. State of Saurashtra, AIR 1957 SC 264

⁵ Alex Rosenblat, *Uberland: How Algorithms Are Rewriting the Rules of Work* (2018).

⁶ Report of the Second National Commission on Labour (2002)

⁷ Code on Social Security, No. 36 of 2020, § 2(35) (India).

⁸ *Id.* §§ 109–114.

⁹ International Labour Organization, *Non-Standard Employment Around the World* (2016).

¹⁰ Frank Pasquale, *The Black Box Society* (2015).

¹¹ NITI Aayog, *supra* note 2

¹² *Uber BV v. Aslam*, [2021] UKSC 5.

¹³ Valerio De Stefano, *The Rise of the "Just-in-Time Workforce"*, 37 *Comp. Lab. L. & Pol'y J.* 471 (2016).

¹⁴ NITI Aayog, *India's Booming Gig and Platform Economy* (2022).

¹⁵ International Labour Organization, *World Employment and Social Outlook 2021* (2021).

¹⁶ Alex Rosenblat, *Uberland: How Algorithms Are Rewriting the Rules of Work* (2018).

¹⁷ Frank Pasquale, *The Black Box Society* (2015).

¹⁸ NITI Aayog, *supra* note 2.

¹⁹ International Labour Organization, *Non-Standard Employment Around the World* (2016).

²⁰ Code on Social Security, No. 36 of 2020, § 2(35) (India).

²¹ *Uber BV v. Aslam*, [2021] UKSC 5.

²² Valerio De Stefano, *The Rise of the "Just-in-Time Workforce"*, 37 *Comp. Lab. L. & Pol'y J.* 471 (2016).

²³ International Labour Organization, *Non-Standard Employment Around the World* (2016).

²⁴ NITI Aayog, *India's Booming Gig and Platform Economy* (2022)

²⁵ Dharangadhara Chem. Works Ltd. v. State of Saurashtra, AIR 1957 SC 264

²⁶ Alex Rosenblat, *Uberland: How Algorithms Are Rewriting the Rules of Work* (2018)

²⁷ Dharangadhara Chem. Works Ltd. v. State of Saurashtra, AIR 1957 SC 264.

²⁸ Bangalore Water Supply & Sewerage Bd. v. A. Rajappa, AIR 1978 SC 548

²⁹ Code on Social Security, No. 36 of 2020, §§ 2(35), 2(60) (India).

³⁰ *Id.* §§ 109–114.

³¹ *Hussainbhai v. Alath Factory Thezhilali Union*, AIR 1978 SC 1410.

- 32 Uber BV v. Aslam, [2021] UKSC 5.
- 33 International Labour Organization, *Non-Standard Employment Around the World* (2016).
- 34 Minimum Wages Act, No. 11 of 1948 (India); Industrial Disputes Act, No. 14 of 1947 (India).
- 35 NITI Aayog, *India's Booming Gig and Platform Economy* (2022).
- 36 Id.
- 37 Code on Social Security, No. 36 of 2020, §§ 2(35), 2(60), 109–114 (India).
- 38 Id. §§ 109–114.
- 39 International Labour Organization, *World Employment and Social Outlook 2021* (2021).
- 40 Frank Pasquale, *The Black Box Society* (2015).
- 41 Hussainbhai v. Alath Factory Thezhilali Union, AIR 1978 SC 1410.
- 42 Uber BV v. Aslam, [2021] UKSC 5.
- 43 International Labour Organization, *World Employment and Social Outlook 2021* (2021).
- 44 Alex Rosenblat, *Uberland: How Algorithms Are Rewriting the Rules of Work* (2018).
- 45 NITI Aayog, *India's Booming Gig and Platform Economy* (2022).
- 46 International Labour Organization, *Non-Standard Employment Around the World* (2016).
- 47 Id.
- 48 Frank Pasquale, *The Black Box Society* (2015).
- 49 NITI Aayog, supra note 3.
- 50 International Labour Organization, *Women at Work in the Gig Economy* (2021).
- 51 Valerio De Stefano, *The Rise of the "Just-in-Time Workforce"*, 37 Comp. Lab. L. & Pol'y J. 471 (2016).
- 52 Id.
- 53 International Labour Organization, *World Employment and Social Outlook 2021* (2021).
- 54 Dharangadhara Chem. Works Ltd. v. State of Saurashtra, AIR 1957 SC 264.
- 55 Hussainbhai v. Alath Factory Thezhilali Union, AIR 1978 SC 1410.
- 56 NITI Aayog, *India's Booming Gig and Platform Economy* (2022).
- 57 Uber BV v. Aslam, [2021] UKSC 5.
- 58 Dynamex Operations W., Inc. v. Superior Court, 416 P.3d 1 (Cal. 2018).
- 59 Valerio De Stefano, *The Rise of the "Just-in-Time Workforce"*, 37 Comp. Lab. L. & Pol'y J. 471 (2016).
- 60 International Labour Organization, *World Employment and Social Outlook 2021* (2021).
- 61 Code on Social Security, No. 36 of 2020, §§ 2(35), 2(60) (India).
- 62 Id. §§ 109–114.
- 63 Uber BV v. Aslam, [2021] UKSC 5.
- 64 European Commission, *Proposal for a Directive on Platform Work* (2021).
- 65 Dynamex Operations W., Inc. v. Superior Court, 416 P.3d 1 (Cal. 2018).
- 66 Valerio De Stefano, *The Rise of the "Just-in-Time Workforce"*, 37 Comp. Lab. L. & Pol'y J. 471 (2016).
- 67 NITI Aayog, *India's Booming Gig and Platform Economy* (2022).
- 68 Frank Pasquale, *The Black Box Society* (2015).