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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE GIG ECONOMY IN INDIA: LEGAL RECOGNITION, SOCIAL INSECURITY, AND THE QUEST FOR PROTECTION**

AUTHORED BY - SHARLET ABRAHAM\* & JOHN PAUL\*\*

## **ABSTRACT**

The rise of the gig economy has fundamentally reshaped labour markets across the globe, blurring the line between employment and self-employment. In India, platforms such as Ola, Uber, Swiggy, and Urban Company have created new avenues of work for millions while simultaneously exposing workers to structural precarity. Classified as “independent contractors” rather than employees, gig workers are excluded from most statutory protections relating to minimum wages, collective bargaining, and social security. This paper undertakes a socio-legal analysis of gig work in India, interrogating how constitutional principles, statutory frameworks such as the Code on Social Security, 2020, and global developments have addressed this new form of labour. It argues that while platform work promises flexibility, it must not come at the cost of dignity, equality, and livelihood security. Through comparative insights from jurisdictions such as the United Kingdom, Spain, and the European Union, the paper highlights both pitfalls and pathways for reform. Ultimately, it advances the case for a hybrid regulatory approach that recognises the unique features of gig work while ensuring meaningful protection, thus bridging the gap between innovation and justice in India’s labour law framework.

**KEYWORDS:** Gig Economy, Platform Work, Labour Law, Social Security, Precarity, Constitutional Rights.

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## I. INTRODUCTION

The gig economy - encompassing work mediated by digital platforms such as Uber, Ola, Swiggy, and Zomato - has emerged as a defining feature of contemporary capitalism. The rise of algorithmic management, flexible task-based labour, and digital intermediation has produced a new class of workers whose legal status remains precarious. India, with its vast youth population and rapid digital penetration, has become one of the largest markets for platform-based labour in the Global South. NITI Aayog projects that India's gig workforce could expand from 7.7 million in 2020–21 to 23.5 million by the year 2029–30.<sup>1</sup>

Yet, beneath this rapid expansion lies an unresolved tension: Are gig workers employees, independent contractors, or something in between? Traditional labour law frameworks, premised on stable employer–employee relationships, appear increasingly ill-suited for regulating the fluid, flexible, and technologically mediated work arrangements of the gig economy.<sup>2</sup> For workers, the consequences of this ambiguity are profound. Denied access to basic entitlements such as minimum wages, health insurance, maternity benefits, and pension, gig workers remain vulnerable to economic shocks and exploitative practices.<sup>3</sup>

This legal and social precarity raises pressing constitutional questions. Articles 14, 19, and 21 of the Indian Constitution guarantee equality before law, the freedom to carry on an occupation, and the right to life with dignity.<sup>4</sup> To what extent does the exclusion of gig workers from labour protections undermine these fundamental guarantees? The judiciary has historically interpreted these provisions expansively, recognising social and economic rights as integral to dignity.<sup>5</sup> A failure to extend similar protections to gig workers risks creating a constitutional blind spot in one of the fastest-growing segments of India's economy.

Globally, jurisdictions have adopted divergent approaches. The United Kingdom Supreme Court held in *Uber BV v. Aslam* that Uber drivers qualify as “workers” entitled to minimum wage and holiday pay.<sup>6</sup> California, by contrast, enacted Assembly Bill 5 (AB5) to apply a

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<sup>1</sup> NITI Aayog, India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work 7 (2022), <https://www.niti.gov.in>.

<sup>2</sup> Guy Davidov, The Status of Uber Drivers: A Purposive Approach, 6 J. LAB. & SOC'Y 73, 75 (2021).

<sup>3</sup> Janhavi Dave & Uma Rani, Platform Work and the Pandemic: Policy Gaps and Precariousness, 163 INT'L LAB. REV. 15, 19 (2023).

<sup>4</sup> INDIA CONST. arts. 14, 19, 21.

<sup>5</sup> *People's Union for Democratic Rights v. Union of India*, (1982) 3 S.C.C. 235 (India).

<sup>6</sup> *Uber BV v. Aslam*, [2021] UKSC 5 (appeal taken from Eng.).

stringent “ABC test” for classifying workers, only for Proposition 22 to exempt app-based transport and delivery companies.<sup>7</sup> The European Union, through its proposed Platform Work Directive, seeks to create a presumption of employment while mandating algorithmic transparency.<sup>8</sup> These developments reflect the global struggle to reconcile innovation with social justice.

In India, legislative recognition came belatedly with the Code on Social Security, 2020, which defined “gig workers” and “platform workers.”<sup>9</sup> While a step forward, the Code’s provisions remain skeletal and lack concrete mechanisms for enforcement. Without robust statutory protections, judicial creativity, and policy innovation, gig workers risk remaining outside the protective canopy of labour law.

This article situates the gig economy within a socio-legal framework, examining how the constitutional promise of equality and dignity can be extended to this new class of workers. It proceeds in seven parts. Part II outlines the theoretical and legal framework of gig work, situating it within labour law scholarship. Part III analyses the constitutional dimensions of gig work in India, focusing on Articles 14, 19, and 21. Part IV maps the lived challenges faced by Indian gig workers. Part V undertakes a comparative analysis of foreign jurisprudence. Part VI proposes policy reforms tailored to India’s socio-economic context. Part VII concludes by highlighting the constitutional stakes of regulating gig work.

The central argument advanced is that India must move beyond symbolic recognition of gig workers to substantive entitlements that reconcile flexibility with fairness. The gig economy must not become a site of constitutional evasion, but rather, an arena where democratic ideals of equality and dignity are reaffirmed.

## **II. THEORETICAL AND LEGAL FRAMEWORK OF GIG WORK**

The gig economy occupies an ambiguous space in labour law, blurring the once-stable binary of “employee” and “independent contractor.” Historically, labour law was designed to protect workers engaged in long-term, hierarchical employment relationships, where subordination

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<sup>7</sup> Cal. Lab. Code §§ 2750.3, 2775–2787 (West 2020); Cal. Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative (2020).

<sup>8</sup> Comm’n Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work, COM (2021) 762 final (Dec. 9, 2021).

<sup>9</sup> Code on Social Security, No. 36 of 2020, INDIA CODE (2020).

and control were evident.<sup>10</sup> Gig work, however, is mediated by digital platforms that portray themselves not as employers but as “intermediaries” connecting service providers with customers. This framing allows platforms to avoid obligations such as minimum wage, social security contributions, and liability for workplace harm.<sup>11</sup>

### A. Definitional Ambiguities

The terminology of “gig work” and “platform work” is itself contested. The International Labour Organization (ILO) defines “platform work” as labour performed through digital applications that allocate tasks and mediate payment.<sup>12</sup> The Indian Code on Social Security, 2020 defines a “gig worker” as a person who performs work “outside the traditional employer–employee relationship,”<sup>13</sup> and a “platform worker” as one who undertakes work “arranged on an online platform.”<sup>14</sup> These statutory definitions, while pathbreaking in acknowledging new forms of labour, remain minimalist. They identify workers but provide little substantive protection.

The definitional strategy is not neutral. As Prabha Kotiswaran argues, legal definitions play a constitutive role in shaping the boundaries of labour protection.<sup>15</sup> By labelling gig workers as a distinct category outside “employees,” the law risks entrenching their exclusion from core labour rights.

### B. The Employee–Contractor Binary

Traditional labour law pivots on the binary between employees (entitled to protection) and independent contractors (left to market forces). Courts have employed diverse tests - the “control test,” “integration test,” and “economic dependence test” - to classify workers.<sup>16</sup> Gig work, however, defies easy classification. Platforms exercise significant control over workers through algorithmic management - allocating tasks, monitoring performance, setting pay

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<sup>10</sup> HARRY ARTHURS, *Labour Law and Industrial Relations in Canada* 22–24 (6th ed. 2009).

<sup>11</sup> Valerio De Stefano, *The Rise of the “Just-in-Time Workforce”: On-Demand Work, Crowdwork and Labour Protection in the “Gig-Economy,”* 37 *COMP. LAB. L. & POL’Y J.* 471, 476–77 (2016).

<sup>12</sup> Int’l Lab. Org. [ILO], *World Employment and Social Outlook 2021: The Role of Digital Labour Platforms in Transforming the World of Work* 17 (2021).

<sup>13</sup> Code on Social Security, *supra* note 9, § 2(35).

<sup>14</sup> *Id.* § 2(60).

<sup>15</sup> Prabha Kotiswaran, *The Legal Construction of Work*, 34 *OXFORD J. LEGAL STUD.* 101, 103–05 (2014).

<sup>16</sup> MARK FREEDLAND & NICOLA KOUNTOURIS, *The Legal Construction of Personal Work Relations* 23–25 (2011).

structures - while simultaneously disclaiming employer status.<sup>17</sup>

In India, judicial precedents underscore the centrality of “control” in employment classification. In *Dhrangadhra Chemical Works Ltd. V. State of Saurashtra*, the Supreme Court held that the “test of employment” is the right to control not just what is done, but how it is done.<sup>18</sup> Under this standard, gig workers - whose routes, timings, and ratings are determined by platforms - exhibit traits of employees. Yet courts have been reluctant to extend this reasoning to platform work.

### C. Algorithmic Management as Invisible Control

Scholars note that algorithmic management represents a new modality of control, subtler but equally pervasive.<sup>19</sup> Rating systems incentivise certain behaviours, while opaque algorithms determine task allocation and deactivation.<sup>20</sup> For instance, drivers may be “deactivated” for low acceptance rates without due process, mirroring summary dismissal.<sup>21</sup> Such practices challenge the fiction of worker autonomy that platforms propagate.

The opacity of algorithmic management also raises issues of due process and accountability. Workers rarely understand how decisions affecting their livelihoods are made, undermining transparency and fairness - values central to both labour law and constitutional jurisprudence.<sup>22</sup>

### D. International Labour Standards

The ILO has emphasised the need to adapt labour standards to new forms of work. Convention No. 102 on Social Security and Recommendation No. 198 on the Employment Relationship stress that employment classifications should not be used to deny protections.<sup>23</sup> The ILO’s 2021 report on “World Employment and Social Outlook” highlights how gig workers globally face lower earnings, longer hours, and lack of social security.<sup>24</sup>

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<sup>17</sup> JEREMIAS PRASSL, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* 45–46 (2018).

<sup>18</sup> *Dhrangadhra Chem. Works Ltd. V. State of Saurashtra*, A.I.R. 1957 S.C. 264, 267 (India).

<sup>19</sup> Karen Levy, *The Contexts of Control: Information, Power, and Truck-Driving Work*, 21 *INFO. SOC’Y* 204, 208–09 (2015).

<sup>20</sup> Deepa Das Acevedo, *Regulating Work in the Gig Economy: What Are the Options?*, 82 *L. & CONTEMP. PROBS.* 27, 31–32 (2019).

<sup>21</sup> Torsen Framke, *Exclusion by Design: Algorithmic Management and Labour Rights*, 32 *INDUS. L.J.* 45, 52 (2021).

<sup>22</sup> Veena Dubal, *The Drive to Precarity: A Political History of Work, Regulation, & Labour Advocacy in San Francisco’s Taxi & Uber Economies*, 38 *BERKELEY J. EMP. & LAB. L.* 73, 89 (2017).

<sup>23</sup> ILO, *Recommendation Concerning the Employment Relationship*, R198, June 15, 2006.

<sup>24</sup> ILO, *World Employment and Social Outlook 2021*, *supra* note 12, at 19–20.

India, as a member state, has often invoked ILO principles in judicial reasoning. In *People's Union for Democratic Rights v. Union of India*, the Supreme Court relied on ILO standards to hold that non-payment of minimum wages violated constitutional rights under Article 23.<sup>25</sup> Applying similar reasoning, one could argue that denying gig workers basic entitlements is inconsistent with India's international commitments.

### E. The Socio-Legal Lens

A purely legal analysis risks overlooking the lived realities of gig workers. The socio-legal perspective emphasises that law interacts with culture, technology, and social hierarchies.<sup>26</sup> In India, caste and gender significantly shape gig work. Women platform workers face disproportionate risks of harassment and lack of maternity benefits.<sup>27</sup> Workers from marginalised castes are often concentrated in low-paying delivery and driving jobs.<sup>28</sup> These inequities reveal that gig work is not merely an issue of classification but also of social justice. Thus, the theoretical and legal framework of gig work must recognise that formal distinctions between “employees” and “contractors” mask deeper realities of control, dependence, and vulnerability. Without a reconceptualisation, gig workers risk remaining invisible within the law.

## **III. CONSTITUTIONAL DIMENSIONS OF GIG WORK IN INDIA**

The Indian Constitution is not merely a charter of negative liberties but a transformative document committed to advancing social and economic justice. The exclusion of gig workers from labour protections raises fundamental questions under Articles 14, 19, and 21. Each of these provisions has been interpreted expansively by the Supreme Court to encompass not just formal equality but substantive entitlements necessary for a life of dignity. Applying these principles to the gig economy exposes the constitutional infirmities of the current regulatory vacuum.

### A. Article 14: Equality Before the Law

Article 14 guarantees “equality before the law and equal protection of the laws.”<sup>29</sup> The

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<sup>25</sup> *People's Union for Democratic Rights*, supra note 5, at 241.

<sup>26</sup> Roger Cotterrell, *Why Must Legal Ideas Be Interpreted Sociologically?*, 25 *J.L. & SOC'Y* 171, 174 (1998).

<sup>27</sup> Janhavi Dave & Anannya Bhattacharjee, *Gendered Precarity in India's Platform Economy*, *INT'L DEV. ECON. ASS'N WORKING PAPER* (2022).

<sup>28</sup> Surajit Mazumdar, *Precarious Work and Caste in India*, 5 *J. DALIT & TRIBAL STUD.* 33, 37–39 (2021).

<sup>29</sup> *INDIA CONST.* art. 14.

Supreme Court has clarified that equality is not limited to formal, arithmetical parity but extends to substantive fairness.<sup>30</sup> In *E.P. Royappa v. State of Tamil Nadu*, the Court famously held that arbitrariness is antithetical to equality.<sup>31</sup>

Gig workers, despite performing functions similar to employees in traditional industries (e.g., taxi drivers, couriers), are excluded from basic entitlements like minimum wages or social security. This differential treatment lacks a rational nexus to the objective of labour protection. Platforms often justify the exclusion on grounds of “flexibility” and “independence.” However, the presence of algorithmic control undermines the reality of independence.<sup>32</sup> The arbitrary denial of protection to a similarly situated group of workers therefore raises a prima facie violation of Article 14.

Further, Article 14 encompasses the doctrine of “reasonable classification.”<sup>33</sup> To justify differential treatment, two conditions must be satisfied: (a) the classification must be based on an intelligible differentia, and (b) the differentia must have a rational nexus to the object sought to be achieved.<sup>34</sup> Categorising gig workers separately from employees might meet the first prong, but fails the second. Excluding them from social security undermines, rather than advances, the object of labour law, which is to protect vulnerable workers.

#### B. Article 19(1)(g): Freedom of Trade and Occupation

Article 19(1)(g) guarantees citizens the right to practice any profession or carry on any occupation, trade, or business.<sup>35</sup> However, this right is subject to “reasonable restrictions” in the interests of the general public.<sup>36</sup> The Supreme Court has interpreted this to mean that workers must have real, effective freedom in choosing and pursuing an occupation. In *Olga Tellis v. Bombay Municipal Corporation*, the Court linked the right to livelihood directly to Article 19(1)(g).<sup>37</sup>

Gig workers are nominally free to “choose” their work, but algorithmic management creates

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<sup>30</sup> *State of W. Bengal v. Anwar Ali Sarkar*, A.I.R. 1952 S.C. 75, 80 (India).

<sup>31</sup> *E.P. Royappa v. State of T.N.*, (1974) 4 S.C.C. 3, 38 (India).

<sup>32</sup> JEREMIAS PRASSL, *Humans as a Service*, supra note 17, at 59–61.

<sup>33</sup> *Budhan Choudhry v. State of Bihar*, A.I.R. 1955 S.C. 191, 193 (India).

<sup>34</sup> *Id.*

<sup>35</sup> INDIA CONST. art. 19(1)(g).

<sup>36</sup> INDIA CONST. art. 19(6).

<sup>37</sup> *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 S.C.C. 545, 567 (India).

significant constraints. Platforms set fare structures, allocate rides, and penalise refusals, limiting the autonomy of workers.<sup>38</sup> Moreover, sudden deactivations without recourse deprive workers of their livelihood, undermining occupational freedom.<sup>39</sup>

The state has a constitutional obligation to ensure that occupational freedoms are not illusory. The failure to regulate exploitative practices in platform work represents an abdication of this duty. Moreover, reasonable restrictions under Article 19(6) apply symmetrically: just as the state may restrict corporate freedom to ensure fairness, it must also secure the freedom of individuals engaged in occupations mediated by platforms.

### C. Article 21: Right to Life and Dignity

Article 21 provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law.”<sup>40</sup> The Court has interpreted this provision broadly to include the right to livelihood, health, and dignity. In *Maneka Gandhi v. Union of India*, the Court held that Article 21 is to be read expansively in harmony with Articles 14 and 19.<sup>41</sup>

For gig workers, the denial of social security, health coverage, and fair wages directly impinges on the right to live with dignity. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Court held that the right to life includes the right to the “bare necessities of life.”<sup>42</sup> Without access to maternity benefits, accident insurance, or pensions, gig workers are denied these necessities.

The pandemic starkly revealed these vulnerabilities. Thousands of delivery workers and drivers lost income overnight when platforms suspended operations, with little to no social protection.<sup>43</sup> This precariousness is incompatible with the constitutional mandate of dignity. If the Court could hold in *Bandhua Mukti Morcha v. Union of India* that bonded labour violates Article 21,<sup>44</sup> it follows that algorithmically enforced precarity without basic protections similarly undermines fundamental rights.

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<sup>38</sup> Acevedo, *supra* note 20, at 34–35.

<sup>39</sup> Framke, *supra* note 21, at 51–53.

<sup>40</sup> INDIA CONST. art. 21.

<sup>41</sup> *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248, 283 (India).

<sup>42</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608, 618 (India).

<sup>43</sup> *Dave & Rani*, *supra* note 3, at 18–19.

<sup>44</sup> *Bandhua Mukti Morcha v. Union of India*, (1984) 3 S.C.C. 161, 183 (India).

#### D. Directive Principles and Constitutional Morality

While not justiciable, the Directive Principles of State Policy (DPSPs) provide important interpretive guidance. Articles 38, 39, 41, and 43 mandate the state to secure social justice, adequate livelihood, and living wages.<sup>45</sup> Courts have frequently read DPSPs into fundamental rights to give them substantive content.<sup>46</sup> Extending this approach, protections for gig workers can be framed not as legislative generosity but as constitutional necessity.

Moreover, constitutional morality demands that emerging forms of exploitation not be ignored. As Dr. B.R. Ambedkar noted, constitutional morality requires the state to uphold justice even where social or economic power asymmetries persist.<sup>47</sup> In the gig economy, where platforms wield disproportionate power over atomised workers, constitutional morality necessitates intervention to restore fairness.

#### E. Toward a Constitutional Reconstruction of Work

The constitutional analysis demonstrates that the exclusion of gig workers from labour protections is not merely a policy gap but a constitutional infirmity. Article 14 prohibits arbitrary exclusion, Article 19 requires meaningful occupational freedom, and Article 21 mandates dignified livelihood. Combined with the Directive Principles, these provisions support a reconstruction of labour law to encompass gig workers.

Recognising gig workers as rights-bearing subjects under the Constitution is the first step toward aligning India's digital economy with its constitutional commitments. The judiciary, legislature, and executive must converge to ensure that the gig economy does not become a constitutional vacuum but a site where transformative constitutionalism is realised.

### **IV. LIVING CHALLENGES, LEGAL FRAMEWORK, AND JUDICIAL ENGAGEMENT**

The constitutional framework guarantees equality, dignity, and social justice, but gig workers continue to encounter serious exclusions in practice. The rapid expansion of the platform economy in India has created new forms of work that defy traditional classifications. While

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<sup>45</sup> INDIA CONST. arts. 38, 39, 41, 43.

<sup>46</sup> Unni Krishnan, J.P. v. State of A.P., (1993) 1 S.C.C. 645, 684 (India).

<sup>47</sup> 7 CONSTITUENT ASSEMBLY DEBATES 38 (Nov. 4, 1948) (statement of B.R. Ambedkar).

hailed as flexible and entrepreneurial, this model conceals layers of vulnerability. Examining the lived realities of gig workers alongside the existing legal landscape and judicial engagement reveals the disjuncture between constitutional ideals and economic practices.

#### A. Precarious Status and Economic Vulnerabilities

Gig workers in India are typically categorised as “independent contractors,” a classification that excludes them from the ambit of core labour laws.<sup>48</sup> This contractual arrangement allows platforms to avoid obligations under statutes such as the Minimum Wages Act, the Employees’ Provident Funds and Miscellaneous Provisions Act, and the Maternity Benefit Act.<sup>49</sup> Empirical research indicates that average earnings of delivery workers range between ₹15,000 and ₹20,000 per month, yet after deducting fuel costs and commissions, net incomes often fall below statutory minimum wages.<sup>50</sup> The problem is magnified for women, who face reduced earning opportunities due to caregiving responsibilities, discriminatory practices, and unsafe working environments.<sup>51</sup>

#### B. Algorithmic Control and the Myth of Autonomy

Platforms advertise flexibility as the defining advantage of gig work, but in practice they exercise control through algorithmic systems. Dynamic pricing models, incentive structures, and customer rating mechanisms structure the terms of work and earnings.<sup>52</sup> Workers risk “deactivation” for failing to meet acceptance rates or for negative customer feedback, often without notice or procedural safeguards.<sup>53</sup> Scholars have described this model as the “algorithmic boss,” which creates new forms of subordination by embedding managerial authority into technology.<sup>54</sup> Far from ensuring autonomy, algorithmic control perpetuates economic dependence under opaque conditions.

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<sup>48</sup> Motor Transport Workers Act, No. 27 of 1961, INDIA CODE (1961).

<sup>49</sup> Minimum Wages Act, No. 11 of 1948, INDIA CODE (1948); Employees’ Provid Funds and Miscellaneous Provisions Act, No. 19 of 1952, INDIA CODE (1952); Maternity Benefit Act, No. 53 of 1961, INDIA CODE (1961).

<sup>50</sup> Int’l Labour Org., The Role of Digital Labour Platforms in Transforming the World of Work in India 32–33 (2021).

<sup>51</sup> Divya Prakash, Gender and Precarity in India’s Gig Economy, 44 INDIAN J. GENDER STUD. 67, 71–72 (2022).

<sup>52</sup> Valerio De Stefano, Negotiating the Algorithm: Automation, Information Asymmetries, and Power in the Gig Economy, 41 COMP. LAB. L. & POL’Y J. 333, 339 (2020).

<sup>53</sup> JEREMIAS PRASSL, Humans as a Service, *supra* note 17, at 59–60.

<sup>54</sup> Antonio Aloisi, Commoditized Workers: Case Study Research on Labour Law Issues Arising from a Set of “On-Demand/Gig Economy” Platforms, 37 COMP. LAB. L. & POL’Y J. 653, 669 (2016).

### C. Exclusion from Social Security under the Code on Social Security, 2020

The Code on Social Security, 2020 (CSS 2020) represents the first statutory recognition of “gig workers” and “platform workers.”<sup>55</sup> Despite this symbolic importance, its design is limited. The Code leaves social security schemes largely to governmental discretion and restricts aggregator contributions to a capped percentage of annual turnover.<sup>56</sup> Consequently, entitlements such as provident fund, health insurance, pensions, and maternity benefits remain aspirational rather than enforceable.<sup>57</sup> The COVID-19 pandemic exposed this gap acutely: gig workers, deemed “essential” during lockdowns, were denied adequate income support and medical cover.<sup>58</sup>

### D. Barriers to Collective Action and Gendered Inequalities

Traditional labour protections have long relied on the right to unionise, yet gig workers’ classification as independent contractors bars them from recognition under the Trade Unions Act, 1926.<sup>59</sup> The dispersed nature of work, fear of retaliation, and reliance on platforms for income further fragment efforts at organising. Notwithstanding these challenges, unions such as the Indian Federation of App-Based Transport Workers (IFAT) have emerged to demand recognition and bargaining rights, though with limited effectiveness.<sup>60</sup> Gendered inequalities deepen the crisis: women workers in platform sectors such as beauty and domestic services face harassment, lack of maternity protections, and structural exclusion from leadership roles in emerging unions.<sup>61</sup>

### E. Judicial Responses to the Plight of Gig Workers

Indian courts have gradually extended constitutional protections to vulnerable forms of labour. In *People’s Union for Democratic Rights v. Union of India*, the Supreme Court held that non-payment of minimum wages constitutes forced labour under Article 23 of the Constitution.<sup>62</sup> In *Bandhua Mukti Morcha v. Union of India*, the Court reaffirmed that the right to life under Article 21 encompasses humane conditions of work and dignity.<sup>63</sup> More recently, the Delhi

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<sup>55</sup> Code on Social Security, *supra* note 9.

<sup>56</sup> *Id.* § 114(4).

<sup>57</sup> K.R. Shyam Sundar, *The Social Security Code, 2020: A Critique*, 57 *ECON. & POL. WKLY.*, no. 42, Oct. 17, 2020, at 22.

<sup>58</sup> Int’l Labour Org., *COVID-19 and the World of Work: Impact and Policy Responses in India* 14–15 (2021).

<sup>59</sup> Trade Unions Act, No. 16 of 1926, INDIA CODE (1926).

<sup>60</sup> *Indian Fed’n of App-Based Transp. Workers v. Union of India*, W.P. (C) No. 12704/2021 (Delhi H.C.).

<sup>61</sup> CENTRE FOR INTERNET & SOC’Y, *Digital Platforms and Women’s Work in India* 22–23 (2022).

<sup>62</sup> *People’s Union for Democratic Rights*, *supra* note 5.

<sup>63</sup> *Bandhua Mukti Morcha*, *supra* note 44.

High Court admitted a public interest petition by IFAT demanding implementation of CSS 2020, observing that denial of welfare protections could implicate Articles 14 and 21.<sup>64</sup> Although the case is ongoing, it reflects the judiciary's recognition that constitutional rights must adapt to new forms of employment.

## V. COMPARATIVE AND POLICY LESSONS

The challenges posed by platform work are not unique to India. Across jurisdictions, legislatures and courts have sought to reconcile flexibility with social protection. A comparative analysis of developments in the United Kingdom, the United States, and the European Union highlights different regulatory models and their implications for India.

### A. The United Kingdom and the Hybrid “Worker” Status

The United Kingdom has adopted an intermediate legal category of “worker” under the Employment Rights Act, 1996.<sup>65</sup> This classification secures access to minimum wages, paid leave, and rest breaks, while stopping short of granting the full rights of employees. In *Uber BV v. Aslam*, the UK Supreme Court confirmed that Uber drivers were “workers,” holding that contractual labels cannot override the economic reality of control exercised by platforms.<sup>66</sup> This approach demonstrates that flexible arrangements can be reconciled with baseline labour protections.

### B. The United States: The ABC Test and Proposition 22

In the United States, the Fair Labor Standards Act, 1938 excludes independent contractors from coverage.<sup>67</sup> California's Assembly Bill 5 introduced the “ABC test,” presuming employment unless platforms could prove genuine independence.<sup>68</sup> However, aggressive platform lobbying resulted in Proposition 22, a voter initiative exempting app-based transport and delivery companies from the statute, while offering limited health and accident benefits.<sup>69</sup> This episode illustrates the difficulty of enacting protective legislation in the face of concentrated corporate power.

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<sup>64</sup> Indian Fed'n of App-Based Transp. Workers, *supra* note 60.

<sup>65</sup> Employment Rights Act, 1996, c. 18, § 230(3) (UK).

<sup>66</sup> *Uber BV v. Aslam*, *supra* note 6, [2021] 2 W.L.R. 1075.

<sup>67</sup> Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219 (2018).

<sup>68</sup> Cal. Assemb. B. 5, 2019–2020 Reg. Sess. (Cal. 2019).

<sup>69</sup> Cal. Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative, Gen. Election (Nov. 3, 2020).

### C. The European Union: Presumption of Employment and Algorithmic Accountability

The European Commission's proposed Platform Work Directive establishes a rebuttable presumption of employment where indicators of control exist.<sup>70</sup> It further mandates algorithmic transparency, requiring platforms to disclose automated decision-making processes that affect work allocation and conditions. By addressing both misclassification and information asymmetry, the EU offers a comprehensive model for regulating platform work in a rights-based framework.

### D. Policy Lessons for India

India's experience suggests the need for a calibrated but firm regulatory response. First, CSS 2020 must be amended to create binding obligations rather than discretionary schemes.<sup>71</sup> Second, platforms should contribute meaningfully to a national social security fund, with contributions linked to revenue rather than capped percentages.<sup>72</sup> Third, statutory recognition of collective bargaining rights for gig workers should be introduced, possibly through sectoral boards.<sup>73</sup> Fourth, legislation mandating algorithmic accountability is critical to ensure fairness and due process in work allocation and deactivation.<sup>74</sup> Drawing from comparative lessons, India can design a legal framework that preserves flexibility while ensuring constitutional compliance.

## **VI. CONCLUSION**

The analysis demonstrates that India's gig economy stands at a constitutional crossroads. While it has generated employment and innovation, it has also entrenched precarity, misclassification, and social exclusion. The existing statutory framework under the Code on Social Security, 2020 remains inadequate, offering recognition without enforceable entitlements. Judicial interventions have extended constitutional protections incrementally, but a more systemic response is necessary.

Comparative experience underscores that law can adapt to digital economies. The United Kingdom's hybrid "worker" model, the European Union's presumption of employment and

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<sup>70</sup> Comm'n Proposal for a Directive, *supra* note 8.

<sup>71</sup> Code on Social Security, *supra* note 9.

<sup>72</sup> *Id.* ch. IX.

<sup>73</sup> Alex J. Wood et al., Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy, 33 *WORK, EMP. & SOC'Y* 56, 58–60 (2019).

<sup>74</sup> Indian Fed'n of App-Based Transp. Workers (IFAT), About Us, <https://ifat.org.in> (last visited Aug. 26, 2025).

algorithmic transparency, and the United States' struggles with corporate pushback all provide important lessons. For India, the path forward must rest on strengthening statutory protections, embedding algorithmic accountability, enabling collective bargaining, and creating a universal social security floor.

Ultimately, the question is not whether gig workers fit traditional categories of employment but whether constitutional values of equality, dignity, and justice will extend to them. To deny such protections is to hollow out Articles 14, 19, and 21 of the Constitution. Extending them, on the other hand, would exemplify transformative constitutionalism - an interpretive approach that ensures the Constitution evolves to meet the challenges of changing economic realities. The gig economy, in this sense, is not just a question of labour regulation but a test of India's constitutional morality.

