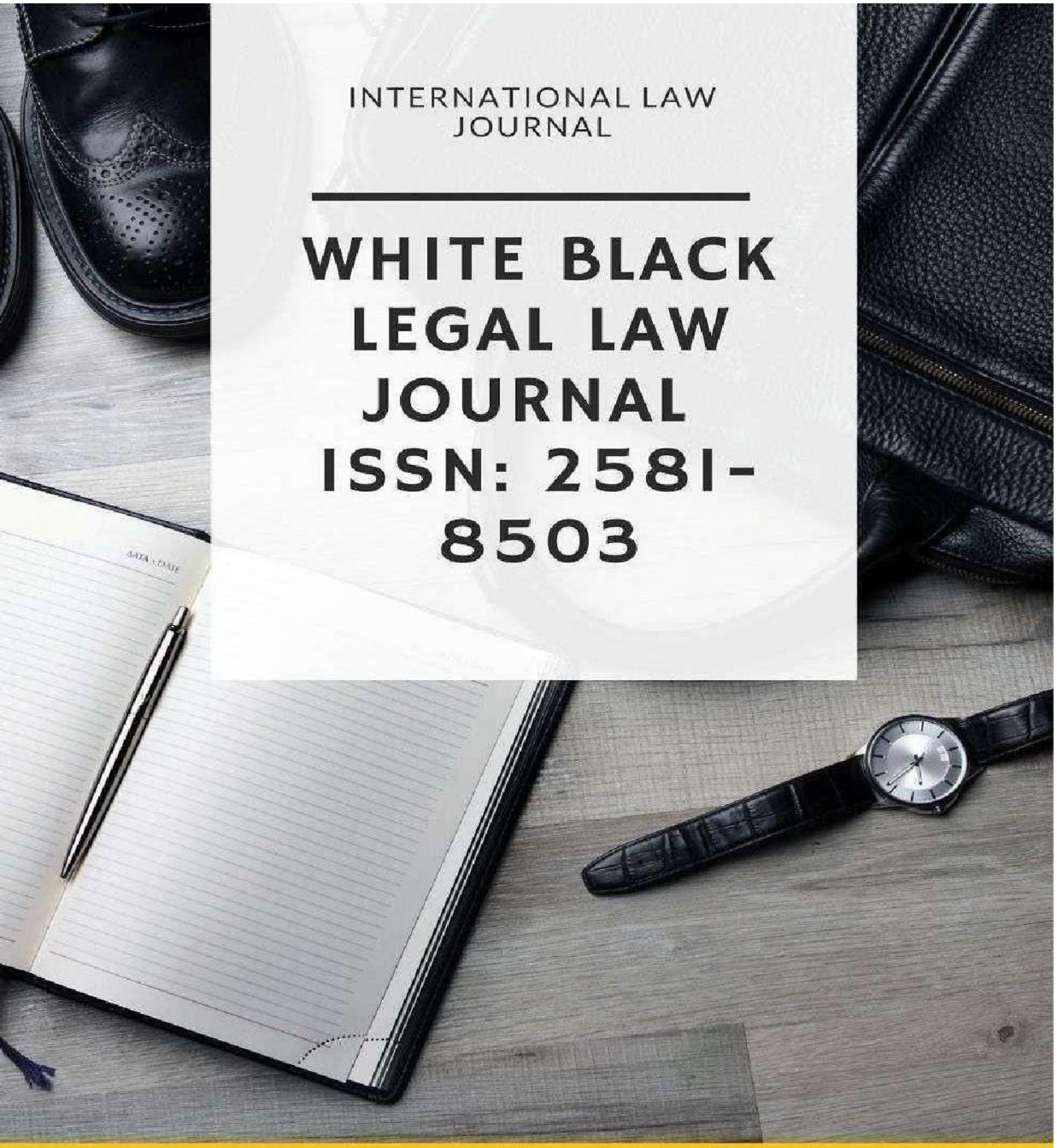


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SOCIAL SECURITY OF GIG WORKERS IN INDIA: A CRITICAL ANALYSIS OF THE CODE ON SOCIAL SECURITY, 2020

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Abstract

In recent years, the growth of app-based work has created a huge and floating workforce that is engaged in core economic activities. As large numbers of workers are entering into this new domain of work, the workers remain outside the purview of the traditional employer-employee relationship. Estimated NITI Aayog estimate for gig economy workforce in India in 2020-21 was 7.7 million and it is expected to rise to 23.5 million by 2029-30.1 While recognizing the existence of gig economy workers for the first time in the history of independent India through Code on Social Security, 2020 (effective from 21 November 2025), Social Security (Central) Rules, 2026 have given operational effect to the concept of social security through the said Code in May 2026.2 This paper, therefore, examines whether this formal recognition of gig workers translates into real social security benefit.[1]

The paper will, using a doctrinal and comparative approach, analyze the provisions of the Code, namely the definitions in section 2(10), section 114 and its scheme-enabling character, the capping of contributions by aggregators in section 114(5), the registration- and eligibility-based approach to entitlements in section 114(1)-(3), as well as the institutional framework of section 6. As the Code grants formal inclusion but no real protection to gig workers, three deficits are identified: Firstly, the benefits to be conferred on gig workers are to be laid out in the schemes of benefits that the Central Government "may" frame under section 114(10). Secondly, the Code on Social Security deliberately refrains from deciding the employment status of gig workers. Consequently, the statutory definitions of employment will continue to be of no use to distinguish between employees and non-employees. Thirdly, the entitlements of gig workers to the benefits conferred upon them depend, according to section 114(1)-(3), on their registration and on their having worked for 90/120 days on the platform in question. For a mobile, digitally managed workforce, proving these requirements will be a hard nut to crack.

[1] NITI Aayog, India's Booming Gig and Platform Economy (June 2022).

The paper will, for the purpose of comparison, also look into the approach of Uber BV v Aslam in the UK, the California ABC test, the Spanish Rider Law, the new EU Directive 2024/2831 on platform work, as well as the new ILO Convention No 193 (2026) on Women and Men in the New World of Work. Furthermore, the paper will analyze the two already existing statutes on platform workers, namely the legislation of the State of Rajasthan as well as that of the State of Karnataka. Finally, some recommendations will be offered, namely the conferment of statutory minimum entitlements, a rebuttable presumption of employment, the possibility of portable benefits as well as algorithmic transparency.

Keywords: *Gig workers; platform workers; Code on Social Security 2020; aggregators; employment status; social security; Article 21; algorithmic management.*

RESEARCH DESIGN

Statement of the Problem

Indian social security law was designed around the “employee” in an “establishment.” The gig worker who is paid per task by an algorithmic intermediary and gets labeled as a “partner” or “independent contractor” does not fit within this binary. The Code on Social Security, 2020 creates a new category and offers welfare schemes open to administrative discretion. The question the paper seeks to answer is whether such a category and an optional scheme can provide the social security a worker is entitled to.

Research Questions

1. Does the Code on Social Security, 2020 provide a legally adequate definition of "gig worker" and "platform worker", and does it address the problem of worker misclassification?
2. Is the scheme-based, contribution-linked model under the Code sufficient to deliver enforceable social security rights to gig workers?
3. How far do constitutional guarantees (Articles 14, 21, 23, 38, 39, 41, 42 and 43) and India's international commitments support a right to social security for gig workers?
4. How do India and the comparative jurisdictions (the United Kingdom, California, Spain and the European Union) differ in extending protection to platform workers?
5. What legislative and administrative reforms are needed to make social security for gig workers effective, portable, and enforceable?

Objectives of the Study

1. To trace the evolution of social security law for informal and non-standard workers in India.
2. To analyze the definitions, institutional framework, and funding model for gig workers under the Code and the 2026 Rules.
3. To evaluate the Code against constitutional principles and ILO standards.
4. To study judicial trends on employment status and the right to social security.
5. To compare selected foreign and state-level models.
6. To propose workable reforms.

Hypotheses

- **H1 (main):** The Code recognizes gig workers formally but does not guarantee enforceable social security, because benefits are contingent on future schemes, and the aggregator's contribution is capped.
- **H2:** The Code's silence on employment status leaves platform workers exposed to continued misclassification.
- **H3:** State legislation in Rajasthan and Karnataka is more rights-oriented than the central framework.
- **H0 (null):** The Code provides adequate and enforceable social security to gigs and platform workers.

Research Methodology

The study is doctrinal, analytical, and comparative. Primary sources are the Constitution of India, the Code, the 2026 Rules, state statutes, judicial decisions and ILO instruments. Secondary sources include books, journal articles, NITI Aayog and ILO reports, Fairwork India ratings and the report of the Parliamentary Standing Committee on Labour. Four jurisdictions were chosen because each represents a distinct regulatory technique: judicial reclassification (the United Kingdom), a statutory test (California), a statutory presumption for a defined sector (Spain) and a general rebuttable presumption (the European Union). The study is non-empirical and involves no fieldwork. Because the Rules, schemes and state laws are still evolving, the analysis is current only to the date of writing. Citations follow OSCOLA, adapted for Indian reports.[2]

[2] Fairwork India, Fairwork India Ratings (latest edition).

CHAPTER 1: INTRODUCTION

Work is organized around the screen of a smart phone in the digital era. The platform economy has opened up new avenues for livelihood. However, it is based on the exploitation of a precarious workforce; their labour is vital, but their survival is not protected by law. The regular type of employee was in mind when the Indian labor laws were conceived, and the gig worker does not quite fit in the paradigm.

The Gig economy is a kind of labor market where work is assigned to freelancers through digital platforms on a per task basis. In India this could be drivers for Ola or Uber. Delivery people for Zomato or Swiggy. People doing home services for Urban Company. Porter for logistics. Niti Aayog says that there were 7.7 million such workers in India (as of 2020-21) and that by 2029-30 they would be 23.5 million.1 This is not just a big number in terms of how much the group contributes to the economy, but it is also important because many of these workers are young people who were unable to get formal jobs. So, this is why the labor laws of India must change to regulate the gig economy and provide similar levels of social security to traditional workers to the gig economy workers.

One of the most striking features of the platform economy is that the platforms act as gatekeepers, where they have a significant amount of control over the workers but are not providing any kind of social security to the workers. In other words, as a worker you are required to take-up tasks as assigned, time constraints, performance in line with the platform standards, etc. even though the platform claims itself to be a marketplace where it acts as a facilitator of independent transactions of buyers and sellers.2 As it is called by Prassl, the 'human as a service' where the platform externalizes the risk and captures the reward. In this sense, the gig worker does not deserve social security, which is given to traditional workers who are working with the same entity which you are at the mercy of.

The vast literature demonstrates the deficiencies of the gig economy and the difficulties faced by those in the gig economy. For instance, according to an ILO study on digital labor platforms, they often use practices that increase workers' vulnerability and exploit the flexibility of workers. 3 The various reports on Fairwork India point to Indian gig platforms being lacking in fair pay, fair work conditions, fair contracts, fair management, and fair representation. 4 The State of Working India 2023 notes how the defining feature of the Indian labor market is the lack of formality where workers are vulnerable to exploitation and have low-income security. 5 For a gig platform, usually, the person who gets injured (delivery partner or driver, etc.) does

not have a form of compensation, as an employee would.[3]

Hence, no sick leaves or maternity benefits, etc.

Such platforms were not mentioned specifically anywhere in any of the statutes for the social security of the workers before the enactment of Code on Social Security, 2020. Unorganized Workers' Social Security Act, 2008 mentions unorganized workers and wage workers. The Gig workers are not mentioned specifically. The applicability of the said Act to the gig workers is under consideration in the Supreme Court in the case of Indian Federation of App-based Transport Workers v Union of India.6 Code on Social Security, 2020, that came into effect on 1st November 2025, secures the rights of the workers. The Social Security (Central) Rules, 2026 was notified on 8th May 2026 which provides further details of the implementation of the rules for the workers. It includes details on the registration requirements and information sharing with the appropriate government authorities.[4]

This paper intends to examine such laws and its effectiveness. The structure of the paper is as under. In chapter 2, context and background have been provided. In chapter 3, the constitutional and international legal basis for social security rights is reviewed. Detailed critique of the Code and the Rules is done in chapter 4. Employment status jurisprudence both in India and abroad is discussed in chapter 5. In chapter 6, state level measures are looked at. Finally, challenges and reforms are assessed in chapter 7 and finally, the paper is concluded in chapter 8.

CHAPTER 2: CONCEPTUAL FRAMEWORK

2.1 Evolution of Social Security Law for Workers in India

Indian social security laws were created in the century and were made for specific occupations. The Workmen's Compensation Act 1923 or the Employees' Compensation Act gives protection for injuries that happen at work. The Employees' State Insurance Act 1948 provides insurance for sickness, pregnancy and injuries. The Employees' Provident Funds and Miscellaneous Provisions Act 1952 takes care of money for retirement. The Maternity Benefit Act 1961 protects mothers. The Payment of Gratuity Act 1972 gives rewards for service. All these laws define who is an employee and who is an establishment and use limits based on wages or on the number of workers. Scholars of labour law have long said that this way of

[3] ILO, World Employment and Social Outlook 2021 (ILO 2021).
[4] Indian Federation of App-based Transport Workers v Union of India, W.P.(C) 1068 of 2021 (SC) (pending).

excluding Indians from social security is wrong.[5]

The National Commission for Enterprises in the Unorganized Sector said that the law should set a minimum level of social security for workers who are not organized. The Second National Commission on Labour said that there should be one law that covers all workers. The Unorganized Workers' Social Security Act 2008 lets the right government make welfare schemes but like the Code, the Workers' Social Security Act 2008 does not give any right to workers. The Code on Social Security 2020 brings together the Employees' Compensation Act, the Employees' State Insurance Act, the Employees' Provident Funds and Miscellaneous Provisions Act the Maternity Benefit Act the Payment of Gratuity Act and the Unorganized Workers' Social Security Act 2008 and replaces them with the Code, on Social Security 2020.[6]

2.2 Definitions under the Code

The Code contains three key definitions which structure the whole scheme for this workforce. An aggregator is a digital intermediary or marketplace which connects a buyer or user of a service with a seller or service provider under section 2(2). A gig worker is a person who performs work or participates in a work arrangement and earns it outside the traditional employer-employee relationship under section 2(35). The terms of platform work and platform worker are defined in sections 2(60) and 2(61) by reference to work arranged through an online platform in exchange for payment.1 Chapter IX of the Code deals with unorganized workers, gig workers and platform workers together but treats gig and platform workers as a distinct category while section 2(86) supplies the separate definition of an unorganized worker. Whether gig workers are also unorganized against workers under the 2008 Act is the very question pending in the IFAT petition.[7]

2.3 A Critique of the Definitions

The definitions are significant as an act of recognition, but they have three weaknesses. Firstly, they define the gig worker by what he is not, namely, a person outside the employer-employee relationship. This wording assumes the very conclusion that litigation is intended to be decided. A driver who is in substance as an employee but is contractually labelled as a partner is, per the statutory text, a gig worker and the platform can cite the Code to resist reclassification.

[5] Employees' Compensation Act 1923; Employees' State Insurance Act 1948; Employees' Provident Funds and Miscellaneous Provisions Act 1952; Maternity Benefit Act 1961; Payment of Gratuity Act 1972.
[6] National Commission for Enterprises in the Unorganized Sector, Report on Conditions of Work and Promotion of Livelihoods in the Unorganized Sector (2007); Second National Commission on Labour, Report (2002).
[7] Code on Social Security 2020 (Act 36 of 2020), ss 2(2), 2(35), 2(60), 2(61) and 2(86).

Secondly, the definitions focus on the form of the arrangement rather than the degree of dependence, so a worker who depends on one platform for her entire income is treated in line with one who occasionally earns extra income. Thirdly, the definition of platform work relies on "an online platform" which may not capture arrangements that combine online allocation with offline supervision.

2.4 Theoretical Lenses

Three articles present different approaches that can be used to interpret the current phenomenon. First, according to Davidov's purposive understanding of labor law, regulation of the working conditions of dependent and subordinate workers, who are exploited by another person despite the form of employment, falls under its jurisdiction. Therefore, the most important aspect in the study of the status of workers on online platforms is not a supposed re-definition of their status as employees, but the protection of such workers. Second, De Stefano, analyzing the nature of flexible employment relationships, shows that in order to turn stable costs of labor into marginal ones, platforms use the status of workers as a resource that can be accessed on demand. Thus, he proves the theory of the transformation of workers into a "reserve army of labor." Finally, Supiot's theory of "social drawing rights" suggests that, ideally, all employment-related rights should be attributed to workers on a personal basis, regardless of their employment status, and therefore such rights as benefits should be considered as "portable."[8]

2.5 Employment Status and Why It Matters

Employment status is the gateway to social security in India. Indian courts have developed a series of tests to decide between employee and independent contractor, including the control test, the integration or organization test and the multiple-factor or economic reality test, each of which is discussed in Chapter 5. The Code does not apply these tests to gig workers. Instead, it takes them out of the classification inquiry by creating a separate category. The consequence is that a gig worker has a statutory claim to schemes but not to the entitlements that attach to employee status, such as wages under the Code on Wages, protection against arbitrary termination under the Industrial Relations Code or the statutory benefits of the ESI and provident fund schemes. Understanding this trade-off is essential for critical analysis in Chapter 4.

[8] Guy Davidov, A Purposive Approach to Labour Law (OUP 2016).

CHAPTER 3: CONSTITUTIONAL AND INTERNATIONAL FOUNDATIONS

3.1 The Constitutional Framework

Although the term "right to social security" in the Constitution of India, it can be inferred from various articles that they provide a basis for such a right. Article 21 provides for right to life and liberty. Article14 forbids discrimination on any ground, which is relevant to a statute that treats one category of workers differently from another without any rational basis in their needs. Article 23 prohibits forced labor in any form. The directive principles require that the State shall make provision for an adequate livelihood and equitable distribution of resources (Article 38 and 39), and that it shall make effective provision for social security and welfare of labor (Article 41) and humane working conditions and maternity benefits (Article 42). It shall also strive to secure just and reasonable working conditions and a living wage (Article43). Furthermore, the Constitution makes social security and social insurance as subjects of concurrent jurisdiction (Entry23) and welfare of labor (Entry24). Thus, the existence of both the code at the center and the gig-worker statutes at the state level mentioned in chapter 6 can be explained based on the concurrent list in the Constitution.[9]

3.2 Judicial Expansion of Article 21 and Workers' Rights

In various instances, the Supreme Court has interpreted the Directive Principles as linked to Article 21 of the Constitution and therefore the right to life and dignity encompasses certain social and economic rights. In Francis Coralie Mullin v Administrator, Union Territory of Delhi, the Court held that the right to life includes the right to have access to the necessities of life and a dignified existence. The Court later in Bandhua Mukti Morcha v Union of India interpreted this as including protection of the health and vigor of a bonded laborer and as providing for safe working conditions.[10]

In Olga Tellis v Bombay Municipal Corporation, the Court held that the right to livelihood is an aspect of life protected by Article 21 because no one can live without the means of livelihood. In a subsequent decision, the Consumer Education and Research Centre v Union of India the Court held that the right to health and medical care is a right under Article 21. This right is further linked to the Directive Principles of Justice, which indicates that the Constitution protects a wide range of rights not only of a legal but of a welfare nature for the benefit of

[9] Constitution of India, arts 14, 21, 23, 38, 39, 41, 42 and 43; Seventh Schedule, List III, entries 23 and 24.
[10] Francis Coralie Mullin v Administrator, Union Territory of Delhi (1981) 1 SCC 608; Bandhua Mukti Morcha v Union of India (1984) 3 SCC 161.

workers.[11]

Two lines of jurisprudence in particular are relevant to the situation of the app-based workers. In the first place, in the case of Peoples Union for Democratic Rights v Union of India also known as the Asiad Workers case, the Supreme Court held that Article 23 of the Constitution forbids exploitation and forced labor, which includes any form of coercion in the workplace. Therefore, a lower wage and no choice but to accept such terms of employment may be considered forced labor. Moreover, the Court held that Article 23 extends to private employers. This suggests that the denial of security and working conditions to persons who have no other choice but to work as app-based drivers may be considered forced labor in the sense of the petition in the IFAT case.[12]

Furthermore, in Municipal Corporation of Delhi v Female Workers (Muster Roll) the Court held that maternity benefits should extend to female daily-wage workers on the basis of the Directive Principles and international norms of justice and fairness. It is notable that the Court went beyond the legal wording and interpreted the provisions of the Constitution broadly. The Court has also invoked international law to supplement domestic law in other cases, viz. the Vishaka v State of Rajasthan case and guidelines on sexual harassment in the workplace.[13]

3.3 International Standards

The main international benchmark is the ILO Social Security Convention 1952 (No 102). This Convention establishes minimum standards for nine branches of security such as medical care, sickness, old age, employment injury maternity and invalidity benefit. The Social Protection Floors Recommendation 2012 (No 202) demands defined floors that ensure essential health care and basic income security throughout the life cycle. This Recommendation also incorporates people who work in the economy. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights both ratified by India affirm the right to security.[14]

The recent key development is the ILO Decent Work in the Platform Economy Convention 2026 (No 193) adopted on 12 June 2026. This Convention is the international labour standard

[11] Olga Tellis v Bombay Municipal Corporation (1985) 3 SCC 545; Consumer Education and Research Centre v Union of India (1995) 3 SCC 42.
[12] People's Union for Democratic Rights v Union of India (1982) 3 SCC 235; Sanjit Roy v State of Rajasthan (1983) 1 SCC 525.
[13] Municipal Corporation of Delhi v Female Workers (Muster Roll) (2000) 3 SCC 224; Vishaka v State of Rajasthan (1997) 6 SCC 241.
[14] ILO Social Security (Minimum Standards) Convention, 1952 (No 102); ILO Social Protection Floors Recommendation, 2012 (No 202); Universal Declaration of Human Rights 1948, art 22; International Covenant on Economic, Social and Cultural Rights 1966, arts 9–12.

that focuses on work performed through digital labour platforms. According to the text the Convention covers platform workers no matter their employment status. It demands that workers have access to security and that they are correctly classified. It also requires platforms to reveal how they use monitoring and decision-making. Workers are entitled to ask for an explanation and to review automated decisions, such as suspension or deactivation. Like every ILO Convention, this Convention only obliges states that ratify it. The accompanying Recommendation was not adopted at the session. Nevertheless, this Convention provides a standard against which the Indian framework can be judged. The Courts practice, in Vishaka indicates that the Convention could help interpret Article 21.[15]

3.4 Constitutional Benchmark for the Code

In the aggregate, the authorities cited here establish three propositions. To begin with, social security for workers is part of the dignity protected by Article 21 and is not a matter of administrative largesse. Secondly, the Constitution directs us to the reality of dependence and exploitation and not to the form of the contract. Thirdly, international standards reinforce that a state which recognizes a category of workers must grant them protection which is real and accessible. Though the Directive Principles are not directly enforceable, the State may realize them progressively. However, progressive realization requires a legal commitment, a timeline, and a floor and does not allow a benefit to be left to the discretion of the executive for an indefinite period. This is the touchstone against which the Code is tested in the next chapter.

CHAPTER 4: CRITICAL ANALYSIS OF THE CODE ON SOCIAL SECURITY, 2020

This chapter constitutes a substantial part of the paper. It analyzes Code and 2026 Rules under six headings: the scheme-based architecture, the aggregator contribution, registration and eligibility, governance, the treatment of employment status, and algorithmic. Table 1 below summarizes the principal provisions.

[15] ILO Convention No 193 (2026), as listed in the paper's bibliography.

Table 1: Principal provisions of the Code on Social Security, 2020 relevant to gig and platform workers

Provision	Content	Observation
s 2(2)	Defines "aggregator" as a digital intermediary or marketplace connecting a buyer or user with a seller or service provider	Wide definition; the Second Schedule limits who must contribute
s 2(35)	Defines "gig worker" as a person earning outside the traditional employer-employee relationship	Defined by exclusion; no test of status
ss 2(60)-(61)	Define platform work and platform worker	Turns on work arranged through an online platform
s 6	National Social Security Board for unorganized, gig and platform workers	Advisory; no adjudicatory or binding power
s 113	Registration of unorganized, gig and platform workers	Registration is a precondition to benefits
s 114(1)	Central Government "may" frame schemes (life, disability, accident, health, maternity, old age, crèche)	Discretionary; no time limit or minimum content
s 114(4) and Second Schedule	Aggregator contribution of 1-2% of annual turnover, capped at 5% of payments to workers	Base unclear; cap limits the amount
s 141	Social Security Fund	Inflow depends on notified rate and compliance
Rules 2026	Aggregator registration of workers; periodic updates; 90/120-day eligibility	Rolling eligibility; dependence on aggregator data

4.1 A Discretionary Scheme-Based Architecture

Section 114 of the Code provides that the Central Government may frame and notify schemes for gig workers and platform workers on matters such as life and disability cover, accident

insurance, health and maternity benefits, old age protection, crèche facilities and any other benefit. The operating word is 'may.' Unlike the ESI Act or the EPF Act, in which entitlement arises by statute once the conditions are met, the Code gives the gig worker no benefit until a scheme is notified, and it does not require the Government to notify any scheme within a stated period or with a minimum content. The Parliamentary Standing Committee on Labour examined the Bill, including its treatment of unorganized and gig workers, before the Code was passed.[16]

This design has a doctrinal consequence. A right that depends on executive willingness is an aspiration, and not an entitlement. A gig worker injured today cannot approach a forum to claim a benefit under section 114, because the section confers a power on the Government and not a right on the worker. The 2008 Act also gave the Government the authority to devise schemes, and its experience reveals the constraints of an approach that relies on executive initiatives. The Code accordingly perpetuates a structural flaw of the earlier legislation for the workers who need it most.[17]

4.2 The Aggregator Contribution

Section 114(4) requires aggregators to contribute one to two percent of their annual turnover, subject to a ceiling of five percent of the amount paid or payable to gig workers and platform workers. The aggregators to which the obligation applies are those in the Second Schedule, which lists among such categories ride-sharing services, food and grocery delivery, logistics, e-marketplaces and professional services. The contributions are to be paid to a Social Security Fund established under the Code. Four difficulties arise.

- **Ambiguity of the base:** "Annual turnover" is not defined to resolve whether it means the platform's own revenue, such as commission, or the gross value of transactions that pass through it. The difference is large. Take a hypothetical platform that has its own revenue at Rs 100 crore and pays out Rs 400 crore to workers. Two percent of revenue is Rs 2 crore-just 0.5 percent of payouts, whereas the ceiling of five percent of payouts would be Rs 20 crore. The ceiling therefore says little about the likely amount, and the base determines almost everything.
- **The ceiling:** Where payouts are small relative to turnover, the cap may reduce the contribution below the percentage of turnover. It also ties the maximum contribution to

[16] Code on Social Security 2020 (Act 36 of 2020), ss 113–114 and Second Schedule.
[17] Unorganized Workers' Social Security Act 2008.

what the platform pays out, which is a figure the platform itself controls.

- **Multi-apping:** Many workers work on several platforms. The Code does not explain how contributions from different aggregators are to be pooled for a single worker, or how a worker's benefits are to be matched with contributions made on her behalf.
- **Delay in operationalizing the levy:** The statutory band is wide, and the effective rate depends on notification by the Central Government. A commentary on the 2026 Rules indicates that the Rules impose interest at twelve percent a year on late payment, but a fund without a notified rate and start date has no steady inflow.

4.3 Registration and Eligibility Under the 2026 Rules

Section 113 of the Code says unorganized workers, gig workers and platform workers must register to get benefits. The e-Shram portal is the system to do this. In the Union Budget 2025-26, the government said gig workers will get identity cards and e-Shram registration and health coverage under the Pradhan Mantri Jan Arogya Yojana. The Social Security (Central) Rules, 2026 give details about how this will work.[18]

As per the summary, workers who are 16 years or older can register using their Aadhaar. Aggregators must upload details of their workers on the e-Shram portal within 45 days after the Rules are made. After that they must update workers onboarding and exit information every day or, in time. A gig or platform worker can only claim benefits if they worked for at least 90 days with one aggregator or 120 days across different aggregators in the previous financial year. The draft version of the Rules considered a worker as "engaged" on any day on which she earned income from aggregator work, regardless of the amount. The Rules improve upon the operative details but raise concerns of their own. First, eligibility is rolling, so that a worker who completes eighty-nine days a year, perhaps because of illness or injury, will lose eligibility for the following year at precisely the time when she most needs to cover. Second, the 120-day test for multiple aggregators presupposes reliable data sharing across competing platforms. Third, the commentary suggests that failure by an aggregator to update worker particulars may leave the worker ineligible, penalizing the worker for the default of the party that holds the data. Fourth, Aadhaar-linked registration could leave out workers with authentication problems, migrant workers and persons with limited digital literacy. Fifth, portability across platforms and states is an administrative aspiration rather than a statutory right.

[18] Ministry of Labour and Employment, e-Shram portal documentation; Ministry of Finance, Union Budget 2025–26: Budget Speech (2025).

4.4 Governance and the National Social Security Board[19]

Section 6 provides a National Social Security Board for unorganized workers, gig workers, and platform workers. The board shall be chaired by the Union Minister for Labour and shall consist of representatives of aggregators, gig workers, and the Central and State Governments.1 The Board's functions include advising on and reviewing schemes and evaluating their implementation. It, therefore, does not have the authority to adjudicate disputes or require aggregators to provide information or directions. The inclusion of workers' representatives is appropriate, but boards with no decision-making powers cannot offset a law that gives the executive discretion benefits. Grievance redress mechanisms and penalties for default by aggregators are weak compared to those provided for in the state statutes discussed in Chapter 6.

4.5 Silence on Employment Status

The Code neither makes assumptions about employment nor provides a test for reclassification. It also fails to cover gig workers under the main statutes relating to employees. The Code on Wages 2019 governs the wages of the worker, which implies that a gig worker cannot take legal action against an employer for paying less than the minimum wage, unless she is reclassified, while the Industrial Relations Code 2020 leaves her vulnerable to arbitrary termination and without a remedy to collective bargaining. Thus, the Code takes a narrow view of social security detached from the conditions which give rise to insecurity. A platform may deactivate a worker at will and the worker then loses not only income but, by virtue of the 90/120-day rule, eligibility for benefits as well.[20]

The comparative experience described in Chapter 5 indicates that a separate category without a presumption of employment embeds upon the uncertainty that other jurisdictions have sought to eliminate. By defining gig workers as persons outside the framework of the employer/employee relationship, the Code can be interpreted by courts as a legislative endorsement of the platforms' classification. Such an interpretation is not inherent, and courts may still look behind the label in the appropriate case, but the Code offers them no statutory guidance for doing so.

4.6 Algorithmic Management

The Code remains silent on features of platform work that have a direct say on a worker's

[19] Code on Social Security 2020 (Act 36 of 2020), s 6.
[20] Code on Wages 2019; Industrial Relations Code 2020; Code on Social Security 2020 (Act 36 of 2020).

income: dynamic pricing, rating systems, automated activation and deactivation of tasks, with no information on the rationale provided to the worker. This silence becomes unacceptable in the wake of the ILO Convention of 2026, requiring disclosure of algorithms and review of significant automated decisions, and the EU Directive of 2024, which deals extensively with algorithmic management. While the Supreme Court has explicitly recognized informational privacy as a fundamental right in Justice K S Puttaswamy v Union of India, such rights need to be substantiated through statutes for effective enforcement by individual workers against firms.[21]

4.7 Assessment Against the Hypotheses

The analysis provided above confirms the first two hypotheses. Indeed, the analysis supports H1 since the benefits are derived from notified schemes; thus, their contribution remains uncertain in terms of quantum and base, and certain categories of workers are deprived of these benefits. Similarly, the analysis also supports H2 because the Code does not clarify the status of employment, and by design, the Code may perpetuate the platforms' worker classification. Nevertheless, the Code represents a significant step forward in one regard. It creates a legal basis for the State to intervene and obligate the platforms to contribute to the register of workers, which the 2026 Rules transform into specific time-bound requirements.

CHAPTER 5: JUDICIAL APPROACH AND COMPARATIVE MODELS

5.1 Indian Tests of Employment

Indian courts have never restricted employment to the label in a contract. In Dharangadhra Chemical Works Ltd v State of Saurashtra case, the Supreme Court applied the control and supervision test to find that the salt workers engaged under a contract were nevertheless workmen, because the manner of work was under the control of the employer. Silver Jubilee Tailoring House v Chief Inspector of Shops and Establishments described the right to control the manner of work as the prima facie test of employment, while accepting that it is not exhaustive. In Hussainbhai v Alath Factory Thezhilali Union case, the Court looked beyond the interposition of a contractor to the reality of the relationship and held that where the work is integral to the establishment, the workers are its employees. The Court said in Workmen of Nilgiri Cooperative Marketing Society v State of Tamil Nadu that no single factor is decisive, and that control, ownership of tools, method of payment and the degree of integration must all

[21] Justice K S Puttaswamy v Union of India (2017) 10 SCC 1.

be weighed, with substance prevailing over form. Steel Authority of India Ltd v National Union Waterfront Workers case made the point from the other side, holding that a contractor arrangement is open to challenge if it is a sham or a camouflage. Balwant Rai Saluja v Air India Ltd reaffirmed effective control and supervision as the decisive factor and cautioned against treating workers engaged through an intermediary as employees without proof of the principal's control.[22]

These decisions give the platform worker two arguments. If control is extended to include algorithmic control of pricing, allocation, ratings and deactivation, the control test points towards employment. If the economic reality and integration tests are applied, a driver who cannot work without the platform and who has no real bargaining power resembles an employee more than an independent entrepreneur. Neither argument has yet been tested by the Supreme Court in the platform context, because the IFAT petition filed in September 2021 and invoking Articles 14, 21 and 23 remains pending. The question before the Court is whether gig workers are "unorganized workers" entitled to benefits and whether the denial of social security violates the Constitution. The Union has defended a separate social security framework in preference to reclassification.

5.2 The United Kingdom: *Uber BV v Aslam*

In Uber BV v Aslam, the UK Supreme Court held that Uber drivers were 'workers' for the purposes of employment rights legislation on minimum wage and working time. The Court rejected the argument that the written contract was decisive and held that the statutory question should be answered by looking at the purpose of the legislation, which was to protect those in a position of subordination and dependence. Relevant facts were Uber setting the fare and contractual terms and controlling drivers via ratings and allocation of trips as well as restricting communication between driver and passenger. It also held that working time included all the time the driver was logged in and ready to accept trips. The significance for India is methodological: the Court applied a purposive approach in line with Davidov's thesis and did not allow the platform's drafting to dictate status.[23]

5.3 California: The ABC Test

In Dynamex Operations West Inc v Superior Court, the California Supreme Court adopted the

[22] Dharangadhra Chemical Works Ltd v State of Saurashtra AIR 1957 SC 264; Silver Jubilee Tailoring House v Chief Inspector of Shops and Establishments (1974) 3 SCC 498.
[23] Uber BV v Aslam [2021] UKSC 5.

"ABC" test of employee status according to which an individual is an employee unless the hiring entity could prove that the worker is free from its control, performs work outside the usual course of its business and is customarily engaged in an independently established trade. The burden of proof therefore rests with the hiring entity. The test was later codified into state legislation, but California voters approved Proposition 22 in 2020 which exempted app-based drivers from employee status while providing them a package of limited benefits and the California Supreme Court upheld the new law in 2024. The Californian experience is an illustration of how a strong judicial standard may be eroded by political lobbying and a warning that a package of limited benefits may act as a substitute for employment rights. [24]

5.4 Spain: The Rider Law

The Spanish Supreme Court ruled in 2020 that riders delivering for the online platform Glovo are employees and not self-employed, and the Royal Decree-Law 9/2021, also known as the Rider Law, introduced a legal presumption of employment for courier workers who deliver through digital platforms and gave worker representatives the right to acquire information about the algorithms and artificial intelligence that set working conditions. The Spanish example shows the approach that combines the presumption of employee status with algorithmic transparency, although it is limited to a particular sector.[25]

5.5 The European Union: Directive 2024/2831

The EU Platform Work Directive establishes a rebuttable legal presumption of employment in cases where circumstances indicate control and direction on the part of the enterprise, shifting the burden of proof to the latter. It also imposes requirements on algorithmic management, including transparency, human oversight, and limitations on the use of automation and specific types of data processing.1 Member States are to adopt legislation bringing their laws into harmony with it by December 2026. It is the most comprehensive attempt to date to address both status and algorithmic power.[26]

[24] Dynamex Operations West Inc v Superior Court (2018) 4 Cal 5th 903; Castellanos v State of California (Cal, 25 July 2024).
[25] Real Decreto-ley 9/2021 (Spain).
[26] Directive (EU) 2024/2831 on improving working conditions in platform work.

5.6 Comparative Table

Table 2: Comparative models of protection for platform workers

Jurisdiction	Mechanism	Approach to status	Algorithmic safeguards	Lesson for India
United Kingdom	*Uber BV v Aslam* [2021] UKSC 5	Purposive; contract label not decisive; "worker" status	Control through ratings and allocation counted as indicators	A purposive status test can protect workers without a new statute
California	*Dynamex* ABC test; Proposition 22 (2020)	Presumption of employment with burden on hirer, displaced for app drivers by Proposition 22	Limited	Strong standards are open to political reversal
Spain	Royal Decree-Law 9/2021 (Rider Law)	Statutory presumption for delivery riders	Right of worker representatives to algorithm information	A sector presumption with transparency is workable
European Union	Directive (EU) 2024/2831	Rebuttable presumption triggered by facts of control	Transparency, human oversight, limits on automated decisions	Status and algorithms should be addressed together
India	Code on Social Security 2020; Rules 2026; state Acts	Separate category; no presumption	None in the Code; some in Karnataka Act	Recognition without status or algorithm rules

5.7 Comparative Lessons

Three lessons are apparent. First, other jurisdictions tackle the problem of status before

addressing the allocation of rights. India, in contrast, creates a third category which lacks a presumption and therefore is a risk of entrenching the ambiguity which elsewhere is being eliminated. Second, protection is most enduring when it marries a status test with transparency in relation to algorithms since control over income now passes through software. Third, the ILO Convention 2026 shows that the international consensus is converging on classification, social security, and algorithmic accountability as a package. India's framework takes account of only the second of these elements and does so via discretionary policies.

CHAPTER 6: STATE-LEVEL INITIATIVES

Since social security and labour welfare fall in the Concurrent List, the states have been able to legislate platform workers without waiting for the Centre. Their statutes provide a useful test of the paper's third hypothesis.

6.1 Rajasthan

The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act 2023 was the first of its kind to be enacted at the level of the state. It covers registration of gig workers and aggregators, a welfare board, welfare fund (financed by a fee on the transactions) and a grievance mechanism. The significance of the Act is in its methodology: linking the fee to each transaction, thus avoiding the ambiguity of a turnover basis and allowing the tracking in real time. Implementation has so far been behind the statute. As far as the position in case of rules and fee notification, it requires a check.[27]

6.2 Karnataka

The Karnataka Platform Based Gig Workers (Social Security and Welfare) Act 2025 is the most comprehensive state law yet, taking effect from 30 May 2025 upon enactment of an ordinance and notification of rules in November 2025. It provides for a Gig Workers Welfare Board with representation from workers, aggregators and women, a Social Security and Welfare Fund and a Payment and Welfare Fee Verification System and requires aggregators to pay a welfare fee of between one and five per cent of each a payout to a worker at a rate to be notified. The Act provides that the state welfare fee counts towards the total contribution payable under section 114(4) of the Code relating to the state and central schemes. It also includes provisions on contract terms, transparency, grievance redress, and automated

[27] Rajasthan Platform Based Gig Workers (Registration and Welfare) Act 2023.

decision-making. Like the Code, benefits under the Act depend on schemes notified by the Board, so the substantive welfare provisions may take some time to come into operation.[28]

6.3 Other States

Other states such as Telangana, Jharkhand, and Bihar have already taken steps in this direction. Their draft or adopted laws should be checked before presenting to the public, but the pattern is clear: states have taken control over the regulation of platforms.

6.4 Analysis

In what ways do the state models improve upon the Code? The per transaction fee is much easier to administer and audit than the percentage of turnover. Statutes provide for grievance mechanisms, and in Karnataka, rules on contract terms and automated decisions. Registration of aggregators is mandatory and has a statutory basis. What are the limitations? State statutes still rely on notified schemes for benefits; thus, the problem of discretion is not entirely resolved. There are variations in standards between states, which creates the risk of regulatory arbitrage and platform exit, and workers moving between states may find that benefits do not travel with them. The paper therefore finds that H3 is partially supported: the state laws are more rights-oriented in their design, but do not yet guarantee enforceable benefits. Their fragmentation indicates the need for a national minimum floor.

CHAPTER 7: CHALLENGES AND SUGGESTIONS

7.1 Principal Challenges

The analysis in the preceding chapters identifies nine recurring challenges: definitional ambiguity about status; discretionary and unfunded schemes; an uncertain contribution base and a cap on contributions; exclusion by registration and the rolling 90/120-day test; weak portability for multi-appointing workers; algorithmic opacity; limited enforcement powers; fragmented central and state regulation; and the fiscal capacity of the State to finance a universal floor.

7.2 Suggestions

1. **Convert discretion into entitlement:** Amend Section 114 so that the Central Government “shall” formulate schemes within a specified period and that the Code

[28] Karnataka Platform Based Gig Workers (Social Security and Welfare) Act 2025.

prescribes a minimum statutory benefit package, encompassing accident, health, life and old-age coverage.

2. **Introduce a rebuttable presumption of employment: The** Code should adopt a purposive test, so that a worker who is subject to control or economic dependence on the platform faces a presumption of employment, to be rebutted by the platform. A narrower but more feasible alternative would be to introduce such a presumption in specific sectors, as in the proposed Spanish Rider Law.
3. **Reform the contribution model:** The base should be explicitly defined and preferably take the form of a combination of levy per transaction and a percentage of turnover, with the ceiling removed or revised. Contributions from both platforms and per transaction would also alleviate the problem of multiple aggregators.
4. **Create a portable social security account:** Workers should have a single account, to which all aggregators contribute, as envisioned by Supiot: a universal, individualized social security account.
5. **Remove the penalty for workers on the aggregator's default:** Eligibility criteria should be based on verifiable engagement data and not on the time of filing by an aggregator, and a worker should retain eligibility throughout illness, injury or maternity
6. **Mandate algorithmic transparency and review:** Aggregators must be required to disclose the logic of rating and allocation systems, give notice and reasons before deactivation and offer human review and grievance officer, according to ILO Convention No 193 and the EU Directive.
7. **Strengthen the National Social Security Board:** It should be given mandatory powers to demand data from aggregators, hear complaints and levy penalties, and its reports should be presented to Parliament.
8. **Harmonize central and state laws:** A minimum floor should be set by the central legislature, with freedom for states to provide better standards, and a clear determination of how state fees count towards the central contribution.
9. **Support the collective voice:** a statutory social dialogue forum, and recognition of gig workers' unions for consultation, would give workers a means of influencing the content of schemes and of monitoring compliance.

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CHAPTER 8: CONCLUSION

This paper set out to test whether the Code on Social Security, 2020, now operationalized by the Central Rules of 2026, provides India's gig and platform workers with social security that they can claim as of right. The analysis supports the main hypothesis. The Code is a historic act of recognition, since it is the first Indian statute to name aggregators, gig workers and platform workers, to require contributions from platforms and to promise a registry and a board. However, it is recognized without redistributing it. Benefits depend on schemes that the Government "may" frame, the contribution is uncertain in base and capped in amount, and eligibility is conditioned on registration and a rolling engagement threshold that a mobile and digitally managed workforce may fail to meet through no fault of its own.

The second hypothesis is also supported. By defining the gig worker as a person not in the employer-employee relationship and not setting up a test or presumption of the status, the Code leaves intact with the misclassification at the heart of the problem. The comparative analysis shows that the United Kingdom, Spain, the European Union and with qualifications for California have all treated the status as the gateway to protection, and the ILO Convention of 2026 now recommends correct classification together with social security and algorithmic accountability. The third hypothesis is partly supported, as the Rajasthan and Karnataka statutes are more rights-oriented in design, particularly in their transaction-based fees and grievance mechanisms, but they too depend on the scheme's notification. The null hypothesis is therefore rejected.

The constitutional position also goes in the same direction. If Article 21 contains the right to life with dignity and the right to the health of the worker, and Article 23 covers exploitation by private agents, a system where the worker's protection is subject to the discretion of the executive fails to meet the standards set out in the Constitution The pending IFAT petition gives the Supreme Court an opportunity to say so. In the meantime, Parliament can act by replacing discretion with entitlements, adopting a presumption of employment, reforming the contribution model, ensuring portability, and regulating algorithmic management.

Recognition without redistribution is at best a tokenistic gesture. For India's burgeoning gig workforce, the true test of the Code will not lie in the theoretical elegance of its definitions but in whether a delivery worker injured on a rainy night can claim a benefit as of right.

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