Recognition Without Protection: Evaluating India's Labour Codes for Platform-Based Gig Work

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ABSTRACT

The rapid expansion of app-based platforms such as Uber, Ola, Swiggy, Zomato and Urban Company has created a large workforce that does not fit within the traditional employee-independent contractor divide. Existing literature on Indian labour law has examined the judicial tests for determining employment status in considerable depth, but comparatively little attention has been paid to whether the Code on Social Security, 2020 ("the Code"), India's first legislative response to gig work, translates formal recognition into enforceable protection. This gap forms the central inquiry of the paper: Does statutory recognition of gig and platform workers amount to meaningful labour protection, or does it remain largely symbolic? The paper adopts a doctrinal and analytical research methodology, examining primary legal sources, including the Code on Social Security, 2020, judicial precedents on employment classification, and state legislation such as the Rajasthan Platform Based Gig Workers Act, 2023, supplemented by the United Kingdom's intermediate "worker" category and the European Union's presumption-of-employment model. The paper argues that while the Code marks an important step in formally recognising gig workers, the absence of enforceable rights, effective implementation and regulation of algorithmic management leaves their protection more legislative than lived.

KEYWORDS

Gig economy, Platform workers, Code on Social Security 2020, Labour law reform, Algorithmic management, Employment classification, Rajasthan Gig Workers Act.

INTRODUCTION

The growth of the gig economy has changed the way people work in India. Today, millions of workers earn their livelihood through digital platforms such as Uber, Ola, Swiggy, Zomato and Urban Company. While these platforms provide flexibility and new employment opportunities,

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they have also raised important legal questions about the rights and protection of gig workers. Unlike traditional employees, gig workers are usually treated as independent contractors, even though many of them work under the control and supervision of digital platforms. This creates uncertainty because India's labour laws have traditionally been designed around the distinction between an employee and an independent contractor.

The Code on Social Security, 2020 recognizes gig and platform workers and provides for social security measures but does not grant them the same legal protections available to employees. This paper examines whether India's Labour Codes are adequate for platform-based employment and argues that while they recognise gig workers, they do not provide comprehensive labour protection.

THE CLASSIFICATION PROBLEM

Traditional Test for Determining Employment

The classification of workers as employees or independent contractors has long determined their labour law protection, and Indian courts have developed multiple tests to identify an employment relationship including tests formulated for traditional workplaces that are increasingly difficult to apply to platform-based employment.

Traditionally, the control test has been one of the earliest methods used by courts to determine employment status. The underlying question is whether the employer controls not merely what work is to be performed but also the way it is performed. In *Dharangadhra Chemical Works Ltd. v. State of Saurashtra*, the Supreme Court recognized supervision and control as important indicators of an employment relationship, although the degree of control may vary depending upon the nature of work.[2]

However, the application of the control test to platform work is far from straightforward. Drivers working for Uber or delivery partners associated with Swiggy may decide when to log in or accept work, suggesting a degree of independence. At the same time, algorithmic allocation of orders, customer ratings, performance incentives and the possibility of account deactivation indicate a significant level of platform control. Consequently, the traditional understanding of "control" requires reconsideration in the digital economy.

[2] Dharangadhra Chemical Works Ltd. v. State of Saurashtra, AIR 1957 SC 264.

Recognizing the limitations of the control test, courts gradually adopted broader approaches. The integration test examines whether a worker forms an integral part of the employer's organization rather than operating an independent business. From this perspective, platform workers perform functions that are central to the business model of digital aggregators. Without drivers or delivery partners, platforms such as Uber or Zomato would be unable to provide the very services on which their commercial operations depend.

Courts have also relied upon the economic reality test, which focuses on the practical nature of the relationship rather than contractual labels. In *Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments*, the Supreme Court emphasized that the true relationship between the parties must be determined from the surrounding circumstances instead of merely accepting the contractual description adopted by them.[3] This approach assumes greater importance in the gig economy where workers are commonly designated as "independent contractors" despite often depending economically upon a single digital platform.

The Supreme Court further refined this approach in *Workmen of Nilgiri Cooperative Marketing Society Ltd. v. State of Tamil Nadu* by observing that no single test is conclusive in determining the existence of an employer-employee relationship. Instead, courts must examine the cumulative effect of factors such as control, integration and economic dependence.[4] This multi-factor approach highlights the complexity of platform-based employment, where elements of both employment and independent contracting coexist.

INDIA'S LEGAL SYSTEM FOR GIG WORKERS

Until recently, Indian labour laws were primarily designed to regulate traditional employment relationships. As platform-based work expanded, this framework proved inadequate because gig workers did not fit neatly within the categories of employee or independent contractor. The Code on Social Security, 2020 marked the first legislative attempt to recognize this emerging workforce and provide a framework for their social security.

[3] Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments, (1974) 3 SCC 498.
[4] Workmen of Nilgiri Cooperative Marketing Society Ltd. v. State of Tamil Nadu, (2004) 3 SCC 514.

Position Before the Labour Codes

Before the Labour Codes, India's labour laws such as the Industrial Disputes Act, 1947, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, and the Factories Act, 1948; applied only where an employer-employee relationship could be established.[5] As the gig economy expanded, this framework proved inadequate: platform workers for Uber, Ola, Swiggy and Zomato were classified as independent contractors, so they could not claim provident fund, insurance, paid leave or protection against unfair termination, and their rights were governed largely by platform contracts rather than labour legislation.

Recognition under the Code on Social Security, 2020

A. Legislative Recognition

The Code on Social Security, 2020 is the first central legislation in India to formally recognize gig and platform workers. Earlier labour laws were mainly designed for traditional employer-employee relationships, leaving gig workers outside the scope of most labour protections. By introducing separate definitions for gig and platform workers, the Code acknowledges the growing role of the gig economy and the need to provide some level of legal protection to those working through digital platforms.

Section 2(35) of the Code defines a gig worker as a person engaged in work outside the traditional employer-employee relationship. Section 2(60) defines platform work as work carried out through online platforms that connect service providers with customers, while Section 2(61) defines a platform worker as a person engaged in such work.[6] These definitions are significant because they formally recognize gig and platform workers as a distinct category under labour law, even though they are not treated as employees.

The Code also defines aggregators under Section 2(2), referring to digital platforms such as Uber, Swiggy and Zomato that connect workers with customers. Instead of treating these platforms as employers, the Code places limited welfare obligations on them by requiring contributions towards social security schemes. Although this is an important step in

[5] Industrial Disputes Act, No. 14 of 1947; Employees' Provident Funds and Miscellaneous Provisions Act, No. 19 of 1952; Employees' State Insurance Act, No. 34 of 1948; Factories Act, No. 63 of 1948.
[6] The Code on Social Security, 2020 (Act No. 36 of 2020), ss. 2(2), 2(35), 2(60)-2(61).

recognizing gig workers, the Code stops short of granting them the full range of rights and protections available to regular employees.

B. Registration

Under Section 113, gig and platform workers must register to become eligible for welfare schemes notified under the Code, the first step towards bringing them within the formal social security system.

C. Social Security Schemes

Section 114 empowers the Central Government to frame social security schemes for gig and platform workers, covering life and disability cover, accident insurance, health and maternity benefits and old-age protection. These are not guaranteed as statutory rights but reflect an intention to provide basic social security for non-traditional employment.

D. Social Security Funds

To support these schemes, Section 141 provides for the creation of Central and State Social Security Funds.[7] The Code also places certain financial responsibilities on aggregators, requiring them to contribute towards these funds. This model shifts part of the welfare burden to digital platforms while avoiding the classification of aggregators as employers. The Code is therefore an important step towards recognizing gig workers within India's labour law framework. However, it primarily adopts a welfare-based approach and does not alter their legal status as independent contractors or extend the full range of employment rights available to regular employees.

Judicial Developments

Indian courts have gradually recognized that the traditional tests discussed above may not adequately address the realities of platform-based work, though the principles established in those decisions continue to influence discussions on the legal status of gig workers.

More recently, courts have begun to acknowledge the unique challenges faced by platform workers. In Indian *Federation of App-Based Transport Workers (IFAT) v. Union of India*, the petitioners sought recognition of gig workers' right to social security under the Code on Social

[7] The Code on Social Security, 2020 (Act No. 36 of 2020), ss. 113, 114 and 141.

Security, 2020 and raised concerns regarding their constitutional rights under Articles 14, 21 and 23[8] of the Constitution.[9] The case highlighted the lack of effective implementation of welfare measures and brought national attention to the need for stronger legal protection for gig workers.

Although the judiciary has recognized the growing concerns surrounding platform-based employment, Indian jurisprudence remains at a developing stage. Courts have not yet conclusively determined whether gig workers should be treated as employees or recognized as a separate legal category with independent rights and protections.

State-Level Initiatives

While the Code on Social Security, 2020 provides a national framework for gig workers, its implementation has been gradual. In response, some states have taken independent steps to provide greater protection to platform workers. These initiatives reflect the growing recognition that existing labour laws require reforms to address the realities of the gig economy.

A significant development is the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023, which is the first state legislation in India specifically enacted for gig workers.[10] The Act registers platform-based gig workers, establishes the Rajasthan Platform Based Gig Workers Welfare Board, creates a welfare fund financed by aggregator contributions, and introduces a grievance redressal mechanism for complaints against digital platforms. Karnataka and Telangana have also proposed similar measures, signaling a growing willingness among states to address gig workers' welfare beyond the central framework.

CRITICAL ANALYSIS: IS THE EXISTING FRAMEWORK ADEQUATE?

Although the Code on Social Security, 2020 is a significant step towards recognizing gig workers, the existing framework falls short of providing meaningful labour protection. It acknowledges gig workers as a distinct category but does not grant them the legal rights

[8] INDIA CONST. arts. 14, 21, 23.
[9] Indian Federation of App-Based Transport Workers (IFAT) & Ors. v. Union of India & Ors., W.P. (C) No. 1068 of 2021 (Supreme Court of India, filed 9 September 2021, pending).
[10] Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act No. 20 of 2023).

available to traditional employees. In other words, the law recognizes gig workers without fully protecting them. Implementation has also been uneven in the way that many of the schemes notified under the Code are yet to be fully operationalized, and progress has varied considerably across states, so the benefits promised on paper have not been realized uniformly in practice.

The most significant limitation is that recognition does not create enforceable rights. Gig workers remain outside the employer-employee relationship and therefore cannot automatically claim benefits such as provident fund (PF), Employees' State Insurance (ESI), minimum wages or paid leave. The Code creates a legal identity for gig workers, but not a corresponding set of enforceable employment rights. Recognition without rights risks becoming symbolic rather than substantive.

The framework also overlooks the realities of platform-based work. Since gig workers are dispersed and often work across multiple platforms, the collective bargaining model under the Industrial Relations Code, 2020 is difficult to apply in practice. Similarly, the law does not regulate algorithmic management, even though customer ratings, automated work allocation, incentive structures and account deactivation directly influence workers' earnings. Today, an algorithm often exercises more control over a worker than a traditional manager, yet labour law continues to regulate only the latter.

From a corporate law perspective, requiring aggregators to contribute to social security funds without recognizing them as employers lets platforms participate in worker welfare while avoiding most obligations of an employer-employee relationship, regulating the platform's financial contribution rather than its control over workers.

Overall, the framework is an important beginning but not a complete solution. Unless statutory recognition is accompanied by enforceable rights, effective implementation and greater platform accountability, the protection available to gig workers will remain limited.

COMPARATIVE INSIGHTS

A comparison with other jurisdictions highlights the limitations of India's approach to regulating gig work. In the United Kingdom (UK), the Supreme Court in *Uber BV v. Aslam* recognized Uber drivers as "workers", an intermediate category between employees and independent contractors.[11] This classification entitled them to rights such as minimum wage and paid leave while preserving some flexibility in working arrangements.

Similarly, the European Union's (EU) Platform Work Directive[12] introduces a rebuttable presumption of employment. Where digital platforms exercise significant control over workers, they are presumed to be employers unless they can prove otherwise. This shifts the burden from workers to platforms and strengthens labour protections.

India has taken a different approach. Rather than reclassifying gig workers or creating an intermediate category, the Code on Social Security, 2020 recognizes them mainly for social security purposes. This preserves flexibility but provides fewer enforceable rights than the UK and EU models, making India's framework comparatively more welfare-oriented than protection-focused.

RECOMMENDATIONS

The existing framework can be strengthened through targeted reforms. First, the Central Government should notify contribution rates and operational guidelines for social security schemes within a fixed timeline, since statutory recognition without implementation offers little protection. Secondly, a dedicated grievance redressal mechanism should address algorithmic-management issues such as unfair account deactivation and rating-based penalties, with platforms required to explain significant algorithmic decisions and allow workers to appeal.

In the long term, India may consider an intermediate "third category" of workers, similar to the UK model, balancing essential labour protections against the flexibility of platform work.

CONCLUSION

The rapid growth of the gig economy has challenged the traditional distinction between employees and independent contractors. Through the Code on Social Security, 2020, India has taken an important first step by formally recognizing gig and platform workers within its labour

[11] Uber BV v. Aslam, [2021] UKSC 5.
[12] Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on Improving Working Conditions in Platform Work, OJ L, 11 November 2024.

law framework. However, recognition alone is insufficient when it is not accompanied by enforceable rights, effective implementation and meaningful platform accountability.

The current framework adopts a welfare-oriented approach rather than extending employment protections, leaving issues such as collective representation, algorithmic management and employer accountability largely unresolved.

Ultimately, the adequacy of India's labour codes should be assessed not only by what they recognize on paper but also by the protection they provide in practice. Until statutory recognition is matched with meaningful legal safeguards, the promise of labour protection for gig workers will remain more legislative than lived.