
CONSTITUTIONAL RIGHTS IN THE AGE OF ALGORITHMS: GIG WORK IN INDIA

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ABSTRACT

This socio-legal study of gig work in India examines the impact of caste, class, gender, and algorithms. It highlights a violation of human rights in the gig economy. Many gig economy workers classified by platforms such as Zomato, Swiggy, Uber, and Urban Company as independent contractors are from the SC/ST/OBC categories and therefore denied minimum wage, social security, and Code on Social Security 2020 protections.¹ It undertakes qualitative analyses using doctrinal analysis through comparative law to determine whether a void exists in the Constitution that violates Articles 14, 21, and 23. The finding was that there is a lack of transparency and due process in the use of algorithms for invisible supervision of tasks, ratings, ability to earn tips, and termination of contracts, which creates additional caste-based inequalities in payment and access to the platform economy.

Workers of SC/ST background are logging over 14 hours per day at less than minimum wage (for example, after paying expenses, ₹265). Additionally, these workers must deal with customer discrimination and geographic isolation. Female workers deal with sexual harassment without the PoSH Act coverage, and are economically coerced to work in unsafe conditions at night. This research also used relevant international law and standards to identify regulatory deficiencies in the Indian market: UDHR, ICESCR, ILO Decent Work, EU Platform Work Directive, and UK *Uber BV v Aslam*. The researcher recommends reforms such as classifying all gig workers as employees, mandating transparency in algorithmic management, and expanding social security coverage and collective bargaining on behalf of gig economy workers.

The use of technology has increased precarity for gig workers, and therefore, in order for gig workers to benefit from the economic opportunities created by digital platforms, the Indian legal system must conform to constitutional guarantees of dignity, equality, and freedom from exploitation of workers.

¹ M. Mohan et al., *Ushering Thin Welfare Regimes at the Cost of Thick Labour Jurisprudence: A Tale of New Labour Codes in India*, Rev. Droit Comparé Trav. Séc. Soc., no. 4 (2021), <https://doi.org/10.4000/rdctss.2633>.

Keywords: Gig Economy, Algorithmic Management, Caste and Labour Inequality, Socio-Legal Analysis, Platform Work, Constitutional Rights.

I. INTRODUCTION

Every day, millions of gig workers move across India's cities so that we can live comfortably, yet their own lives remain unstable, unseen and unprotected. Without any social or legal protection that formal workers usually receive, they deliver food, drive passengers, repair appliances and provide all the essential urban services. This moral contradiction stands as the centre of India's growing economy.

The gig economy refers to a labour market that is based upon short-term, on-demand, task-based work, mediated largely through digital platforms.² Instead of working in stable, long-term jobs, many people today earn their living one task at a time. Apps like Zomato, Swiggy, Uber, Ola, Rapido, Porter, Urban Company and Dunzo have become the new middlemen, connecting everyday workers with customers who need something done immediately.³

In this model, workers are often recognised as independent contractors or “partners,” rather than employees.⁴ This classification not only gives platforms managerial control without any legal responsibility. The workers must bear the operational risks such as accidents, maintenance costs, illness or sudden loss of work and also supply their own tools, like fuel, vehicles, smartphones, etc. Their income isn’t static. rather depends upon dynamic pricing, incentive structures, customer demand, and algorithmic assignment systems.

Although the gig economy promises flexibility, it comes at a cost of unpredictable income and exploitation.⁵ Workers assigned duties, ratings, incentives, and account status have been assigned to an opaque algorithm, giving rise to an entirely new and untransparent system of digital governance with no due process.⁶

In India, gig work is also shaped by class and caste-based inequalities. A large number of gig

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

³ C. Hb et al., *An Analysis of the Labour Rights of Gig Workers in India* (2023), SSRN, <https://doi.org/10.2139/ssrn.4558703>.

⁴ Prabha Kotiswaran, Labour in the Indian Platform Economy, 56(50) *Econ. & Pol. Weekly* (2021).

⁵ D. Sinha & D. Pandit, A Case of Hyper-Local Food Delivery Workers in Kolkata, India, 100 *Res. Transp. Econ.* 101335 (2023).

⁶ ALEX ROSENBLAT, *UBERLAND: HOW ALGORITHMS ARE REWRITING THE RULES OF WORK* (UNIV. OF CAL. PRESS 2018).

workers belong to SC/ST/OBC, and other low-income communities and engage in platform work because they have limited options.⁷ It represents a new regime of labour control in which algorithmic management, uncertain legal coverage, and socio-economic vulnerability converge to constitute work.

II. RESEARCH METHODOLOGY

The approach taken by this research is Socio-Legal and uses a combination of doctrinal analysis and Contextual Studies to examine the lived realities of gig workers in India. The research is based on Primary Legal Sources (Constitutional Provisions, Statutes, Rules, and Significant Judicial Decisions) and is also informed by International Human Rights Instruments. The research is based on a critique of what the existing norms do or do not provide with respect to platform-mediated labour relations, but unlike much of the other socio-legal literature, it engages critically with the Developed Socio-Legal Literature about Caste, Precariousness, and Algorithmic Management as secondary sources. By critiquing Legal Doctrine in "action" against this body of social evidence, the methodology seeks to determine whether the current legal protections are adequate and to provide "normative recommendations" for reform that are rooted both in the Constitution and in the everyday realities of gig workers.

III. SOCIO-LEGAL CONTEXT OF GIG WORKERS IN INDIA

A. Growth of Platforms

Digital labour platforms like Zomato, Swiggy, Uber, Ola, Dunzo, Porter, Rapido and Urban Company are transforming the urban service economy in India. They depend on a flexible and mobile workforce to fluctuate according to customer demand, but rely on a legal framework where workers are classified as "partners or independent contractors", not employees.⁸ This shields platforms from meaningful employment-related liabilities. Despite having significant control over earnings, behaviour, and work allocation, the millions of workers performing important urban work are outside of the formal social and legal protections related to work.⁹

⁷ D. Sinha & D. Pandit, A Case of Hyper-Local Food Delivery Workers in Kolkata, India, 100 *Res. Transp. Econ.* 101335 (2023).

⁸ Amit Joshi, Saharsh Jain & Puneet K. Gupta, *Challenges and Impact of the Gig Economy*, Sustainable Economies, 2(2), 96 (2024), <https://doi.org/10.62617/se.v2i2.96>.

⁹ C. Hb, U. Chandrappa & B. R, *An Analysis of the Labour Rights of Gig Workers in India* (2023), SSRN, <https://doi.org/10.2139/ssrn.4558703>.

B. Informalisation of Digital Labour

The platforms advertise gig work as contemporary, digital, and empowering, but they resemble India's historical experiences with informal work. Gig workers do not have written contracts, fixed wages, paid leave, or access to social security schemes. The gig worker provides all the necessary tools of work (e.g. vehicle, smartphone, fuel, repairs, etc.) in addition to meaningless workplace protections and entitlements. Platforms operate with employer-like controls and supervision (i.e. algorithms, performance rating, penalties and incentives) without having a description of being an employer of insights. In effect, these developments establish a condition of disguised employment, in which gig workers bear the risks of informal work without receiving any of the protections of formal work.

C. Gender Vulnerability

Women workers on platforms confront a set of vulnerabilities that are clearly different and amplify their marginalisation. Those working in home-service work also report harassment while delivering the service inside of a customer's home, unsafe travel to and from clients' homes after dark, and significant unpaid time waiting for customers before appointments.¹⁰ Without coverage under the PoSH Act¹¹, women working on a platform (in consideration of sexual harassment) have no formal venue to report or contest an incident of sexual harassment. At the same time, user rating and customer feedback systems create additional pressures to accept unsafe jobs since a low rating limits future work opportunities. Gender vulnerability is also shaped by caste and class, adding another layer of vulnerability, which places women gig workers in a precarious space within the platform economy.

D. Economic Coercion

Even though gig work is framed as "flexible", a large portion of gig work operates through overt mechanisms of economic coercion. Workers can face algorithmic penalties for refusing tasks, cancelling orders, or deviating from what is perceived as the 'normal' pace of work (the term 'normal' in this sense is entirely subjective). Lower ratings and being on a customer order list limit opportunities for new orders in the future, while incentive systems create the sense of

¹⁰ Piyush Poddar & Samiksha Jha, *Women Domestic Workers Fight Sexual Harassment*, India Dev. Rev. (Apr. 10, 2025), <https://www.idronline.org/article/gender/women-domestic-workers-fight-sexual-harassment/>.

¹¹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, INDIA CODE (2013).

being forced into doing work (like taking an assignment during peak hours, or a late-night assignment) that might not be safe for the worker. In the end, one way or another, workers modify their routines, sleep patterns, routes, as well as the risk/exposure of their freelance work to satisfy algorithmic demands. Thus, the flexibility of gig work is ultimately illusory because, from the worker's perspective, they are bound in a system (digitally) that disciplines their labour and violates their rights, and provides no equivalent protections to address safety or health.

IV. HUMAN RIGHTS FRAMEWORK

The gig economy in India has become the centre of a human rights debate. Though we often hear from platform companies that they provide the flexibility and opportunity that was previously unavailable to all workers, the numerous external studies described in your uploaded file indicate that gig workers have been subjected to a variety of threats against their dignity, equality, livelihood, safety, and freedom from exploitation; all areas of human rights protections guaranteed by both the Constitution of India as well as the International Standards recognized by the Government of India.

A. Constitutional Rights

i. Article 14: Equality, Fairness, and Non-Arbitrariness

As seen through Article 14¹², as well as in your analysis of cases from organisations, gig workers are subjected to arbitrary and discriminatory behaviours when using the platforms on which they provide services. Algorithms that manage gig work arrangements are neither transparent nor accountable for their decisions.

Therefore, Penalising workers through biased algorithms or unexplained decisions violates the guarantees of fairness and non-arbitrariness under Article 14. Through this legislation, workers have a right to equal treatment and the right to be informed about decisions taken by the platforms with a reasonable explanation. However, many gig workers cannot understand or contest the hidden mechanisms that platforms use to manage their worker base, hence why protection from arbitrary treatment becomes an essential human rights issue in the platform's economy.

¹² INDIA CONST. art. 14.

ii. Article 21: Dignity, Livelihood, and Safe Working Conditions

Article 21 grants more than merely the ability to survive: it gives individuals the ability to lead a dignified life, provide for themselves and their families, through safe and humane working conditions.¹³ Various studies identified a variety of safety risks associated with working for a platform-based company, including accidents and harassment during the night, with little to no support from the platforms themselves.

Research from the Transport Research Board found that many gig workers are making only Rs. 265 (approximately US\$3.95) after expenses.¹⁴ This undermines the right to earn a living and supports the contention that the conditions of work in the gig economy often violate Article 21's requirement of having a safe and dignified working environment. Gig workers are subjected to constant digital surveillance of their activities through the tracking of their movements and the performance of their individual tasks using algorithms, thereby raising privacy concerns.

The realities of gig work indicate that such working conditions violate the requirements of Article 21 regarding a person being able to live and work in a safe, dignified, and equitable manner.

iii. Articles 23-24: Prohibition of Exploitation

Articles 23-24 prohibit all forms of forced labour and exploitative labour practices.¹⁵ The Supreme Court has established that physical force isn't necessary to establish exploitation; rather, if the individual is being compelled economically to work, then that alone can constitute forced labour.

Consequently, when a worker cannot refuse an order, when a worker cannot limit the number of hours worked, and when a worker's ability to survive is predicated on the worker's ratings, the worker's "choice" is essentially imaginary. The circumstances described herein are consistent with the broader definition of exploitation prohibited under Articles 23 & 24.

¹³ INDIA CONST. art. 21.

¹⁴ Berger, T., Frey, C., Levin, G., & Danda, S., 2019. Uber happy? Work and well-being in the 'Gig Economy'. *Economic Policy*. <https://doi.org/10.1093/epolic/eiz007>.

¹⁵ INDIA CONST. arts. 23–24.

iv. Directive Principles of State Policy (Arts. 38, 41, 42, 43)

The Directive Principles mandate the government to address inequality, provide social services, offer safe working environments, and ensure that people live in decent conditions.¹⁶ There are some gaps in protection for gig workers and platform workers identified by the Directive Principles.

Most gig workers do not receive any type of social security or protections from injury or accident, and many gig workers do not have a consistent source of income or a "living wage". While some gig workers have been injured on the job and have had no recourse to remediate their circumstances or seek assistance, many gig workers have been placed in unsafe workplaces and have not been provided a clear vehicle to file complaints for any injuries or unfair treatment they experience on the job.

The Directive Principles make clear that the government has an obligation to establish stronger protections for platform workers, further recognise their vulnerabilities, and ensure that workers' dignity and safety are not compromised in pursuit of economic growth.¹⁷

B. International Human Rights Framework

i. Universal Declaration of Human Rights (UDHR)

According to the Universal Declaration of Human Rights (UDHR)¹⁸, every human being has dignity and rights. It states that workers are entitled to earn a fair wage, work in a safe environment, be treated equally and have sufficient living standards for health and well-being. The UDHR's principles apply to gig workers, who may earn a low and fluctuating wage, work in unsafe environments and are often discriminated against by customer ratings and algorithmic decisions.

When workers do not receive fair wages, lack protections from accidents or have arbitrary control exerted by digital platforms, they have lost the fundamental rights of dignity, safety and fairness as outlined in the UDHR.

¹⁶ INDIA CONST. arts. 38, 41–43.

¹⁷ Dubey, U., & Kalla, N., 2025. A STUDY OF WELFARE MEASURES FOR GIG WORKERS IN INDIA. *EPRA International Journal of Research & Development (IJRD)*. <https://doi.org/10.36713/epra22084>.

¹⁸ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

ii. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁹ provides a legal basis for the rights outlined in the UDHR. It guarantees workers the right to a just and favourable wage, a safe work environment, the right to rest and leisure, and the right to social security.

Unfortunately, gig workers do not have any of these protections. Gig workers are not guaranteed to receive a fair wage for the hours they work, have unpredictable pay, do not have the benefit of sick leave, have no insurance coverage, and have no access to a stable welfare system.

If a worker's income is based entirely on fluctuating algorithms and they assume all risks related to illness or accidents, they have lost the economic security protected by the ICESCR.

iii. ILO's Decent Work Agenda

The Decent Work Agenda from the International Labour Organisation (ILO)²⁰ defines four pillars that represent the main principles behind their approach to achieving Decent Work: Fair Income; Job Security; Social Protection; and Workers' Voice. In India, Gig Work fails on all four pillars; There are no guaranteed earnings for workers who participate in gig work. There is also no such thing as Employment Security for anyone working in gig work, and access to many formal forms of protection, e.g., Health Insurance, Maternity Benefits, workers' comp, is virtually non-existent for gig workers. Also, there is a lack of voice for the gig worker as they are not recognised by platforms as being employees, which makes it difficult for gig workers to organise and negotiate for better pay and/or working conditions. The ILO's Decent Work principles reveal that the promises of gig work do not match the vulnerabilities that gig workers experience on a daily basis.

iv. UN Guiding Principles on Business and Human Rights (UNGPs)

Corporations have a responsibility to respect Human Rights, and they must avoid causing harm and must provide redress when Human Rights violations occur, according to the UN Guiding

¹⁹ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

²⁰ Int'l Lab. Org., *Decent Work* (1999).

Principles on Business and Human Rights. To accomplish this, the UNGPs²¹ require; transparency, accountability, and ethical business practice.

However, as mentioned above, the design of many platforms (websites) that provide gig work is often driven more by a desire to achieve maximum efficiency, rather than ensuring a safe working environment and providing Fairness in employment practices.

Gig workers also face the possibility of sudden account deactivation, "algorithmic punishment" without explanation, and dangerous job assignments. Additionally, by citing their independence from the platform as "independent contractors," the platform is failing to comply with the core expectations established in the UNGPs.

v. The OECD Guidelines for Multinational Enterprises

The OECD Guidelines²² require businesses that conduct business internationally to engage in ethical labour practices, to prevent discrimination against individuals, and to protect those in a vulnerable position. However, the nature of the gig economy often places workers in socially disadvantaged castes, classes, and genders at elevated levels of exploitation and has limited job opportunities. The examples of unequal rating systems, zone-based income disparities, and the absence of grievance or complaint mechanisms run contrary to the emphasis on fairness, transparency, and accountability set forth in the OECD Guidelines. As such, the OECD Guidelines suggest that further protections are essential for gig workers, particularly those from marginalised backgrounds.

V. COMPARATIVE STUDY

Examining how different countries around the world are developing regulations to deal with gig workers reveals that many jurisdictions have recognised these workers' vulnerabilities and begun providing them with protections typically associated with regular employees. Additionally, the international developments discussed in this section can serve as a helpful starting point for India when courts and lawmakers determine how the protections and rights provided to gig workers will be applied within the platform economy. To illustrate the lessons learned by India from an analysis of the regulatory responses by the European Union, the

²¹ Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

²² Org. for Econ. Co-operation & Dev., *OECD Guidelines for Multinational Enterprises* (2011).

United Kingdom, and the United States, and from the perspective of the most recent international developments.

A. The European Union

The EU's regulatory regime for platform work is among the most progressive in the world. For example, under the EU Platform Work Directive (2023)²³, there will be a rebuttal presumption of employment for any platform that controls the conditions of a worker's work, pays for the work performed, monitors the performance of the worker, or allocates tasks assigned to the workforce. This means that the onus of proof is on the platform, and if they cannot demonstrate the contrary, the worker will be treated as an employee. The EU directive also mandates that platforms provide transparency related to their Automated Decision-Making (ADM) systems so that workers know how these systems impact the distribution of tasks, pricing, performance ratings, and deactivation of a worker from a platform. The EU directive gives workers the right to appeal against ADM decisions, thereby creating critical safeguards against the abuse of algorithms.²⁴

The EU regulatory model views platform technologies as hiding the control of a traditional employer, and, therefore, companies must demonstrate why a worker classified as an independent contractor should be accepted as such. The acceptance of "algorithmic management" as a form of control will serve as an important framework for India in developing the regulation of platform work and worker rights.²⁵

B. The United Kingdom

Uber BV v. Aslam (2021) decided that Uber drivers are workers rather than self-employed. The Supreme Court determined that Uber has a high level of control over significant aspects of the service provided by its drivers, including setting fare levels, creating one-sided contracts, and monitoring and rating drivers through the app. The Supreme Court stated that it is important to

²³ 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), as provisionally agreed in 2023.

²⁴ Rofi Aulia Rahman, József Hajdú & Valentino Nathanael, *Digital Labour Platformer's Legal Status and Decent Working Conditions: European Union and Indonesian Perspective*, Volksgeist: Jurnal Ilmu Hukum & Konstitusi, 7(1), 157–175 (2024), <https://doi.org/10.24090/volksgeist.v7i1.10366>.

²⁵ Raquel Flórez et al., The EU Platform Workers Directive: Effective as of 1 December 2024! What Does This Mean for Platforms, Companies More Generally, and Workers?, Freshfields Technology Quotient (Dec. 6, 2024), <https://technologyquotient.freshfields.com/post/102jqg1/the-eu-platform-workers-directive-effective-as-of-1-december-2024-what-does-thi>.

classify workers according to the actual nature of their relationship with the platform, rather than based on the contractual terms that the platform has established.²⁶

As a result of this ruling, Uber drivers are entitled to receive the minimum wage, paid leave, and other social protections, and the UK courts have recognised that just because flexible working conditions exist, it does not mean that a worker is not dependent on or subject to control by another party. Modern labour markets may require hybrid classifications of 'worker'.²⁷

C. The United States

In the United States, labour laws vary by State, and therefore the framework is also fragmented. For example, California passed Assembly Bill 5²⁸ (the "ABC Test") to clarify that a worker will be presumed to be an employee unless the hiring entity can establish that:

- i. They are free from control,
- ii. Perform an activity outside the usual course of business, and
- iii. Are engaged in an independent business.

Using this standard, most gig workers would be identified as employees. This resulted in a great deal of pushback from large tech companies in response to the passage of Proposition 22 in November 2020²⁹, which established a new category of employment for app-based drivers and, thus, exempted them from Assembly Bill 5. Even though Proposition 22 was initially upheld in the courts, various courts continue to question its constitutionality. Therefore, the continued litigation surrounding it indicates that there is still a lot of debate regarding how to classify gig workers.

Additionally, the evolution of these lawsuits illustrates that technology platforms continue to be able to utilise their political power to avoid being considered employees under the ABC Test. As such, in the US, the ABC Test represents an important way to protect the rights of gig

²⁶ Uber BV v. Aslam, [2021] UKSC 5.

²⁷ Mohammed Al Bhadily, *In the Era of Gig Economy: Are Uber Drivers Contractors or Employees?*, PEOPLE: Int'l J. Soc. Sci. 279–280 (2025), <https://doi.org/10.20319/icssh.2025.279280..>

²⁸ Cal. Assemb. B. 5, 2019–2020 Reg. Sess. (Cal. 2019).

²⁹ Proposition 22, App-Based Drivers as Contractors and Labour Policies Initiative (Cal. 2020).

workers and identifies the importance of implementing statutory tests to help identify gig workers.

VI. INDIAN LEGAL FRAMEWORK.

A. Pre-2020 Period: Legal Vacuum and Informality

Pre-2020, there was a huge lack of legislation and formality for gig/platform workers in India. The nature of these workers was that of self-employed contractors who received payment via an app (Uber, Ola, Swiggy, Urban Company). Because of this, platforms did not need to comply with the Industrial Disputes Act 1947³⁰ or any other labour legislation that only applies to employees.

While courts occasionally recognised the plight of informal workers, gig workers were not seen as being in a legal category. The lack of regulations means:

- i. No minimum wage or fair pay standard
- ii. No protection against wrongful termination
- iii. No social security/insurance
- iv. No means of grievance redressal.
- v. No norms for safety or working conditions
- vi. No obligation on the part of platforms to provide for the welfare of gig/platform workers.

This period is indicative of the legislation being silent with respect to the growth of this industry.

B. Code on Social Security 2020: First Statutory Recognition

The Code on Social Security 2020³¹ is the first important Indian legislative measure to

³⁰ Industrial Disputes Act, No. 14 of 1947, INDIA CODE (1947).

³¹ Code on Social Security, No. 36 of 2020, INDIA CODE (2020).

recognise gig and platform-based workers. This recognition will position platform-based labour as a new structural category that will require appropriate policy intervention.³²

i. Key Definitions

The Code on Social Security 2020 establishes the following definitions: Gig Worker, a person who performs a job or service to an employer or other party outside the traditional employer-employee relationship. The Code defines Gig Workers as workers who perform services through an online platform. A Platform Worker is a worker who performs work using an online platform.³³

These definitions provided in the Code on Social Security 2020 serve to legitimise Gig Work as a valid form of labour.³⁴

ii. Social Security Schemes Under the Code, both the Central and State Governments may establish Social Welfare Schemes for Gig Workers, including:

- a. Accident Insurance,
- b. Healthcare and Maternity benefits,
- c. Protection for Old Age,
- d. Creche Facilities,
- e. Social Welfare Schemes established under the Code will be discretionary rather than mandatory.

iii. While the CSS Code 2020 recognises gig workers, it does so without providing minimum wage guarantees, grant of employment status, or labour rights; it lacks an enforcement mechanism; and there is no establishment of a grievance redressal system. Therefore, CSS Code 2020 recognises gig workers but does not provide any

³² C. Hb, U. Chandrappa & B. R, *An Analysis of the Labour Rights of Gig Workers in India* (2023), SSRN, <https://doi.org/10.2139/ssrn.4558703>

³³ Code on Social Security, No. 36 of 2020, § 2(35), INDIA CODE (2020).

³⁴ Code on Social Security, No. 36 of 2020, § 2(61), INDIA CODE (2020).

protections for them as workers.³⁵

C. Occupational Safety, Health and Working Conditions Code 2020

The Occupational Safety and Health Code 2020 (OSH Code) brings together all laws covering workplace health, safety and conditions of employment; however, the OSH Code does not treat gig workers as employees or workers under the OSH Code. Platform workers aren't recognised as employees, and therefore, the following provisions of the OSH code do not apply to gig workers:

- i. Hours worked,
- ii. Overtime payment protection against hazardous work
- iii. Restroom and sanitation
- iv. Night-time work

Gig workers' exclusion from all of the above puts them at great physical risk of accidents, injury from road hazards, harassment, etc., which is why they don't have protection.³⁶

VII. JUDICIAL COMMENTS AND CASE LAWS

While there has not been a definitive ruling from any Indian courts to date regarding whether gig or platform workers are considered employees or independent contractors, there have been several cases decided by both the Supreme Court as well as the High Courts which do not specifically address gig or Platform Workers but provide underlying principles related to dignity, fairness, non-exploitation, and due process that can be applied to platforms or gig workers. The decisions provide a very strong constitutional framework for affording legal protection to these individuals, and for recognising the vulnerability that results from algorithmic management of gig or platform workers.

- i. *Olga Tellis v Bombay Municipal Corporation*³⁷

³⁵ Yash Mittal, *Compliance with Labour Laws in India on Gig Economy and Online Workplace*, Int'l J. Multidiscip. Res., 5(4), 4276 (2023), <https://doi.org/10.36948/ijfmr.2023.v05i04.4276>.

³⁶ Ibid.

³⁷ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 SCC 545 (India).

The Supreme Court ruling in *Olga Tellis v. Bombay Municipal Corporation* determined that a person's right to life, as established in Article 21 of the Indian Constitution, is directly related to their right to a means of sustenance. The Court stated that taking away a person's means of sustenance is akin to taking away their life. Therefore, this ruling has direct implications for gig workers, as the deactivation of their accounts by platform providers can take place without warning or justification and, due to the abruptness of the account deactivations, can violate the fundamental right to a way to earn a living.

ii. *Bandhua Mukti Morcha v Union of India*³⁸

Bandhua Mukti Morcha v. Union of India recognises that employees should have access to humane working conditions with dignity. According to the Court, coercion can be either physical or economic and thus constitutes an aspect of exploitative labour. Similar to traditional employees, gig workers regularly endure long hours, unstable earnings, unsafe conditions, and algorithmic pressure, all of which could be characterised as exploitative according to the expanded definition used by the Court.

iii. *Maneka Gandhi v Union of India*³⁹

The *Maneka Gandhi v. Union of India* ruling established that all decisions taken will be evaluated based on fairness, justice, and reasonableness, as well as on the basis that they are not found to be arbitrary. As such, gig workers operate in an environment where there is no recourse to a fair process (through human intervention) due to the lack of transparency in the way algorithms work, including sudden pay adjustments and automated terminations, all of which prevent gig workers from having access to fair as well as reasonable treatment under what is mandated in *Maneka Gandhi*.

iv. *E.P. Royappa v. State of Tamil Nadu*⁴⁰

The *E.P. Royappa v. State of Tamil Nadu* case held that the act of arbitrariness equates to inequality and thus includes unreasonable/irrational decisions. Arbitrary decisions being made by algorithms, such as those based on ratings or undisclosed rules regarding the allocation of

³⁸ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (India).

³⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

⁴⁰ *E.P. Royappa v. State of T.N.*, (1974) 4 SCC 3 (India).

orders, are encompassed within the greater doctrine of inequality set forth in Article 14.

Though there has not yet been a landmark ruling, the rationale expressed by the Supreme Court and some High Courts demonstrates a clear trend in recognising that vulnerable workers must be protected from the arbitrary, exploitative and opaque practices of their employers. In addition, the constitutional values of dignity, equality and fairness strongly favour increasing protections for gig workers and implementing regulations on algorithmic control over gig workers.

VIII. ALGORITHMIC EXPLOITATION AND CONSTITUTIONAL STANDARDS

While managing gig work may be seen as informal or traditional, it presents unique challenges. Platforms can shape a worker's access to orders, incentives, and continued engagement through processes that workers cannot see, understand or contest. Workers do not know when or how they are rated, what criteria are used to assign ratings, and due to the opaque nature of this system, workers are unable to challenge their ratings. In this way, platforms exert digital control over workers, taking value from them without offering the worker any form of transparency, a voice or protection.

Under Article 14, the Supreme Court has long found that an arbitrary decision made by a superior is inherently discriminatory against the inferior and that the power exercised has to meet the standards of fairness, reasonableness and non-discrimination. To this end, the court has interpreted the application of Article 14 to mean that the decisions made by a platform when managing its workers must meet certain minimum standards of transparency, consistency and contestability.

This creates an environment in which the majority of SC/ST/OBC workers are concentrated in the gig economy. As such, if the rules governing gig work are not transparent and the workers are systematically hindered from earning a decent wage through the work they perform or if the work performed is less safe or profitable than that available to other workers, that systemic hindrance to earnings must be viewed as an indirect form of discrimination against SC/ST/OBC workers even if the codes do not on their face appear to be discriminating. Therefore, an arbitrary decision made by the platform is constitutionally suspect due to the existence of a caste-stratified workforce.

The critique found in Articles 21 and 23 continues in their expansion. The protection afforded by Article 21 for workers is a protected entitlement to a dignified livelihood and a safe working environment while Article 23 provides the prohibition against forced labour (not only physical forced labour) but also includes economic coercion, as evidenced within the context of algorithmically controlled regimes. A worker's refusal of unsafe, unremunerated or extremely low paying work(s) will result in the complete loss of all access to work because of the design(s) of the algorithms that allow such opportunities to exist. In a situation where one's survival depends on acting in accordance with obscure one-sided commands dictated through technology, the concept of "choice" no longer exists. By recognising that exploitative use of algorithms is a constitutional issue, a positive obligation is created for the state to regulate the design of platforms and classifications of gig workers to ensure that technological innovation does not take precedence over the basic principles of equality, dignity, and the right to freedom from economic exploitation.

IX. CONCLUSION

The gig economy in India has transformed the way we consume goods and services and has created a large network of urban workers who keep our cities operating, but aren't protected. This research suggests that gig economy workers are not independent; they are dependent on the platform for access to workers, receive instructions via algorithms from the platform, and are affected by a significant power difference.

Gig economy workers tend to come from economically disadvantaged caste/class groups, with women facing additional challenges related to safety and support. They perform many of the same tasks that traditional employees do daily, while holding unstable income, lacking social security and lacking workplace protections that are provided to traditional employees.

According to the Indian Constitution, every worker is entitled to equal treatment and protection from exploitation. These entitlements apply to gig economy workers as well; however, the way the platform uses algorithms lowers the likelihood of gig economy workers exercising these entitlements. Gig economy workers are often unaware of how their pay rates were determined, how their ratings are generated, and/or why their accounts were terminated. This lack of visibility leads to a decrease in fairness, security, trust, etc.

The Code on Social Security (2020) is a milestone because it provides statutory recognition for

gig workers. However, it does not offer the guarantees or install strong and enforceable rights for workers that would allow them to truly take advantage of the benefits that are contained in the Code. Many other labour statutes also have gaps that make it hard for gig workers to gain access to the protections they require. In this respect, various state initiatives, such as Rajasthan's Act, are evidence of progress, but they are still at a nascent stage and are limited in their scope.

Ultimately, Indian courts have provided many strong principles on principles such as fairness, humane working conditions, and the economic protection of workers, and while these concepts do not conclusively define the relationship between gig workers and platforms today, they can act as valuable guides for the development of the law in relation to gig work in the future until a landmark case regarding this relationship is issued.

On an international level, there is a global trend towards increasing protections for gig workers. For example, the EU adopts an assumption of employment; in the UK, gig workers are recognised as workers, and in the US, new tests are in place to determine whether a particular platform can exercise "real control" over a worker and to what extent that platform has a corresponding duty of care.

This research findings highlight the need for supportive legal and regulatory frameworks to protect gig workers from precarious employment, discriminatory treatment, and denial of fundamental entitlements such as minimum wage and health care. The gig economy presents opportunities but it also presents challenges to protect the dignity, working conditions, and livelihoods of gig workers as businesses adapt to using on-demand labor as technology evolves. The law needs to evolve and adapt to the rapid rate of change of technology to ensure human rights are not prevented by technological innovation.