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SOCIAL SECURITY IN THE GIG ECONOMY: ANALYSING THE INCLUSIVENESS OF INDIA'S LABOUR CODES

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ABSTRACT

The rapid growth of the gig economy has fundamentally altered traditional employment relationships, creating new legal challenges in extending social security protections to non-standard workers. Gig and platform workers, engaged through digital intermediaries, often remain outside the scope of conventional labour welfare mechanisms. In India, the introduction of the Code on Social Security, 2020 marks a significant step towards recognising these workers within the formal legal framework.

This study critically examines the inclusiveness of India's labour codes in providing social security to gig workers, focusing on statutory provisions, contribution mechanisms, and implementation frameworks. It evaluates whether the Code effectively ensures access to benefits such as insurance, pensions, and welfare schemes, or merely offers symbolic recognition without enforceable rights.

Through a doctrinal analysis of legislative provisions and judicial principles relating to labour welfare and right to livelihood, the research identifies key gaps in enforcement, coverage, and accountability. The study concludes that while the Code represents progressive intent, its practical impact remains limited due to structural and administrative challenges, thereby necessitating stronger legal mechanisms to ensure meaningful protection for gig workers.

KEYWORDS

Gig Economy, Social Security, Platform Workers, Labour Codes, Informal Employment, Welfare Schemes, Worker Protection

INTRODUCTION

The emergence of the gig economy has redefined the nature of work, shifting from traditional employer-employee relationships to flexible, task-based engagements mediated by digital platforms such as Uber and Zomato. While this model promotes flexibility and economic participation, it simultaneously raises serious concerns regarding the absence of social security protections for gig workers.

Historically, labour laws in India were designed to protect workers in formal employment

settings, where employer liability was clearly established. However, gig workers fall into a legal grey area, often classified as independent contractors, thereby excluding them from statutory benefits such as provident fund, insurance, and maternity protection.

In response to these challenges, the Indian government introduced comprehensive labour reforms, including the Code on Social Security, 2020, which for the first time recognises gig and platform workers within the legal framework. This marks a significant departure from earlier laws, attempting to extend welfare benefits to a

previously unregulated workforce.

Despite this advancement, critical questions remain regarding the effectiveness and inclusiveness of these provisions. The Code primarily adopts an enabling approach, allowing the government to frame schemes without guaranteeing enforceable rights. This raises concerns about whether gig workers are truly protected or merely acknowledged in principle.

This study aims to critically evaluate the extent to which India's labour codes ensure social security for gig workers, analysing statutory provisions, identifying practical challenges, and assessing the adequacy of the existing legal framework.

RESEARCH METHODOLOGY

This research adopts a doctrinal (black-letter law) methodology to analyse the legal framework governing social security for gig workers under the Code on Social Security, 2020. The study is based on secondary sources, including statutory provisions, judicial decisions, legal commentaries, journal articles, and policy reports.

The research involves a detailed examination of provisions relating to gig workers, platform workers, and unorganised workers under the Code. It further undertakes a comparative analysis with traditional labour law principles to understand the evolution of social security protections.

Judicial interpretations relating to the right to livelihood and labour welfare are also analysed to assess the broader constitutional framework supporting worker protection.

The study is analytical and descriptive in nature, focusing on evaluating the adequacy and effectiveness of the legal provisions. However, it does not include empirical data or field-based research, which may limit the assessment of ground-level implementation. Despite this limitation, the research provides a comprehensive legal evaluation of the

inclusiveness of India's labour codes in the context of the gig economy.

REVIEW OF LITERATURE

The issue of social security in the gig economy has gained significant attention in recent legal and academic discourse, particularly in light of emerging platform-based employment models. Scholars have widely debated the classification of gig workers and the adequacy of existing labour laws in addressing their welfare needs.

Early studies on labour law in India, particularly under traditional frameworks, focused on employer-employee relationships and the extension of social security benefits through statutory mechanisms. However, with the rise of digital platforms, these traditional models have become increasingly inadequate.

Recent literature analysing the Code on Social Security, 2020 highlights its attempt to bridge this gap by recognising gig and platform workers. Scholars acknowledge this as a progressive step but criticize the lack of enforceable rights and the dependence on government-framed schemes.

Comparative studies indicate that jurisdictions such as the UK and EU have adopted stronger approaches by reclassifying gig workers or extending mandatory benefits. In contrast, India's approach remains flexible but weak in enforcement.

Judicial interpretations, particularly in cases involving the right to livelihood, have also influenced academic discussions. The principle established in Olga Tellis v. Bombay Municipal Corporation emphasises that livelihood is integral to the right to life under Article 21, thereby supporting the argument for extending social security protections.

Overall, the literature reflects a mixed perspective, recognising the Code's intent while highlighting significant gaps in implementation, accountability, and coverage.

OBJECTIVES OF THE STUDY

- To examine the concept of social security in the gig economy
- To analyse provisions relating to gig workers under the Code on Social Security, 2020
- To evaluate the inclusiveness of labour codes in extending welfare benefits
- To study the role of aggregators in social security contributions
- To analyse judicial principles relating to worker protection
- To identify challenges in implementation
- To assess the adequacy of enforcement mechanisms
- To suggest reforms for strengthening social security coverage

SCOPE OF THE RESEARCH

This study is confined to a legal analysis of social security provisions applicable to gig workers under the Code on Social Security, 2020. It focuses on statutory obligations, welfare schemes, and regulatory mechanisms governing platform-based employment.

The research includes an examination of definitions, applicability, contribution frameworks, and enforcement provisions under the Code. It also considers relevant judicial principles and policy discussions relating to labour welfare.

However, the study is limited to doctrinal analysis and does not include empirical research or comparative field studies. It focuses primarily on the Indian legal framework, with limited reference to international developments for contextual understanding.

DEFINITION OF GIG WORKER AND PLATFORM WORKER

Under the Code on Social Security, 2020, a *gig worker* is defined as a person engaged in work outside the traditional

employer–employee relationship, while a *platform worker* refers to a person who provides services through an online platform or digital intermediary. This definition is significant because it formally recognises a new category of workers who were previously excluded from labour welfare legislation.

The inclusion of gig and platform workers marks a progressive shift in labour law by extending the scope of protection beyond formal employment structures. However, the Code deliberately avoids classifying these workers as “employees,” thereby limiting the applicability of traditional labour rights such as minimum wages, provident fund, and statutory insurance.

This creates a legal ambiguity in fixing employer liability, as digital platforms exercise substantial control over workers through algorithms, ratings, and work allocation, yet deny an employment relationship. In Dharangadhra Chemical Works Ltd. v. State of Saurashtra, the Supreme Court evolved the “control test” to determine the existence of an employment relationship, holding that the degree of supervision and control is a key factor. Applying this principle, gig platforms may arguably fall within the scope of employer control.

Thus, while the definition under the Code expands coverage, it simultaneously weakens enforceability by maintaining a distinction that benefits platforms more than workers.

SOCIAL SECURITY SCHEMES – SECTION 114

Section 114 of the Code on Social Security, 2020 empowers the Central and State Governments to frame and notify social security schemes for gig workers and platform workers. These schemes may include benefits such as life and disability insurance, health and maternity benefits, old-age protection, and other welfare measures.

This provision reflects a welfare-oriented approach by recognising the vulnerability of gig workers and attempting to integrate them into the social security framework. However, the

nature of this provision is enabling rather than mandatory, meaning that the actual availability of benefits depends entirely on government action and policy decisions. There is no statutory guarantee that such schemes will be implemented uniformly or effectively.

The constitutional basis for such welfare measures can be traced to the right to livelihood under Article 21, as recognised in Olga Tellis v. Bombay Municipal Corporation, where the Supreme Court held that the right to life includes the right to earn a livelihood. Social security is a natural extension of this principle, particularly for economically vulnerable workers.

Despite this, the absence of enforceable rights under Section 114 weakens its impact, making social security more of a policy option than a legal entitlement.

AGGREGATOR CONTRIBUTION – SECTION 114(4)

Section 114(4) of the Code on Social Security, 2020 introduces the concept of aggregator contribution, requiring digital platforms such as Uber and Swiggy to contribute a prescribed percentage of their turnover towards the social security fund for gig workers.

This provision is a significant development as it attempts to impose financial responsibility on platforms that benefit economically from gig labour. It reflects the principle that entities exercising economic control should contribute to worker welfare, even in the absence of a formal employment relationship.

However, the effectiveness of this provision is limited due to lack of clarity regarding contribution rates, absence of strict enforcement mechanisms, and dependence on government rules for implementation. There is also no direct linkage ensuring that contributions translate into tangible benefits for workers.

In M.C. Mehta v. Union of India, the Supreme Court introduced the doctrine of absolute liability, holding that enterprises engaged in

hazardous or profit-making activities must bear responsibility for harm caused. By analogy, gig platforms deriving economic benefit from workers should bear stronger obligations towards their welfare.

Thus, while Section 114(4) introduces accountability, it falls short of establishing a robust and enforceable liability framework.

NATIONAL SOCIAL SECURITY BOARD – SECTION 6

Section 6 of the Code on Social Security, 2020 provides for the establishment of a National Social Security Board to recommend and monitor welfare schemes for unorganised workers, including gig and platform workers. The Board comprises representatives of government, employers, and workers, aiming to ensure participatory governance in policy formulation.

The creation of such a body reflects an institutional approach to addressing the complexities of social security in the gig economy. It is intended to act as an advisory and coordinating mechanism, facilitating the design and implementation of welfare schemes.

However, the Board's role is largely recommendatory, lacking binding authority to enforce compliance or ensure implementation of its recommendations. This significantly limits its effectiveness in holding employers or aggregators accountable.

In Consumer Education and Research Centre v. Union of India, the Supreme Court recognised the right to health and safety of workers as part of Article 21 and emphasised the duty of the State to ensure effective implementation of welfare measures. This highlights the need for stronger institutional mechanisms rather than merely advisory bodies.

Thus, while Section 6 establishes a framework for governance, its limited powers reduce its impact on actual enforcement of social security rights.

EMPLOYMENT STATUS AND CLASSIFICATION OF GIG WORKERS

The classification of gig workers under the Code on Social Security, 2020 remains one of the most critical issues affecting the effectiveness of social security provisions. The Code recognises gig and platform workers as a distinct category but deliberately avoids classifying them as “employees.” This exclusion has significant legal consequences, as most labour rights—including minimum wages, provident fund, and statutory benefits—are traditionally linked to an employer–employee relationship.

Gig workers are typically treated as independent contractors by platforms such as Uber and Zomato, allowing these companies to avoid legal obligations associated with employment.

However, in practice, these platforms exercise substantial control over workers through algorithmic management, performance ratings, pricing structures, and work allocation. This creates a contradiction between formal classification and actual working conditions.

In Dharangadhra Chemical Works Ltd. v. State of Saurashtra, the Supreme Court held that the existence of control and supervision is a key factor in determining an employment relationship. Applying this principle, gig workers may arguably fall within the scope of “employees,” despite contractual labels suggesting otherwise.

The failure to clearly classify gig workers results in legal ambiguity and weakens the enforcement of social security rights. Without recognising them as employees or creating a strong hybrid category with enforceable rights, the current framework allows platforms to benefit from labour without assuming corresponding responsibilities. This remains a fundamental limitation in achieving true inclusiveness under the labour codes.

ENFORCEMENT MECHANISMS AND STATE RESPONSIBILITY

The effectiveness of social security provisions under the Code on Social Security, 2020 largely depends on the strength of enforcement mechanisms and the role of the State in ensuring compliance. While the Code provides a framework for welfare schemes, it lacks a robust enforcement structure to guarantee their implementation. The responsibility is primarily placed on the government to frame schemes, monitor compliance, and ensure that benefits reach gig workers.

However, the absence of strict monitoring authorities, clear timelines, and accountability mechanisms weakens enforcement. Unlike traditional labour laws, where employers can be directly penalised, the gig economy framework relies heavily on administrative action rather than legal compulsion.

In Bandhua Mukti Morcha v. Union of India, the Supreme Court emphasised that the State has a constitutional obligation to protect vulnerable workers and ensure the implementation of welfare laws. This principle highlights that mere legislation is insufficient without active enforcement.

Thus, weak enforcement remains a major barrier to achieving effective social security coverage in the gig economy.

RIGHT TO SOCIAL SECURITY AS A CONSTITUTIONAL GUARANTEE

Social security is increasingly recognised as part of the broader right to life and dignity under Article 21 of the Constitution of India. Although the Code on Social Security, 2020 attempts to extend welfare benefits to gig workers, the lack of enforceable rights raises questions about its constitutional adequacy.

In Olga Tellis v. Bombay Municipal Corporation, the Supreme Court held that the right to livelihood is an integral part of the right to life. Similarly, in Consumer Education and Research

Centre v. Union of India, the Court recognised the right to health and safety of workers as a fundamental right.

These judgments establish that social security is not merely a policy objective but a constitutional necessity. Therefore, the absence of mandatory and enforceable provisions under the Code undermines its ability to fully realise these constitutional guarantees.

COMPARATIVE ANALYSIS WITH INTERNATIONAL STANDARDS

A comparative analysis reveals that India's approach to gig worker protection under the Code on Social Security, 2020 is relatively weak when compared to international standards. Several jurisdictions have adopted stronger measures to ensure social security coverage for gig workers, including reclassification of workers or mandatory contribution systems.

The International Labour Organization has emphasised the need for universal social protection systems that include non-standard workers such as gig workers. Many countries have moved towards recognising gig workers as dependent contractors or extending full labour protections.

In contrast, India's framework remains largely enabling and discretionary, with limited enforceability. While it recognises gig workers, it does not guarantee minimum standards of protection, thereby falling short of global best practices.

ACCESSIBILITY AND IMPLEMENTATION CHALLENGES

The effectiveness of social security provisions under the Code on Social Security, 2020 is significantly limited by practical barriers relating to accessibility and implementation.

Although the Code provides for welfare schemes for gig and platform workers, access to these benefits depends largely on procedural requirements such as registration, awareness, and administrative efficiency.

One of the major challenges is the registration requirement under Section 113, which places the burden on workers to enrol on digital portals. In reality, many gig workers lack awareness, digital literacy, or access to technology, leading to their exclusion from welfare schemes. Additionally, there is no mandatory obligation on aggregators to ensure worker registration, further weakening coverage.

Implementation is also affected by administrative inefficiencies, delays in framing rules, and lack of coordination between central and state authorities. The absence of a strong monitoring mechanism results in weak enforcement of existing provisions.

In Bandhua Mukti Morcha v. Union of India, the Supreme Court emphasised that the State has a duty to identify and protect vulnerable workers and ensure effective implementation of welfare laws. This principle highlights that mere legislative recognition is insufficient without practical accessibility.

Thus, despite statutory inclusion, structural and procedural barriers significantly restrict the realisation of social security benefits for gig workers.

Assessing the Inclusiveness of India's Labour Codes in the Gig Economy

The inclusiveness of the Code on Social Security, 2020 in relation to gig workers remains limited and largely symbolic. While the Code formally recognises gig and platform workers, it fails to provide enforceable and guaranteed rights, thereby weakening its practical impact.

The framework is primarily enabling in nature, allowing the government to frame schemes without imposing a mandatory obligation to provide benefits. This results in a system where social security is dependent on policy discretion rather than legal entitlement. Furthermore, the absence of a clear employer–employee relationship allows aggregators to avoid full liability, reducing accountability.

From a constitutional perspective, this raises

concerns. In *Olga Tellis v. Bombay Municipal Corporation*, the Supreme Court recognised the right to livelihood as part of Article 21, while in *Consumer Education and Research Centre v. Union of India*, it affirmed the right to health and safety of workers. These principles suggest that social security should be treated as a fundamental right rather than a discretionary benefit.

Therefore, although the Code represents a progressive step in recognising gig workers, it does not achieve true inclusiveness due to lack of enforceability, weak implementation, and limited accountability. The inclusion is more formal than substantive.

CONCLUSION

The emergence of the gig economy has fundamentally altered traditional labour relationships, exposing significant gaps in the existing framework of social security. The Code on Social Security, 2020 represents an important legislative attempt to address these challenges by formally recognising gig and platform workers within India's labour law regime. This marks a shift towards broader inclusion of non-standard workers who were previously excluded from statutory protection.

However, a critical assessment reveals that such inclusion remains largely formal rather than substantive. The Code adopts an enabling approach, where the provision of social security benefits depends on government schemes rather than enforceable legal rights. The absence of a clear employer–employee relationship further weakens accountability, allowing aggregators to benefit economically without assuming corresponding legal obligations.

Moreover, practical barriers such as lack of awareness, digital accessibility issues, and weak enforcement mechanisms significantly limit the actual reach of these provisions. From a constitutional perspective, the right to livelihood and social security, as recognised in judicial precedents, demands stronger and

more effective protection.

Therefore, while the Code reflects progressive intent, it falls short of achieving true inclusiveness. A shift towards a rights-based and enforceable framework is essential to ensure that gig workers are not merely recognised in law but are genuinely protected in practice.

KEY RECOMMENDATIONS

1. Introduce enforceable social security rights for gig and platform workers rather than relying solely on enabling provisions.
2. Clearly define employment status or create a hybrid legal category to fix liability on aggregators.
3. Mandate aggregator contributions with strict enforcement mechanisms and transparency in fund utilisation.
4. Simplify and universalise registration processes, ensuring automatic or platform-assisted enrolment of workers.
5. Strengthen enforcement mechanisms by establishing dedicated monitoring authorities and ensuring accountability.
6. Enhance awareness and accessibility, particularly for workers lacking digital literacy or resources.
7. Provide effective grievance redressal mechanisms for gig workers to claim benefits and report violations.
8. Ensure uniform implementation across states by framing clear and consistent rules under the Code.
9. Limit discretionary powers of the government to avoid arbitrary exclusion from social security schemes.
10. Align national laws with international

standards, particularly those of the International Labour Organization, to ensure comprehensive worker protection.

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