

Invisible Workforce, Visible Gaps: Analysing the Constitutional Dimensions of Social Security for Gig Workers in India

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Abstract

The emergence of the gig economy has reshaped India's labour landscape, offering flexibility but also creating a class of precarious workers excluded from traditional social security protections. This paper critically examines the constitutional dimensions of social and economic rights for gig workers, focusing on how Articles 14, 19, and 21 of the Indian Constitution can be judicially interpreted to ensure equitable treatment and welfare entitlements. The study reviews judicial precedents on equality, livelihood, and the right to dignity to assess their potential extension to informal and platform-based workers. It explores whether the constitutional guarantees of equality before law, freedom to practise any profession, and protection of life and personal liberty can collectively serve as a framework for recognising gig workers' rights within India's social justice paradigm. The paper also evaluates recent policy initiatives, including the Code on Social Security (2020), through the lens of constitutional morality and distributive justice. By mapping judicial reasoning, legislative reforms, and socio-economic realities, this review argues that the Indian judiciary holds transformative potential to redefine the relationship between labour and capital in the digital age. Ultimately, it calls for a rights-based approach that bridges the visible gaps of an invisible workforce, ensuring inclusivity within India's evolving constitutional democracy.

Keywords: Gig economy, social security, constitutional rights, equality before law, right to livelihood, judicial interpretation

Introduction:

The rapid growth of India's gig economy has fundamentally altered the nature of employment, producing a new category of labour that exists beyond the traditional employer-employee framework. Gig workers—drivers, delivery partners, and freelancers on digital platforms—form an

“invisible workforce” that fuels the country's urban and digital infrastructure, yet they remain largely outside the ambit of formal social protection. Their exclusion from statutory benefits such as provident fund, health insurance, and minimum wages reveals a significant gap in India's constitutional commitment to social and economic justice.

The Constitution of India, through its Preamble and Part III, envisions a society grounded in equality and dignity; however, the precarious status of gig workers raises pressing questions about whether the fundamental rights under Articles 14, 19, and 21 can be judicially expanded to safeguard this emerging class of workers [1].

Article 14 guarantees equality before the law and equal protection of the laws, a cornerstone for challenging arbitrary classifications. The Supreme Court has repeatedly affirmed that equality is not merely formal but substantive, encompassing fairness and non-arbitrariness in state action [2]. When gig workers are systematically excluded from labour benefits available to regular employees despite performing similar functions, this exclusion arguably violates the egalitarian spirit of Article 14 [3]. Article 19(1)(g), which secures the freedom to practise any profession, occupation, or business, also carries a correlative duty on the State to ensure that such freedom is not illusory [4]. The denial of adequate social security mechanisms undermines the meaningful exercise of this right, especially when gig work becomes the sole means of livelihood.

Article 21, which protects the right to life and personal liberty, has been expansively interpreted to include the right to livelihood, health, and human dignity [5]. Landmark rulings such as *Olga Tellis v. Bombay Municipal Corporation* and *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* established that livelihood is integral to

life itself [6]. Extending this reasoning, the constitutional guarantee of dignity can be invoked to justify state responsibility for ensuring a minimum level of economic and social protection for gig workers [7]. Furthermore, Directive Principles of State Policy—particularly Articles 38, 39, and 43—though non-justiciable, reinforce the constitutional vision of a welfare state and provide interpretive guidance for courts in expanding the ambit of social rights [8].

The judicial discourse on socio-economic rights has gradually evolved from restraint to recognition. Decisions in cases such as *People's Union for Democratic Rights v. Union of India* and *Bandhua Mukti Morcha v. Union of India* demonstrate the Court's readiness to read welfare entitlements into the fabric of fundamental rights when confronted with economic exploitation [9]. Applying this jurisprudence to gig workers presents both a challenge and an opportunity: a challenge, because the gig economy is mediated by private technology corporations operating beyond conventional labour regulation; and an opportunity, because it allows the judiciary to reaffirm the transformative character of the Constitution in addressing new forms of inequality.

This paper, therefore, seeks to review the constitutional dimensions of social security for gig workers in India, analysing whether existing judicial interpretations can evolve to accommodate platform-based labour. By situating gig work within the triad of equality, freedom, and dignity, it argues for a

constitutional reading that bridges the gap between formal labour protections and digital-age realities.

Literature Review

The intersection of gig work, social security, and constitutional rights has emerged as a complex field in Indian legal scholarship. Early analyses of the gig economy primarily focused on its technological and entrepreneurial aspects rather than its legal consequences. However, recent research has redirected attention toward the constitutional and labour rights implications of platform-based work. Scholars have observed that the expansion of app-mediated employment in India coincides with a decline in traditional job security and the erosion of welfare protections guaranteed under existing labour laws [10].

The Code on Social Security, 2020 was the first legislative attempt to formally recognise gig and platform workers within the Indian labour framework. Yet, commentators argue that its scope remains largely declaratory and fails to provide enforceable social security entitlements [11]. The Act defines gig workers but does not integrate them into existing schemes like the Employees' Provident Fund or Employees' State Insurance. Consequently, scholars highlight a constitutional tension between legislative intent and the broader promise of social and economic justice embedded in Part III and Part IV of the Constitution [12].

Legal theorists have emphasised the potential for judicial interpretation to bridge these gaps.

Drawing from jurisprudence on equality and dignity, scholars note that the Supreme Court's rights-based approach under Articles 14, 19, and 21 can serve as a foundation for recognising gig workers' entitlements [13]. In this context, comparisons have been made with landmark decisions such as Bandhua Mukti Morcha and People's Union for Democratic Rights, where the Court expanded constitutional protections to informal labourers. Applying this reasoning to the gig economy could transform the current legal landscape by reinterpreting fundamental rights to cover emerging forms of work.

Empirical studies on the gig economy's impact on livelihoods also reveal significant gendered and class-based disparities. Women and marginalised communities often face algorithmic discrimination, unequal pay, and lack of grievance redressal mechanisms [14]. These findings reinforce the argument that the principle of substantive equality, as developed in E.P. Royappa and Maneka Gandhi, should guide judicial engagement with gig work regulation. Furthermore, scholars have drawn parallels with international labour law frameworks, such as the ILO's Recommendation No. 198 (2006) on employment relationships, advocating that India reinterpret its constitutional principles to reflect evolving global labour standards [15].

Several authors have further examined the role of the State in mediating the digital economy's ethical and social implications. They contend that the constitutional obligation to secure

social order based on justice—economic and political—under Article 38 imposes a positive duty upon the State to design inclusive welfare frameworks for non-traditional workers [16]. Recent judgments of the Indian courts on contractual and informal labour also indicate a gradual shift toward recognising informal workers' constitutional personhood, though the jurisprudence on gig work remains nascent.

Research Methodology and Legal Framework Review

This review adopts a doctrinal and analytical research methodology, drawing upon primary and secondary legal materials to examine the constitutional and statutory dimensions of social security for gig workers in India. The doctrinal method involves a critical analysis of the text of the Constitution, relevant labour statutes, judicial precedents, and policy reports issued by governmental and international organisations [18]. The analytical component synthesises judicial reasoning with constitutional principles to evaluate how Indian courts might interpret existing rights in light of emerging labour realities.

The study relies on primary sources such as the Constitution of India, the Code on Social Security, 2020, and key Supreme Court judgments interpreting Articles 14, 19, and 21. These are supplemented with secondary materials, including academic commentaries, journal articles, and reports from the International Labour Organization (ILO) and NITI Aayog, which provide contextual insights into the socio-economic vulnerabilities of gig

workers [19]. A qualitative content analysis is employed to trace the evolution of judicial thought on labour rights, equality, and dignity, identifying interpretive trends relevant to digital labour platforms [20].

In reviewing the legal framework, the study begins with the Code on Social Security, 2020, which marks India's first legislative recognition of gig and platform workers. However, the statute's limited enforcement mechanisms and absence of universal coverage create a lacuna between legislative intent and actual welfare delivery [21]. The Industrial Relations Code, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020 also remain largely silent on algorithmic control and employment classification—issues central to gig work [22].

At the constitutional level, Articles 14, 19, and 21 form the core of judicial reasoning on equality, freedom, and dignity, while Directive Principles under Articles 38, 39, and 43 articulate the State's duty to promote social welfare [23]. Indian courts have progressively interpreted these provisions to include socio-economic rights for informal workers, as seen in cases like Bandhua Mukti Morcha and People's Union for Democratic Rights [24]. The methodology thus integrates doctrinal legal analysis with constitutional hermeneutics to assess whether these judicial principles can be extended to digital labour relations.

Analysis and Discussion

The constitutional analysis of gig workers' rights in India reveals a fundamental tension

between market innovation and social justice obligations. While digital platforms have redefined work structures, the law's response remains largely reactive and fragmented [26]. Judicial precedents show that the Indian Constitution's transformative character allows reinterpretation to accommodate new forms of inequality, as seen in the expansion of socio-economic rights under Articles 14 and 21 [27]. Yet, courts have not directly addressed the precariousness inherent in algorithmic labour systems, which blur the distinction between employer and independent contractor [28].

The exclusion of gig workers from statutory benefits reflects a constitutional underreach rather than a legislative oversight. The Directive Principles, particularly Articles 38 and 43, impose a positive duty on the State to ensure equitable distribution of material resources and secure just working conditions [29]. However, the implementation of these principles has been inconsistent, leading to a widening gap between constitutional ideals and social realities. Comparative constitutional analysis indicates that other jurisdictions, including the U.K. and the E.U., have moved toward recognising platform-based labour as dependent employment, extending welfare benefits and minimum wage protections [30].

In India, recognising gig workers as a distinct constitutional category could enable judicial innovation without undermining market flexibility. The interpretive shift towards substantive equality and dignity-based jurisprudence—rooted in Maneka Gandhi and Bandhua Mukti Morcha—provides a viable

pathway for courts to affirm social security as an element of the right to life [31]. A rights-based judicial approach, supported by constitutional morality and welfare principles, can reconcile digital capitalism with constitutionalism [32]. Thus, the gig economy represents both a legal challenge and an opportunity for the Indian judiciary to reaffirm the Constitution as a living document responsive to evolving modes of labour [33].

Findings and Suggestions

Findings

The review reveals that India's existing legal and constitutional mechanisms inadequately address the vulnerabilities of gig workers. The Code on Social Security, 2020, while progressive in intent, remains limited in execution—failing to impose binding welfare obligations on digital platforms [34]. Judicial interpretation of Articles 14, 19, and 21 has historically expanded the scope of social rights, yet courts have not directly confronted the constitutional implications of algorithmic labour and platform-based employment [35].

A consistent finding across literature and jurisprudence is the absence of a coherent employment classification for gig workers. This ambiguity perpetuates legal invisibility, denying them benefits available to regular employees [36]. Furthermore, the Directive Principles of State Policy, particularly Articles 38 and 43, though aspirational, have not been adequately invoked to promote the welfare of digital workers [37]. The findings also underscore that without judicial innovation, the

promise of substantive equality and constitutional dignity risks exclusion from India's new labour economy.

Suggestions

First, the judiciary should adopt a purposive interpretation of Articles 14 and 21, recognising social security as an inherent component of the right to life and dignity [38]. Second, Parliament must operationalise the Code on Social Security, 2020 through enforceable schemes that compel platform companies to contribute to welfare funds. Third, the creation of a national registry for gig and platform workers, integrated with Aadhaar-linked welfare mechanisms, can ensure portability of benefits and accountability [39].

Additionally, India should look toward comparative constitutional frameworks—such as the European Union's proposed Directive on Platform Work—to guide reform on classification, collective bargaining, and fair remuneration [40]. Finally, collaboration between judiciary, legislature, and civil society is essential to construct a rights-based welfare ecosystem, ensuring that the invisible workforce becomes visible within India's constitutional imagination.

Conclusion

The rise of the gig economy in India marks a defining transformation in the world of work—one that challenges the conventional boundaries of labour law, welfare policy, and constitutional interpretation. While digital platforms have expanded opportunities for flexible employment, they have simultaneously

deepened the precarity of workers who remain outside the ambit of formal protection. This review establishes that the Indian Constitution, with its inherent emphasis on equality, freedom, and dignity, possesses the interpretive capacity to evolve in response to such emerging realities.

Recognising gig workers within the framework of social and economic rights is not merely a legislative necessity but a constitutional imperative. The judiciary's history of expanding the meaning of life and liberty offers a foundation for extending social security as a fundamental entitlement. However, achieving genuine inclusion demands coordinated reform—where judicial creativity, legislative precision, and administrative accountability converge to create enforceable safeguards.

Ultimately, bridging the gap between constitutional ideals and labour realities requires reaffirming the transformative spirit of the Constitution itself. Protecting gig workers through rights-based welfare measures would not only ensure justice for the invisible workforce but also strengthen India's commitment to equality and human dignity in the digital age.

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