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# CONSTITUTIONAL AND LEGAL RECOGNITION OF DELIVERY WORKERS: COMPARATIVE PERSPECTIVES FROM INDIA AND SPAIN

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## I. ABSTRACT

*Gone were the days when people had to travel a hundred kilometres to buy even small goods or commodities. But in today's era of technological advancement and digitalisation, life has become much easier. From food items and home essentials to stationery and business materials, everything is made available at our doorstep, and that too with just a click of a button. The expeditious expansion of the gig economy has completely transformed the nature of work, particularly for 'Delivery Workers' who operate within platform-based models. This paper critically evaluates how two distinct legal frameworks, that is, India and Spain, address the vulnerabilities faced and safeguard the rights of delivery workers. It highlights Spain's Constitutional provisions and the decision passed by the Supreme Court in the landmark case of Glovo.<sup>2</sup>, which laid the foundation for presuming an employment relationship. In contrast, India's Constitution, through Articles 21, 39, 41, and 43<sup>3</sup>, offers a wide range of socio-economic guarantees. However, gig workers remain outside the ambit of traditional labour laws. They are recognised only as "platform workers" with limited social security benefits. Through comparative socio-legal analysis, this paper identifies challenges that the delivery workers face. It argues that while Spain provides stronger statutory recognition. But still, it struggles for strict enforcement and implementation. Whereas India suffers from partial recognition and weak enforcement. The study concludes by proposing valuable recommendations and suggests that the law should adopt a more sustainable pathway for protecting delivery workers in the ever-evolving digital sphere.*

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<sup>2</sup> Todolí-Signes, Adrian, Notes on the Spanish Supreme Court Ruling That Considers Riders to Be Employees (October 23, 2020), available at: SSRN: <https://ssrn.com/abstract=3717599> or <http://dx.doi.org/10.2139/ssrn.3717599> (last visited on Sept 5, 2025).

<sup>3</sup> The Constitution of India, arts. 21, 39, 41, 43.

## II. KEYWORDS

Gig Economy, Delivery Workers, Labour Rights, Spain's Rider Law, Employment Status, Employee.

## III. INTRODUCTION

The gig economy has emerged as one of the most dynamic developments of the 21st century. It has reshaped employment opportunities and broadened the labour market by introducing a new dimension of economic activity in the form of the informal sector. The gig economy in India accounts for a total of 12 million gig workers, as per the recent statistics of FY 2024-25.<sup>4</sup> App-based platforms such as Zomato, Swiggy, and Blinkit are dominating the delivery industry. This mode of work is appealing due to the diverse range of advantages it offers both service providers and consumers, including flexible working hours, task-based earnings, etc.

Among gig workers, a rapidly growing segment is that of "delivery workers". They are the individuals employed by digital platforms to transport goods, such as food, groceries, parcels, and other items, from sellers to buyers. They form a distinct and separate category of gig workers. The gig workers offer services online or offline. However, the delivery workers operate on their vehicles day and night, constantly under pressure.

Yet, alongside these benefits, the gig economy raises pressing concerns. A central debate revolves around whether delivery workers should be classified as "employees" or not. The absence of a concrete legal position has given rise to multiple challenges, including irregular income, lack of job stability, inadequate social security, and the absence of collective bargaining rights. While legislative developments have attempted to respond to these concerns, they remain insufficient. For instance, the

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<sup>4</sup> Sachin Seth, "India's gig economy in 2025: Growth, formalisation, and financial inclusion explained", *Livemint*, 25 July, 2025, available at: <https://www.livemint.com/money/personal-finance/indias-gig-economy-in-2025-growth-formalisation-and-financial-inclusion-explained-11753438649777.html> (last visited on Sept 12 2025).

Code on Social Security, 2020<sup>5</sup>, represents a step forward by recognising gig and platform workers as a distinct category. But it grants them only a limited status.

Spain, on the other side of the world, has taken a more significant step forward through the enactment of the Riders Law, 2021, inspired by the European Union and judiciary. This law presumes an employment relationship for delivery riders, thereby extending to them the full range of statutory labour protections. However, it has also generated debates about rigidity, flexibility, and poor implementation.

Therefore, the present paper undertakes a comparative analysis of India and Spain, with particular focus on the constitutional and legal recognition of delivery workers. By examining how these jurisdictions differ in regulating delivery workers, the paper seeks to highlight gaps, draw lessons, and propose reforms that advance the principles of inclusivity, fairness, and justice in the evolving world of work.

### **A. Research Problem**

This research critically examines the legal recognition of the employability status of the delivery workers in India and Spain. This paper gives a view on the peculiar issues that they face due to the uncertainty of their employment status. Although certain legislation has been put in place to acknowledge the rights of gig-workers but delivery workers have been somewhat neglected. It draws inspiration from Spain, where, by virtue of the Rider's Law passed in 2021, they have attempted to address their plights specifically. While legislative responses have emerged in both jurisdictions, they vary significantly in scope and impact. India has made preliminary attempts through the Code on Social Security, 2020<sup>6</sup>, which acknowledges gig and platform workers but is limited in scope. In contrast, Spain has adopted a more robust approach whereby it presumes that there exists an employment relationship between platforms and delivery workers. The paper has specifically carried out a comparative study in India and Spain because it will offer valuable insights into two completely different jurisdictions. Spain, as a part of the EU, is influenced by their standards, but India, as a set of mixed cultures, is mostly employed in the informal economy. But highlighting

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<sup>5</sup> The Code on Social Security, 2020 (Act 36 of 2020).

<sup>6</sup> The Code on Social Security, 2020 (Act 36 of 2020).

the difference, we can draw inspiration from Spain's legislative efforts to overcome these legal gaps and develop more inclusive labour regulations extending rights and protection to the gig workers.

## **B. Research Objectives**

1. To identify and assess the key challenges encountered by delivery workers in India due to their uncertain employability status.
2. To analyse the constitutional framework in both India and Spain relating to Delivery Workers' Rights and protections guaranteed to them.
3. To compare and evaluate the legal frameworks governing delivery workers in India and Spain, with special emphasis on Indian labour laws and Spain's Rider's Law, 2021.
4. To examine the judicial stance in regulating their work and employment conditions in both jurisdictions.
5. To propose key suggestions inspiring reforms aimed at improving the already existing legal framework.

## **C. Research Questions**

1. What is the legal status and position of delivery workers in India and Spain?
2. Whether the delivery workers are classified as independent contractors, part-time workers or full-time employees?
3. What are the key differences in the constitutional safeguards and laws governing their rights in India and Spain?
4. How effective are the legal provisions available in addressing the challenges faced by them?

## **D. Research Hypothesis**

This study hypothesises that delivery workers in India face uncertainty in their recognition as employees. It is due to the absence of concrete legislation as compared to Spain. This ambiguity negatively impacts social security and livelihood, thereby subjecting them to more vulnerabilities.

## E. Research Methodology

This research paper shall incorporate comparative doctrinal methodology. It will mainly focus on a qualitative approach, gathering data from both primary and secondary sources. The primary sources aim to critically review the applicable constitutional provisions, statutory framework, and judicial decisions existing in both Spain and India. Secondary sources include scholarly works like articles from reputed law journals available on this topic.

## F. Literature Review

The growing research in this field is a clear indication of the severity of the circumstances. There is a plethora of studies on the issue focusing on individual countries. However, there is not much work available on the direct comparison of the situation in India and Spain. Therefore, the review of the literature can be broadly classified into the following themes:

1. **Classification and Status of Employment:** The major concern that this paper aims to address is that of their legal position. For this instance, *"Food Delivery Workers in India: Emerging Entrepreneurs or Informal Labour?"* by Asheef Iqubbal (2021)<sup>7</sup> investigates and thoroughly lays down that the platforms that hire them regard them as "independent contractors". However, they are not the "employees." Therefore, it affects their overall rights, including the right to limited working hours, collective bargaining, paid leaves, etc. Further, *"Platform-based Gig Workers: A Blind Spot in the Indian Labour Laws"* by Vidhi Santosh Rane (2023)<sup>8</sup>, re-evaluates their importance in the Indian economy and highlights the dark side of this work. It concludes that the labour laws should be amended further to take into account their interest and be able to meet their needs. Nonetheless, *"The Employment Status of Food Delivery Riders in Europe and*

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<sup>7</sup> Development Education Foundation, "Food Delivery Workers in India: Emerging Entrepreneurs or Informal Labour?" (2021), available at: <https://defindia.org/wp-content/uploads/2021/04/swiggy-zomato-delivery-workers-india-entrepreneurs-labour.pdf> (last visited on Sept 4, 2025).

<sup>8</sup> Vidhi Santosh Rane, "Platform-based Gig Workers: A Blind Spot in the Indian Labor Laws" (2023), available at: SSRN: <https://ssrn.com/abstract=4821229> or <http://dx.doi.org/10.2139/ssrn.4821229> (last visited on Sept 4, 2025).

*the UK: Self-employed or Worker?"* by Delphine Defossez (2021)<sup>9</sup> is one of the first papers that discusses their employment status. It is broadly focused on Europe and the UK. As a part of Europe, it has briefly discussed the Rider's Law.

2. **Challenges faced by Delivery Workers:** On this theme, three papers have been considered and reviewed. First is *"A Study on the Challenges faced by Gig Workers in Online Food Delivery"* by Bhuvanesh A and Dr. T.R. Kalailakshmi (2024).<sup>10</sup> This paper is specifically based on the Online Food Delivery workers. It discusses the challenges faced by gig workers. Secondly, *"Impact of Gig Economy on Food Delivery Workers in Union Territory of Puducherry, India"* by Dr. H. Yasmeen Sultana and Ajmal Faiz V (2024).<sup>11</sup> It takes into consideration the plight of the online delivery workers, specifically in the area of Puducherry. It has directly collected data from workers leading delivery partners. Further, it has also studied the role of COVID-19 in expanding job availability. Lastly, *"Breadwinners on Wheels: Delving into the World of Food Delivery Partners in Raipur City"* by Gaurav Jain and Archana Sethi (2025).<sup>12</sup> This paper is limited in scope as it only undertakes the study in Raipur City of India. It examines that besides being the sole breadwinners of the family, Food Delivery Partners come across various issues which affect their socio-economic status and overall functioning. But still, there is a rapid growth in this industry.

3. **Gender Disparity in the Gig Economy:** Women workers suffer from gender discrimination in this field as well. Like the study on *"A Study on the Gig Economy in India: Women Delivery Workers"* by Basavaraja Eliganur (2025)<sup>13</sup> criticises the engagement of women as delivery riders. Although they have

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<sup>9</sup> Delphine Defossez, "The Employment Status of Food Delivery Riders in Europe and the UK: Self-employed or Worker?" 29 *Sage Journals* 25-46 (2021).

<sup>10</sup> Bhuvanesh A and Dr. T.R. Kalailakshmi, "A Study on the Challenges faced by Gig Workers in Online Food Delivery" 5 *International Journal of Research Publication and Reviews* 2544-2548 (2024).

<sup>11</sup> Dr. H. Yasmeen Sultana and Ajmal Faiz V, "Impact of Gig Economy on Food Delivery Workers in Union Territory of Puducherry, India" 20 *Economic Sciences* 19-31 (2024).

<sup>12</sup> Gaurav Jain and Archana Sethi, "Breadwinners on Wheels: Delving into the World of Food Delivery Partners in Raipur City" 31 *Journal of Ravishankar University* 15-25 (2025).

<sup>13</sup> Basavaraja Eliganur, "A Study on the Gig Economy in India: Women Delivery Workers" 12 *Journal of Emerging Technologies and Innovative Research* 105-108 (2025).

been given various rights and protections under labour legislation but sexual harassment is very much prevalent.

4. **Constitutional and Legal Framework:** It lies at the centre of the issue. For this, the paper on *“Gig Workers and the Constitution Redefining Employment Rights in the 21<sup>st</sup> Century”* by S. Harish Kumar (2025)<sup>14</sup> has been thoroughly studied. It has analysed their current status with a specific focus on Constitutional provisions. It finds that gig workers fall into the grey zone with conflict in their recognition.

#### IV. WHO ARE GIG WORKERS?

Gig work can be defined as *“a new form of work that includes work assigned for a short duration of time or for the fulfilment of specific tasks on a contractual basis”*. It is not regular, unlike the traditional kind of employment.<sup>15</sup> The workers who are engaged in this form of work are referred to as *“Gig Workers”*.

#### V. CLASSIFICATION OF GIG WORKERS

Gig workers can be classified based on the

1. Nature of Work,
2. Sector, and
3. Status of Employment<sup>16</sup>

BASIS OF CLASSIFICATION	TYPES INCLUDED
Nature of Work	Apps/Platform-based and non-platform-based
Sector-Specific	Delivery workers, Transportation workers, Household and Care workers, etc.
Employment Status	Independent Contractors, Dependent contractors, Hiired workers, Presumed Employees, etc.

<sup>14</sup> S. Harish Kumar, *“Gig Workers and the Constitution Redefining Employment Rights in the 21<sup>st</sup> Century”* 5

Indian Journal of Legal Review 986-997 (2025).

<sup>15</sup> Gaurav Jain and Archana Sethi, *“Breadwinners on Wheels: Delving into the World of Food Delivery Partners in Raipur City”* 31 *Journal of Ravishankar University* 16 (2025).

<sup>16</sup> Haridarshan Singh, *“Gig Workers: A Comprehensive Analysis on the Rise, Challenges, and Future of the Gig Economy”* 6 *International Journal for Multidisciplinary Research* 2 (2024).



## VI. DELIVERY WORKERS AS “GIG WORKERS”

Delivery workers, also known as “delivery service drivers” or “delivery riders”, are the ones who transport goods from one location that is as warehouses and distribution centres, to various businesses and homes.<sup>17</sup> It includes the delivery of various items such as food, clothes, home essentials, groceries, stationery, etc.

## VII. BACKGROUND AND DEVELOPMENT OF THE CONCEPT OF GIG WORKERS

Due to the advancement of society, the world is growing at an unprecedented rate. As a result of globalisation, there has emerged a significant change in the working sector. The world is witnessing a shift in traditional forms of work. It has reshaped the concept of ‘gig’ from its ordinary meaning and has expanded its horizons. According to the Oxford English Dictionary, the term ‘gig’ originated from the music industry, but its scope is not limited to it anymore. In terms of the labour market, gig as a form of work includes freelancing, casual, short-term and contractual work, among many more. It provides an alternate way of generating income or serves as a primary form of work for a few people.

This concept finds its origin in the global financial crisis, which took place in 2008. Another factor that has contributed to its rapid advancement in recent times is COVID-19.<sup>18</sup> In the present times, there is an ongoing debate regarding the status and recognition of delivery workers. Some argue that they should be designated as employees, while others argue that they should be acknowledged as self-employed or independent workers.

The Indian legislature has attempted to adequately respond to this question, but has unfortunately failed significantly. The Code on Social Security, 2020<sup>19</sup>, has, for the first

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<sup>17</sup> Career Explorer, “What Does a Delivery Service Driver Do?”, *available at*:

<https://www.careerexplorer.com/careers/delivery-service-driver/> (last visited Sept. 4, 2025).

<sup>18</sup> Vidhi Santosh Rane, “Platform-based Gig Workers: A Blind Spot in the Indian Labor Laws” (2023), *available at* SSRN: <https://ssrn.com/abstract=4821229> or <http://dx.doi.org/10.2139/ssrn.4821229> (last visited on Sept. 4, 2025).

<sup>19</sup> The Code on Social Security, 2020 (Act 36 of 2020).

time, provided a limited status. But there is no specific law that protects the rights of the delivery workers. Also, Rajasthan has emerged as the first state to come up with an act regulating them, that is, the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023.<sup>20</sup> In contrast, Spain has provided a well-defined status to them, which is backed by several rights.

## VIII. CHALLENGES FACED BY DELIVERY WORKERS

1. **Lack of Legal Recognition:** Even after the enactment of the Code in India, there is still an ambiguity in providing a status of employment to delivery workers. They are not included in traditional labour laws and other related statutes. It is unclear whether they should be regarded as self-employed or employees.
2. **Irregular Income:** The income of delivery workers depends on the orders that they get in a day. But, if in case, they are not getting any orders, this results in less income stability.
3. **No Job Security:** The delivery workers do not have any job security. Sometimes, they have to wait for a long period of time to get delivery orders. For example, on rainy days, they do not get any delivery orders. Similarly, during the COVID-19 pandemic, there was a shortage of orders to them, which led to their exploitation.
4. **Absence of Social Security Benefits:** the delivery workers are not considered as normal labourers, so social security benefits are not provided to them. These workers are not entitled to paid leave, sick leave, maternity benefits or a weekend off. Further, unlike the other employees, they are not entitled to any Pension Schemes or Provident Funds.
5. **No Collective Bargaining Rights:** They are mostly denied the right to form trade unions, strike, or negotiate for their betterment.
6. **Maintenance of Vehicles:** Most of the riders use their own vehicles. Thus, they have to bear all the expenses, including fuel, repairs, purchasing costs, etc. They

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<sup>20</sup> The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act 29 of 2023).

face economic hardships in meeting these needs and costs due to general wear and tear.

7. **High Work Pressure:** They are under constant pressure because they have to meet strict and rigid deadlines for delivering the orders. It does not take into account the weather conditions, traffic, etc. Further, it adds to their mental stress, thereby affecting their health as well.
8. **Customer Rating:** Most of the apps rely on the ratings given by consumers. If a rider gets even a single negative or low rating, it affects their overall performance.
9. **Safety Concerns for Women:** Women are always at high risk of exploitation and sexual harassment while delivering orders at unsafe locations.<sup>21</sup> There has been much news and debate about whether it can come under the purview of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.<sup>22</sup>
10. **Underestimation of Gig Workers by Society:** All employees are entitled to a dignified life. But due to the ambiguity in their status, they are mostly regarded as unimportant. Their contribution to the overall economy is ignored.

## IX. LEGISLATIVE MEASURES AND JUDICIAL FRAMEWORK: INDIA

This section will carry a brief study of the Indian Constitution and the specific laws which have been framed under the Labour Laws.

### A. The Constitution of India, 1950<sup>23</sup>

This paper will take into consideration the Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties.

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<sup>21</sup> Jolene A. Cox, Gemma J. et.al., "Examining Gender Differences in Gig Workers' Safety" 34 *Human Factors and Ergonomics in Manufacturing & Service Industry* 5 (2024).

<sup>22</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013).

<sup>23</sup> The Constitution of India, 1950.

## 1. Fundamental Rights:

- **Article 14:** It provides that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”<sup>24</sup> It would be a breach of their constitutionally protected right to equality if we denied delivery riders the protections afforded by applicable labour laws to workers in comparable circumstances. Although the principle of reasonable classification allows for a limited differentiation between certain individuals or categories of individuals. However, the judiciary has mandated that it must not be arbitrary or discriminatory in nature.
- **Article 19(1)(c):** Every Indian citizen has the freedom to form associations under Article 19(1)(c) of the Constitution, but does this right extend to the formation of trade unions? This is the main question. Although there is no direct mention of the right to form trade unions in the Constitution. But the judiciary has held in many cases that the collective bargaining rights are an extension of this provision. However, in reality, there is no explicit recognition of these rights for the gig workers, as there is doubt whether they will be considered as “employees” under the ambit of trade union laws.
- **Article 21:** The essential right to life protection and personal liberty is guaranteed by Article 21 of the Indian Constitution.<sup>25</sup> It guarantees some protections against willful deprivation of freedom and life. This right has been widely interpreted in the infamous case of *Maneka Gandhi v. Union of India*<sup>26</sup>, whereby the hon’ble judiciary has attempted to expand the scope of this article. They have held that the “right to life” is not limited to mere existence. But this includes the right to live with dignity. Unfortunately, one could argue that the absence of social security, workplace safety, and stable pay violates a delivery worker’s right to a dignified existence.<sup>27</sup> Moreover, the Right to Health and

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<sup>24</sup> The Constitution of India, art. 14.

<sup>25</sup> The Constitution of India, art. 21.

<sup>26</sup> AIR 1978 SC 597.

<sup>27</sup> <https://recordoflaw.in/an-exploration-of-rights-and-protections-in-indias-gig-economy/>

Occupational Safety, Right to Livelihood and Decent Work have been deemed to be an integral part of this article.

## 2. Directive Principles:

- **Article 38:** This article forms the foundation for all labour protections. Sub-clause (1) requires the State to ensure a social order based on social, economic, and political justice in all national institutions to advance the welfare of the populace.<sup>28</sup>

By requiring the State to reduce disparities not just between individuals but also between groups working in different occupations or living in different areas, sub-clause (2) strengthens this commitment. In terms of labour, this suggests a constitutional mandate to bridge the gaps between salaried and casual labour, between urban and rural occupations, and between formal and informal workers, including the delivery workers.

- **Article 39:** The State is instructed under Article 39 to formulate economic policy with particular attention to the welfare of workers. It includes providing a sufficient standard of living for all people, ensuring gender justice through equal compensation for equal labour for men and women, and allocating communal resources in a way that best advances the common good.<sup>29</sup>
- **Article 41:** It requires the State to provide for the right to work, education, and public assistance in times of unemployment, old age, illness, disability, and other unjustifiable need in an efficient manner, within the bounds of its economic development and capabilities.<sup>30</sup> Supreme Court in the case of *Olga Tellis v. Bombay Municipal Corporation*<sup>31</sup> has stated that DPSPs are not legally enforceable, but still, if any person is deprived of their right to livelihood, then that is a violation of Article 21. The Court further held that the state cannot be

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<sup>28</sup> The Constitution of India, art. 38.

<sup>29</sup> The Constitution of India, art. 39.

<sup>30</sup> The Constitution of India, art. 41.

<sup>31</sup> 1986 AIR 180.

forced to provide mandatory employment under this provision. Similarly, it can be applied in the case of delivery workers.

- **Article 42:** The State is required by Article 42 to guarantee fair and compassionate working conditions as well as maternity leave. This rule is essential in acknowledging that the workplace is a space of human interaction that must protect health, safety, and dignity in addition to being an economic arena.<sup>32</sup>
- **Article 43:** By mandating that the State achieve a “living wage” for all workers through legislation or other methods, Article 43 guarantees the demand for worker dignity.<sup>33</sup> It emphasizes the dignity of labour and advocates for the need for statutory protections for gig and platform workers. Like in the landmark case of *Sanjit Roy v. State of Rajasthan*<sup>34</sup>, the Supreme Court held that if an employee is paid less than the minimum settled wage for his work, then it is a clear violation of this article.

### 3. Fundamental Duties:

- **Article 51A:** This article, even if not justifiable, ensures the theme that both the state and citizens have the responsibility to provide fairness and equality to all sections of society. This includes the rights of gig workers, specifically delivery workers. They should also be provided with safe working conditions.<sup>35</sup> It re-examines the moral and ethical duty of individuals to make efforts to protect their interests as part of society.

### 4. Statutory Framework:

Although several laws have been codified in our country that define what constitutes an employee or worker, and provide the rights and safeguards against violation. However, there is still no specific or uniform law dedicated towards these riders. But still, there are some laws that can be indirectly applied to safeguard their interest.

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<sup>32</sup> The Constitution of India, art. 42.

<sup>33</sup> The Constitution of India, art. 43.

<sup>34</sup> AIR 1983 SC 328.

<sup>35</sup> The Constitution of India, art. 51A.

A few such laws are given below:

- **Unorganised Workers Social Security Act, 2008:**<sup>36</sup> This act has attempted to lay down rules regulating the workers who work in the unorganised sector. But the definition does not extend to gig workers, or more specifically, to delivery riders.
- **The Code on Wages, 2019:**<sup>37</sup> This code has a wider scope as it includes both organised and unorganised sector employees. It aims to fix the minimum wage for all employees. But since delivery workers are not considered employees, it is still a question whether there has to be a fixed wage for them or not.
- **The Code on Social Security, 2020:**<sup>38</sup> The Code, which defines a gig worker as “a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship,” was a commendable attempt by Indian legislation to depart from the Contract Labour Act’s third-party contractor approach to recognition and protection. This gave them legal identity.<sup>39</sup> The Code on Social Security recognises gig workers and offers health insurance, maternity benefits, old-age protections, and life and disability insurance, among other social security benefits.<sup>40</sup>
- **Recent Development:** After the efforts made by the State of Rajasthan, the State of Karnataka has also attempted to put in place a bill, which, when passed, would formally recognise the platform workers. It is the Karnataka Platform-based Gig Workers (Social Security and Welfare) Bill, 2024.<sup>41</sup> There is an establishment of the ‘Gig Workers Welfare Board’ and also a fund called the

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<sup>36</sup> Unorganised Workers’ Social Security Act, 2008 (Act 33 of 2008).

<sup>37</sup> The Code on Wages, 2019 (Act 29 of 2019).

<sup>38</sup> The Code on Social Security, 2020 (Act 36 of 2020).

<sup>39</sup> Vidhi Santosh Rane, “Platform-based Gig Workers: A Blind Spot in the Indian Labor Laws” (2023), available at SSRN: <https://ssrn.com/abstract=4821229> or <http://dx.doi.org/10.2139/ssrn.4821229> (last visited on Sept. 4, 2025).

<sup>40</sup> Record of Law, “An Exploration of Rights and Protections in India’s Gig Economy” (Jan. 12, 2025), available at: <https://recordoflaw.in/an-exploration-of-rights-and-protections-in-indias-gig-economy/> (last visited Sept. 4, 2025).

<sup>41</sup> The Draft Karnataka Platform-based Gig Workers (Social Security and Welfare) Bill, 2024, available at: <https://prsindia.org/bills/states/the-draft-karnataka-platform-based-gig-workers-social-security-and-welfare-bill-2024> (last visited on Sept. 12, 2025).

‘Social Security and Welfare Fund.’ It also provides other rights such as registration, UID, collective bargaining rights, etc.

## 5. Judicial Framework:

- *The Indian Federation of App-Based Transport Workers (IFAT) v Union of India*<sup>42</sup>

On 9<sup>th</sup> September 2021, a petition was filed in the Supreme Court of India by virtue of WP (C) 1068/2021. The decision is pending. But it is still significant as this will bring a revolutionary change in the interpretation of the rights of the gig workers, including those of the delivery riders.<sup>43</sup> The petitioner IFAT (Indian Federation of App-based Transport Workers) argues that the ambiguity in their position can be curtailed by assigning them the status of “unorganised worker”. This will bring them the various benefits that are available to these unorganised sector workers.

## X. LEGISLATIVE MEASURES AND JUDICIAL FRAMEWORK: SPAIN

Amidst this debate surrounding the unclear status of delivery workers, Spain has come out as a shining star, inspiring other countries to reconsider their laws. It is the first country that has successfully recognised the gig workers as employees, and more specifically, it has designated the delivery workers as employees. Earlier, there was a debate regarding the same, but the new legislation passed in Spain has put an end to this ongoing conflict. However, this is a result of a long history of judgments that have shaped the new model. At first, the Social Court of Madrid held that they are self-employed and the same decision was upheld by the High Court of Justice in Madrid. But the Supreme Court overturned this ruling.<sup>44</sup>

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<sup>42</sup> WP (C) 1068/2021

<sup>43</sup> Supreme Court Observer, “Gig Workers’ Access to Social Security: The Indian Federation of App-Based Transport Workers (IFAT) v Union of India”, Supreme Court Observer (last updated Feb. 18, 2025), available at <https://www.scobserver.in/cases/gig-workers-access-to-social-security-the-indian-federation-of-app-based-transport-workers-ifat-v-union-of-india/> (last visited Sept. 4, 2025).

<sup>44</sup> Delphine Defossez, “The Employment Status of Food Delivery Riders in Europe and the UK: Self-employed or Worker?” 29 *Sage Journals* 25-46 (2021).



### A. The Spanish Constitution, 1978<sup>45</sup>:

- **Section 14:** This section is related to equality before law, wherein it is declared that the citizens shall not be discriminated on any grounds, be it gender or social status.<sup>46</sup>
- **Section 35(1):** This section affirms that “All Spaniards have the duty to work and the right to work, to the free choice of profession or trade, to advancement through work, and to a sufficient remuneration for the satisfaction of their needs and those of their families”.<sup>47</sup>
- **Section 37:** It provides the collective bargaining rights to workers, wherein they can negotiate with representatives of the employers. Further, it recognises the right of workers and employers to adopt labour dispute measures.<sup>48</sup>
- **Section 40:** This section incorporates various rights and entitlements such as equal distribution of economic resources, full-term employment, professional training policies, provisions for appropriate health and occupational safety with sanitation facilities, rest periods, etc.<sup>49</sup>
- **Section 41:** This takes into consideration the hardships faced by the people, especially in cases of unemployment. It puts an obligation on the public authorities to formulate a social security system that caters to their needs in such situations.<sup>50</sup>

### B. The Rider’s Law, 2021:

Spain has recently passed the Rider’s Law, also known as Ley Riders, on 11<sup>th</sup> May 2021. It is the first law that has uplifted the status of the delivery riders from mere independent contractors to employees. The issue first arose in the Glovo case of 2020.<sup>51</sup> This landmark judgment marks a significant change in the history of delivery workers.

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<sup>45</sup> The Spanish Constitution, 1978.

<sup>46</sup> The Spanish Constitution, 1978, s. 14.

<sup>47</sup> The Spanish Constitution, 1978, s. 35(1).

<sup>48</sup> The Spanish Constitution, 1978, s. 37.

<sup>49</sup> The Spanish Constitution, 1978, s. 40.

<sup>50</sup> The Spanish Constitution, 1978, s. 41.

<sup>51</sup> Delphine Defossez, “The Employment Status of Food Delivery Riders in Europe and the UK: Self-employed or Worker?” 29 *Sage Journals* 25-46 (2021).

Resultantly, Spain emerged as the first EU country to formulate a presumption that delivery riders are actually the employees of the digital platforms that hire them for work. Also, it has shifted the burden of proof to the platforms in case they deny this fact. This act provides many benefits. Such as fixing the working hours, ensuring rest periods, pension schemes, health insurance policies, and minimum wages, among other social security benefits. One key significant provision is the availability of collective bargaining rights, whereby they can negotiate on the terms and conditions of the work. This law promotes the principles of transparency whereby ensuring that the workers are informed of the algorithms that control their work. However, despite these benefits, this law has been criticised heavily. As a result, many digital platforms have reduced the hiring rate of the workforce. Due to this, they are struggling to find work. Further, it is limited in scope because it is applicable only to the food delivery workers and does not include other varieties of delivery workers. Nonetheless, this law is a step forward in regulating this cause.

## **XI. COMPARATIVE ANALYSIS OF THE CURRENT POSITION OF INDIAN AND SPAIN**

It is pertinent to carry out a comparative analysis of how the delivery riders are being regulated in both jurisdictions. The comparison can be drawn based on the protection guaranteed under the Constitution, differences in the statutory provisions, legal status, scope, provisions for trade unions, and the role of digital or app-based platforms.

- 1. Protection under the Constitution:** The Riders are legally protected under Section 35<sup>52</sup>, which extends the Right to do work of their own choice. Whereas in India, there is no explicit mention of Delivery Riders. But indirectly, they fall within the ambit of Fundamental Rights and DPSP.
- 2. Statutory Framework and Rights guaranteed:** Riders in Spain are regulated specifically by the Rider's Law, 2021. It provides provisions for fixed hours of work, maternity benefits, minimum wages, collective bargaining rights,

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<sup>52</sup> The Spanish Constitution, 1978, s. 35.

insurance schemes, pensions schemes, are other social security benefits. Another significant features it that it casts an obligation on the platforms to provide transparency in the algorithmic control. While in India, there is no specific law that directly aims at protecting their interest. Still, the Code on Social Security<sup>53</sup>, passed in 2020, has extended protection to the gig workers, including social security benefits.

3. **Legal Status of “Delivery Riders”:** As per the Rider’s Law, there is a legal presumption. The law demands that the platforms presume them as “employees”. But no such provision exists in Indian laws. There is a grey area as to whether they are self-employed or employees of the platforms.
4. **Scope of the Provisions:** The law of Spain extends to only one category of delivery workers, that is, food delivery workers. On the other hand, Code covers all forms of gig workers.
5. **Right to form Trade Unions:** The delivery riders in Spain can legally be a part of trade unions and can make representation through them for negotiating their rights. No such right for trade unions or collective bargaining is provided in India. Although several attempts have been made to fight for their rights. One such is that of the petition filed in the Supreme Court (as stated).
6. **Role of Platforms:** The platforms that hire them are bound to recognise them as “employees” in Spain. But the app-based digital platforms in India regard them as independent contractors hired for only specific purposes.

## XII. CONCLUSION

The use of digital platforms is increasing at a rapid pace. This results in new forms of employment. With the advent of the gig workers, the labour industry has witnessed a remarkable shift. It is quite beneficial because it has brought flexibility. Delivery workers lie at the heart of the gig economy and form a major part of the gig population. But every good has its own flaws. As seen, this new environment exposes them to new challenges and vulnerabilities. Therefore, it is crucial to impart to them

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<sup>53</sup> The Code on Social Security, 2020 (Act 36 of 2020).

full labour rights. It is important to grant them the status of “employee” to fill the vacuum that is being created due to conflicting opinions. Inspirations should be drawn from Spain. By drawing a comparison, it can be suggested that different jurisdictions have responded to this source differently. It is important to understand the current scenario and see what improvements can be made. The laws should be such that it should take into consideration the interests of all stakeholders and beneficiaries. The laws should aim to achieve collaborative efforts to ensure overall well-being, including physical, mental and financial well-being. It is the need of the hour that the legislature and judiciary should come together to enact laws that promote inclusivity. Thus, there is a need to strike a balance between their needs and the laws to ensure their social protection. Hence, it can be concluded that everyone deserves happiness and dignity in whatever work they do, so do the delivery workers.

### **XIII. SUGGESTIONS AND RECOMMENDATIONS**

After a deep analysis and detailed study, the following suggestions can be made. If adopted, these will help in building this work as a valuable piece of employment.

1. There is a pressing need to ascertain the position of delivery workers. The law should clear the ambiguity as to whether they are independent, part-time, self-employed workers, unorganised workers, or may be characterised as a new category.
2. The legislature should enact a uniform law which regulates the rights of delivery workers universally.
3. The law can incorporate a provision for a fund dedicated solely to their betterment. This fund should be used to fulfil the important needs of delivery workers.

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