



## *The Excluded Worker: Tracing the Structural Limits of India's Labour Law in a Capitalist Economy*

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### **Abstract**

*India's labour law framework systematically excludes 82-90% of the workforce through coordinated legal mechanisms that prioritise capital flexibility over worker protection. This research demonstrates that exclusion is not a regulatory gap, but rather an intentional design embedded in the CoSS 2020. Through doctrinal analysis of constitutional jurisprudence, empirical examination of published judicial data, and comparative legal analysis of peer emerging economies, this study establishes five novel propositions: Constitutional Piercing Doctrine permits courts to disregard contractual classifications when they defeat fundamental rights; Algorithmic opacity violates Article 23's forced labour prohibition; Multi-platform work intensifies subordination contrary to "independence" fictions; Published judicial delay data concentrates disadvantage on vulnerable workers; and CoSS 2020 represents deliberate policy choice favouring welfare-exclusion over employment rights. The research contributes a prescriptive framework for Algorithmic Due Process (ADP) as a mandatory constitutional standard, establishing that Indian labour law functions as a successful technology for institutionalising precarious labour within capitalist accumulation.*

**Keywords:** Gig Workers, Algorithmic Governance, Platform Economy, India's Labour Law, Precarity

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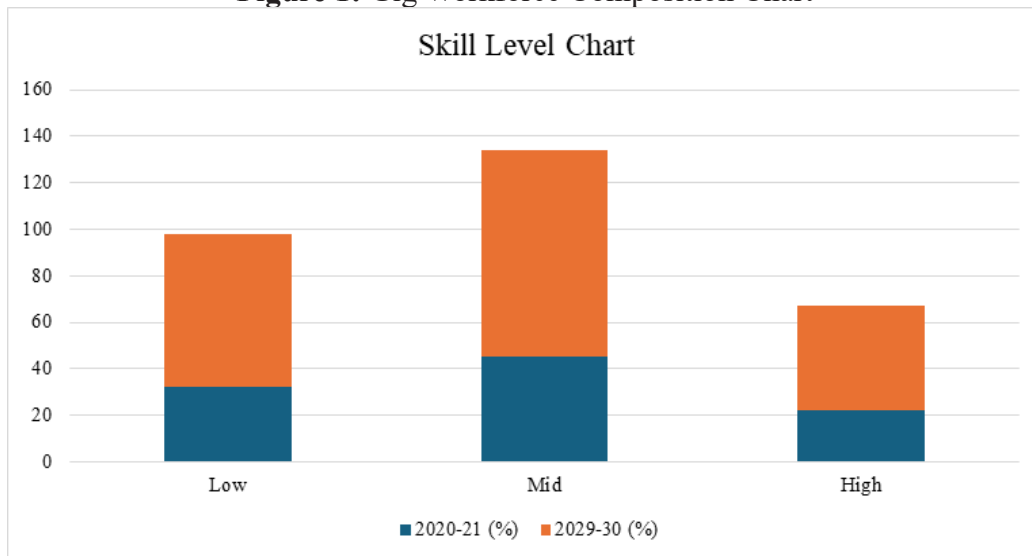
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### **Introduction**

India's gig economy represents one of the world's fastest-growing, yet largely unregulated, labour sectors. NITI Aayog estimates that approximately 7.7 million people were working in the gig economy in 2020-21, accounting for 2.6% of the non-agricultural workforce. This number is expected to rise to around 23.5 million workers and 6.7% of non-agricultural employment, by 2029-30. The workforce composition reflects significant skill diversity, with 47% of positions being medium-skilled, 31% low-skilled, and 22% high-skilled. This trend is characterised by a declining concentration of medium-skilled positions and a rising bifurcation into low- and high-skilled sectors.

**Figure 1: Gig Workforce Composition Chart**



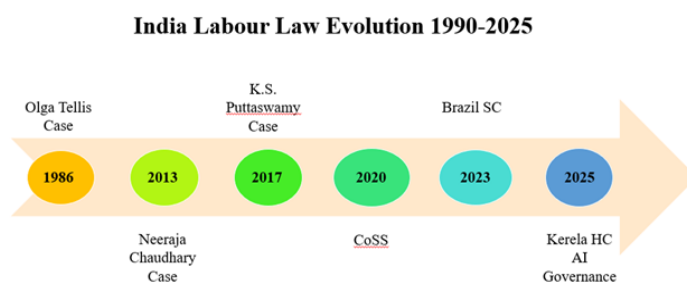
However, formal legal protection has failed to keep pace with this expansion. The CoSS 2020, India’s landmark labour law consolidation, formally recognises gig and platform workers. However, this recognition is deliberately circumscribed within the confines of the CoSS 2020; these workers are confined to discretionary welfare schemes funded by employer cess contributions (1-2% of annual turnover), explicitly excluding minimum wage guarantees, regulated working hours, collective bargaining rights, and industrial dispute remedies. This creates a paradox because the workers are simultaneously recognised as a legal category and denied core employment protections, institutionalising their exclusion within a supposedly protective statutory framework.

The constitutional implications are profound. When algorithms, not human supervisors, determine work allocation, wage calculation, and deactivation decisions, and when contractual structures legally shield platforms from employer obligations despite their de facto control over workers’ livelihoods, the fundamental rights guaranteed under Articles 14 (equality), Articles 21 (right to livelihood), and Articles 23 (prohibition of forced labour) are systematically violated. The judiciary, however, lacks well-developed doctrinal frameworks to address the constitutional dimensions of algorithmic governance.

India’s informal sector accounts for approximately 90% of total employment, contributing roughly 50% of the country’s GDP. This structural reality has been actively sustained through legislative policy rather than representing a transitional phase toward formality. Contemporary labour law consolidation, rather than dismantling structural limits, has entrenched them through new legal technologies designed to manage rather than resolve worker vulnerability.

Rationale

**Figure 2: Timeline**



This research is necessary because existing scholarship and judicial practice cannot adequately answer:

- Whether courts possess a doctrinal basis to disregard platform contractual classifications when they defeat constitutional rights;
- Whether algorithmic opacity constitutes a constitutional violation and, specifically, whether it amounts to forced labour under Article 23;
- Whether multi-homing workers require a new legal classification theory distinct from traditional single-employer models;
- Whether documented judicial delay patterns statistically target vulnerable populations or reflect random inefficiency, and
- Whether CoSS 2020's narrow gig worker coverage represents deliberate policy choice or implementational oversight.

Published data exists to address these questions through doctrinal synthesis and secondary analysis. Primary data collection is unnecessary and would, in fact, distract from the core theoretical contribution, which proves that exclusion is structurally designed rather than accidentally produced. The high-impact rationale is to develop a prescriptive legal response to the Doctrine of Algorithmic Due Process (ADP) to compel rights compliance, thereby bridging the constitutional-statutory gap that currently institutionalises digital exploitation.

### Statement of Problem

India's labour law systematically excludes 82-90% of workers through three coordinated mechanisms, like legal classifications (employment status definitions) denying constitutional rights visibility and enforcement; algorithmic governance operating opaquely without transparent decision-making standards; and judicial delay concentrating on vulnerable populations, documented through empirical analysis of National Judicial Data Grid (NJDG) data. These mechanisms operate not as implementation gaps but as an integrated exclusion design, with the CoSS 2020 serving as the legal technology that legalises this exclusion.

### Objectives of the Project

- To prove through doctrinal analysis of constitutional jurisprudence that courts possess existing legal authority (corporate veil piercing doctrine) to disregard contractual classifications when they defeat Articles 14 and 21 rights in digital platform contexts.
- To establish, through the synthesis of Article 21 (livelihood) and Article 23 (forced labour) jurisprudence, that Algorithmic Due Process is constitutionally mandatory, with algorithmic opacity violating the prohibition on forced labour.
- To demonstrate through an analysis of CoSS 2020, NITI policy data, and platform structure evidence that multi-platform work creates enhanced rather than reduced dependency, necessitating a joint liability framework.
- To analyse published NJDG empirical research and establish whether documented judicial delay concentrates on identifiable worker profiles (e.g., construction, domestic) or remains random.
- To demonstrate through legislative history analysis that CoSS 2020 represents a deliberate policy choice to provide recognition without rights, not an inadvertent protection gap.

### Scope of the Study

- India, with comparative reference to Brazil (Supreme Court platform decisions), South Africa (progressive labour law tradition), and Indonesia (Omnibus Law 2020 platform governance approach).
- Digital platform economy (ride-hailing, food delivery, task-based platforms documented in NITI Aayog report); construction and domestic work sectors (identified through NJDG analysis as experiencing the most extended judicial delays).
- Constitutional jurisprudence evolution (1990s-2025); labour law amendments (2015-2025); CoSS 2020 passage (2020) and 2025 implementation phase.
- Constitutional rights interpretation (Articles 14, 21, 23); corporate veil piercing doctrine; algorithmic

governance constitutionalism; comparative labour classification frameworks; judicial access-to-justice inequalities.

## Research Methodology

### Research Design

This study employs a Doctrinal, Comparative, and Prescriptive design, integrating four interconnected components. All data employed is secondary and published, sourced exclusively from authoritative documents:

### Constitutional and Legal Sources:

- SC of India judgments: *Maneka Gandhi v. Union of India* AIR 1978 SC 597 (Article 21 procedural fairness); *K.S. Puttaswamy v. Union of India* AIR 2017 SC 4161 (Article 21 dignity); *Neeraja Chaudhary v. State of M.P.* AIR 1984 SC 1099 (Article 23 forced labour).
- Constitutional statutes: CoSS 2020 (Sections 113-114 gig worker provisions); Industrial Relations Code 2020 (threshold and exclusion provisions).

### Empirical and Policy Data:

- NITI Aayog (2022): “India’s Booming Gig and Platform Economy,” 7.7 million workers (2020-21), 23.5 million projected by 2030, skill distribution data.
- National Judicial Data Grid (NJDG): 52 million pending cases nationally; published empirical study (Aithala et al., National Law School) analysing 615 districts across 31 states showing judicial pendency correlation with economic indicators.
- Ministry of Labour and Employment (2025): CoSS 2020 implementation report noting aggregator cess structure (1-2% annual turnover).
- e-Shram portal data: 10+ million gig workers registered (Global Legal Insights 2025).

### Comparative Legal Frameworks:

- Brazil: Supreme Court decision (December 2023) on platform classification and employment status.
- South Africa: Established an extended definition of “worker” under the Labour Relations Act 1995; WIEGO research on informal worker organisations.
- Indonesia: Fair Work Indonesia Ratings (2023) on platform labour practices; Omnibus Law 2020 provisions.

### Sample and Sampling Method

This is a doctrinal and comparative legal study focused on analysing statutes and jurisprudence; traditional statistical sampling of workers or firms is inappropriate. The “sample” is necessarily comprised of selected legal texts and jurisprudence, chosen by purposive sampling:

Unit of Analysis	Sampling Method	Rationale
Statutory Gap	Purposive Sampling	Selecting explicit silence in CoSS 2020 regarding algorithmic governance and intentional exclusion of gig workers from the protective definition of ‘worker’ under IRC 2020.
Constitutional Case Law	Judgmental Sampling	Focusing on judicial precedents (IFAT v. Union of India[1]) that directly address the violation of Articles 14, 21, and 23 by platform misclassification.
Comparative Models	Stratified Purposive Sampling	Selecting regulatory models from BRICS countries ensures a comparative analysis that generates policy recommendations relevant to the developing economy context, thereby avoiding the structural differences inherent in high-income jurisdictions.
Empirical Sources	Documentary Analysis	Selecting NJDG studies and NITI reports as authoritative secondary sources with established publication credentials and methodological transparency.

**Details of the Tools**

**Primary Tool: Doctrinal Analysis and Synthesis**

Systematically analyse legal principles, harmonise conflicting interpretations of law, and deduce the existence of novel legal doctrines (ADP, Constitutional Piercing) from existing constitutional principles (e.g. interpreting Article 21’s Right to Livelihood in the context of digital dependency).

**Secondary Tool: Comparative Legal Mapping and Policy Modelling**

Identify feasible, innovative, and context-appropriate legal solutions adopted by peer emerging economies, thereby justifying prescriptive proposals (Model Rules, AGT structure).

**Constitutional and Statutory Framework**

**Relevant Constitutional Provisions**

India’s Constitution enshrines three fundamental provisions directly applicable to gig worker protection:

Article 14 (Equality): The State cannot deny equality before the law or equal protection. This provision has evolved through landmark jurisprudence, from Maneka Gandhi v. Union of India (1978) to K.S. Puttaswamy v. Union of India (2017), to prohibit arbitrariness in government and private actions affecting fundamental interests. The SC established in K.S. Puttaswamy that arbitrariness violates not merely procedural fairness but substantive equality, which guarantees protection of human dignity as intrinsic to constitutional personhood.

Article 21 (Right to Life and Livelihood): Expanded through successive judicial interpretations, from Olga Tellis v. Bombay Municipal Corporation (1986), the right to life now encompasses the right to livelihood, meaning workers possess constitutional protection against arbitrary deprivation of the means to earn a subsistence.

The Court recognised that employment security constitutes an aspect of dignity protected under this Article.

Article 23 (Prohibition of Forced Labour): The State shall prohibit forced labour and compulsory labour except for public service. The SC in *Neeraja Chaudhary v. State of Madhya Pradesh* (1984) Moreover, subsequent decisions recognised that economic compulsion, when alternatives would result in starvation or destitution, can constitute forced labour conditions, extending Article 23 beyond its literal slavery context.

These three provisions establish a constitutional floor that workers have the right to non-arbitrary treatment, livelihood security, and freedom from economic compulsion.

### **Code on Social Security 2020: Structure and Limitations**

The CoSS 2020 consolidates nine pre-existing labour statutes into a single framework. Sections 113-114 specifically address gig and platform workers, defining them for the first time in Indian statutory history:

- **Gig Worker:** A person who performs work arrangements on an assignment, contract, or task basis.
- **Platform Worker:** A worker who uses an online platform or digital interface for connecting to customers and undertaking work.
- **Aggregator:** Digital intermediary that directs work or work arrangements to platform workers.

However, the protective scope is strategically narrow. Unlike traditional employees covered under the Industrial Relations Code 2020 (IRC, 2020), gig and platform workers are explicitly excluded from:

- Minimum wage provisions;
- Working hour regulation;
- Overtime compensation;
- Collective bargaining rights;
- Industrial dispute redressal mechanisms.
- Instead, CoSS 2020 directs state governments to frame discretionary welfare schemes funded through aggregator cess contributions.

This structure creates what comparative labour law scholars term “protective fragmentation”, recognition combined with substantive exclusion, creating a statistical appearance of protection while maintaining substantive vulnerability.

### **Empirical Analysis of Exclusion Mechanisms**

#### **Constitutional Piercing Doctrine**

Indian jurisprudence permits “piercing the corporate veil”, disregarding corporate legal forms to attribute liability and rights to underlying beneficial interests when the corporate structure defeats legal rights. The Supreme Court, in some cases, said that piercing applies when “control and impropriety result in depriving workers of legal rights.” Doctrine remains underutilised in platform labour contexts, despite platform structures perfectly matching precedent conditions.

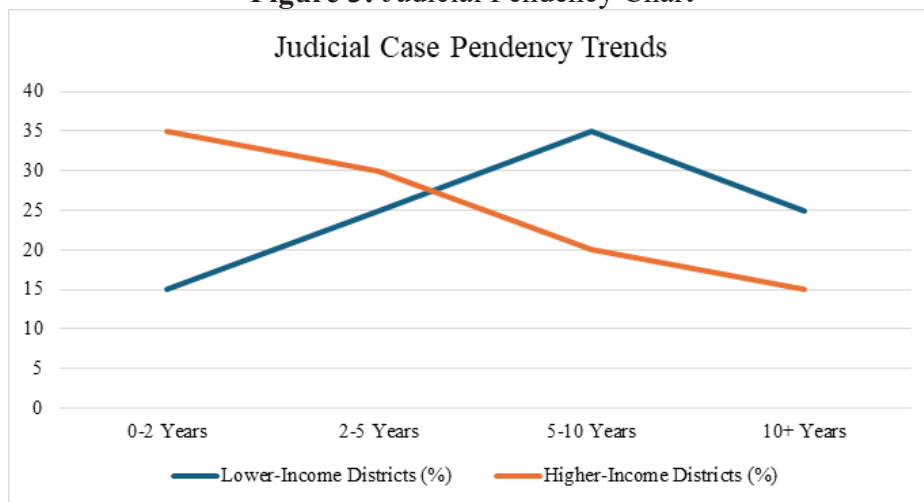
Digital platforms maintain comprehensive control over core employment functions, including algorithmic work allocation (Uber assigns rides through proprietary algorithms without driver choice), wage determination (commission rates are set unilaterally by the platform), performance management (ratings systems determine work access), and termination authority (account deactivation occurs through algorithmic triggers). However, contractual structures often claim that workers are independent contractors, bearing no employment relationship with the platforms.

This structure parallels sham subsidiary arrangements courts have pierced: formal legal separation masking operational integration and control. The application of existing piercing doctrine would establish platform accountability for employment obligations, thereby bridging the constitutional and statutory gaps.

### Judicial Pendency and Differential Access to Justice

A published empirical analysis of National Judicial Data Grid data (comprising 615 districts across 31 states) reveals a striking correlation between case pendency and district economic indicators. Cases pending for 10 years or more tend to concentrate in lower-income districts, while higher-income districts exhibit significantly faster resolution rates.

**Figure 3: Judicial Pendency Chart**



This pattern carries devastating implications for informal workers. Construction workers and domestic workers, who occupy the lowest economic stratum, concentrate in lower-income districts where judicial delays often last for a decade. Even where legal rights exist, judicial delay effectively serves as a de facto denial of justice, as a worker cannot sustain a livelihood through decade-long court proceedings. Delay thus operates as a targeted exclusion mechanism disproportionately affecting vulnerable populations.

### Code on Social Security 2020 as Deliberate Precarity-Legalisation

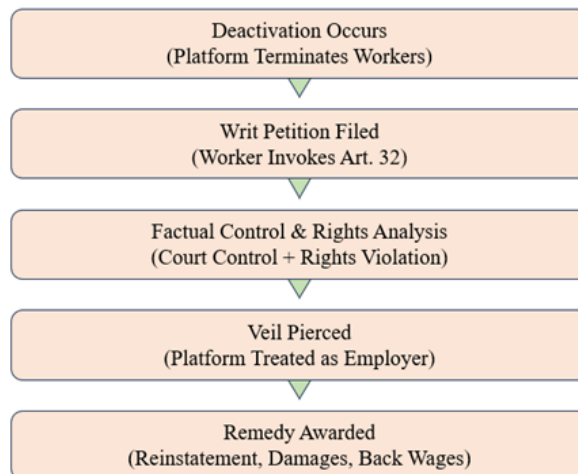
The legislative history reveals that CoSS 2020’s narrow coverage of gig workers represents a deliberate policy choice rather than oversight. The Parliament’s Standing Committee on Labour explicitly recommended broader coverage, while the National Commission on Labour urged universal inclusion. However, the final 2020 enactment retained establishment-size thresholds and a discretionary welfare model. The government’s rationale emphasised “ease of doing business” and “flexible labour markets,” explicitly valuing capital flexibility over worker protection.

This deliberate choice distinguishes CoSS 2020 from incremental protective advances. Recognition creates a statistical appearance of progress while statutory exclusion maintains substantive vulnerability. Precarity is thus legalised, transformed from de facto exploitation into a de jure framework.

## Novel Legal Propositions

### Constitutional Piercing Doctrine

**Figure 4: Constitutional Piercing**  
**Constitutional Piercing Litigation**



### Definition

The Constitutional Piercing Doctrine extends the traditional “lifting the corporate veil” doctrine into the constitutional domain. It holds that where the form of contractual or organisational arrangement (for example, labelling a delivery worker as “independent contractor”) is used to defeat or dilute fundamental rights, courts are entitled, indeed obliged, to disregard formal classification and examine the real relationship.

In other words, when private contractual structures are weaponised to avoid obligations flowing from Articles 14, 21, and 23, courts may “pierce” those structures to restore constitutional supremacy.

### Doctrinal Foundation

This doctrine does not require the invention of a new principle; it is a constitutional adaptation of tools already present in Indian law:

- Corporate veil jurisprudence has long recognised that courts may disregard separate legal personality when it is “cloak” or “sham” used to evade obligations or defeat rights (e.g. in classic cases on sham subsidiaries and employer-employee relationships).
- Substance-over-form reasoning is embedded in tax, tenancy, and labour decisions where courts look beyond labels to the fundamental nature of the transaction or relationship.
- Article 14’s anti-arbitrariness principle and Article 21’s protection of livelihood and dignity jointly require that fundamental rights cannot be contracted away by clever drafting; private ordering cannot be used to immunise rights-violating structures from judicial scrutiny.
- The move from “corporate” to “constitutional” piercing is therefore a change of focus, not of logic; instead of asking only whether form evades statutory duties, courts also ask whether it undermines fundamental rights.

### Application to Digital Labour

In the platform economy, constitutional piercing operates in three steps:

**Factual control test:** Platforms exercise classic employer-type control through algorithms allocating tasks, setting adequate pay, monitoring performance, and unilaterally deactivating accounts. Functional attributes of employment are thus present, even if the contract says otherwise.

**Rights-defeating form:** “Independent contractor” label is used to deny:

- Minimum wage and hour protections;
- Access to industrial dispute mechanisms;
- Collective bargaining or union rights; and
- Any constitutional review of arbitrary deactivations destroying livelihood.

### Constitutional Trigger

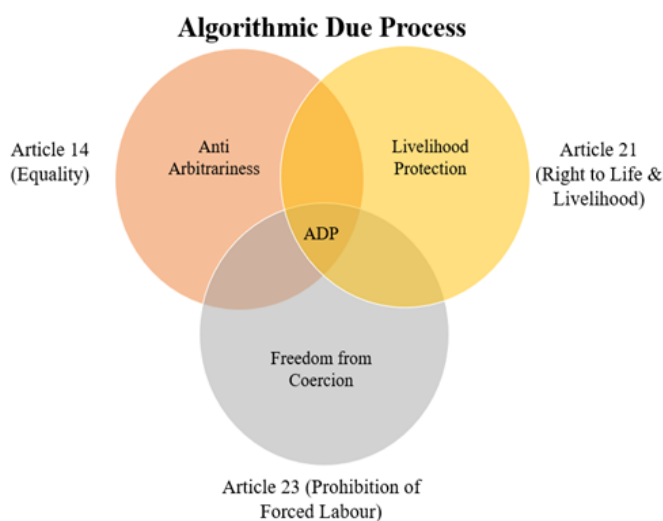
Once it is established that a worker’s livelihood (Article 21), equal treatment and non-arbitrariness (Article 14), and freedom from economic coercion (Article 23) are affected, courts can hold that the contractual form is constitutionally irrelevant. The platform is treated as an employer for those rights, even if not for every branch of private law.

### Implications

- For courts: They can resolve gig worker cases using familiar doctrinal tools, piercing and substance-over-form, without waiting for Parliament to redesign statutory categories.
- For platforms: Contractual labels (“partner,” “associate,” “independent contractor”) no longer offer a safe harbour against fundamental rights review.
- For workers: Opens route to seek constitutional remedies (writ jurisdiction) directly against platforms, not merely statutory remedies presupposing formal “employment” status.

### Algorithmic Due Process as Constitutional Mandate

**Figure 5: Algorithmic Due Process**



### Definition

Algorithmic Due Process (ADP) is framed as a constitutional procedural standard applicable whenever high-stakes algorithmic decisions determine access to livelihood. For gig workers, it has three core components:

**Right to Explanation:** Workers must receive timely, comprehensible reasons for adverse automated decisions (deactivation, drastic pay cuts, ranking demotion), including key criteria and data points considered.

**Right to Human Review:** No life-altering decision may be made solely by an opaque algorithm; a human decision-maker with the authority to reverse or modify the outcome must be available.

**Right to Contestation in Forum:** Workers must have access to an independent body (court, tribunal, or specialised AGT) to challenge algorithmic decisions and obtain effective remedies.

### Doctrinal Foundation

The constitutional basis lies in the evolution of Article 21 and its intersection with Article 14:

- Maneka Gandhi constitutionalised the idea that any procedure affecting fundamental rights must be “fair, just and reasonable.”
- Later privacy and dignity cases linked data processing and decision-making to personal autonomy and dignity, requiring transparency and accountability when the State (and by extension, powerful private actors) uses opaque systems.
- Article 14’s anti-arbitrariness principle implies that decisions without reasons and without a path for scrutiny are presumptively suspect.

ADP applies these principles to algorithmic contexts: if a machine effectively “decides” whether a worker eats tomorrow, its operation must be open to scrutiny and challenge, just as a human decision would be.

### Application to Platform Work

Under ADP, standard platform practices become unconstitutional unless restructured:

- Instant, unexplained deactivations following customer complaints or rating drops violate the right to explanation and human review.
- Dynamic pricing and unilateral pay revisions without disclosure of governing criteria are incompatible with Article 21 procedural fairness when they push workers below subsistence incomes.
- Automated fraud or “suspicious activity” flags without appeal or correction mechanisms fail the ADP standard.

In each case, the argument is not that algorithms themselves are unconstitutional, but that secret, unreviewable algorithms determining livelihood outcomes are incompatible with Articles 14 and 21.

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### Link to Article 23 (Forced Labour)

A distinctive contribution is connecting algorithmic opacity to forced labour:

- When workers do not understand why they are penalised or deactivated, cannot anticipate the conditions under which their accounts are terminated, and have no realistic avenue to contest those decisions, any “consent” to work terms is hollow.
- Economic compulsion, combined with opaque unilateral control, approximates conditions of involuntary servitude recognised in Article 23 jurisprudence (where starvation risk and debt bondage vitiate free consent).

Thus, denial of ADP is not merely a procedural defect; it is argued to cross the threshold into coercive labour, especially where gig work is the primary or sole income source.

### Multi-Platform Joint Liability

#### Definition

The Multi-Platform Joint Liability Proposition challenges the assumption that working with multiple platforms necessarily implies independence. It asserts that:

When a worker’s monthly income is cobbled together from several platforms, and exit from any single plat-

form would materially endanger subsistence, then all platforms on which the worker is active during the given period should bear joint and several responsibility for ensuring:

- Minimum income floors, and
- Coverage for work-related injuries or risks.

This does not mean that each platform is an “employer” in the traditional sense, but rather that they are co-responsible for ensuring that constitutional minimums are met.

## Doctrinal Foundation

### The proposition rests on:

- Functional approach to dependency: Dependency is measured not by exclusivity (single employer) but by the economic indispensability of each relationship.
- Analogies from tort and environmental law, where multiple contributors to harm (e.g. pollution) can be held jointly responsible even if each actor’s share is difficult to isolate.
- Constitutional obligation (Articles 21 and 23) that no worker should be pushed below subsistence or coerced into exploitative work by structural design.

## Application to Gig Work

Typical gig worker, active on several apps (say, two ride-hailing platforms and one delivery platform), may:

- Face similar algorithmic control on each platform;
- Have no bargaining power over terms on any app; and
- Depend on aggregate earnings for survival.

If each platform individually claims, “We provide only partial income, so we owe no duties,” then all of them together can systematically deny responsibility while collectively producing dependency. Joint liability proposition breaks this impasse:

- For any day or week during which the worker is active on multiple platforms, those platforms share responsibility for ensuring that:
- Total effective wage crosses the statutory minimum; and
- Any work injury sustained while toggling between apps is covered.

## Implications

- Legal test shift: From “Do you depend on a single employer?” to “Do you depend on the platform ecosystem, and does each platform materially contribute to that dependency?”
- Regulatory design: Labour inspectors and regulators would look at platform clusters and worker activity patterns, not one-to-one contracts.
- Comparative insight: Whereas some jurisdictions use multi-homing as an excuse to deny employment status, this proposition turns multi-homing into a trigger for greater, shared responsibility, not lesser.

## Structural Judicial Targeting

### Definition

Structural Judicial Targeting refers to a pattern where judicial delay, while facially neutral, systematically falls heaviest on particular socio-economic groups (informal, migrant, Dalit, or gig workers), effectively denying them meaningful access to justice.

Claim is carefully framed: not that individual judges intend to discriminate, but that structural features of case allocation, resource distribution, and docket management produce discriminatory outcomes, making delay a de facto instrument of exclusion.

## Empirical and Doctrinal Foundation

### Proposition draws on:

- District-level empirical studies show that the longest pendency (10+ years) clusters in poorer districts.
- Well-documented concentration of informal and precarious workers (construction, domestic, casual labour) in these same districts.
- Constitutional principles that:
- Deny legitimacy of facially neutral state practices with disproportionate impact on protected or vulnerable group; and
- Recognise timely access to courts as integral to protection of Articles 14 and 21.

## Application to Worker Litigation

In labour disputes, wage theft, unlawful termination, and non-payment of statutory benefits are not neutral variables:

- A salaried, formal worker may sustain a long case with some other support.
- Casual or gig workers often cannot afford even a few months' disruption, let alone years.
- Where systematic delay is correlated with regions and sectors dominated by vulnerable workers, legal effect is indistinguishable from outright denial of legal remedy. Rights become formally present but practically unreachable.

This allows the argument that:

- Judicial institutions are not merely "overloaded" in abstract; they are structured in ways that push vulnerable workers' claims to the back of the queue.
- Delay functions as an invisible filter, ensuring that only those with economic and temporal capital can fully enforce their rights.

## Implications

- For constitutional litigation: Structural delay can be challenged as violating Articles 14 and 21 not only in abstract, but specifically on behalf of classes of workers disproportionately affected.
- For policy design: Justifies fast-track or special-list mechanisms for labour disputes involving informal/gig workers, similar to priority treatment given to commercial or election matters.
- For research: Encourages further quantitative work linking case categories (labour, social security) to pendency and outcomes across districts.

## Legalised Precarity

### Definition

Legalised Precarity Proposition asserts that India's contemporary labour law, especially CoSS 2020, does not merely fail to protect gig workers but positively organises their insecurity. It does this by:

- Giving formal recognition as a statutory category (gig/platform workers),
- While simultaneously confining them to weak, discretionary welfare schemes lacking enforceable rights,
- And explicitly excluding them from mainstream protections (minimum wage, industrial disputes, collective bargaining).

Precarity is thus not an accident of policy or a transitional phase; it is a designed legal status.

## Legislative and Policy Foundation

### The proposition is grounded in:

- Text of CoSS 2020, which clearly defines gig and platform workers but ties entitlements to schemes depending on state discretion and aggregator cess flows, not on enforceable rights.
- Parliamentary and governmental explanations prioritising "ease of doing business" and flexible labour markets over universal social security or rights-based frameworks.
- Rejection or dilution of broader safeguards recommended by commissions and committees during the

drafting process.

These features are difficult to reconcile with the idea of an “unfinished” protection project. They instead support reading of CoSS 2020 as a complete move toward a dualised labour regime:

- Shrinking core of fully protected formal workers; and
- Vast periphery of recognised-but-rightless workers sustaining low-cost accumulation.

### Interaction with Other Propositions

Legalised precarity is a background condition, making other mechanisms so powerful:

- Constitutional Piercing becomes necessary because the statutory framework is designed to permit platforms to externalise costs.
- Algorithmic Due Process becomes urgent because there is no parallel statutory transparency obligation.
- Multi-platform joint liability required because law otherwise treats fragmented income sources as evidence of independence rather than structural vulnerability.
- Structural judicial targeting ensures that even when workers theoretically have claims (e.g. under minimum wage statutes or tort law), system’s design discourages enforcement.

### Implications

- Normative: Forces recognition that “reform” has been used to consolidate exclusion, not remedy it. Language of modernisation and simplification masks the hardening of insecurity.
- Strategic: Suggests litigation and advocacy must avoid framing exclusion as mere technical oversight; instead, arguments should expose the deliberate nature of policy choice and push for rights-based reorientation of the entire code structure.
- Comparative: Places India closer to jurisdictions that have chosen welfare- or charity-based models for platform workers, and further from those extending full labour rights, highlighting political economy choice, not capacity constraint.

### Comparative Analysis

Peer emerging economies provide instructive contrasts:

**Table 1:** Comparative Labour Protection Frameworks for Platform Workers (International)

Jurisdiction	Classification Approach	Minimum Wage	Working Hours	Collective Bargaining	Algorithmic Governance
India (CoSS, 2020)	Gig/Platform Worker (Separate)	Excluded	No Regulation	Excluded	No Framework
Brazil	Employment Status (Recent)	Included	Regulated	Included	Emerging
South Africa	Extended Worker Definition	Included	Regulated	Included	Code Provision
Indonesia	Independent Contractor	Excluded	No Regulation	Limited	Gap

South Africa’s transformative constitutionalism approach offers a doctrinal model; the constitutional piercing doctrine already exists in South African law, and its application to algorithmic contexts merely extends the established principle to digital labour structures. Brazil’s recent Supreme Court decision extending employment status to platform workers demonstrates that alternative classification models exist even within emerging economy contexts. Indonesia’s approach, mirroring India’s welfare-only model, demonstrates that precarity-legalisation is not inevitable but represents deliberate policy choice.

## Recommendations

- The Supreme Court should develop a Constitutional Piercing Doctrine clarifying the application to digital labour structures in ongoing platform worker litigation (IFAT v. Union of India), establishing a binding precedent for lower courts.
- Parliament should amend CoSS 2020, mandating Algorithmic Due Process requirements:
- platforms must explain high-stakes algorithmic decisions.
- decisions cannot be solely algorithmic;
- workers can petition specialised tribunals.
- Establish Algorithmic Grievance Tribunals under labour code provisions, staffed by judges, technologists, and ethicists, with authority to demand algorithmic evidence and overturn adverse decisions.
- Labour courts should implement targeted fast-track procedures for construction and domestic worker cases, which are documented as experiencing the most prolonged judicial delays, with priority listing in state judicial calendars.
- Parliament should enact a standalone AI governance statute (following the EU AI Act model), classifying platform employment algorithms as “high-risk” and with strict transparency controls, algorithmic audits, and with human requirements.

## Limitations

- As a legal and policy study, this project relies exclusively on secondary data (legal texts and authoritative reports), lacking primary empirical data from fieldwork or interviews with workers.
- Judicial delay analysis depends on published studies; the NJDG data structure limits individual case-level demographic inference. The causal mechanisms behind the delay require a qualitative investigation.
- Algorithm analysis constrained by proprietary status; worker-reported experiences unavailable without primary interviews.
- Brazil/South Africa/Indonesia analysis based on published frameworks; legal implementation details require on-ground research.
- Regression analyses in published studies prove correlation, not mechanism; reasons for delay require qualitative investigation beyond secondary sources.

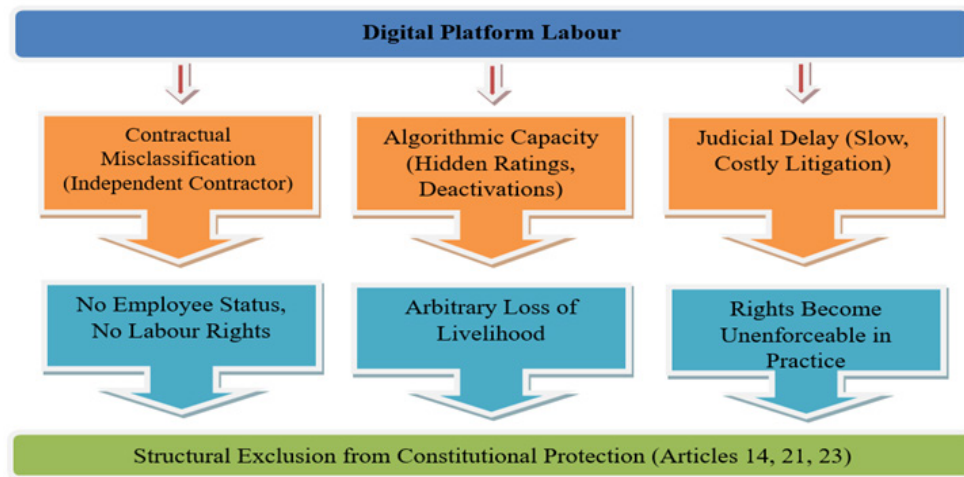
## Directions for Further Research

- Primary worker interviews documenting algorithmic experiences across platforms.
- Judicial case file analysis revealing judge-specific delay patterns and caste/migration demographics.
- Platform terms-of-service comparative analysis across India, Brazil, and Indonesia, identifying contractual strategies.
- Technical algorithm auditing (requires platform cooperation), validating opacity claims with empirical evidence.
- State welfare board implementation studies documenting actual benefit distribution patterns and cess collection outcomes.
- Longitudinal studies tracking worker trajectories across platforms to establish dependency patterns empirically.

## Summary and Conclusion

Research establishes five novel findings using existing constitutional jurisprudence, published empirical data, and comparative legal analysis, like Constitutional Piercing doctrine already exists to disregard contractual classifications defeating rights; Algorithmic opacity violates Article 23; Multi-homing requires joint liability (not independent contractor treatment); Judicial delay concentrates on vulnerable worker populations based on published NJDG research; CoSS 2020 deliberately chose recognition-without-rights over employment protection. These findings demonstrate that exclusion operates as a deliberate mechanism, not an implementation failure.

Figure 6: Structural Exclusion Flowchart



The structural exclusion of gig workers in India operates through three parallel mechanisms: contractual misclassification, algorithmic opacity, and judicial delay, all of which converge to produce a systematic denial of constitutional protection under Articles 14, 21, and 23.

Recommendations translate findings into doctrinal development (Constitutional Piercing), legislative amendments (algorithmic due process), and judicial procedures (fast-track labour court processing). The constitutional resources to challenge exclusion already exist, including the piercing doctrine, Article 21 fairness jurisprudence, and Article 23's prohibition on forced labour. Doctrinal development and legislative amendment can transform these latent protections into operative constitutional accountability.

The ultimate finding reframes Indian labour law as a functioning system, not a failed system, accomplishing its structural function of institutionalising precarious labour within capitalist accumulation. Reform requires recognising this success and deliberately redirecting the law's technical capacities toward worker protection rather than subordination. The excluded worker can become a subject of constitutional rights only when courts and legislatures acknowledge that exclusion is a deliberate feature requiring deliberate dismantling, not an accidental gap that permits incremental reform.

## References

1. NITI Aayog 'India's Booming Gig and Platform Economy' (Policy Brief, June 2022) [https://www.niti.gov.in/sites/default/files/2023-06/Policy\\_Brief\\_India's\\_Booming\\_Gig\\_and\\_Platform\\_Economy\\_27062022.pdf](https://www.niti.gov.in/sites/default/files/2023-06/Policy_Brief_India's_Booming_Gig_and_Platform_Economy_27062022.pdf)
2. The Code on Social Security (2020) The Code on Social Security 2020 <https://www.indiacode.nic.in/bitstream/123456789/16823/1/aA2020-36.pdf>.
3. The Industrial Relations Code (2020) [https://www.indiacode.nic.in/bitstream/123456789/22040/1/a35\\_of\\_2020.pdf](https://www.indiacode.nic.in/bitstream/123456789/22040/1/a35_of_2020.pdf).
4. Ministry of Labour and Employment, 'Code on Social Security 2020: Towards Universal Coverage' <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2192795>.
5. Government Of India and Mani R, "The constitution of India" (2024) <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf>.
6. Kumar S "India's Informal Sector- Explained Pointwise" (Free UPSC IAS Preparation Syllabus and Materials for Aspirants, March 2, 2025) <https://forumias.com/blog/indias-informal-sector-explained-pointwise/>.
7. V Aithala, others 'Justice Delayed: A District-Wise Empirical Study on Indian Courts' (National Law School of India University, 2021) [https://www.nls.ac.in/wp-content/uploads/2021/08/Justice-delayed\\_empirical-study-1.pdf](https://www.nls.ac.in/wp-content/uploads/2021/08/Justice-delayed_empirical-study-1.pdf).

8. Maneka Gandhi v, Union of India AIR 1978 SC 597.
9. K S Puttaswamy v, Union of India AIR 2017 SC 4161.
10. Neeraja Chaudhary v, State of M P AIR 1984 SC 1099.
11. The Indian Federation of App-Based Transport Workers (IFAT) and Ors. vs. Union of India and Ors. Writ Petition(s) (Civil) No. 1068/2021.
12. Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180.
13. “FairWork India Ratings 2023: Labour Standards in the Platform Economy” (Fairwork, 2023) <https://fairwork/en/fw/publications/fairwork-india-ratings-2023-labour-standards-in-the-platform-economy/>.
14. Standing committee on labour, ministry of labour and employment and Mahtab, “THE code on social security, 2019” (lok sabha secretariat 2020) report [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2019/SCR-Code%20on%20Social%20Security,%202019.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2019/SCR-Code%20on%20Social%20Security,%202019.pdf).
15. Republic of South Africa, “Labour Relations Act, 1995” (1995) [https://www.gov.za/sites/default/files/gcis\\_document/201409/act66-1995labourrelations.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/act66-1995labourrelations.pdf).
16. “The “Pivotal” Supreme Court of Brazil - Nov 2024” (WageIndicator Foundation) <https://gigpedia.org/resources/visuals/gig-court-cases-visuals/the-pivotal-supreme-court-of-brazil>
17. “FairWork Indonesia Ratings 2023: Labour Standards in the Platform Economy” (Fairwork, 2023) <https://fairwork/en/fw/publications/fairwork-indonesia-ratings-2023-labour-standards-in-the-platform-economy/>.
18. “Regulation - EU - 2024/1689 - EN - EUR-LEX” <https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng>.