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THE EFFICIENCY OF CODE ON WAGES, 2019 IN GUARANTEEING MINIMUM WAGES TO GIG WORKERS

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ABSTRACT

The impact of COVID-19 pandemic brought out the importance of gig economy workers, especially online workers, in the Indian economy, and the pandemic also highlighted the troubles faced by them. During the pandemic the freelance platform workers played a major role in providing various essential economic services preventing the economy from being slow. However, there is little to no express legal regulations regarding the provision of social protection to gig workers especially with regard to guaranteeing minimum wages and grounds of classification of gig workers of the same purpose. The paper makes use of a qualitative approach, by analysis of various existing literature, legislations in power, and also cases adjudicated, to analyse the current existing definition of gig workers and the protections awarded to them in their various sectors. It is concluded that ambiguity regarding the inclusion of gig workers in the definition of 'employee' under the Code on Wages prevail and that would cause the inevitable loss of benefits to gig workers. Further ambiguity was noticed in the definitions given by the Courts through their interpretation where certain precedents consider certain groups of gig workers as 'contractual labourers' and a certain other group as traditional employees. In conclusion, the Code on Wages can be viewed as an opportunity provided to expand the definition of 'employee' under the act, and therefore the paper recommends that the Code on Wages, 2019 needs to be amended to include a definition of gig workers, understanding the need and design equitable schemes for all groups of gig workers rather than considering these groups to be a part of 'traditional workers', 'contractual labour', and 'independent contractors. This would enable them to receive fair and equal remuneration as per the provisions of the act.

Keywords: gig economy; gig workers; minimum wages; Code on Wages, 2019; social protection

INTRODUCTION

The Code on Wages, 2019 defines the term 'employee' to include only traditional workers, that is, workers who either have express or implied terms of employment with the employer. In the Code there is no express inclusion or exclusion of gig workers within this definition, however, the term 'contract labour' has been provided with an explicit definition. Over the years the Judiciary has interpreted and included certain categories of gig workers within the ambit of the term 'contract labour' and the others under the scope of the term 'employees' for the purpose of the Minimum Wages Act.

The only labour code that provides a definition for 'gig workers' is the Code on Social Security, 2019. However, there is no clarity as to whether it is applicable for all the labour codes and even if they are applicable, the question regarding whether a provision for minimum wage offers coverage to 'gig workers'. Furthermore, no legislation offers the grounds of classification of gig workers, which plays an integral role in determining whether gig workers would be guaranteed minimum wages or not.

The pandemic brought out the importance of gig workers in our economy and highlighted the hardships currently faced by them. According to the report of a study conducted by NITI Aayog, it was estimated that by 2021, 77 lakh

workers would have been engaged in the gig economy and further stated that the gig workforce is expected to expand to 2.35 crore workers by 2030.⁸²¹ Furthermore, the report estimates that the growth will only be on the rise from there. Therefore, the paper aims to highlight the necessity in providing an express definition for the term 'gig workers' and a method of classification of gig workers under the Code on Wages, 2019 so as to guarantee minimum wages to such workers.

This paper delves into the Code on Wages 2019 and other various related legislations to understand the current prevailing conditions of gig workers in the country. The paper analyses the existing definitions provided to gig workers by various legislations and also elucidates the importance of the contributions of the gig workers to the economy and also assesses the shifts of the judicial interpretations of the same in the past years.

WHO ARE GIG WORKERS?

The gig economy is a new way of working that is disrupting traditional industries and challenging conventional recruiting methods. But, despite this fact there has been no clarity in the definition of gig economy and gig workers. The Gig Economy is an economy offering temporary, flexible jobs to independent contractors, freelancers, and part-time workers, connected mostly through online platforms and these workers are typically hired by organisations for temporary or short-term projects.⁸²² Gig workers typically have more flexibility and autonomy than traditional employees, but they also have less job security and benefits. The gig economy can be classified into the digital gig economy and the physical gig economy with the former involving online labour – freelance work, crowd-work or micro-work and the latter involving work-on-demand via apps. One of the most

essential characteristics that can be noticed is that all 'gig workers' are connected to their employers through an application or another preferred technological method and their pay is based on the completion of tasks provided.

Traditional labor norms, such as contractual employment, working hours, vacations, weekly leaves, the right to resolve industrial disputes, and social welfare benefits, are used to distinguish between employees and gig workers. Due to the denial of all the privileges mentioned above, gig workers face social and employment instability in this industry.⁸²³ On the other hand the main distinction between the part time or contract labour and gig workers, is that part time workers are paid remuneration on an hourly basis or stipulated time period and employers usually possess physical contact with them at their workplaces and also through online modes.

The judiciary has interpreted over the years, to include a group of gig workers under the term 'contractual labour' and the other group as 'independent contractors' for the purpose of the minimum wages which is discussed further under part 'legal development' 'guaranteeing minimum wages.

Presently The Code on Social Security, 2019 is the only labour legislation. The Code under section 2(35) defines a gig worker as "a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationships."⁸²⁴ Under section 2(61), the Code defines a platform worker as "a worker working for an organisation which uses an online platform for providing specific services to individuals or organisations."⁸²⁵ Further, section 2(86) describes an unorganised worker "as a self-employed, home-based, or wage worker in the unorganised sector".⁸²⁶

⁸²¹ NITI Aayog (2022), India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work, June, 2022

⁸²² Hinge, P. et al. (2022) 'REVIEW ON GIG ECONOMY IN INDIA AND ITS RISE', KOREA REVIEW OF INTERNATIONAL STUDIES, 15(39), p. 199.

See also; Vivek Kumar (2022) 'How has COVID-19 Transformed the Gig Economy in India?', Impact and Policy Research Review, 1(1), p.8

⁸²³ Sahaj Mathur, 'Labour Law and the Gig Economy: Towards a Hybrid Model of Employment', INDIANCORPLAW, (Dec. 25, 2022), <https://indiacorplaw.in/2022/12/labour-law-and-the-gig-economy-towards-a-hybrid-model-of-employment.html>

⁸²⁴ Code on Wages Act, § 2, cl. 35, No. 29, Acts of the Parliament, 2019

⁸²⁵ Code on Wages Act, § 2, cl. 61, No. 29, Acts of the Parliament, 2019

⁸²⁶ Code on Wages Act, § 2, cl. 86, No. 29, Acts of the Parliament, 2019

IMPORTANCE OF GIG ECONOMY FOR INDIA

The COVID-19 pandemic led to a sharp increase in the demand for online services, such as food delivery, e-commerce, and telemedicine. This, in turn, led to a significant increase in the number of gig workers in India. According to a study, the number of online gig workers in India increased from 109,125 in March 2020 to 138,623 in March 2021, despite a sharp increase in the number of new COVID-19 cases during the same period.⁸²⁷ This suggests that the gig economy was relatively resilient to the COVID-19 pandemic and even benefited from it in some ways.

The gig economy is relatively flexible and adaptable. Gig workers can work from anywhere with an internet connection, which made them well-suited to working during the pandemic when many businesses were closed or operating at reduced capacity. The gig economy benefited the economy during COVID-19 in India. Firstly, food delivery workers played a vital role in ensuring that people had access to food during the pandemic, when many restaurants were closed or operating at reduced capacity. Secondly e-commerce workers helped to keep the economy afloat by providing people with a way to shop for essential goods and services online. Thirdly, Telemedicine workers provided people with access to healthcare without having to leave their homes, which was especially important for people who were vulnerable to COVID-19. Finally, transportation workers helped to keep people and goods moving during the pandemic, which was essential for maintaining supply chains and ensuring that people could get to work and school. Overall, the gig economy played a significant role in helping the Indian economy to weather the COVID-19 pandemic.

Furthermore, the gig economy is growing rapidly, and it is expected to account for a significant portion of the global workforce in the coming years. This is due to a number of

factors, including the rise of new technologies, the changing needs of businesses, and the preferences of workers.⁸²⁸ For businesses, the gig economy offers a number of advantages. Gig workers can be hired quickly and easily, and they can be scaled up or down as needed. This can be especially beneficial for businesses that experience seasonal fluctuations in demand. For workers, the gig economy offers a number of advantages as well. Gig workers have more flexibility and autonomy than traditional employees. They can choose their own hours and work on projects that they are passionate about. Gig workers can also earn a good living, especially if they are skilled and in-demand.

THE CONDITIONS OF EXISTING GIG WORKERS

The main idea on which the gig economy seems to be operating currently is the replaceability nature of workers, where workers are easily considered to be easily disposable. Despite the fact the aspect 'flexibility' which is supposed to be an inherent characteristic of gig work, most gig workers need to work excessive hours due to poor pay. And for every work assigned to the gig workers they can either receive incentives or penalties due to the review culture being adopted to evaluate their performance creating a constant source of stress for these workers and adversely affecting their mental health. Furthermore, the review culture being used as an evaluation mechanism does not really paint the true picture of the performance and efficiency of the workers. Additionally, the platforms through which they are hired sometimes tend to charge a higher commission rate of around 20 to 30 percent eating into their earnings. And some platforms enter into a contract with the workers, but most parts of the group like the domestic workers do not understand these contracts and their significance.⁸²⁹

Gig workers are not entitled to industrial labourers' legal protections, wage stability, job

⁸²⁷ Joo, B. A., & Shawl, S., COVID-19 Pandemic and the Rising Gig Economy: An Emerging Perspective, GLOBAL ECONOMIC SCIENCE 16, 16–23 (2021)

⁸²⁸ Haiti Tayal, Regulating the Gig Economy in India: How Secure Are Gig Workers?, SUPREMO AMICUS, 6.242 (2022)

⁸²⁹ Anweesha Ghosh & Risha Ramachandran, Engendering the Gig Economy in India, INSTITUTE OF SOCIAL TRUST (2021)

security, retirement benefits, or benefits for illness or paternity. As a result, the gig economy casts doubt on the idea of an employment contract and muddies the lines separating employees from independent contractors. The distinction between traditional workers and gig workers is crucial because it establishes the labor rules that gig workers must abide by and spells out what obligations the company has to gig workers in terms of pay, social security, working conditions, and resolving conflicts between the employer and employees.

The gig economy also has some challenges. Gig workers often have less job security and benefits than traditional employees. They may also have difficulty finding steady work, especially if they are not well-known or experienced. Despite the challenges, the gig economy is here to stay. Businesses and workers are increasingly embracing the gig economy because it offers a number of advantages.⁸³⁰

LEGAL DEVELOPMENTS GUARANTEEING MINIMUM WAGES

The legal protections offered to the gig workers have evolved through various judicial interpretations over the years but there is no legislation guaranteeing minimum wages to these workers. The judicial protection offered to them is only by classifying groups of gig workers either as employee or contractual workers for the purpose of minimum wages and not because of the fact that they are gig workers. However, these judicial interpretations highlight the fact that gig workers are workers who have both characteristics of traditional employees and independent contractors, hence the reason for their classification as gig workers.

The Supreme Court of India delivered its judgment in **Officer In-Charge, Sub-Regional Provident Fund Office v Godavari Garments**,⁸³¹ holding that for the purposes of the Employees'

Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act), women who worked from home doing piece work would be considered "employees" of the company which had engaged them to do so, even if there was no direct contract of employment between the two. Though previous judgments had held thus in the context of bidi workers, this judgment's significance lies in the current context of the so-called "gig economy," where workers are not necessarily working out of a fixed place of employment, whether at home or elsewhere. Furthermore, in the case of **Ms. Ayantika Mondal v. State of Karnataka**, the importance of gig economy workers was elucidated where it was argued that regular employees in the private sector of IT based platforms enjoy protection of laws in relation to wage benefits whereas gig workers who are key contributors to the functioning of these platforms have been denied protection of any statute or any scheme of the government.

Further, in the case of **Dhrangadhra Chemical Works v. State of Saurashtra**,⁸³² the supervision and control test was laid down as the basic criterion for establishing employee relationships. This judgement however leaves gaps in considering if a person directly employed as a contractor or is permitted by the vendor or who is given the power by the vendor or has a manpower supply or has a contract with the employing company qualifies as an employee. However, in the case of **Ram Singh v. Union Territory**⁸³³ the courts recognised that the supervision and control test is not enough. Additionally, it was laid down that there exists an employer-employee contract if the employee has control over the means of completion of the task for which the contract is made. Furthermore, as gig workers and freelancers work on a contractual basis the above case places a clear view of the relationship between them and the contractors. Yet, in the case of **Haldia Refinery**

⁸³⁰ Chitra Dey, Rameshwar Shivadas Ture, and Swarnalakshmi Ravi, Emerging World of Gig Economy: Promises and Challenges in the Indian Context, NHRD NETWORK JOURNAL, 71, 71-82, (2022)

⁸³¹ Officer In-Charge, Sub-Regional Provident Fund Office v Godavari Garments, AIR 2019 SUPREME COURT 3528

⁸³² Dharangadhara Chemical Works Ltd v. State of Saurashtra, AIR 1957 SC 264

⁸³³ Ram Singh and Ors. v. Union Territory, Chandigarh and Ors, 2004(1) BJLR 490

Canteen Employees Union and Ors v. Indian Oil Corporation Ltd and Ors,⁸³⁴

it was emphasised that simply having control over dismissal and execution of work does not automatically render a worker as an employee of a company. This further establishes the contradiction in the present precedence set.

The Code on Wages, 2019 aims at providing minimum wages and prompt payment of wages to all employees and aims at protecting the 'Right of Sustenance' for every employee regardless of the sector that they are employed in. Through this legislation, the Central Government is provided with the capacity to fix a floor wage after taking into account the living standards of workers and these floor wages may differ for different geographical locations.⁸³⁵ Additionally, as per the act, the minimum wages decided by the central government or the state government must be higher than that of the floor wage. Though such provisions exist within the act, ambiguity on whether gig workers are included under the ambit of the definition of employee still prevails, which inevitably would lead to the exclusion of gig workers from receiving these benefits and such ambiguity also prevails in the Minimum Wages Act.

SUGGESTIONS

The Code on Wages, 2019 needs to provide a specific definition for gig workers and offer the grounds on which they are classified to be covered under the provision of minimum wages. The Code can no longer be left ambiguous as it results in these workers being classified under other terms though they are recognised to be a separate kind of workers by legislation like the Code on Social Security and a number of literatures. Even in the judicial interpretation they are recognised as gig workers who are considered to be either 'traditional workers' or contractual labour solely for the purpose of minimum wages.

The legislation makers need to recognise the varied nature of the gig economy and need to design equitable schemes for all groups of gig workers rather than considering these groups to be a part of 'traditional workers', 'contractual labour', and 'independent contractors'. Furthermore while designing schemes for gig workers, certain important factors need to be considered such as the specific interests of platforms, the impact on job creation, platform businesses and workers.

Support needs to be provided to workers in subscribing to government schemes and welfare programmes through widespread awareness campaigns as the majority of the gig workers are domestic workers who are not aware of the benefits available to them and even if aware has difficulty in comprehending the requirements to be fulfilled to avail the benefit under the said schemes. Ensuring that these benefits are readily accessible to workers.

The gig workers do not seem to have any bargaining power because of their fungible nature, that they can be disposed of at any time. The gig workers need to be given the right to form trade unions and associations to gain some bargaining power over the employers. Furthermore, a certain set of procedures should be prescribed and adopted for the disposal or termination of the gig workers.

CONCLUSION

While social security benefits are a great place to start, they won't be sufficient to completely protect gig workers' interests. For gig workers, there should be a national minimum wage that applies to all employment, they need to have freedom to form legally recognised unions, and be guaranteed job stability and security. Oddly, the government understands the value of minimum wage and workplace safety but does not recognize the necessity of providing gig workers with these benefits. Furthermore, it does not take into consideration the aspect of registration for availing the social security benefits it has already provide under the Code on Social Security, 2020 as the number of

⁸³⁴ Haldia Refinery Canteen Employees Union and Ors v. Indian Oil Corporation and Ors., AIR 2005 SC 241

⁸³⁵ Code on Wages Act, § 9, No. 29, Acts of the Parliament, 2019

workers is around 50 million gig workers, most of whom are low-skilled workers and do not have the required knowledge to know the 'how' part of registration.

The Code on Wages, 2019 was an opportunity for the government to either expand the term employee to include gig workers or provide specific definition and provision guaranteeing minimum wages or specify at least a set of certain conditions that needs to be fulfilled by the gig workers like the control of employer over employee test and dependance for livelihood test to provide minimum wages for certain group of gig workers.

This paper highlights the necessity for modifications in the existing legislations, specifically the Code on Wages, 2019 to include the term gig workers and provide a definition for the term. Furthermore, to also provide them, who are an integral part of our economy, with the protection of minimum wages.

