

## GIG ECONOMY: NEED FOR LABOUR LAWS

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**BEST CITATION** – KHIRBHA S GOUNDER, GIG ECONOMY: NEED FOR LABOUR LAWS, *Indian Journal of Legal Review (IJLR)*, 4 (1) of 2024, Pg. 33-40, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT

It is believed that impermanent work facilitated by online platforms is supplementing or replacing standard employment in labour markets, which are undergoing a drastic change. However, it is challenging to determine the size and extent of these changes because 'online gig worker' is difficult to quantify using traditional labour market data and economic metrics. In recent months, there has been an increase in worry regarding the position of gig workers. According to the Niti Ayog study, "India's Booming Gig and Platform Economy", there will be roughly 23.5 million gig employees by 2029.<sup>30</sup> The study also highlights the facts that the gig economy is increasingly characterized by subpar safety standards, unfair contracts, a lack of minimal earnings, and a lack of job perks like workers compensation, overtime pay, and paid time off for illness. The purpose of this article is to understand the gig economy and its effects on labour laws and corporate policy. The information will be useful for policymaking, research, and the public.

**Keywords:** gig economy, labour laws, corporate policy, policy making



<sup>30</sup>India's Booming Gig and Platform Economy." [https://www.niti.gov.in/sites/default/files/2022-06/Policy\\_Brief\\_India%27s\\_Booming\\_Gig\\_and\\_Platform\\_Economy\\_27062022.pdf](https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf)

## INTRODUCTION

### I. What do you mean by gig workers?

The term gig workers refer to a person who takes a temporary task that must be completed within a set timeframe and under peculiar working circumstances. Conversely, platform workers are typically defined as personnel who work for businesses that directly provide services to consumers through web-based platforms. Due to their advantages, which include the freedom to select their favored organizations, workdays, vacations, shifts, and temporary employment, the percentage of temporary workers in the workforce has grown considerably. Instead of being compelled to work, employees at this company have the freedom to choose their organization and stay with it as long as they like. Now that the gig economy exists, vulnerable work is feasible. The new governing concept is to use freelancers and independent contractors instead of full-time staff.

Although working as a contractor allows you some freedom, it is very expensive. One of the major issues with the gig economy is the link to work. Gig workers are frequently exposed to risks due to the ambiguity regarding their job relationships, including low compensation, long hours, unfunded sick days, a lack of security at work, and a lack of formal dispute settlement processes. The author of this piece hopes to raise awareness of issues such as the definition of "employee," the nature of gig workers, the importance of legal protection to them, and whether the newly suggested Social Security Code will be sufficient to better the circumstances of these workers. India is now the fifth-largest contract economy in the world, behind the US, China, Brazil, and Japan. India, which has 15 million skilled workers, supplies 40% of the independent labor available worldwide, thereby supporting the increasing demand for a job or the outsourcing industry. By 2024, it is anticipated that India's gig economy will grow at a compound annual growth rate (CAGR) of 17% to USD 455 billion, with the ability to grow at least twice as rapidly as pre-

pandemic projections. According to another prediction, India will have 350 million gig employment by 2025, providing a sizable chance for job searchers to thrive and adapt to shifting workplace dynamics.<sup>31</sup>

### II. How businesses benefit from it?

Businesses may "enjoy multiple advantages from hiring freelancers, such as staff that is responsive to changes, enhanced access to hyper-specialized skills, lower expenses, and a rise in productivity," according to this idealized portrayal of the contingent economy. Gig employees have a great deal of flexibility in their jobs, including the freedom to work from anywhere at any time, set their hours, and choose how many hours and how long shifts they want to put in each day. According to an upbeat perspective, gig work may be freeing for employees who want to break free from the constraints of company authority and bureaucracy.

Many blue-collar employees already experience uncertain income and employment stability in countries like India where casual working circumstances dominate the economy. The freelance economy, on the contrary hand, is a superior option. It is simpler to join and has a more equitable framework than informal employment agreements. The gig economy does not have any private networks that could make it difficult for strangers to enter. People in need have also used gig work as a means of extra income to get by till they can obtain employment.

### III. Laws governing Gig economy in India currently

- Contract law: In India, contract labor, including work performed by outside contractors, is governed by the Contract Labour (Regulation and Abolition) Act, 1970. There is scope for gig workers who work for platforms to be "contractors"<sup>32</sup> under this law. This imposes obligations

<sup>31</sup> <https://timesofindiaindiatimes.com/blogs/voices/what-does-the-rise-of-the-gig-economy-mean-for-the-current-generation/>

<sup>32</sup> Section 2(c) Contract Labour (Regulation and Abolition) Act, 1970

on employers to adhere to the rules set forth in this law, including the welfare and health obligations to provide employees with things like canteens, first aid, and other necessities. However, neither most platforms nor an Indian court have yet to enforce this law.

- Labour laws: A gig worker is defined as "A person who performs work or participates in a work arrangement and earns from such activities outside of the traditional employer-employee relationship"<sup>33</sup> in the new Labour Codes of 2019. Gig workers will receive protections like minimum wages, but crucial protections related to occupational health and safety are still unresolved. Gig workers would be eligible for programs that are announced by the State and Central Government, including life and disability insurance, once the current draft Code is passed into law.

The only workers who are required to follow the Industrial Relations Code (2020) are those who work for a business entity. Gig employees are excluded because they may not have a stable place of job. Therefore, no laws governing the right to organize unions, group negotiations, or impartial hiring and firing apply to gig employees. The Occupational Health, Safety, and Working Conditions Code (2020) does not apply to gig employees. This is troubling, particularly given the reality that numerous freelancers risk their lives by staying at work.

#### OBJECTIVE OF STUDY

While gig work has become a necessity for both the workers and the platforms hiring them, regulation of the gig work remains vital to ensure that these classes of workers are given the same opportunities and protections as other employees covered under various labour laws in India. With the development of technology, labor disputes will only multiply and take on new forms. Proposing legislative tools

and policy frameworks as well as a review of the draft Code is essential in ensuring the protection of rights of gig workers. There this paper aims at highlighting the plight of gig workers and inclusion in new labour law codes.

#### RESEARCH PROBLEM

The main issue is the recognition of the Gig economy workers and the need for laws to safeguard them. There is a law governing the right to organize unions, group negotiations, or impartial hiring and firing apply to gig employees.

#### RESEARCH QUESTION

- Who are gig economy workers?
- Are there any laws governing them?
- Is there a need for new laws for this sector of employment in India?

#### RESEARCH METHODOLOGY

The doctrinal method was used to conduct the research. This is because the qualitative technique is well suited to explanatory and descriptive research. By taking this technique, the researcher was able to focus on the writings of notable international law academics who debate whether international law is a real law or not. This aided in the creation of a thorough study of the arguments in this dispute, ultimately leading to an objective conclusion. The study relied heavily on secondary sources of information, such as online documents, journal articles, policy documents, and all other important reading materials, such as newspapers, press releases, news items, and government reports.

#### ANALYSIS

'The question of "what is the future of work" has generated much discussion among companies over the past two decades due to the development of technology, the internet, industrialization, and more recently, the COVID-19 pandemic. Less than 0.5% of the engaged labor force worldwide, with a percentage below 0.3% in developing countries, is thought to

<sup>33</sup> Section 2(35)The Code on Social Security, 2020



partake in the gig economy, according to the World Bank Group's 2019 study on the "Changing Nature of Work". According to the "India's Booming Gig as well as Platform Economy," study by India's policy think tank, NITI Aayog (NITI study)<sup>34</sup>, published in 2022, the proportion of gig employees in the overall workforce grew from 0.54% in 2011-12 to 1.33% in 2019-20.

According to the NITI Report, "gig workers" are those who perform jobs outside of the conventional employer-employee relationship. Platform employees and non-platform workers are the two categories that makeup contract workers. Platform workers are those gig workers who interact with consumers using online algorithmic matchmaking platforms, such as websites or applications like Amazon or Uber. Non-platform employees are those who operate independently of these platforms. These primarily consist of temporary employees, day laborers, and non-technological building workers.<sup>35</sup>

#### i. India's gig economy

Workers can be generally categorized as (i) employees, (ii) contractual workers, such as contract labor and interstate migrant workers, and (iii) workers engaged in the unstructured labor economy under the Indian labor law system. Below, we have a short explanation of each idea.

- Employee: A individual who is paid to conduct labor in an establishment is considered to be an employee. According to laws like the Minimum Wages Act of 1948, Employees' Pension Fund and Other Provisions Act of 1952 (EPFA), Payment of Bonus Act of 1965, etc., employees are entitled to benefits like minimum wages, bonuses, provident funds, gratuities, equal remuneration, medical benefits, and maternity benefits.

- Contract labor and migrant workers: An individual employed by a company through an agency to carry out work is regarded as contract labor. An individual is considered a migratory laborer if they are hired by an independent contractor in another part of the nation. The Contract Labor (Regulation and Abolition) Act, 1970 (CLRA) governs the safety and health of contract workers.
- Workers in the unorganized economy: These individuals carry out tasks as salary workers, self-employed individuals, or home-based workers. The Unorganized Workers' Social Security Act of 2008 (UWSSA) regulates the welfare of these workers and offers several welfare programs, including the Pradhan Mantri Jeevan Jyoti Yojana for lite insurance and disability benefits and the Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana for health care and maternity benefits.

Gig employees are only partially recognized by the country's existing labor rules. As previously stated, the CLRA, UWSSA, and Builder and Other Construction Employees (Regulation of Employment and Conditions of Service) Act, 1996 all have provisions that to some degree control the safety of migratory workers, building and construction workers, and disorganized workers. These rules, however, were not created for contemporary gig employees like platform workers. According to all labor regulations, including those governing contract labor, platform employees are not eligible for any benefits. Even if the CLRA could have been extended to platform employees under the definition of "contract labor," platforms do not provide these advantages to such structured workers.

#### ii. Case – assessing the status of gig workers

Amita Gupta from Uber Eats for reportedly being 10 minutes late over a delivery after working for 96 hours in a single week has brought attention

<sup>34</sup> "India's Booming Gig and Platform Economy." [https://www.niti.gov.in/sites/default/files/2022-06/Policy\\_Brief\\_India%27s\\_Booming\\_Gig\\_and\\_Platform\\_Economy\\_27062022.pdf](https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf)

<sup>35</sup> "NITI Aayog Launches Report on India's Gig and Platform Economy."

to the need for fundamental employment rights for gig workers.

In 2019, Gupta filed a lawsuit against Uber Eats, alleging that she had only received Rs.18,000 for a total of 96 hours of labor. Uber and Gupta reached an out-of-court agreement to resolve the well-known unfair firing case for Rs. 240,00,000 following the first meeting in the Federal Court. The lack of other safeguards for this new economy industry, weak union power, and insufficient legal reforms continue to disadvantage gig workers and strengthen the power of businesses operating in such a "precarious" casual labor market.<sup>36</sup>

A common story of employee liberty and choice, as well as two key methods of computer control removing accountability away from the business, were key factors in the out-of-court settlement. The 2020 case centered on the business's strategy of using algorithms to assign and handle work to provide freedom and liberty for employees in an unconventional employment model. With precarious employment, poor pay, and the burden of providing for their basic needs, the gig economy has produced new market circumstances that worsen the exploitation of several of the more vulnerable workers.

The Gupta case could potentially be interpreted to mean that there are no job ties or that it is important to consider whether gig workers are subcontractors or employees in the conventional sense. To reduce labor expenses and output time, gig economy businesses are laying new foundations for the monetization of labor. New precariousness is created as a result, harming society. Since the freelance economy is being appropriated, normalized, and enforced as socially useful, or as serving a greater purpose, the two control mechanisms represent a compelling story that is challenging to challenge.

iii. More unregistered cases

Uber driver Priyanka Devi was attacked by two men in Delhi, causing her to lose her day's earnings. Uber India spokesperson Ruchica Tomar confirmed that the incident was reported to local news, but Uber did not respond to Devi. In Hyderabad, Mohammed Rizwan, a 23-year-old, was attacked by a customer's pet dog while delivering food orders for Swiggy. Rizwan jumped from a third-floor balcony and died a few days later. In the same city, Y. Venkatesh, a driver for the Ola ride-hailing service, has been in a coma since last year after being beaten by the friends of a passenger who refused to pay his fare.

Gig work in India is dangerous, with at least a dozen such attacks over the past few months. A review of local news reports across the country shows at least a dozen such attacks over the past few months. The Center for Internet and Society surveyed 1,500 gig workers last year, finding that one in three said they fear theft or physical assault at work.

Power imbalances in Indian society due to class and caste divides create a potentially toxic environment for platform workers. The gig workforce in India has expanded rapidly in recent years, with NITI Aayog estimating that there may be more than 23 million gig workers in the country by 2030<sup>37</sup>. The growth of this cohort, who lack stable jobs, social protections, and access to collective bargaining, intersects with India's other social fractures, exacerbating their precarity and vulnerability.

iv. New policy formulated in India and its critical analysis

The Social Security Code, 2020 represents a good move towards including gig employees by placing them within the legal framework. Nine acts, including the Employees Provident Fund Act, the Pension Scheme, The Maternity Benefit Act, etc., have been combined into this revised act. By introducing uniform social security rules for employees in all industries, this act aims to increase entry for those who labor in the

<sup>36</sup> Amita Gupta v Portier Pacific Pty Ltd; Uber Australia Pty Ltd t/a Uber Eats (2020)72 AILR 103-167

<sup>37</sup> Supra

unorganized sector. This is the very first time a law specifically addresses the job agreements of gig workers, platform workers, fixed-term employees, etc., who were previously exempt from the nation's labor laws. To be eligible for the code's benefits, platform employees must register on an internet platform, Code on Social Security, 2020 aims to amend and consolidate laws related to social security to extend it to all employees and workers in organized or unorganized sectors according to the code. Platforms like Zomato and Swiggy, for instance, are obliged to set aside 1% to 2% of their income for social security and welfare programs.

Although the act offers perks like life and disability insurance, accidental death and dismemberment insurance, childcare, etc., it still participates in the self-perpetuating cycle of questionable behavior by failing to acknowledge the workers to be employees. Although the code supports the requirement for welfare, it does not offer a plan for implementing issues like minimal wage, employment security, and workplace safety. Additionally, it is still inadequate in portraying the corrosive facts of the working world, such as job instability, appalling pays and working conditions, and worsening impacts on mental and physical well-being. In addition, despite being separated under the Act, the code battles to alter the social environment for the unregulated sector by missing the conceptual difference between contract workers/platform workers and self-employed people. A September 2020 report from the nonprofit PRS Legislative Research<sup>38</sup> offers a suitable illustration: In the lack of assignment papers and employer-imposed restrictions on work hours, a driver employed by one app-based taxi aggregator may also work for one of its rivals, meeting the description of a gig worker. However, because he seeks his career through an internet platform, he would also be considered a platform worker. Due to his self-

employment, this chauffeur may also be regarded as an irregular worker.

These definitional overlaps subject the definition to misunderstanding because of its ambiguous nature and may be harmful to employees regarding accessibility to safety plans. After perusing the act, it becomes clear that it operates primarily in favor of business interests rather than those of workers. The parliament must continue to amend the code to establish a structure that offers gig workers a universal minimal salary, employment security, and the opportunity to organize legal unions to guarantee immediate results.

#### v. Action by state

The "Rajasthan Platform-Based Gig Workers (Registration and Welfare) Bill"<sup>39</sup> recognizes the considerable economic contributions made by gig workers and intends to give them the safety and assistance they need. This bill's main goal is to make social security & welfare benefits available to gig workers who work in the state.

A welfare board has been established to oversee the rights and welfare of gig workers. The board, consisting of five representatives from gig workers and aggregators, ensures all parties' interests are considered in welfare and regulation decisions. The platform-based gig workers welfare fee and fund provide financial assistance and welfare benefits during difficult times, ensuring that gig workers receive the necessary support and resources.

#### CONCLUSION

In 2021, a customer attacked and physically hurt a Zomato delivery executive, upon request of money. Zomato made the quick decision to suspend the employee without looking into the claimed misbehavior to prevent further agitation. Like this, a recent tweet by Swiggy addressing the abuse of delivery execs sparked widespread public outrage. Digital platforms like Swiggy, Zomato, Ola, and Uber currently refer to their employees in India as "delivery

<sup>38</sup> "September 2020." <https://prsindia.org/policy/monthly-policy-review/september-2020>

<sup>39</sup> Bill no 30 of 2023 [https://aioe.in/wp-content/uploads/2023/09/Gig\\_Workers\\_Bill\\_2023\\_1690274461.pdf](https://aioe.in/wp-content/uploads/2023/09/Gig_Workers_Bill_2023_1690274461.pdf)



partners or independent contractors" who use the service aggregators' resources to carry out the specified tasks. Therefore, by positioning themselves outside of the realm of a conventional employer-employee relationship and referring to themselves as "technology providers" or "internet service platforms," these businesses exempt themselves from the responsibility that results from gig labor.

#### Future of gig economy and need of corporate policies

International jurisdictions are gradually moving toward the enactment of comprehensive labor regulations that acknowledge the misguided justifications of those digital platforms that turn to abusing legal gaps to abuse their employees. States like California recently enacted a historic law, the Assembly Bill<sup>40</sup>, which incorporates the ABC test to increase passible culpability and give gig workers employee classification standing. This test's initial assumption says that all employees are employees, and puts the responsibility on the employers, to show that the workers are conducting labor "outside of a hiring entity's business." In Australia, the Commission on Fair Work lately rendered a landmark decision requiring that Delivery workers be treated as employees according to the law rather than autonomous freelancers. The commission concluded, in particular, that Deliveroo's booking System had considerable influence over the deliveries, thereby creating an employer- employee connection.<sup>41</sup> Therefore, there is a need for more corporate policy.

There are several new company laws that could be introduced to provide better protections for gig workers, including:

- Classification of gig workers: One of the most important legal issues affecting gig workers is their classification as independent contractors rather than employees. New laws could be introduced to clarify the definition of gig

workers and to ensure that they are properly classified under labor laws.

- Minimum wage requirements: Many gig workers earn low wages, and new laws could be introduced to ensure that they are paid at least a minimum wage.
- Social security benefits: Currently, most gig workers do not have access to social security benefits such as health insurance, retirement benefits, or unemployment insurance. New laws could be introduced to require gig economy companies to provide these benefits to their workers.
- Anti-discrimination protections: Gig workers may face discrimination based on their race, gender, age, or other characteristics. New laws could be introduced to prohibit discrimination in the gig economy and to provide legal remedies for workers who experience discrimination.
- Collective bargaining rights: Gig workers currently do not have the right to unionize or engage in collective bargaining. New laws could be introduced to provide gig workers with collective bargaining rights and to ensure that they have a voice in negotiating their pay and working conditions.

Overall, new company laws could be introduced to ensure that gig workers are treated fairly and have access to basic protections and benefits that are currently unavailable to them. India consists of various labour laws whose jurisdiction can be extended to the Gig economy but there is an immediate need for new corporate policies. Such policies would benefit both the employee and employer and provide social security to the workers. The new corporate policy concepts would help in generating several small jobs which will be duly regulated by the labor codes and benefit the employee working in the gig economy sector.

<sup>40</sup> Assembly Bill 5 (AB5)

<sup>41</sup> Australia Pty Ltd [2021] FWC 2818

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