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# THE PLIGHT OF CAB DRIVERS IN INDIA'S GIG ECONOMY AND THE ABSENCE OF SPECIFIC LABOUR LAWS

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## ABSTRACT

This paper discusses the work-related conditions of gig workers in India with a special emphasis on cab drivers. The position of cab drivers in relation to the aggregators as well the need for social security benefits for gig workers in India's unorganised sector has also been looked into. This research paper will analyse the provisions of the Code on Social Security, 2020 and the regulatory hurdles in the implementation of the said code. In addition to this, the paper also looks at the position of cab drivers from the perspective of the Industrial Disputes Act, 1947. At the end of the paper, the researcher has put forth a set of suggestions for the better implementation of the Code on Social Security, 2020, for building better working conditions as well as strengthening cordial relations between gig workers like cab drivers and their employers.

**Keywords:** cab drivers, gig workers, platform work, workman, Code on Social Security

## Chapter 1

### Introduction

#### 1.1 Introduction

The availability of online platforms in India's gig economy has made these job services a lucrative opportunity. Initially, the platform of commuter taxi services such as 'Ola' and 'Uber' provided cab drivers with a fair wage system and other benefits that had even resulted in some of their income reaching as high as Rs. 90, 000 per month. The high initial incomes made many of them avail loans for buying cars and smartphones. These corporations operating through digital medium have limited fixed costs, few full-time employees and do not own any taxis.<sup>1</sup> It is one of the various business methods that have led to their fast-paced growth in India's economy. However, the gradual deterioration of work conditions especially with regard to the pay structure has resulted in a wave of nationwide protests by the gig economy workers. The downgraded pay structure even means that there is now a heavy burden for clearing the loan amount which they had opted for earlier. The outdated labour law regime is the root cause of the problem as it neither states any social security benefits for unorganized sector workers nor defines gig and platform workers. The strict nature of the app where the drivers have no control or say over the fare prices and a "rating method" (where the customers rate the drivers from 0 to 5 after the fare trip) stating a minimum rating standard failing short of which the drivers can even lose their access to the app are among the other pitfalls of these so-called gig economy platforms. The Covid-19 pandemic has further hit the cab drivers as they fell short of income during the times of lockdown. The new legislation, that is, the Code on Social Security 2020 has sought to address this issue by making it legal for gig and platform workers to avail social security benefits.

#### 1.2 Research Problem

The enactment of the Code on Social Security 2020 has proved to be landmark legislation and has paved the way for the development of further legislations with respect to social security benefits. By incorporating organised and unorganised sector workers under one ambit, it has made it made simpler to avail for social security benefits. For the first time, separate definitions

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<sup>1</sup> *Have Uber and Ola Met Promises Made to Drivers and Commuters*, ENGAGE (Sept. 27, 2021, 9.31 PM), <https://www.epw.in/engage/article/ola-uber-workers-platform-gig-economy-earnings>

and welfare schemes for gig, platform and unorganised sector workers have been provided. However, there are some issues with regard to the overlapping definitions and the not-so-inclusive process of registration requirements. Although the Code provides for separate definitions, there is no clarity as a gig worker can be also a platform worker together under the broader ambit of unorganised sector workers. There is thus a lacuna as to how these welfare schemes will be implemented. Moreover, regulating the structure of benefits for these workers might lead to the online platforms resorting to a stricter work regime (in order to remain profitable) resulting in rigid minimum working hour requirements (affecting the flexibility of working conditions enjoyed by gig workers), changes in hiring practices, payoff structure, etc. There is an urgent need to interpret these issues and resolve the mischief associated with the concept of gig and platform workers in India.

### **1.3 Research Questions**

1. Whether cab drivers providing services under the multinational ride-sharing companies fall within the scope of “workman” under Section 2(s) of the Industrial Disputes Act, 1947?
2. Whether the provisions incorporated within the Code on Social Security 2020 guarantee the proper implementation of the social security benefits and other rights of gig workers in the Indian economy?

### **1.4 Hypotheses**

1. The cab drivers providing services under the multinational ride-sharing companies do fall within the scope of “workman” under Section 2(s) of the Industrial Disputes Act, 1947.
2. The provisions incorporated within the Code on Social Security 2020 still need to be interpreted as it does not specify the scope and proper implementation of the social security benefits and other rights of gig workers because of overlapping zones and dual authorities.

### **1.5 Scope and Limitation**

The scope of this paper is limited to the provisions of the Industrial Disputes Act, 1947, Code on Social Security 2020 and the working conditions of cab drivers in India.

The limitation of this paper is that it only covers the statutory provisions of the Code on Social Security with respect to gig and platform workers and the situation of cab drivers in India. Since this legislation is yet to be implemented and has been postponed for the next year (since the states in India have not issued notifications), the observations and analysis made in this

paper is from the view of the present economic situation of gig workers and are just suggestions for better implementation of the Code. The paper has its weaknesses as the Code on Social Security is yet to be implemented nationwide.

### **1.6 Research Objectives**

The objectives of this research paper are as follows:

1. To understand the situation of cab drivers in India's gig economy.
2. To analyse the provisions of social security benefits for gig workers under the Code on Social Security 2020.
3. To study the problems associated with the Code on Social Security with regard to registration, dual authorities and overlapping zones.
4. To suggest measures for better implementation of the provisions for social security benefits and for improving the relationship between cab drivers and the aggregators of platform service providers.

### **1.7 Methodology**

The methodology used in this research paper is based on the doctrinal research method.

**Primary Sources:** The primary sources collected for this paper includes the Industrial Disputes Act, 1947; The Employment Rights Act, 1996 (UK); The Code on Social Security, 2020, and some important cases laws of India and the decision of a trial court in the United States and a landmark decision of the United Kingdom Supreme Court.

**Secondary sources:** The secondary sources used in this paper are online articles, journals, news articles, and academic websites.

## Chapter 2

### Application of Section 2(s) of the Industrial Disputes Act, 1947 to Cab Drivers in Gig Economy

After the issues regarding better working conditions and demands for increasing wages including social security measures started emerging between cab drivers and the owners of these multinational ride-sharing companies, there was an intense debate as to whether the cab drivers fall under a traditional employer-employee relationship and the question as to **‘whether cab drivers are ‘workman’ under section 2(s) of the Industrial Dispute Act, 1947?’** For a long time, these companies were reluctant to treat them as workmen. It was important to classify them as workmen as, without it, it becomes difficult to avail the security benefits and other work-related rights under labour laws. Although cab drivers working under these companies do not fall under a traditional employer-employee relationship owing to the hybrid nature of employment, various cases laws instead show support in favour of treating them as workers.

#### 2.1 Indian jurisprudential stance on the scope of “workman”

In the majority of the decisions by Indian courts, they have looked into two important aspects, that is, the characteristics of a workman and if it applies to cab drivers and the nature of contract by the virtue of which an employer-employee relationship arise. This relationship answers the question as to if they (cab drivers) are ‘independent contractors’ or ‘employees’ under the control and supervision of the employers (the ride-sharing companies).

Section 2(s) of the Industrial Disputes Act, 1947 is an exhaustive and detailed provision that defines workman as *“workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied...”*<sup>2</sup> This section also provides a list of persons employed under specific categories like police service, those subject to the Air Force Act, 1950; the Army Act, 1950; the Navy Act, 1957, those employed in managerial or administrative capacity etc. However, there is no express mention of gig workers or workers under a similar kind of employment. Thus, we can safely say at least, that cab drivers are not expressly excluded from this provision. It is also true that since this is fairly a new kind of employment, and we cannot directly analyse from a literal meaning of the

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<sup>2</sup> Industrial Disputes Act, 1947, S.2(s), No.14, Acts of Parliament, 1947(India)

said provision. Thus in order to justify them as workmen, we need to look into the kind of activities performed as well as the companies' power of dismissal, discharge and retrenchment over the cab drivers.<sup>3</sup>

In one of the earliest decisions of the Supreme Court in *Dharangadhara Chemical Works v. State of Saurashtra*, (AIR 1957 SC 264), the court laid down the distinction between and 'independent contractor' and 'workman'. It held that while an independent contractor agrees to do the work himself, the latter (workman) agrees to get other persons to do the work. Besides, this case also held that personal commitment to the work is essential to be absorbed within the scope of 'workman' under section 2(s) of the ID Act. Looking from the perspective of cab drivers, this judgement applies well to them as they cannot hire someone else to drive on their behalf as it is against the contractual policies. Just like a workman, they are also under a contractual obligation and compulsion to commit the work themselves.

In the case of **Management of DC Dewan Mohideen Sahib v Janab S. Ahmen Hussain and Sons**, AIR 1966 SC 370, The court looked into the element of independence. It distinguished real independence from illusory independence. It is necessary to verify the element of independence of an independent contractor. When a person enjoys real independence, he or she has control to a certain degree over the way how the activities are to be performed. In the case of Uber and other companies also, not everyone can become a driver as they are required to have a set of skills and specific documents to be registered as a driver. They do not have complete independence over their work.

***Workmen of Nilgiri Cooperative Society Ltd. v. State of Tamil Nadu*, (2004) 3 SCC 514:** This case established the *Integration test* which is a test to see if the concerned person has been integrated into the employer's concern or has remained independent of it. The test lays down questions like "Who is the appointing authority", "Who is the paymaster?", "Who can dismiss?", "What is the extent of control and supervision?", "Is there any alternative service of the employee?", "The nature of the work?", and "Nature of establishment?"

The apps operating under the platform economy have a grading system based on rating method. The rating methods range from 1 to 5 and accordingly the customers rate the drivers after a

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<sup>3</sup> Section 2(s) of the ID Act, 1947 mentions, "...for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute..."

fare has been completed. A driver whose rating falls below 4.5 may even lose his access to the app. Thus in a way we can see that the companies do exercise the power of dismissal or discharge over the cab drivers. Moreover, if a person gives complaint through the app, the company can even take actions based on that and can terminate their contract with concerned driver against whom the complaint was reported.

## 2.2 Decision in foreign courts

### 2.2.1 Decision in California, United States

Recently, the decision of a trial court in San Francisco, California upheld the injunction against continuously terming Uber and Lyft drivers as “independent contractors” and upheld the states’ employment laws based on the **principles of equity**.<sup>4</sup> The trial court held that these platforms do exercise the right of supervision by setting a negative standard of rating, as well as controlling the portion of the share of fare collected by the drivers from the riders. Moreover, they can also track and collect information of the drivers which clearly shows that the drivers cannot independently act on their own over how the activities are to be performed. Once they accept a ride, they are bound to arrive at the destination of the rider unless the rider himself or herself cancels the ride. This option is not left to the drivers. A three-pronged test known by the name “**ABC test**” codified by California’s AB 5 was used in this case to determine if a worker should be classified as an employee or independent contractor. This test makes it mandatory that the workers need to be free from the control and direction of the employer and must perform tasks that are outside the usual course of the hiring entity’s business in order to be deemed independent contractors.<sup>5</sup>

### 2.2.2 Decision in United Kingdom Supreme Court (Uber BV and others v Aslam and Others)

Similarly, the UK Supreme Court came up with a landmark decision on 19<sup>th</sup> February, 2021 in the matter between **Uber BV and others v Aslam and Others, (2021) UKSC 5** where a seven-

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<sup>4</sup> Lisa Nagele-Piazza, *Uber, Lyft Ordered to Classify California Drivers as Employees*, SHRM (20<sup>th</sup> October, 2021, 9:00 PM) <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/uber-lyft-ordered-to-classify-california-drivers-as-employees.aspx#:~:text=Uber%20and%20Lyft%20must%20reclassify,to%20a%20California%20appeals%20court>.

<sup>5</sup> Paridhi Rastogi, *UK Supreme Court Rules Uber Drivers are Workers: Its Impact on India*, INDIA CORP LAW, (20<sup>th</sup> October, 2021, 9:15 PM) <https://indiacorplaw.in/2021/03/uk-supreme-court-rules-uber-drivers-are-workers-its-impact-on-india.html>

judge bench comprising of Lord Leggatt, Lord Reed (President), Lord Hodge (Deputy President), Lady Arden, Lord Sales, Lord Kitchin<sup>6</sup>, and Lord Hamblen looked into the issues of qualification for the national minimum wage, paid annual leave and other workers' rights for the Uber drivers.<sup>7</sup> If not, are they independent contractors providing service to riders and a part of their fare as commission to these platforms? The court also looked into a secondary question, that is, if they are indeed workers working under an agreement of workers' contracts, does it apply when they are logged into the app within the territory which they are licensed to operate, or do they work only when driving passengers to their destination? This is an interesting matter since if (according to the allegations made by Uber company) they are independent contractors working for their passengers, then what of the period when they are not working and searching for a fare through the app?

### **2.2.2.1 Brief facts of the case:**

In the year 2016, the Uber drivers in the United Kingdom raised a claim that they should be considered as 'workers' for the purpose of employment legislation. This question came before the Employment Tribunal. Contrary to this, Uber raised a claim that the drivers are independent contractors as they work for the passengers (acting in their independent capacity as a contract for service) and are merely like agents of the company. They also alleged that due to a large number of drivers they are not entitled to 'paid holidays' nor do they have a specific minimum wage due to the hefty task of monitoring and supervising the working hours.

In the Employment Tribunal decision, they held in favour of drivers stating that they satisfy the requirement of the test of being a worker under **Section 230 (3) of the Employment Rights Act, 1996**. Due to the strict nature of contract and the amount of control enjoyed by Uber, they cannot be termed independent contractors. Aggrieved by the tribunal's decision, Uber appealed in the Court of appeals which got dismissed as well. The matter finally reached before the Supreme Court of the United Kingdom where a seven Judge Bench gave a landmark decision on their employment status.

Uber's main contention before the Supreme Court was that it merely acts as a technology service for the drivers to connect to passengers, and that once a driver connects to a passenger;

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<sup>6</sup> Lord Kitchin fell ill and it was uncertain when he would return to work. Therefore, under an agreement with the presiding Judge, Lord Reed, the Court was actually constituted of six members.

<sup>7</sup> Uber BV and others v Aslam and Others, (2021) UKSC 5



it no longer remains a party to the contract between the driver and the passenger. As such they are independent contractors.

### 2.2.2.2 Analysis of the Supreme Court of UK:

Firstly, the court emphasized the need to understand the purpose of employment legislation. The court held in the following words that, “*that purpose is to give protection to vulnerable individuals who have little or no say over their pay and working conditions because they are in a subordinate and dependent position in relation to a person or organisation which exercises control over their work.*”<sup>8</sup> A careful reading of the above decision makes it clear that the drivers clearly fulfill the purpose of the statute as they enjoy no say over the commission rates, and are under the control and subordination of Uber’s terms and conditions of work. Section 230 (3) defines ‘worker’ as, “...an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, ...by the individual;

*and any reference to a worker’s contract shall be construed accordingly.*”<sup>9</sup>

It is true from clause (a) of the above decision that there is a contract of employment.<sup>10</sup> This is established after the drivers register online and present a set of documents consisting of a national insurance certificate, driving license, license to drive a private hire vehicle, vehicle logbook, MOT certificate and certificate of motor insurance at the local offices of Uber company.<sup>11</sup> Although the drivers are free to choose when to work, where to work and how to work, the company does have some form of control and supervision in form of standards of performance mentioned under the “Welcome Packet”. These forms of control can be clearly understood from the instructions such as “**Polite and professional at all times**”, “**Avoid inappropriate topics of conversation**” and “**Do not contact the rider after the trip has ended**”. Besides this, the welcome packet also mentions about receiving high rating stats and low cancellation rate which means that the drivers are least expected to cancel a ride

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<sup>8</sup> Uber BV and others v Aslam and Others, (2021) UKSC 5

<sup>9</sup> The Employment Rights Act, 1996, S230(3), United Kingdom Act of Parliament, 1996 (UK)

<sup>10</sup> The parties are required to enter into a “partner registration form” stating that they agreed to be bound by and comply with terms and conditions described as “Partner Terms” dated 1 July 2013.

<sup>11</sup> Uber BV and others v Aslam and Others, (2021) UKSC 5

themselves.<sup>12</sup> For a driver who has completed more than 200 trips and has a rating below 4.4 out of 5 is subjected to “quality intervention” for improvement. Even after this if they are rated below the required minimum, their accounts are deactivated and are “logged off” from the Uber platform. This clearly shows that Uber has strict control over the employment condition of drivers. Other forms of control include a **fixed rate of wages, terms fixed by the contract, limited information about the passenger’s destination which gets revealed after the drivers pick them up from their location, routes fixed by Uber**<sup>13</sup>, limited communication between the driver and passengers to limit their influence of entrepreneurial and professional skills.

Based on the above factors, the court decided in favour of Uber drivers and dismissed the appeal since they have a strict form of control and the terms of employment are tightly defined. This decision if looked at from the perspective of Section 2 (s) of the Industrial Dispute Act, 1947 can also rightly justify the drivers being workers as they can be “dismissed” and “discharged” from employment.

### **2.3 Analysis and conclusion of the hypothesis**

From the observations of the above-mentioned case laws, it is clear that Cab drivers working in the gig economy of India and other parts of the world are “workers” and not independent contractors. Although they do enjoy some kind of independence it is only illusory and not real. The real control, supervision and power of discharge and dismissal are enjoyed by these multinational companies. Although the concept of gig economy was non-existent at the time when the Industrial Disputes Act came into operation, yet the arrangement of working conditions does not deprive these drivers of their rights as a worker for their benefit under different labour laws. Hence, the Hypothesis, (1) is correct.

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<sup>12</sup> If the drivers cancel more than three times in a row, they can lose access to the app temporarily for ten minutes.

<sup>13</sup> Although the drivers can chose a different route, they are monitored for the fare charged and if the passenger is dissatisfied can face complaint as well.

## Chapter 3

### Code on Social Security and its Application to Gig Workers

The Code on Social Security, 2020 is a comprehensive statute for the implementation of social security measures (especially for the unorganised sectors) as it seeks to provide a uniform code by replacing the nine legislations which provided social security to the employees like Maternity Benefit Act, Employees' Provident Fund Act, Employees' Pension Scheme, Employees' Compensation Act, etc. By defining newer concepts not covered by the earlier statutes such as gig workers, platform workers, fixed-term employees, etc; it has a wider coverage of workers (organised and unorganised sector). The code has incorporated different social security benefits earlier segregated under different statutes and so it avoids the segregation of workers in order to achieve equal treatment in terms of benefits available under different schemes and a uniform framework.

#### 3.1 Benefits for gig workers under Chapter IX of the Code on Social Security, 2020

Chapter IX of the Code on Social Security running from Section 109 to 114 provides and mentions the provisions of social security measures for the unorganised sector workers, gig workers and platform workers.

Section 114 of the Code states, *“(1) The Central Government may frame and notify, from time to time, suitable social security schemes for gig workers and platform workers on matters relating to— (a) life and disability cover; (b) accident insurance; (c) health and maternity benefits; (d) old age protection; (e) crèche; and (f) any other benefit as may be determined by the Central Government.”*<sup>14</sup> By covering these social security measures, the new Code paves the way for the growth and success of many newer opportunities and jobs emerging in the unorganised sector workers by giving them a sense of confidence and trust over their own job.

#### 3.2 Regulatory hurdles faced by gig workers under the Code on Social Security, 2020

##### 3.2.1 Gig workers, platform workers, and unorganised sector workers: Overlapping definitions

The definitions of different terminologies have been covered under Section 2 of the Code on

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<sup>14</sup> The Code on Social Security, 2020, S.114 (1), No. 36, Acts of Parliament, 2020 (India)

Social Security, 2020.

S.2 (35) defines gig worker as, "*gig worker*" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.<sup>15</sup> Gig workers work on a part-time or hourly basis, and the work is generally completed within a specified period of time. It is also outside a traditional work arrangement. The term being relatively new in India, is mainly used in a way which is similar to platform workers. It applies to students working on a part-time basis, or even a part-time professor, freelancers, and independent contractors. However, the problem here is that, cab drivers are not independent contractors (proven under chapter 2). Also, there is no strict rule that a gig worker cannot be a platform worker at the same time. For instance, a college student working as a part-time driver is a gig worker. Also, he or she may be a platform worker if the employers are a platform service provider such as multinational ride-sharing companies like Uber. These companies do not have a fixed working hour schedule and hence, that person (working as a driver) can also have other sources of income from different work arrangements.

Section 2 (60) and 2(61) define platform work and platform worker respectively as:

*"(60) "platform work" means a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an **online platform** to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment<sup>16</sup>; (61) "platform worker" means a person engaged in or undertaking platform work"*<sup>17</sup>

A careful reading of Sections 2(35) and 2(60) reveals that a gig worker can also be a platform worker as well. Both the definitions are talking about being outside the purview of a "traditional employer-employee relationship". The Code, however, does not expressly mention any similarities between the two. This confusion becomes even more profound as we move to section 2(86) defining unorganised worker as, "*unorganised worker*" means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or

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<sup>15</sup> The Code on Social Security, 2020, S.2 (35), No. 36, Acts of Parliament, 2020 (India)

<sup>16</sup> The Code of Social Security, S. 2(60), No. 36, Acts of Parliament, 2020 (India)

<sup>17</sup> The Code of Social Security, S. 2(61), No. 36, Acts of Parliament, 2020 (India)

*Chapters III to VII of this Code*<sup>18</sup> This is because the whole statute is dealing with unorganised sector workers and organised sector workers. Many are unsure why separate definitions were given for gig and platform workers although they are a subset of the larger definition, that is, unorganised sector workers. Therefore, it is also unclear how specific schemes for these categories will be applicable or will separate schemes applicable to each will also be applicable to all of these categories of workers or not. This makes the process of availing of social security benefits slower as there are lots of ambiguities with regard to this matter.

Moreover, the Code is also silent on the issue of a gig worker being both a platform worker and unorganised worker, and therefore, claiming all the benefits mentioned under Chapter IX of the Code. Owing to the ambiguities in the definition itself, the Code does not bar a person (whose working status is unclear) to avail multiple benefits of applying under both S.109 and S.114. This would also be unjust if a person enjoys two working statuses but for someone who enjoys only one status. Such confusions might only lead to greater misuse of these provisions in the long run.

Among the many recommendations made by the Standing Committee on Labour, a lot have not been addressed in the Code. For instance, the committee had suggested broadening the definition of unorganised workers to include both gig and platform workers and making the definition of gig workers precise in order to avoid any misinterpretation.<sup>19</sup>

### **3.2.2 Section 114 (4) of the Code and regulatory hurdles**

A bare reading of Section 114 (4) of the Code seems to be a very beneficial provision as it seeks to make the aggregators contribute 1-2 percent (but not more than 5 percent) of their total annual turnover to the Social Security Fund mentioned under Section 141 (1) of the Code. However, the real issues faced by the gig workers especially during the times of the Covid-19 pandemic may instead turn the tables on them. In an article published by “Forbes India”, they have interviewed a Mumbai-based gig worker named, Priyanka Thorat, who has stated how the salary paid to them, is already less and the pandemic has even cut down their wages to less than fifty percent. The twenty-four year old gig worker expressed her concern about how the new legislation might even cut down whatever minimum wages they earn. The Code should

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<sup>18</sup> The Code of Social Security, S. 2(86), No. 36, Acts of Parliament, 2020 (India)

<sup>19</sup> Divya J Shekhar, *Why the Code of Social Security, 2020 misses the real issues gig workers face*, FORBESINDIA, (Oct.23, 2021, 6:30 PM) <https://www.forbesindia.com/article/take-one-big-story-of-the-day/why-the-code-on-social-security-2020-misses-the-real-issues-gig-workers-face/63457/1>

have instead focused on setting a minimum wage for gig workers as it has been a lingering issue for some time now. In the article, they have mentioned about Sahil Sharma, co-founder and chief executive officer of GigIndia, an on-demand marketplace for gig workers who are of the opinion that the Code should have considered issues with regard to the fluctuation of income depending on factors like the number of rides or deliveries per month, among others and continuity in getting work.<sup>20</sup>

### 3.2.3 The issue of dual authorities: central versus state government

Until the enactment of the Code, the appropriate authority vested with the power of dealing with the welfare of unorganised sectors was the unorganised sector workers' welfare board under the different state governments. Now, this power has been extended to the central government as well. However, instead of making the process simpler, it has been complicated further by entrusting both the authorities with different sets of social security measures under section 109(1) and 109(2) of the Code on Social Security, 2020. It would have been much simpler had the state governments were the implementing authority and the central government collected a portion of the cost of providing the social security measures.<sup>21</sup> Under section 109(3) the state governments and others can also contribute a portion to the social security fund. It means, the fund can be contributed by state government, aggregators, a corporate social responsibility fund<sup>22</sup>, and any other source as well. Therefore, having two social security funds under section 141 of the Code on Social Security seems absurd if the contribution can be from both the authorities and other sources. It would have been much simpler had there been only one fund.

### 3.2.4 The Issue of Inclusivity with respect to registration

The whole purpose of the Code on Social Security was to be as much inclusive as possible. This statute as stated in its object, aims to bring a wide range of workers under both organised and unorganised sector to avail for the social security benefits. However, implementing a strict regime of registration process is a technical hurdle that needs to be urgently addressed. Section 113(2) state that, “(2)Every eligible unorganised worker, gig worker or platform worker

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<sup>20</sup> Ibid

<sup>21</sup> Kingshuk Sarkar, Under new labour code, an Uber driver can be both gig and platform worker. It's a problem, THEPRINT (Oct. 23, 2021, 8:00 PM) <https://theprint.in/opinion/under-new-labour-code-an-uber-driver-can-be-both-gig-and-platform-worker-its-a-problem/521628/>

<sup>22</sup> Within the meaning of the Companies Act, 2013

*referred to in sub-section (1) shall make an application for registration in such form along with such documents including Aadhaar number as may be prescribed by the Central Government...*”

The Supreme Court has mentioned in a number of cases that Aadhar is not mandatory.<sup>23</sup> The very use of the word “shall” seems to constrain a wide ambit of workers sought to be achieved by the Code. In a way, this provision seems to go against the very purpose of the Act itself.

It can, therefore, be said that though the Code seems to be a big savior for the unorganised sector workers; it still leaves behind some legal lacunae that need to be addressed from time to time by the legal authorities and law-making bodies. The issue with dual authorities also needs to be addressed and rectified between the central and the state governments. Therefore, the hypothesis (2) **has** been proved correct.

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<sup>23</sup> K.S. Puttaswamy v. Union of India, 2017 10 SCC 1

## **Chapter 4**

### **Suggestions and Conclusion**

#### **4.1 Suggestions**

- I. The law-making bodies should provide for a separate provision mentioning a minimum wage threshold so that the contribution taken from annual turnover does not negatively affect the earnings of a gig worker.
- II. The central and the state government should come up with a standard ratio of their contributions made to the Social Security Fund in order to avoid disagreements over the portion of respective contributions as well as set specific jurisdiction of their implementing authority.
- III. The mandatory registration through the Aadhar number should be relaxed as there are still many people who have not generated an Aadhar Id. Moreover, letting one's personal identity open to these private companies increases the chances of violation of the Right to Freedom under Article 19 and Right to Life and Personal Liberty under Article 21.
- IV. The respective state governments should take the responsibility of proper dissemination of information about the registration process through local Panchayats, Ration shops, and other feasible local bodies.
- V. There should be more and more responses collected from gig workers regarding their suggestions for improving the Code on Social Security since they are the ones being directly affected by the Code.
- VI. The companies should establish an easily accessible grievance department where the employees can put forth their grievances or problems. Most of the employers are faceless entities and the employees do not have proper platforms to address issues with respect to earning such as the high commission rates charged by these platform providers.
- VII. The concept of collective bargaining should be extended to gig workers and they should be able to unionize for a common cause.

#### **4.2 Conclusion**

With the growth of technological advancements and entrepreneurial ventures in the platform economy of India, more and more job opportunities are likely to be created. The Code on Social Security, 2020 encourages future legislations in the emerging areas of labour laws as it has overcome the technical hurdles of unifying the existing laws and approaching new areas like platform and gig work. Nevertheless, the Code falls behind some core issues that can lead to



subsequent obstacles in a smooth and efficient disposal of cases involving gig workers. The law-making bodies and legal authorities should make necessary amends in the Code before implementing them nationwide. Along with the hike in fuel prices, expenses of vehicle insurance and maintenance, the overall earnings of a gig worker has been affected seriously by the ongoing Covid-19 pandemic. As such the Code has set high expectations from many of the gig and platform workers who have fought long for their labour-related rights in various parts of the country. Since the concept of gig workers is fairly new in India, taking examples of similar problems from the countries like United Kingdom and the United States can help fill the loopholes in the execution of social security benefits. Otherwise, the attempt made by the legislative bodies for safeguarding the interests and rights of gig workers is highly commendable and appreciable.

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