
THE GROWING DESPAIR AMONGST ONLINE PLATFORM WORKERS: A CROSS-JURISDICTIONAL ANALYSIS

Pintu Babu, Innovation & Knowledge Associate, PSL Advocates & Solicitors

Ayushman Patnaik, 3rd Year at Department of Law, Maharaja Agrasen Institute of Management Studies

Pushkar Deo, 4th Year at UPES Dehradun

ABSTRACT

The emergence of the online platform industry, supported by the adoption of modern digital tools and internet has led to India's phenomenal expansion in the online food delivery business. Recently, this industry has seen the development of new companies like Swiggy and Uber Eats, as well as evidenced that older players such as Zomato adjusting their business strategies to match with the industry's needs. The development of service providers like Uber and Ola for taxis, and Swiggy and Zomato for food delivery services, has revolutionised the digital spree that India has entered in recent years. Although the food delivery platforms have created significant new job possibilities and extended the client base for established restaurants and cafes, but it should not lose the sight that the delivery executives who work for them are facing noteworthy problems concerning their work status and engagement with their respective companies. The term Gig Workers is interpreted as a term to characterise hundreds and thousands of individuals that work for such companies as a Platform Worker on a day-to-day basis, sometimes up to 12 hours a day, throughout 7 days a week to earn their share of living. Food delivery platforms have adopted technological solutions which have undoubtedly enhanced the customer experience. However, this has occurred in an unorganized system in which workers are completely at the discretion of these platforms to earn their basis livelihood. This article is a humble attempt to understand the position of gig workers under the applicable Indian laws and a way forward how this space can be regulated to the benefit of food delivery agents, restaurant owners and general public.

Keywords: Platform Workers, Gig Economy, Code on Social Security 2020, Working Conditions, Online Food Delivery

Working Conditions of Delivery Executives/Partners of Zomato and Swiggy

Because of India's growing unemployment rate in recent years, the young generation has opted for careers in unusual spaces and new sectors. Recently in a Governmental Report claimed that India's unemployment rate in 2017-18 was the highest.¹ *Amitabh Kant*, the CEO of NITI Aayog, stated that Ola and Uber alone had produced 2.2 million employments in India since 2014. Often feeling burdened by family responsibility, unemployed millennials are flocking to internet companies like Grofers, Uber, Swiggy, Bigbasket, and Zomato, which have made financial freedom accessible for them.²

Job instability, varied income, relatively low annual pay, no long-distance return incentives, and the reported lack of first mile pay have all plagued these delivery executives. However, rising petrol prices, no rewards, and decreasing cash reserves — all during an unprecedented pandemic year — have prompted some of them to protest against these platforms. Zomato and Swiggy were positioned at the bottom of the rankings based on the working conditions of the delivery executives³. The Report was based on the fairness of contract, working conditions, management and representation. *Jamshed*, 43, a delivery driver in Gujarat who works for both Zomato and Swiggy, said that *"They call us partners but they don't treat us that way. We are slaves to them We aren't employees for them but labour, so they expect us to not raise our voices or ask questions. But with no job security, how do we survive?"*⁴

In India, the most prominent concerns amongst online food delivery executives are salary and working conditions. As per the gig workers first person accounts in India, the poor compensation often forces them to work more than eight hours per day, seven days a week throughout the year. The major challenge for gig workers is inadequate social security benefits, which makes it difficult for workers to pay for their healthcare bills and sustain their livelihoods. Analysts say there's no such thing as a fixed minimum wage and that these employees have few legal rights to bargain together.⁵ A Zomato spokesperson stated

¹ Annual Report of Periodic Labour Force Survey (PLFS), 2017-18, < http://mospi.nic.in/sites/default/files/publication_reports/Annual%20Report%2C%20PLFS%202017-18_31052019.pdf?download=1> accessed 17 August 2021.

² Indrani Bose, 'Food for Thought: From long working hours to dismal pay – the life of a food delivery man', (24 March 2019) < www.financialexpress.com> accessed 17 August 2021.

³ Fairwork India Ratings 2020 report <https://fair.work/wpcontent/uploads/sites/131/2020/12/Fairwork_India_2020_report.pdf> accessed 17 August 2021.

⁴ Tanishka Sodhi, 'We are slaves to them': Zomato, Swiggy delivery workers speak up against unfair practices They are battling job insecurity, variable pay, low base pay, increasing fuel prices, and inconsistency in incentive payments. (14 August 2021) < www.newslaundry.com> accessed 17 August 2021.

⁵ Sumathi Bala, "Already under massive stress from the virus, more Indian workers turn to 'gig economy' livelihoods", (13 May 2021), <www.cnbc.com> accessed 17 August 2021.

that there's no fixed average base wage for workers; it is determined by the area and location of employment. The overall pay covers various factors like waiting time and distance covered. Also, according to a Swiggy representative, a delivery worker's income is divided into three categories: per order payment, which is proportionate to criteria such as distance travelled and time spent, peak pay, and bonus pay.⁶

The delivery executives must use their own motorcycles for delivery, which they have to borrow money for, adding to their burden of already low-income bracket. There are various expenses that they must bear, like the company t-shirts that they need to wear, and they also need to bear fuel expenses and repair related expenses on their own irrespective of the long trips they cover throughout the day. These workers join the platforms to earn adequate income for their livelihood but when they join these platforms, they realise that it majorly includes more of out-of-pocket money as compared to the money they earn in a day. Another hurdle in their day-to-day life is the unhealthy lifestyle that they've to adapt in order to receive various additional incentives. Part-time delivery partners work 5 to 8 hours per day, while 42% work more than 12 hours per day. The incentive-based pay structure motivates delivery workers to work excessive shifts, and noticeably only 19% of people work within statutory part-time working hours⁷. The statutory working hours in a day should not exceed 9 hours for an adult⁸. On bikes, delivery executives perform lengthy shifts in polluted environments. They must log in and remain present in their region at all times. These factors not only affect the physical health of these delivery executives but also the mental health of these individuals. Another drawback of working for app-based firms is the absence of opportunities for professional advancement. Though most of these platforms doesn't provide opportunities for skill growth, some do provide training in interpersonal skills to help the employees to communicate with consumers.⁹

Legal position of Platform Workers under the Code on Social Security, 2020

From the aforesaid discussion, it becomes evident that platform workers such as Zomato and Swiggy delivery executives do not fall directly within the ambit of labour laws. The result of this anomaly is that they are unable to claim benefits available under those laws such as

⁶ Gayathri Vaidyanathan, "A Pandemic of Discontent: The Growing Woes of India's Food Delivery Workers", (22 December 2020), <thewire.in/labour/swiggy-workers-covid-19-paycut-job-loss>, accessed 17 August 2021.

⁷ Harshula Sinha, Adya Behera, Nishta Relan and Vedant Kaul, Understanding Food Delivery Platform: Delivery Persons' Perspective, TISS Hyderabad (2019).

⁸The Minimum Wages Act, 1948, Rules 20 to 25.

minimum wage, equal remuneration, forming trade unions, collective bargaining etc. However, there is a silver lining since platform workers have been recognized under the Code on Social Security, 2020 (“Code”) as they can now lawfully claim social security perks. The new Code aims to reshape the social security framework for the unorganized sector, which is defined to comprise a wide range of occupations including self-employment. The Centre is in-charge of developing social security plans for these platform workers. The issue is that the Code provides for creation of various statutory boards for unorganized and platform workers. This model, appears to be overlapping since platform workers are just a part of the wider group of unorganized employees.¹⁰

However, the new Code recognizes the platform work¹¹ as- “*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*”. Alongside, the Code defines platform workers as “*a person engaged in or undertaking platform work*”.¹²

As per the mandate of the new Code, a National Social Security Board will be constituted by the Central Government comprising of members from various sectors and government authorities. The board shall be responsible for making recommendations to the Central Government regarding framing of suitable schemes for different sections of unorganized workers, gig workers and platform workers and to monitor such social welfare schemes for unorganized workers.¹³ The Central Government has also recommended that benefits like medical and maternity leave, and also health and disability cover, be made available to all citizens.¹⁴ The respective State Government is in charge of giving benefits to workers like provident funds, skill enhancement, and housing. Under the Code, the Central Government is obligated to set up a call center or help line number to facilitate the platform workers as per of the Code which provides the functions of this helpline facility¹⁵; those are-

¹⁰ S. Mehrotra, Rework Social Security Code for Informal Workers - The Hindu BusinessLine. Rework social security code for informal workers, (May 19, 2021), <TheHinduBusinessLine.<https://www.Thehindubusinessline.com/opinion/rework-social-security-code-for-informal-workers/article34599616.ece>.> Accessed 23 August 2021.

¹¹ Section 2(60) of The Code on Social Security, 2020.

¹² Section 2(61) of The Code on Social Security, 2020.

¹³ Ibid.

¹⁴ Section 114 of The Code on Social Security, 2020.

¹⁵ Section 112 of The Code on Social Security, 2020.

- to disseminate information on available social security schemes for the unorganized workers, gig workers and platform workers;
- to facilitate filing, processing, and forwarding of application forms for registration of unorganized workers, gig workers and platform workers;
- to assist unorganized workers, gig workers and platform workers to obtain registration; and
- to facilitate the enrolment of the registered unorganised workers, gig workers and platform workers in the social security schemes.

The Code also requires platform workers to compulsorily register on a government website in order to get incentives as per the Code, which will be determined by the Central Government. Furthermore, this registration is conditional on the fulfilment of some pre-conditions as provided under the Code¹⁶:

- that the worker has completed 16 years of age;
- that the worker has worked for at least 90 days in the preceding 12 years;
- that the worker has submitted a self-declaration form;
- that every eligible unorganised worker, gig worker or platform worker shall make an application for registration in such form along with such documents including Aadhaar number as may be prescribed by the Central Government and such worker shall be assigned a distinguishable number to his application.

The Code also requires the government to establish a Social Security Fund specifically for platform workers, that was not required earlier under the Code on Social Security Bill of 2019 (“Code Bill”) ¹⁷.

Status of Platform Workers in the Foreign Jurisdictions

Considering the negative situation in India, it is important to comparatively understand the rights and benefits available to platform workers in other countries around the world. Unlike India, the judicial system of these countries has been recognizing and protecting the rights of platform workers.

I. THE UNITED KINGDOM

The Supreme Court of the United Kingdom recently passed a landmark and significant ruling about the rights of platform workers such as *Uber* drivers in *Uber BV and others v. Aslam and*

¹⁶ Section 113 of The Code on Social Security, 2020.

¹⁷ Section 141 of The Code on Social Security, 2020.

*Others*¹⁸. The 7-judge bench of the Supreme Court ruled that Uber drivers were to be considered as “workers” under the Employment Rights Act, 1996 (“**UK Act 1996**”) which entitled them towards employee benefits such as minimum wages, paid leaves, and other legal entitlements. In this Act “worker” means an individual who has entered into or works under-

- a contract of employment, or
- any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or personally perform any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.¹⁹

The Court rejected Uber’s argument that the drivers were third party contractors and noted that:

- Uber set the fares of each ride the drivers carried. Had the drivers been self-employed they would have been able to decide the prices.
- Uber was the sole authority to determine the contract terms and the driver could only choose to accept or reject it.
- Uber monitored the driver’s performance and could unilaterally terminate the contract if it was not found satisfactory.
- Uber also had the ability to penalize drivers if they cancelled to many rides.

The Court then went on to understand the purpose of various labour legislations as being to promote the vulnerable workers from exploitation by granting them certain rights. Considering the beneficial nature of the labour legislations, it ought to be interpreted liberally and if *Uber* drivers were not granted such rights conferred by the Parliament, it would seriously undermine the efficacy and meaning of labour laws. Even though the decision specifically focused on *Uber* drivers, it has longstanding positive repercussions on the status of other platform workers.

II. UNITED STATES OF AMERICA

The regulation governing the gig economy has witnessed significant advancements in the United States, with the state of California, USA codifying the stated law. Such advancements are likely to alter existing labour structures and human resource strategies in the United States. California Assembly Bill 5 was enacted by the California legislature in September 2019. The latest regulation covers workers' 'employment status' if they claim to be independent contractors

¹⁸ [2021] UKSC 5.

¹⁹ Section 230 of the Employment Rights Act 1996.

rather than employees. AB5 came into effect on January 1, 2020. AB5 is a bill passed by the Governor in September 2019 that addresses employment status when an employing organization asserts that the individual employed is a freelancer. It codifies and explains the verdict of the California Supreme Court in the classic case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*²⁰. This new legislation states that a person giving labour or services is deemed an employee for laws governing employee workplace conditions, pay, and welfare benefits.²¹

III. SPAIN

In a significant September 2020 ruling, the Spanish Supreme Court held that food delivery riders of popular apps such as *Glovo* and *Deliveroo* (similar to *Swiggy* and *Zomato* in India) were employees and not self-employed²². The Court noted that the relationship which existed between the rider and the app was of a professional nature.

Glovo argued before the Supreme Court that it was merely an intermediary between the restaurants and the delivery boys. But Court ruled that it was not so but was instead a business that fixed conditions for the provision of its services and owns the assets essential to carrying of such services. This was the first ruling by Spain's Supreme Court which attempted to regulate the functioning of platform and gig workers. With this landmark judgment, food delivery executives became entitled to defined salaries, paid leaves, sick leaves, and all ancillary benefits available under Spanish labour laws.

IV. FRANCE

The highest Civil Court of France, the Court of Cassation, ruled on 4th March 2020 that Uber drivers were employees and not independent contractors²³. The Court noted that the drivers were neither free to decide fares nor free to determine the terms of conditions for conducting the transportation service business. It also noted that the drivers could never choose a ride which suited them and hence had to be available the entire day, fearing termination if performance was not satisfactory. In addition to this, if the driver refused to carry out three rides, Uber could levy additional penalties and charges in the form of cancellation charges etc.

²⁰ Cal. Sup. Ct., (2018).

²¹ Manishii Pathak, Natasha Sahni, India: Gig Economy – Legal Developments, 19 June 2020, <www.mondaq.com>, Accessed, 17 August 2021.

²² Manuel V. Gomez, 'Spanish Supreme Court rules food-delivery riders are employees, not self-employed' (*El Pais*, 24 September 2020) <https://english.elpais.com/economy_and_business/2020-09-24/spanish-supreme-court-rules-food-delivery-riders-are-employees.html> accessed 17 August 2021.

²³ Mr. X. v. Uber BV, <https://www.courdecassation.fr/IMG/20200304_arret_uber_english.pdf> accessed 17 August 2021.

Considering all of this, the Court concluded that since Uber sent the driver instructions, supervised his performance, and exercised power to sanction, the *‘working within an organized service may constitute an indication of subordination in cases where the employer unilaterally determines the terms and conditions of performing the job.’* In these circumstances, the drivers are employees.

Many other countries have been actively taking measures to ensure that the rights of platform workers could be protected. The Belgian Labour Authority under Belgium’s Ministry of Labour has recently initiated a prosecution against food delivery app *Deliveroo* after an 18-month investigation concluded that the company had failed to endeavor and implement Belgian labour law and had not provided benefits to delivery riders. The case is still pending²⁴.

A local court in Palermo, Italy also recently decided that food delivery app *Glovo* had to take its delivery executives as employees, full time and permanent and it must pay an hourly minimum wage as provided by the Collective Agreement between the Tertiary Sector, an important Italian labour law regulation²⁵. The Supreme Court of Italy also ruled in 2019 that riders must be protected as employees²⁶ and protection for subordinate work as provided by the Jobs Act must be extended to delivery partners. The Judges of the Court further stated that *“when the hetero-organization, accompanied by personality and continuity of performance, is marked to the point of making the collaborator comparable to an employee, an equivalent protection is required and, therefore, the remedy of the full application of the discipline of subordinate work”*.

Concludingly, judicial and quasi-judicial authorities have been extremely vigilant in recent times to protect the rights of gig and platform workers. According to the World Employment and Social Outlook, 2021 of the International Labour Organization, India is the largest supplier of workers globally across online platform jobs²⁷. Since 2014, over 2.2 million Indians are

²⁴ Marine Strauss & Clement Rossignol, ‘Belgian labor authority launches court case against Deliveroo’ (*Reuters*, 20 January 2020) <<https://www.reuters.com/article/us-deliveroo-belgium-court/belgian-labor-authority-launches-court-case-against-deliveroo-idUSKBN1ZJ1N4>> accessed 17 August 2021.

²⁵ Robert Rotunno, “Glovo hire the delivery boy as an employee”. In Palermo the first sentence that requires an app to recognize the subordination of the riders’ (*il Fatto Quotidiano*, 23 November 2020) <<https://www.ilfattoquotidiano.it/2020/11/23/glovo-assuma-il-fattorino-come-dipendente-a-palermo-la-prima-sentenza-che-impone-a-una-app-di-riconoscere-la-subordinazione-dei-rider/6013230/>> accessed 17 August 2021.

²⁶ FQ, ‘Foodora, the Supreme Court agrees to the riders: "To them the protections of subordinate work"'. Foodinho's appeal rejected’ (*il Fatto Quotidiano*, 24 January 2020) <<https://www.ilfattoquotidiano.it/2020/01/24/foodora-la-cassazione-da-ragione-ai-riders-vanno-considerati-lavoratori-subordinati-respinto-ricorso-di-foodinho/5684269/>> accessed 17 August 2021.

²⁷ Somesh Jha, ‘India Largest Supplier of Workers on Digital Platforms: ILO’ (*Bloomberg Quint*, 23 February 2021), <<https://www.bloombergquint.com/economy-finance/india-largest-supplier-of-workers-on-digital-platforms-ilo>> accessed 17 August 2021.

engaged as delivery partners with apps such as *Zomato* and *Swiggy*²⁸. With such staggering numbers, it is extremely important for the legislature and judiciary to recognize the rights of such platform workers. The decisions given by the Supreme Court of the United Kingdom and Spain have a clear bearing on the situation in India and the Indian Supreme Court, in accordance with its constitutional duty to ensure the protection of fundamental rights, ought to work towards the rehabilitation of the work-life of platform workers. India has already witnessed protests by delivery partners of *Zomato*, drivers of *Uber* against their respective companies demanding pay, working period, weekly holidays etc. In such a situation, a pro-active role on part of the Government is extremely necessary and is need of the hour to ensure that platform workers are not overly exploited.

Way Forward

The gig economy is rapidly expanding in the employment sector and has seen tremendous development in recent years. Furthermore, the new generation of on-demand business practices employed by new tech firms has resulted in a variety of workforce arrangements, such as gig and platform employees. Freelance workers are currently not governed by current labour laws and regulations in India, and their affiliation with an organization is managed by a contractual agreement between such businesses and individuals. Recently, a bill was approved by the Indian Parliament which intends to expand ESIC coverage to the app and freelance workers, who are regarded as the least privileged segments of the labour market²⁹. The central government intended to adopt the four labour regulations on April 1st. However, these are expected to be postponed because various state governments having still not developed the laws outlined in the codes. Nirmala Sitharaman, Union Finance Minister, recently stated that a database of informal sector workers will be created in order to offer them social security and welfare benefits³⁰. Also, workers must be given more authority so that they could participate equally in choices that directly impact their livelihoods. Platforms govern everything and have uncontrolled authority, which is the core of this matter. Ministry under which the platforms would function is still not clear, and the Code does not provide for the implementation of appropriate legislative actions. It also does not specify the conditions for app-based exemption,

²⁸ Indrani Bose, 'Food for Thought: From long working hours to dismal pay – the life of a food delivery man' (*Financial Express*, 24 March 2019) <<https://www.financialexpress.com/industry/food-for-thought-from-long-working-hours-to-dismal-pay-the-life-of-a-food-delivery-man/1525219/>> accessed 17 August 2021.

²⁹ The Industrial Relations Code, 2020.

³⁰ Special Correspondent 'Portal to collect data on gig workers in Budget', (*The Hindu*, February 01, 2021), <<https://www.thehindu.com/news/national/portal-to-collect-data-on-gig-workers-in-budget/article33717552.ece#>>, Accessed 21 August 2021.

as well as the timelines for collecting and delivering social security funds to workers. Thus, a policy is required that acknowledges that gig workers are similar to regular and standard employees in various ways, although if the platforms insist on treating them as non-employees, they must be accepted in a separate segment and presented with perks such as minimum wages and various employment safeguards, as well as mandatory requirements which may accommodate the gig industry.