
NAVIGATING LABOUR LAW IN GIG ECONOMY: ANALYSIS OF ITS LEGAL IMPLEMENTATION IN LIGHT OF SOCIAL SECURITY

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ABSTRACT

“Even though the Gig Economy is only at its infancy stage in India, it can certainly be affirmed that its expansion is ever-growing at a rapid rate. According to the estimations, many reports reiterate that there could be as many as 350 million gig jobs in India. The government is constantly ensuring that Gig Workers are entitled to protected workplace cultures.”

Gig Economy is a fast-paced economy constituting individuals who are performing respective delegated tasks, and in return are paid for the work done by them. In accordance with the multinational outsourcing “Freelancer.com”, wherein India is considered to be one of the leading countries comprising the freelancing economy and is prospering steadily. The retired demographic is increasingly participating in gig work, utilizing blockchain-based payment systems, and engaging with blockchain-based markets. The evolution of technology has captured the entire employment process and permanent positions are designated to the contractors at both; newly formed businesses and renowned business setups. The Gig Economy has been surrounded by appraisal as well as criticism. On one hand, this economy has aimed at reducing unemployment, encouraging participation of the workforce, increase in popularity and efficiency, addressing the demands which is advantageous for both; the customers as well as the businesses. On the other hand, this economy is also encircled by various shortcomings, which is inclusive of lack of steady earnings, the working week becomes quite episodic, the responsibility of ensuring safety is vested at the extent of the individuals which becomes a major concern for stress. Lastly, considering that Freelancing jobs are not inclusive of health benefits, paid leaves, holidays, or parental leave and thus, lacks job security.

This Research Article focuses upon the favourable and adverse effects of the rapidly growing Gig Economy in relation to their social security, alongside focusing upon the suggestions to improve their standing in the society and effectively capitalize on the entitlements that could be offered to them.

Keywords: Employment, Freelancing Jobs, Gig Economy, Technolog

INTRODUCTION

A typical work arrangement encompasses the conventional and subsisting association between the employer and the employee, wherein the employee is entitled to remuneration for the work undertaken by them at regular intervals from the employer upon the conclusion of the work agreed upon between the parties vide an employment agreement. In case of absence of such agreement, the employees are engaged with the work on a temporary basis. The duration of such employment opportunities are usually accorded for short tenures. The phenomenon is regarded as “Gig Work.”

In pursuance of the Report of 2022, of “*NITI Aayog*,” Gig Workers are commonly referred to as individuals who are employed on a short-term basis and the relationship between the employer-employee falls beyond the conventional association between the two.

In the recent and forthcoming years, India, has and will experience considerable and steep rise in the no. of gig workers who are employed on a short-term basis, which will ultimately solidify their position as a burgeoning gig economy. The inclusion of gig workers in the draft “*Labour Code Bill i.e., Code on Social Security, 2020¹*,” has been undertaken by the Indian legislature.

Gig Culture is considered beneficial for both; the businesses as well as the employees in the long run. Alongside the advent of this culture, a Gig worker possesses the entitlement to work for several employers, he can choose the initiatives he wishes to participate in. The greatest benefit for the employers is flexibility and choice of workers. They can cut costs and control expenditures by integrating their workforce to the fluctuations in the demands.

The primary factors propelling the expansion of the gig economy are the development of technological platforms, the demand for flexible work hours, and the emphasis on skills. Flexi-staffing is the fifth largest industry in India and is prevalent in both blue-collar and white-collar occupations.

LEGAL ANALYSIS

The Gig Workers currently face the dearth of a stringent legislation that would certainly protect and safeguard their rights, resulting in discrepancies vis-à-vis the conventional long-term

¹ THE CODE ON SOCIAL SECURITY, 2020 NO. 36 OF 2020.

employees. The present labour law legislations bifurcate the employees into three distinct categories namely – government, public-sector and private employees, and these differentiations serve to establish particular terms of employment and entitlements to the respective employees engaged in different sectors of the economy. The gig workers are not inclusive in any of these aforementioned categories, which ultimately leads to various repercussions.

The potential applicability of “*Contract Labour [Regulation and Abolition] Act, 1970*²” constitutes the engagement of workers through a trusted third-party contractor, which duly applies to the gig workers.

It focuses upon imposition of the employer’s responsibility to ensure that proper welfare and health benefits are accorded to the employed. Unfortunately, this issue is yet to be accounted for and interpreted before the Indian judicial system.

“*The Employment Compensation Act, 1923*³”, which governs the essence of mandatory compensation for the injuries endured by the engaged employees during their course of employment, have not been conclusively extended to the gig workers, is again an uncertainty on their end.

The current Labour Laws of the Indian Jurisprudence, have provided little, to almost least recognition to the gig workers, and thus, resulting in disparities in the provisions of the legislation safeguarding the interests of the employees which broadly cover the employees at large, excluding gig workers in terms of security and entitlements. These gig workers are not privileged to equal pay at work, insurance coverage, restricted availability of credit and volatility in revenue. Platform workers have supplementary obstacles such as limited internet connectivity and precarious employment conditions.

There are several Indian firms constituting- big basket, flip kart and urban company, who have guaranteed their employees the entitlement of fair and timely remuneration and receiving at least the minimum wages.

² Contract Labour (Regulation & Abolition) Act, 1970 & Rules 1971 [No.37 OF 1970].

³ THE EMPLOYEE’S COMPENSATION ACT, 1923 ACT No. 8 OF 1923.

The “*e-SHRAM Portal* “, was an initiative of the Indian government, with the objective to maintain a “*National Database*”, of the unorganized employees. This venture widened the array and scope of social security benefits which would also circumferene the gig and platform workers.

The “*National Coordination Committee*”, on Gig workers, in a coalition of unions have been corresponding to gig and platform employees, this need to provide social and job security to these employees have been acknowledged before the parliament recently. In furtherance of this demand, a charter was submitted before the Union Labour Law Minister – Mr. Bhupendra Yadav, and reiterated that approximately 12 million gig and platform workers are subjected to exploitation, theft of wages, unlawful termination of employees, mental trauma, and prone to unfair labour practises. These issues have heightened since the inception of Covid-19 pandemic and still continue to arise, considering that these employees of the unorganized sector were supplying essential services at their own personal costs to earn a living.

The Legal growth of the gig economy in India commenced fairly late. Its evolution was pursued by subsequent to various judicial rulings pertaining to the said subject matter. In the case of, “*Dhrangadhara Chemical Works v. the State of Saurashtra*”⁴, the court was of a view, that in order to determine the employer-employee relationship it must be ascertained through “*control and supervision test*”. And the Hon’ble Apex Court held similar view in another case of, “*Balwant Rai Saluja v. Air India Ltd.*”⁵, wherein, it was considered that a worker who is employed and considered an employee because, the employer has the authority to control his actions during the course of employment, also direct him accordingly as per the requirements of the delegated task and offer him substantial wages as agreed upon between them by the virtue of pre-determined employment agreement. Consequently, the court classified the relationship between the two parties as that of an employer and employee.

The surge in the population of gig/ platform workers in India, have compelled the legislative body to enact any such provisions/ legislations as they deem fit for safeguarding the interests of the gig workers, for their welfare.

In contravention to that, there are several challenges encountered while adhering to the interests of such gig workers, one of which is that they are often remarked as “*independent*

⁴ Dhrangadhara Chemical Works v. the State of Saurashtra; AIR 1957 SC 264, 1957 SCR 152.

⁵ Balwant Rai Saluja v. Air India Ltd.; (2014) 9 SCC 407.

contractors” and not “*employees*”. This differentiation acts as a hurdle while according to them the benefits and protection, as compared to the conventional employees.⁶

There are certain judicial pronouncements wherein the judiciary has duly taken stand for these deprived employees in the case of “*All India Gig Workers Union v. Uber India Systems Pvt. Ltd.*”⁷, the union in the present case, filed complaint against uber for neglecting and not providing the nominal amount of wages and assuring them social security alongside other benefits to their drivers. The case is still in pursuance before the court and its major impact will change the entire dynamics of the gig economy. In the case of, “*Olga Tellis v. Bombay Municipal Corporation*”⁸, the court directed the government to ensure the rights and the benefits along with social security of the gig workers are not suppressed. “*The Indian Federation of App-Based Workers' Legal Action for Social Security*”, pertains to the fact that ensuring social security of the gig workers is fundamental, and it is imperative to acknowledge their rights. Absence of social security shall be violative of their fundamental right guaranteed under “*Article 21*”⁹ of the “*Indian Constitution*.”¹⁰

In the year 2020, the “*Social Security Code*” was successfully enacted by both houses of the parliament and subsequently got presidential assent. This legislation titled as the “*Social Security Code, 2020*,” came as a weapon for safeguarding the interests of such workers employed in gig work highlighted under “*Section 2(35)*”¹¹ of the code. As per the aforesaid, code a gig worker is delineated as an individual who engages in any labour or partake any labour agreement for generating income from those activities and falls beyond the ambit of the conventional employer-employee relationship. This could only be pursued after ensuring compulsory registration which would entitle the employees to several job/ social security benefits, which comprises: “*life and disability insurance, accidental insurance, health and maternity benefits, and old age protection.*”

CHALLENGES FACED BY GIG WORKERS

The inclusion of gig workers in the “*Social Security Code, 2020*,” and “*minimum wage*

⁶ DC Dewan Mohideen Sahib v. The Industrial Tribunal, Madras; AIR 1966 SC 370.

⁷ All India Gig Workers Union v. Uber India Systems Pvt. Ltd.

⁸ Olga Tellis v. Bombay Municipal Corporation; 1986 AIR 180, 1985 SCR Supl. (2) 51.

⁹ THE CONSTITUTION OF INDIA, 1950, Art.21.

¹⁰ THE CONSTITUTION OF INDIA, 1950.

¹¹ THE SOCIAL SECURITY CODE, 2020, § 2(35).

legislation”, is a much-appreciated move, yet, there are certain challenges faced by the gig workers regardless of such entitlements:

1. No legislative framework ensures the gig workers a decent and sound workplace, which is an important factor to consider for better efficiency and productivity.
2. Current Indian laws do not allow gig workers to organise and bargain collectively. The “*International Labour Organisation*”(hereinafter, *ILO*) considers collective bargaining and association of basic rights. When an organisation violates employee rights, a trade union represents them. Further collective bargaining allows employees to negotiate with management. If these rights aren't recognised, management will abuse power.¹²
3. No law in India gives equal status to the gig workers, and not even the employers are obligated to treat gig workers equally. As per the ILO, every worker is treated in a just and fair manner to prevent unjust discrimination.
4. The ILO considers equitable salaries a human right, and no law on the contrary obligates the employers to pay the gig workers minimum wages.¹³

SOLUTIONS

The Solutions for protection of rights of the gig workers as follows:

1. The “*Social Security Code, 2020*,” considers gig workers as another category so that they are entitled to the benefits. However, a better solution would be enactment of a separate law governing their rights would have been an ideal step. The code defines gig workers as several non-standard workers who receive the same benefits, creating ambiguity.
2. In the new legislation, distinctive categories and definitions could have been accorded to the “*part-time workers, platform workers, on-call workers, and self-dependent workers*”, The law should give all non-standard workers some basic rights, such as the right to not be treated

¹² ILO. 2021e. ‘Extending Social Security Coverage to Workers in the Informal Economy: Lessons from International Experience (Good Practice Guide)’. <https://www.social-protection.org/gimi/RessourcePDF.action?id=55728>.

¹³ ILO, 2020. Promoting employment and decent work in a changing landscape, International Labour Conference, 109th session, 2020, Report III (PartB) (https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_736873.pdf).

unfairly, the right to a basic wage, the right to bargain as a group, and the right to work in a safe environment.

3. The law should require employers to give these perks to workers who don't fit the typical Mold. If they don't, they should have to pay a heavy fine. Ensuring different laws for “*non-standard workers*” would encourage a lot of people to join the gig economy, which would directly help our country grow.

CONCLUSION

In comparison to other nations, India exhibits a relative lack of progress in enacting legislation aimed at safeguarding the rights and welfare of non-standard workers. The Social Security legislation that has been enacted still requires a lot of stringent provisions to be incorporated. Gig workers are integral to the advancement of both the nation and organisations, so acknowledging their fundamental rights has significant importance. The government should refrain from adopting a pro-producer's stance and abstain from passing legislation that aligns with the interests of organisations seeking limited regulations. Instead, it should adopt a pro-gig workers approach, which would incentivize their engagement and foster their beneficial contributions to economic growth. Given the ongoing expansion of the gig economy inside our nation, it is anticipated that legislative measures ought to be implemented in order to ensure the provision of appropriate benefits to gig workers, thereby safeguarding their fundamental rights.