
GIG WORKERS: IN SEARCH OF JUSTICE FROM THE INDIAN JUDICIARY

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ABSTRACT

The plethora of legislations has been enacted in India for maintaining welfare, social order and security of the labour force. Due to the emerging trends and modernization in the global level, the traditional employer-employee relationship is now being reduced. The Fourth Industrial revolution in the world gave rise to the Gig Economy. The recent phase of digitalisation in the global South, reflected in the widespread adoption of Internet and smart-phone technologies, has given rise to an emergent gig economy that employs tens of millions of workers across its diverse urban centres. The gig economy, characterized by short-term contracts, freelance work, and on-demand tasks, has witnessed the rapid growth in recent years, reshaping the way people work and earn a living. Gig work are more like many jobs in delivery, home services, food & beverages, e-commerce emerged which were temporary in nature, contractual or part time and apt for freelancers and people looking for short term assignments. These employees called gig workers have become a part of developing India and are contributing in an immense manner to the gig economy. India is the fifth largest country in terms of gig workers. The gig populace is partly attracted by the youth and partly by the middle and old-aged persons. In India, The vast majority of gig workers, Unorganised Workers and Platform workers fall under unorganised sector and accepting gig workers as “employees” remains controversial and also face quite more issues. The stigma of the gig workers is evident and which need to be informed and reformed.

The preamble of the Indian Constitution assures the democratic way of living and every Indian citizen is entitled to receive fundamental rights which are guaranteed under the Constitution of India. To protect the dignity of workers’ and the need for protecting the interest of labour as human beings has been enshrined in the Articles 16,19,23,24,39,41,42,43, and 43A keeping in line with the Fundamental rights and Directive Principles of State Policy. The state shall ensure the adequate working conditions to the workers in any form of labour work done. The Supreme Court of India is known as the Guardian of the Indian Constitution. The basic fundamental rights which also includes the Right to Work and Livelihood on decent conditions of work under the Article 21. Denial of the social security to the “gig workers” and the

“platform workers” is an affront to the workers' right to life and the right against forced labour that are secured by Articles 14, 21 and 23 of the Constitution of India.

The Indian Ministry of Labour and Employment established the New Four Labour Code for New India which is considered to be the Biggest Labour Reforms in Independent India but it has Contemporary issues in the legislation and enforcement. For the maiden time in the code on Social Security, 2020 recognised ‘gig workers’ and ‘platform workers’ as ‘unorganised workers’. But at present the unorganised workers are not entitled to any benefit under the social welfare legislations. The researcher through this paper would like determine the ambiguity in chapter IX of Code on social Security, 2020 which potentially leaves significant portion of the workers vulnerable and also many other provisions in Unorganised Workers’ Social Security Act, 2008 dealing with social security of gig workers and unorganised workers. NITI AAYOG report which was established in 2022 “India’s Booming gig and Platform economy” has provided the perspectives and recommendations of the future work of gig economy and it included challenges, characteristics, opportunities, barriers and so on. But, the report does not include anything about the cases so far filed by the workers for the violation of fundamental rights and role of the judiciary in deciding the cases.

Therefore, the research is primarily doctrinal and the researcher in this first part paper analyse the nature of the work and present scenario gig workers in India. The second part of the paper clearly put forward the Constitutional guarantees and discusses the lacunae in the legislation and the enforcement of new labour codes in respective of gig workers, unorganised workers and platform workers. The gig workers face many violations and currently striving hard for their livelihood. In order to get rid of the disastrous reforms happening to them, they seek the court to ensure their own fundamental rights under the Constitution of India. So, The third part of the paper deals with the role of courts in emerging issues of gig workers’ rights and filing the lacunae in legislation by the Judiciary and also criticise with the help of decided cases such as Daily Rated casual Labour vs. Union of India, The Indian Federation of App-Based Transport Workers (IFAT) vs. Union of India, Kavitha S. Sharma vs. Uber India, Uber India System Private Limited vs. Union of India, Ayantika Mondal vs. State of Karnataka. The researcher feels it is significant to look into the role of the courts in the contemporary issues regarding gig workers’ rights. Because Gig economy provides major part to the Gross Domestic Product of our country and so said major economic contributors’ rights are violated and the judiciary cannot keep its eye out of the subject matter. If done, the raising spirit and the demand for gig economy may be decreased. The paper in the end provides findings and suggestions through this research for the better resolution in the matters

dealing with gig economy and the workers' rights.

Keywords: Gig workers, gig economy, unorganised workers, social order, employee, right to livelihood, Labour Codes.

INTRODUCTION:

“Gig workers, often called independent contractors, freelancers, or platform workers play a vital role in the global workforce. Gig workers are vital to the modern economy”¹. The traditional employer-employee relationship is broken in the gig economy. “The most recent phase of digitalisation in the global South, reflected in the widespread adoption of Internet and smart-phone technologies, has given rise to an emergent gig economy that employs tens of millions of workers across its diverse urban centres”². The digital revolution of internet in India made people indulge in gig economy. With a large working population and workforce growing by a whopping four million every year, the advent of a gig economy has impacted the Indian labour market to a large extent. After Covid -19, there is an exponential growth in online service providing apps such as Ola, Uber, Swiggy, Zomato, Rapido, have initiating to earn money through services which can be easily availed through online. These companies make up the largest employers of India's gig economy, and hence India has now become one of the largest hubs worldwide for the gig economy³.

NATURE OF THE GIG WORK:

The Fourth Industrial Revolution in the world gave rise to the Gig Economy. The persons indulging in the Gig workforce are known as Gig workers. “Gig workers are also a cost-effective solution, often working on a project basis, reducing continuous payroll expenses”⁴. In the gig economy, it opens the door and gives opportunities to students, retirees, elderly and disabled people. The persons who are ready to do part-time jobs and those who are seeking additional income are working as gig workers. These persons mostly prefer this gig because of the increased flexibility in terms of choosing working hours and various delivery jobs. The

¹ Sarvagya Chitranshi and H A Dhruvi, Determining the Status and Treatment of “Gig Workers” under the Industrial Disputes Act, 1947, GLS Law Journal, Volume 06, Issue 02, July – December 2024, available at <https://doi.org/10.69974/glslawjournal.v6i2.134>

² Aditya Ray, Coping with crisis and precarity in the gig economy: “Digitally organised informality”, migration and socio-spatial networks among platform drivers in India, Sage Journals, Volume 56, Issue 4, June 2024, Pages 1227- 1244, available at <https://doi.org/10.1177/0308518X231220296>

³ Ananya Radhakrishnan and Namrata Singha Roy, Artha Vijnana, Gokhale Institute of Politics and Economics, Volume LXV No.2, June 2023.

⁴ Ibid.

workers, who are engaged in gig work are earning money to make their livelihood, cannot be assured that they may stick to these jobs. The gig work is currently temporary; workers are doing it until they find their standardised permanent jobs. The reasons can be lack of respect, job security, fixed income, legislation and social security. The primary problem with Indian gig economy workers is this. Predominantly, service providers often treat the gig workers as employees in terms of the control on working hours, wages, etc., exercise over them, but to contrast without providing with any other employee benefits like insurance, medical benefits, an employee provident fund, bonuses or gratuities, etc. “A survey conducted by a Delhi-based NGO, among more than 5,000 gig and platform workers across 32 cities in the country has found that 85% of them work above eight hours a day as drivers and riders and within that, 21% work sweat it out for more than 12 hours a day. A whopping 65% of women who responded to the survey said they felt unsafe in their jobs”.⁵ “Gig workers in India claim that the poor remuneration frequently forces them to put in more than 8 hours a day and work every day of the week. For actual problems, gig workers do not have access to a proper Grievance Redressal Mechanism”.⁶ Due to their inability to negotiate and unclear professional path, receive a steady salary, etc., they continue to be financially vulnerable⁷.

PRESENT SCENARIO OF GIG WORKERS IN INDIA:

"Unorganised workers, gig workers, and platform workers are peas in a pod, not literally but the problems they face are quite similar". By 2025, 15% of the world's workforce is predicted to work in the gig economy, according to a forecast published by the International Labour Organization (ILO)⁸.

In India, it is observed that only 8% of the workers are working in the organized sector whereas more than 90% of the workers are sticking themselves to informal sector or unorganised sector. While stating this, the present scenario of gig workers is evident. As the government, fronting the flexibility in the gig work,

Majorly places the informal sector outside the reach of any social security benefits such as medical benefit and pension schemes, provident fund benefits, etc., “According to a Digital

⁵ The Hindu, Published on 08 March 2024, - New Delhi, <https://www.thehindu.com/news/national/85-of-gig-workers-work-for-more-than-8-hours-study/article67926096.ece>

⁶ Ibid., Pg No. 3

⁷ Ibid.,

⁸ Ibid.,

Future Society report (2019), India is the second-largest freelancer market, and this app-based technology does away with the middleman”.⁹ The gig economy used the carrot-and-stick approach to hire which means that the economy offers people things in order to persuade them to do something and then punish them if they refuse to do it¹⁰.

CONSTITUTIONAL PROVISIONS RELATED TO LABOUR:

In India, the duty of the State is to ensure and formulate the labour rights which is enshrined in Part-IV of the Constitution of India, 1950 which deals with the Directive Principles of State Policy (DPSP), specifically through Articles 39, 41, 42, 43, and 43A¹¹. Articles 19, 23, and 24¹² are the fundamental rights guaranteed to every citizen.

LACUNAE OF NEW INDIAN LABOUR CODES:

According to the new Code, the Central Government can formulate suitable welfare schemes for the unorganized sector from time to time on issues about life and disability, death, health and maternity benefits, old age protection, and so on. However, the vast majority of gig workers fall under the unorganized sector, hence deprived of the ‘Employees Provident Fund’ and the Employees’ State Insurance Schemes¹³. They are deprived of some social security

⁹ Digital Future Society, Annual Report 2019, Digital Future Society Think Tank, published on February 2020.

¹⁰ Akshay Luthra and Akshita Singh, Emerging challenges in Labour Laws, Jan 5, 2022.

¹¹ Constitution of India, 1950 – Directives of State Policy- Article 39 (a) - that the citizens, men and women equally, have the right to an adequate means of livelihood;

Article 41: Right to work, to education and to public assistance in certain cases.- “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”

Article 42: Provision for just and humane conditions of work and maternity relief.- “The State shall make provision for securing just and humane conditions of work and for maternity relief”

Article 43: Living wage, etc., for workers.—“The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas”

Article 43-A: Participation of workers in management of industries.- “The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry”.

¹² Constitution of India, 1950 – Fundamental Rights - Article 19: Protection of certain rights regarding freedom of speech, etc.- (1)“All citizens shall have the right- (c) to form associations or unions”

Right against Exploitation - Article 23: Prohibition of traffic in human beings and forced labour.- (1)“Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”

Article 24: Prohibition of employment of children in factories, etc.- “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

¹³ Ibid.,

benefits available to the organized sector. These benefits could range from insurance and maternity benefits to pension and gratuity, typically partially funded by the employer¹⁴. The gig workers are “independent workers”, the minimum wages does not apply to gig workers. The new labour codes should be aimed to fulfil all the gaps left in the previous legislation, but the emerging workforce does not get the minimum wages under the new wage code. Gig workers deserve basic market protections like any other employee. The existing regulatory initiatives mostly concern consumer protection issues and eliminate unfair competition among sectors¹⁵.

The Code on Social Security is an Act that amends and consolidates the laws relating to social security and extends social security to all employees and workers either in the organised, unorganised or any other sectors¹⁶. It attempts to fulfil the long-standing requests and demands of three categories of workers: unorganised workers, gig workers, and platform workers. Under the Code, an “employee”¹⁷ has been defined as a person working in an establishment, other than Apprentices, employed on wages to do *inter alia*, skilled, semi-skilled, and unskilled work, whether terms of employment are implicit or express. As opposed to a single definition of worker, the Social Security Code differentiates between different types of workers such as unorganized worker, gig worker, etc. and defines them separately¹⁸.

ELUCIDATION OF “GIG WORKER”:

Under Section 2(35) of the Social Security Code, a gig worker is “a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship”¹⁹. By distinctly and meagrely defining the terms “unorganized sector” and “unorganized worker”, the Social Security Code has effectively refrained the cogency of the definition of a gig worker to the unorganized sector. Nonetheless, the benefits available under the Social Security Code can be enjoyed by the gig workers, barring workers in the unorganized sector. To achieve this, the gig workers primarily to be

¹⁴ Ibid.,

¹⁵ Ibid.,

¹⁶ Preamble of Code on Social Security, 2020

¹⁷ Code on Social Security, 2020-Section 2(26)

¹⁸ Rajrishi Ramaswamy & Dr. Anuradha Binnuri (2023), An analysis of the impact of India’s Labour Codes on its organized and unorganized sectors, Cogent Social Sciences, 9:1, 2238458, DOI:10.1080/23311886.2023.2238458

¹⁹ Code on social security, 2020

removed from unorganized workers.

AMBIGUITIES IN RECOGNITION OF THE GIG WORKERS IN INDIAN LEGISLATIONS:

After the impact of COVID-19, the gig economy is getting more developed and a person getting into the gig economy has also increased in Indian society because of their hardship. “From 2016 to 2021, the gig economy in India is projected to expand at a compound annual growth rate (CAGR) of 17%”.²⁰ So the Parliament introduced the New Labour Code which is considered to be the Biggest Labour Reforms. By enacting the Social Security Code, 2020 “gig workers” and “Platform workers” are recognised as “Unorganised workers”. But this recognition falls short of being sufficient enough for the development and welfare of the Gig workers. However, the recognition is still under some lacuna and this gap should be filled by the interpretation done by the court as per power given under Article 141²¹ of the Indian constitution²². The fact that the code continues to lack any form of social security benefits for the gig workers remains highly controversial.

The Unorganized Worker’s Social Security Act, 2008 does not define the term “worker” but only defines what the unorganized sector is that too in arbitrary and restrictive terms²³. The Act excluded gig workers from the scope of social security and benefits. “Since then, this model of work has further thrived due to its intrinsic characteristics of flexibility (afforded both to platforms/aggregators and workers), low entry barriers for workers, digitization, an ambiguous regulatory framework, and, operational efficiency”.²⁴ “The Act merely defines “unorganized worker” and applies the definition to all workers in the sector”.²⁵

MISINTERPRETATION OF “INDEPENDENT WORKERS” AND “EMPLOYEES”:

The main problem is that gig workers are mostly considered as “independent workers” and not as “employees” in the traditional sense. In the traditional employer-employee relationship

²⁰ P. Karun Kumar, Gig Workers: Challenges and Legal Recognition in India, International Journal for Multidisciplinary Research, Volume 6, Issue 2, March-April 2024, E-ISSN: 2582-2160, <https://doi.org/10.36948/ijfmr.2024.v06i02.15836>

²¹ Constitution of India, 1950 – Article 141: Law declared by Supreme Court to be binding on all courts. –“ The law declared by the Supreme Court shall be binding on all courts within the territory of India.”

²² Ibid.,

²³ Ibid.,

²⁴ Ulka Bhattacharyya* & Soumya Jha, Understanding Social Security for Gig Workers: Analyzing Recent Developments, NLIU Law Review, Volume XI, Issue 1, December, 2021.

²⁵ Ibid.,

it is understood that the employee is the one who does the work given by the employer who takes control of what he does. On the contrary, independent workers also work for the employer, but the employer here takes control only over the work, not on the method of work being done by the employee. Thus, gig workers are mostly described as “partners” and not “employees” or “workmen” under any of labour legislations.

OBSTACLES STUMBLE ON GIG WORKERS:

Central Government Schemes under Section 45: Section 45 of the Social Security Code enables “the Central Government to frame schemes for unorganized workers, gig workers, and platform workers and the members of their families for providing benefits admissible” (emphasis added). As the section, clearly puts the word “*may*”, the Social Security Code has left the discretion to the Central Government to enact the welfare scheme for the workers. Even though, the enactment of such schemes is not mandate, however government shall be concerned about the development of their livelihood. “It is therefore imperative that this position be changed and a more forceful mandate be imposed on the Central Government, in furtherance of not only the objectives of the Code, but also of the Constitutional provisions in that regard”.²⁶

LACK OF LIMPIDITY IN THE PROCEDURE:

Registration Procedure: The registration procedure envisaged under Section 113 which provides for the Registration of unorganised workers, gig workers and platform workers under Social Security Code has been borrowed from Section 10 of the Unorganized Worker’s Social Security Act, 2008 (UWSSA) which provides the Eligibility for registration and social security benefits with a few additions being made. “In essence, the provision provides that to avail the benefits under the Social Security Code as well as the schemes formulated by the Central Government for the unorganized workers, they are to be mandatorily registered. The remaining procedure entails the workers to make an application for registration to the Central Government by furnishing *inter alia*, his Aadhaar card”.²⁷

²⁶ Ibid.,

²⁷ Ibid.,

NITI AAYOG REPORT 2022²⁸:

“The report on the gig economy projects that by 2030, there will be 2.35 crore gig workers. In terms of expertise, the number of gig force workers stated by NITI Aayog is as follows: 31% of workers are in low-skilled jobs, 47% are in medium-skilled employment, and 22% are in high-skilled work. This creates the need for the recognition of gig workers in the Indian society”.²⁹ “According to the NITI report, it is estimated that in 2020-2021, 77 lakh workers were engaged in the gig economy and they constituted 2.6 percent of the non-agricultural workforce or 1.5 per cent of the total workforce in India”.³⁰ But, the report does not include anything about the cases so far filed by the workers for the violation of fundamental rights and role of the judiciary in deciding the cases.

ROLE OF THE JUDICIARY IN THE EMERGING ISSUES OF GIG WORKERS:**DAILY RATED CASUAL LABOUR VS. UNION OF INDIA:³¹****Facts:**

The appellants were Daily Rated Casual Labour employed under Postal and Telegraphs Department through Bhartiya Dak Tar Mazdoor Manch, National Federation of Postal and Telegraphs employees through its Secretary General. The labour force is divided into three broad categories of skill levels: skilled, semi-skilled, and unskilled. The majority of the unskilled labour is performed by safari workers, assistants, peons, and other individuals who perform cleaning, digging, sweeping, and other similar works. Semi-skilled labourers include draftsmen, carpenters, wiremen, A.C. mechanics, and others with technical experience but no degree or diploma. Skilled labour comprises employees who hold requisite degrees, diplomas, or certificates. The principal complaint raised by the employees was that, even though they have been working as casual labourers for the past ten years, the pay is very low and pitiful. The salary is very less while comparing with the regular employees who have been working in the same Post and Telegraph department mentioned above.

Secondly, no proposal for the scheme has been drafted by the Central Government and

²⁸ NITI AAYOG report which was established in 2022 - “India’s Booming gig and Platform economy”

²⁹ Ibid.,

³⁰ Ibid.,

³¹ 1987 AIR 2342

consequently, they have been denied benefits, such as pensions, increments, leave facilities, etc., but the said benefits are enjoyed by the regular workers working there.

The casual workers filed this petition allegedly that the Union government is exploiting them³².

Issues³³:

The petitioners brought the following matters before the Union of India in their writ of mandamus:

1. To mandate that the Daily Rated Casual labourers in the Posts and Telegraphs Department get the same compensation for equivalent work as the department's permanent employees.
2. To provide the Union of India instructions to take on Daily Rated Casual Workers in the P&T Department who have been working continuously for longer than six months.

Judgement:

Violation of Articles 14 and 16 of the Constitution³⁴ - It is implausible to classify employees as either regular or casual workers to pay less than the minimum pay for the regular cadres employees.

Violation of Sections 37, 38(2), and 39(d) of the Constitution – In particular, the State "shall endeavour to eliminate inequalities in status, facilities, and opportunities, not only among individuals but also among groups of people residing in different areas or engaged in different vocations," as stated in Article 38(2).

Moreover, the State should guarantee "that there is equal pay for equal work for both men and women" in accordance with Article 39(d)". The state can at least ensure the minimum pay and

³² <https://www.the-laws.com/Encyclopedia/Browse/Case?caseId=007891577000&title=daily-rated-casual-labour-employed-under-pandt-department-vs-union-of-india>

³³ P. Karun Kumar, Gig Workers: Challenges and Legal Recognition in India, *International Journal for Multidisciplinary Research*, Volume 6, Issue 2, March-April 2024, E-ISSN: 2582-2160, <https://doi.org/10.36948/ijfmr.2024.v06i02.15836>

³⁴ Constitution of India, 1950, Fundamental Rights, Article 14 – Equality before law.— “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India” and “Article 16 - Equality of opportunity in matters of public employment.”

such denial amounts to exploitation of labour. The petitioners was working under the Postal and Telegraphs Department for almost a year but not working continuously, and the petitioners were rendering the same services as the regular staff. As a result, individuals can request protection and assert that they are the target of discrimination under Article 37³⁵ of the Constitution.

From these inferences court gave the following judgement³⁶:

1. The Union of India and the other respondents to pay wages to the workmen who are employed as casual labourers belonging to the several categories of employees referred to above in the Postal and Telegraphs Department at the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres but without any increments.
2. The petitioners are entitled to corresponding Dearness Allowance and Additional Dearness Allowance, if any, payable thereon. Whatever other benefits are now being enjoyed by the casual labourers shall continue to be extended to them.
3. The respondents were given instructions to create a plan that would take in casual employees who had been employed by the department on a regular basis for more than a year.
4. The judgement ordered all General Managers Telecom to increase the rates of daily wages for the casual/semi-skilled/skilled labour and all the employees to be employed on daily wages only.

Note: In this case the casual workers are considered to be non-platform gig workers.

COMMERCIAL DRIVERS WELFARE ASSOCIATION VS UNION OF INDIA:³⁷

Facts:

A writ petition was filed by the group of Uber and ola drivers in the Delhi High court on 2017.

³⁵ Constitution of India, 1950, Article 37 - Application of the principles contained in this Part.—“The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”

³⁶ Ibid.,

³⁷Writ Petition (C)No. 3933 of 2017

They filed this petition stating that they were being subjected to exploitation with regard to pay, working, benefits. Through this petition, drivers asked the court to determine the legal status of workers. The petition also stated that the drivers were denied of their fundamental rights under the labour laws and Constitution of India. The Labour laws referred to in the petition are the Workman's Compensation Act 1923, Payment of Wages Act 1936, Employees' State Insurance Act 1948, and the Employees Provident Funds Act 1952.

Issue:

Whether Uber and Ola drivers were only acting as online conduits for the riders or the drivers were “employees” and entitled to the benefits under various labour laws?

Finding:

Prior to the petition coming before the court, the claimant withdrew it, instead deciding to approach the government through social dialogue efforts pursuant to the Industrial Disputes Act 1947³⁸.

The Judgement or any order related to this petition cannot be found as this petition is withdrawn before the date of hearing of the petition.

Comment:

In the above said petition, the petitioners requested Union of India, the Labour Department, and the Transport Department, to set up a committee for the purpose of monitoring the implementation of said labour laws. The Uber and Ola drivers are “workmen”, should come within the scope of Industrial Disputes Act. The new question arises frequently before the court as the gig workers issues, including hiring, termination, service conditions, and dispute resolution mechanism and so on. “It is perhaps the first time that complex questions involving the legal regulation of the “**gig economy**” are coming before the Indian Courts”.³⁹ The gig workers face stigma in the society and judiciary is pertaining to reckon on it.

³⁸<https://www.biicl.org/gig-workers-litigation-database/commercial-drivers-welfare-association-v-union-of-india-2017>

³⁹By Gautam Bhatia, Delhi High Court to Decide if Uber/Ola Drivers are Employees :: ECJ Advocate-General's Opinion on Uber as a Transport Service, Employer-Employee Relationship, Sharing/Gig Economy, 2017 May 12th; <https://indiapublicsphere.wordpress.com/2017/05/12/delhi-high-court-to-decide-if-uberola-drivers-are-employees-ecj-advocate-generals-opinion-on-uber-as-a-transport-service/>

AYANTIKA MONDAL VS. STATE OF KARNATAKA:⁴⁰

Facts:

The petitioner has filed this petition seeking for the protection of gig workers. The regular employees in the formal sector or private sector of the IT-based platforms enjoy the protection of laws, whereas the gig workers who are key contributors to the functioning of the IT based platforms have been denied of the protection of any statute or any scheme of the government. The petitioner through this petition asks for the statute that ensures the rights and protection of laws.

Prayer⁴¹:

1. To issue the writ of mandamus enjoining the State Government to enact a statute for the protection of the gig workers.
2. To issue the writ of mandamus directing the State Government to issue necessary directions by framing guidelines to ensure that companies running IT platforms pay salary to registered gig workers and also the a specific statutory power must vest in the State Government.

The petition was rejected with no reason stated.

Criticism:

The impact of COVID-19 has had adverse effects in the society. The gig workers being the most affected group during the pandemic. The gig workers do not have any statutory protection or welfare scheme; hence through this petition they make an appropriate representation to the Government. However, the gig workers are not being served what they have prayed for to date.

THE INDIAN FEDERATION OF APP-BASED TRANSPORT WORKERS, (IFAT) VS. UNION OF INDIA⁴²:

⁴⁰ Writ Petition No. 6757 of 2020

⁴¹ Ayantika Mondal vs State of Karnataka, dated 12 May, 2020, available at https://www.livelaw.in/pdf_upload/pdf_upload-374729.pdf

⁴² W.P.(C) 1068/2021, <https://www.scobserver.in/reports/gig-workers-access-to-social-security-the-indian->

Facts:

Tulasi Jagdish Babu, an Ola taxi driver, and Kaushar Khan, a former Ola and Uber driver, filed a petition with the Supreme Court on behalf of the Indian Federation of App-based Transport Workers, claiming that the agreements between service aggregator companies and gig workers violate Articles 14, 21, and 23 of the Indian Constitution of 1950. A labour union called the Indian Federation of App-based Transport Workers (IFAT) was established in 2019 to represent employees of ride-sharing companies including Ola, Uber, Swiggy, and Zomato⁴³.

Issues:

1. Right to Social Security is a guaranteed constitutional right for all working people whether in the formal or informal sectors.
2. “Gig workers” and “Platform workers” are in an employment relationship with the aggregators and there are failed to be recognised as “workmen” within the meaning of all social security legislations. It is the violation of right to equality under 14 of the constitution.
3. The State fails to register gig workers as “unorganised workers” and does not provide them social security which is a violation of Article 21 of the Indian Constitution. The denial of Social Security by state has resulted in their exploitation through forced labour which violates Articles 23 and 14 of the Constitution.
4. To order the state and make the gig workers register on the E-SHRAM site.
5. State to supply essential food grains and the PM Garib Kalyan Ann Yojana to all Gig workers, whether they have ration cards or not.
6. State Government shall work accordingly, to make sure that all the financial institutions are working as said by the RBI circulars that soften loan repayments and gig workers’ cars are not confiscated as loan repayment default.
7. Gig workers’ rights to equality, life, adequate standard of living, and freedom from

federation-of-app-based-transport-workers-ifat-v-union-of-india-writ-petition-summary/

⁴³ Ibid.,

being compelled to labour have been infringed by the responding service aggregators. It is mostly contract work and gig workers are in the position of either “take it” or “leave it”. The gig workers have no choice but to sign it but mostly the contract is against public policy.

8. To order the service aggregators to adhere to the Motor Vehicle Aggregator Guidelines, 2020’s insurance, set working hours, minimum remuneration, and grievance redressal criteria.

Judgement:

The court decision was that the gig workers will fall under the employer-employee relationship, so they are entitled to all the rights which are given to traditional workers who fall under the provisions of social security legislation.

Criticism:

The state neither recognises nor registers gig workers as “unorganised workers”. It is evident through this petition that the petitioners are being denied of fundamental rights and essential social security benefits. Moreover, the Supreme Court expressed clear displeasure at the delay of the state in filing the response. The labour and social security rights for gig workers cannot be denied under the guise of a policy decision if a statutory regime provides such protections. The state cannot take it for granted by showing their disinterest, as it deals with the livelihood of the workers. This thereby leaves the gig workers disadvantaged in the society.

KAVITA S. SHARMA VS UBER INDIA:⁴⁴

Facts:

Kavita S. Sharma is an Advocate by profession for which she needs to frequently travel outside of Mumbai. She booked an Uber car from her residence. An Uber driver’s sheer and deliberate negligent and unprofessional conduct, causing the petitioner to miss her flight. She sued Uber for inconvenience faced and deficiency in service under the Consumer Protection

⁴⁴ Consumer Complaint No. 61, decided on 25-08-2022...

<https://www.sconline.com/blog/post/2022/10/27/dcdrc-consumer-court-uber-india-why-held-liable-for-driver-negligence-missed-flight-chennai-legal-news-updates/> & Nidhi Agrawal and Sukarm Sharma, ‘Kavita v. Uber India: divergence of liability and employment in the gig-economy?’ <https://www.tclcr.com/post/kavita-v-uber-india-divergence-of-liability-and-employment-in-the-gig-economy>

Act.

Issues:

1. Whether the complainant proves that she availed of services from Uber India?
2. Whether the opposite party has given deficient service to the complainant?

Judgement:

The Thane District Consumer Forum in this case, it was decided on October 26, 2022, holding Uber accountable for its drivers. The Consumer forum directed Uber to pay the complainant a compensation along with expenses of this case costs together an amount of Rs.20,000. “Thus, Uber is liable for the negligent acts done by its drivers even though Uber claimed that the drivers are independent contractors and not employees”. It is because “the third party contractor (driver) is appointed and managed by the opposite party (Uber) for providing services to the complainant”. “Thus, the interpretation given in this should be considered by the Indian legislature to make laws recognizing the Gig workers”.

Criticism:

The judgement holds that the Uber liable for the inconvenience and action of the driver. Despite the Judgement, the court does not devolve into employer-employee relationship, or into the question of social security.

UBER INDIA SYSTEM PRIVATE LIMITED VS. UNION OF INDIA:

Facts:

The petitioners were Uber India Systems Private Limited, Pragatisheel Auto Rickshaw Driver and IBIBO Group Private Limited along with Make My Trip (India) Private Limited filed this petition against the Union of India. They challenged Clauses (iii) and (iv) of notification relating to Central Tax (rate) and Clauses 1(i) and 2(i) of the notification dated 18-11-2021 issued by the Government of India, as ultra vires to the Indian Constitution and also to Section 9(5) and 11 of Central Goods and Sales Tax Act, 2017 (CGST Act). The parent notification dated 28-06-2017 relating to Central Tax which provided for unconditional exemption from GST in cases of (i) supply of services by auto rickshaws and (ii) transportation of passengers

by stage carriage other than air-conditioned stage carriage. The said exemption of tax on the 'fare' was available to the individual auto rickshaw driver, bus operator and the ECO irrespective of the mode of booking availed by the consumer, i.e., online/offline or offline agents. The Respondents, then, issued the impugned notification amending the parent Notification and thereby withdrawing the exemption to the Electronic Commerce Operators ('ECOs') granted vide the parent Notification for the services. Thus, with effect from 01-01-2022, with respect to a booking made by a consumer through the electronic platform of an ECO for an auto-rickshaw ride or a bus ride, the 'fare' has become exigible to tax.

Issues⁴⁵:

The petitioners 1 and 2 have challenged the impugned Notifications on four main grounds. They are as follows,

1. The impugned Notifications fail to satisfy the test of reasonable classification under Article 14 of the Constitution as there is differential treatment between auto rickshaw drivers providing services through Petitioner 1 and street-hailing auto rickshaw drivers; it suffers from palpable arbitrariness and not in conformity with the doctrine of level playing field.
2. The petitioners are against public interest and impact the livelihood of the auto rickshaw drivers providing services through ECOs and freedom of choice to the consumers/riders ('consumers'), thereby violating Articles 19(1)(g) and 21 of the Constitution
3. Petitioner 1 is separately charged and liable to GST and there are no other instances of transportations supplied through ECOs being taxed differently such as that levied through the impugned Notifications, therefore, the same is liable to be struck down⁴⁶.
4. Whether the impugned Notifications withdrawing from the ECOs the benefit of exemption from payment of GST on service of transportation through auto rickshaws and non-air-conditioned stage carriage, which continues to remain available to the individual service providers is violative of Articles 14, 19(1)(g) and 21 of the Constitution?

⁴⁵ Ibid.,

⁴⁶ <https://www.sconline.com/blog/post/2023/04/18/delhi-high-court-dismisses-pleas-challenging-notifications-issued-by-union-of-india-imposing-gst-on-uber-ola-rides-in-auto-rickshaws-and-buses-legal-updates-research-awareness-news-law/>

Judgement:

The bench held, that the impugned Notifications are not the violation of rights enshrined under the Articles 14, 19(1)(g), and 21 of the Constitution and fulfill the test of 'reasonable classification' on the basis of the "mode of booking" availed by the consumers. The Respondents can issue the impugned Notifications under Sections 9(5) and 11 of the Central Goods and Services Act, 2017 which are not ultra vires to the said Act, 2017 and the notifications upheld the constitutionality.

Criticism:

The Supreme Court should be conscious of the nature of the gig work and the status of the workers. Gig workers in the state of lack of identity and social security, are being forced to pay CGST. The state didn't ensure the minimum wage to the gig workers, but conformity of tax imposition is done. The workers sought for the justice from the judiciary for the violation of their fundamental rights, but the court disavowed their claims without concern for their livelihood.

CONCLUSION:

The government, judiciary, and stakeholders are likely to continue grappling with issues such as worker classification, social security benefits, taxation, and platform regulation. Balancing flexibility for workers with adequate protections will be crucial to fostering a sustainable and inclusive gig economy⁴⁷. "As is, there are many lacunae in the Indian labour law regime". Despite this, the paper mainly perceives the role of the judiciary in the protection of workers' rights. Looking from that point of view, the judiciary failed to do its duty in rendering justice. The last hope of the gig workers is only in the hands of the judiciary to make the Central Government form a statute or any act. The issue are lack of proper legislation, and non-execution which the workers faced. The Judiciary's role towards the workforce issues may lead to prejudice. As a consequence of inadequate regulation, "Gig workers find themselves working too long hours to meet incentives put forth by the platforms".

The Central Government should be efficient while framing the regulations. The Code on

⁴⁷ Legal Implications of the Gig Economy in India, 2024 July 24th, <https://www.freelaw.in/legalarticles/Legal-Implications-of-the-Gig-Economy-in-India->

Social Security 2020 does not clearly define benefits, welfare schemes or entitlements for gig workers because the definition of gig workers is very restrictive. The code doesn't provide registration process for all the workers and a compliance platform. From this, it is evident that there are numerous issues related to social security legislation. Ambiguity in Chapter IX of the Social Security Code, 2020 which potentially leaves significant portion of the unorganised workers vulnerable. Accordingly, the actual status of the gig worker is unclear, and legislation are contending with the issue to decide on what benefits to be given or not to gig workers. Most of the provisions of the Four Labour Codes address the past demands and discrepancies, acting as restorative justice for the past harms. "Also as per the NITI Aayog, the existing labour laws framework does not encourage the growth of labour-intensive sectors as a matter of scheme or arrangement".⁴⁸ Therefore, gig workers are in a disastrous position every problem needs to be discussed and solved by the Government. If not, in case of workers approaching the judiciary, the court should decide for the furtherance of their livelihood.

⁴⁸ Niti Aayog, Employment (Vision 2020)

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