

---

## **A LEGAL ANALYSIS OF GIG WORKERS' RIGHTS IN INDIA IN THE CONTEXT OF A GLOBALIZED ECONOMY**

---

Shubham Upadhaya, LLM (Business Law), Shoolini University Faculty of Legal Sciences,  
Solani

Poonam Bala, Assistant Professor, Political Science, Himachal Institute of Legal Studies  
Shahpur, (HP)

### **ABSTRACT**

The spread of gig and platform work across India has created more sources of income as well as exposing the workers to massive insecurity. With no minimum wages, social security cover, group rights, or any form of protection, the delivery riders, drivers, and even service providers usually work long hours. Despite the declarations provided by the legislation like the Code on Social Security 2020, its application in real life has been minimal. This paper is a critical analysis of attempts by the courts, states and international precedents to deal with these problems. The paper goes on to show that reform is possible and needed through a comparison between the experience of India and that of other countries. The hypothesis of the central thesis is that India needs to shift to a less authoritarian yet more equitable regulatory framework, by creating a new type of law, level, the mandatory aspect of welfare, and strengthening restrictions. Without such reforms, millions of gig workers will continue to be in a legal grey zone, without labor protection.

**Keywords:** Gig Economy, Platform Workers, Social Security Law, Labour Rights, Digital Labour Platform

**INTRODUCTION:-**

The growth of the gig economy in India has had a fast pace in the previous few years. The apps of delivery, ride-hailing, and any freelance platform now use millions of people as employees. This form of employment is flexible and is an easy way in to the labour market in many cases to the workers. At the same time, however, it reveals weaknesses in the Indian legal system in respect of protection of individuals who are neither conventional employees nor full-fledged autonomous contractors. Such workers do not enjoy the rights that employees are usually entitled to including minimum wage benefits, employment security, and contribution to provident funds. Platforms process and regulate their employment by using rating, punishment and rewards. The Indian government in turn responded by introducing the Code on Social Security, 2020, which is the first law to formally recognize the existence of gig and platform workers. Statutory recognition however is not yet being converted into substantive protection. The Code leaves a majority of the benefits to future schemes leaving it unclear how these are going to be funded and distributed. Courts have also been found to be reluctant<sup>1</sup>. They have also pointed to the imbalance of power in the work mediated by platforms but avoided referring to gig workers as employees. This paper discusses how India had currently been managing this issue, the gaps that may still persist, and lessons that can be learned by referencing to other jurisdictions. The goal entails developing a model that keeps the flexibility of the gig work intact and develops equitable protection.

**Current Legal Framework in India**

The first substantive law in India that recognizes the existence of such workers as gig and platform workers was born in the form of Code on Social Security, 2020. The Code formalized the legal interpretation of who would be considered gig workers and who would be considered platform workers, thus the huge pool of persons, whose income was made based on non-conventional employer-employee relationships, were officially brought to existence. Although this legal recognition is taken to be good news, it is mostly empty because no rights have been enshrined against the workers in this statutory recognition. Rather, the Code transfers the task of drafting future welfare schemes to the state authorities, which excludes any specific guarantees on how or how it is going to be implemented or financed. The key problem of this issue is in the fact that it still exists based on the strict, two ends of the pole approach to Indian

---

<sup>1</sup> Code on Social Security, Ministry of Law and Justice, Government of India, 2020

labour law: either a worker is a so-called employee, who possesses a broad range of statutory rights, or a worker is a so-called independent contractor, who has practically no rights at all. The latter category is usually extended to gig workers who obviously rely on platforms as sources of their income but do not have the rights provided to formal employees. As a result, these employees will not have the mandate of the Minimum Wages Act, 1948<sup>2</sup> and the Industrial Disputes Act, 1947<sup>3</sup>. This exclusion denies them a legal right to fair wage, protection against arbitrary termination and a right to recourse to adjudicative dispute-resolution forums. The exclusion is most significant in social security. Under traditional employment, the organisations have a mandatory duty of meeting the demands of provident funds, health insurance, gratuity and other legal entitlements. The platforms, however, have none of this type of obligation laid on them and, as such, the whole of the financial imperative, such as the obligation to pay its workers, lies on the workers who are often not in a position to meet this imperative.

**Judicial reaction:**

Indian courts have shown a hesitation to take final decisions on whether or not gig employees are employees. Jurists acknowledge that declaring such workers as employees would force companies like Uber, Ola, and Swiggy to provide a complete overhaul of their model of operations. This change may also undermine the leniency upon which the popularity of these sites lies both among the laborers and consumers. Therefore, the courts have chosen to deal with the cases case by case as opposed to issuing a blanket rule. The jurisprudential outcome puts gig workers in an ambivalent status of not completely dismissive or protective, and so providing a balanced intermediary status. Developments have however been few encouraging. As an example, the Karnataka High Court had accepted that the Swiggy delivery partners<sup>4</sup> had some rights, although it did not consider them employees. This statement was a deviance that platforms cannot claim to be absolutely accountable. Further, correspondence adjudication is a matter that is continuously observed in Indian courts across other countries. In *Uber BV v. the decision of the UK Supreme Court. Aslam*<sup>5</sup>, that categorized drivers as workers that should receive minimum wages and paid leaves, now must be viewed as a reference point in India.

---

<sup>2</sup> Minimum Wages Act Government of India, 1948

<sup>3</sup> Industrial Disputes Act Government of India, 1947

<sup>4</sup> *Swiggy Delivery Partners v. State of Karnataka* High Court, 2021

<sup>5</sup> *Uber BV v. Aslam*. UK Supreme Court, 2021

Similarly, the case of *Dynamex* of the California Supreme Court<sup>6</sup> is referred to regularly in the academic community. Such instances demonstrate that the international discourse is shaping juridical discourses in India amid the rate of domestic change being very slow. That is the judicial attitude which is now exhibited, cautiously active, giving but slight recognition to the workers, and avoiding an entire wholesale conferred employee status. This workplace patchwork approach will minimize platform business model so that the millions of employees remain uncertain about their rights. Until such time as Parliament is able to legislate clearer statutory provisions, it is probable that Indian courts will continue working in a gradual fashion, offering some relief to the general problem but not actually solving it.

### **State-Level Initiatives:-**

Since national laws have very low effectiveness in protecting gig workers, a number of the sub national jurisdictions have attempted to enact unilateral actions. The biggest effort so far to date has been Rajasthan passing the Platform-Based Gig Workers (Registration and Welfare) Act in 2023<sup>7</sup>. The act gave birth to a welfare board, which required all gig workers to be registered in the state. In addition, it forced companies to make a small percentage of their income into a pool to provide insurance and other benefits related to accidents. To a large percentage of the workforce, this was the first legal recognition of contributions that they made. Similar policies have been implemented in Kerala, which includes platform workers in the elected boards of welfare and their inclusion with the insurance. Tamil Nadu has already developed a desire to come up with a different piece of legislation; nevertheless, clear stipulations have not been outlined. In the rest of the states, there has been a low level of legislative progress. This means that contract workers in a given jurisdiction can get a very low level of statutory protection but at the same time workers that do similar jobs in other jurisdictions may not be subject to any form of protection. Although the statute in Rajasthan is a significant move, it is admittedly flawed. Withdrawal of crucial questions exist in terms of how the welfare fund will be administered and how much of the corporate contribution will be required in terms of its sustainability. Moreover, there is doubt on whether more states would follow this model or just wait until the federal intervention. The framework that is formulated is thus quite imbalanced. The distribution of job rights is rather determined by the geographic location as opposed to occupational involvement, thus making the system unfair and

---

<sup>6</sup> *Dynamex Operations West Inc v. Superior Court Supreme Court of California*, 2018  
<sup>7</sup> *Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act*. Government of Rajasthan, 2023

unpredictable.

### **Gaps and Challenges**

Although there has been a lot of explanation with regard to gig economy, the Indian legal system is significantly behind. At this time, workers are reduced to a binary system those that are employees and that have statutory protections and the ones that are independent contractors and that are accorded minimal or no protections. The gig workers are in a middle place; they use digital platforms to earn their money yet they are methodically denied the benefits of employees. Therefore, they have an uneven income, the absence of security; they are often deprived of the opportunity to simply ask about the changing of the policy adopted by platforms ad hoc. Another important shortcoming is social security. Under the traditional employment practices, organizations are required to make contributions to provident and health insurance schemes as well as pension schemes. On the other hand, the gig workers do not receive these institutional fails. The platforms dictate that employees are self-employed and hence put the full burden of, and the whole social security requirement, on them. In real-life situation though, most of these workers cannot afford to buy individual insurance covers or put savings towards retirement. Based on this, they are left penniless in case of an accident or even total stop of income. Besides, compensation is always unpredictable. The delivery personnel and drivers are also typically compensated on a per-trip basis which permits the platforms to reduce the rates or discontinue the bonuses without prior warning. This has resulted in the habit of forcing most people to work 12-14 hour shifts just to make a living. This is what makes this situation quite precarious, as occupational risks like road threats, bad weather, and unrelenting algorithmic surveillance are not only making it quite tedious but also making reality extraordinary. Without statutory minimum wages or protection of the workforce, the workforce will always face the threat of uncertainty. Although the law may have certain form of protection measures which are enshrined in the law, the implementation is still suboptimal. One of the main barriers is the absence of the collective voice. Employees still have the legal right to unionize, discuss with employers, or organize strikes, but since gig workers are scattered and separate and they are not legally viewed as a unified body. In spite of the fact that nascent groups and protest movements have been organized, they still have limited power as compared to the significant bargaining power of large technology platforms. These are some observations that underscore the fact that the issue is not about legal recognition. The forcefulness of rights and the reality of bargaining of the labor force are the vital components. Unless alongside

remedial actions on the identified gaps, there is a high possibility of happening that the gig workers will remain vulnerable and uncertain.<sup>8</sup>

### **Policy Proposals and Reforms:-**

However, the statutory recognition of gig workers has so far been only formal. The substantive protective actions are the way to go at this point in time. The greatest change should deal with the classification of workers. Today, gig employees are classified as workers who are either workers or independent contractors, but neither of the two classifications can apply to the working conditions of the former. The intermediate position, which is similar to the worker position used in the United Kingdom, might be an effective solution. This intermediate status grants fundamental rights without subjecting the worker to a full-time employment relationship and it could also be modified to fit India. Other crucial issues include social security. The regular employees have the right to the provision of provident funds, health covers, and pensions but gig workers do not enjoy such benefits. Whereas, Rajasthan has begun ambitious project to have a welfare fund, it is still restricted in one state of county, which offers unequal protection to people depending on them geographical locations. A more fair solution would be the creation of a nationally managed fund that would be financed by the contributions of the platforms. Another problem is that of income volatility. Weekly earnings have a tendency to be highly variable, usually in response to a shift in platform incentive payments. Financial instability would be countered by creating a minimum base payment. Also, the standards of working hours and occupational safety must be introduced to guarantee that workers are not under pressure and have to agree to work under dangerous conditions only to get enough money. The freedom of organisation is lacking. Gig workers are scattered and mostly unfamiliar with each other, having disabilities due to the creation of conventional unions<sup>9</sup>. However, online unions/ associations, mediated by the Internet, are an option. The experience of France with such models proves that collective action also can be possible even without a usual workplace. Any regulatory mechanism cannot work without enforcement mechanisms. Flexibility is attractive to several gig workers, but no one should suffer insecurity at the hands of flexibility. An official platform work dispute resolution body/ tribunal would present a

---

<sup>8</sup> International Labour Organization World Employment and Social Outlook 2021: The Role of Digital Labour Platforms in Transforming the World of Work ILO, 2021

<sup>9</sup> Standing Committee on Labour Report on the Code on Social Security, 2020.Lok Sabha Secretariat, 2020

formal avenue to settle disputes thus enhancing compliance.<sup>10</sup>

## **Conclusion**

There has been a booming growth in the gig economy in India, but the legal structure has been behind in India. Employees take passengers, deliver meals, and carry out a variety of different types of work via application-based services every day, but they are not considered a mainstream aspect of the system to ensure legal protection. The achievement of recognition of gig and platform workers in the 2020 Co-operative Societies and Social Security Code has not been accompanied by tangible wrangles like the wages, insurance or even employment security. Courts have been cautious of the matter in fear that a firm ruling would destabilize the current platform model and have provided only partial developments. Many states like Rajasthan have developed welfare funds; however, protection efforts still depend on jurisdiction, which is a source of regulatory confusion. Basic shortcomings are ingrained: the non-established legality status, the non-existing social job security, the lack of financial stability and relative earnings, and the inability to voice collectively. The inability to address these gaps will merely continue to place gig workers at a disadvantage as they are presented with a significant and growing portion of the labor market but denied the basic rights such as that granted to the rest of the workforce. India is currently standing at the crossroads of either continuing to leave gig workers in this transitory liminal period or instituting wholesale changes to protect them minimally. The course of modern labour is very clear; the issue lies in the fact whether the law system will keep pace with current trends.

---

<sup>10</sup> Singh, Charu "Labour Rights in the Gig Economy: The Indian Experience." *Journal of Indian Law and Society*, vol.12, no. 2, 2021