

Gig Workers: Challenges and Legal Recognition in India

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ABSTRACT

As Gig economy is growing in India, The Gig workers should properly be recognized by the legislation for making the social security and welfare policies for their development. Ambiguity in Identifying and distinguishing Gig workers from other workers including Unorganized workers has become a great challenge to make legislation for the welfare of the Gig workers. The Gig workers who are not clearly defined in the code on social security 2020 have become a great challenge and difficult to keep them under employer-employer relationship which makes legislative body unable to make policies on subject matter relating to social security. The challenge can be removed by the judicial interpretation which becomes the basis for the legislative amendment in the future for the proper legal recognition of the Gig workers in the country. The recognition should be extended to the Sexual Harassment of women at workplace act (prevention, prohibition and redressal) act 2013. So, that the women Gig workers can also be protected against sexual harassment at workplace.

Keywords: Gig workers, Code on social security 2020, Lacuna in Code, Filling Lacuna by Judiciary, Gig workers at workplace, Proper recognition and amendment.

INTRODUCTION:

In modern society of India, the gig workers have become the major groups having major economy of the country. They are Working based on temporary contracts. The contracts are short term and the relationship between the gig workers and the employers falls under independent contractor and not under the employer-employee relationship. This basic understanding keeps the gig workers away from the labour and Industrial laws. Therefore, there is no laws protecting gig workers from non-payment of minimum wages under the Minimum Wages Act 1948, non-Payment of Bonuses under the Payment of Bonus Act, non-payment Employee Provident Fund under the Employment Provident Fund Act, non-Payment of Gratuity under the Payment of Gratuity Act, not providing Equal Remunerations, Medical and Insurance Benefits. Gig workers are not provided with safety measures and promoted the health and welfare of the workers given under The Factories Act of 1948, and Gig workers and their families are not provided some relief in case of an accident that may occur during their employment and cause death, or disablement of workmen given under the Workmen's Compensation Act of 1923 this is because most of the gig workers do their work at home. There are no provisions for the formation and registration of trade unions under the Trade Unions Act of 1926 for the purpose of collective bargaining. Thus, the Gig workers will not fall under the purview of the definition of workmen given in the labour legislations such as section 2(g) of trade union act, Section 2 (s) of Industrial Disputes Act of 1947, Section 2(i) of factories act 1948, section 2(n) of workmen compensation act, 1923. Gig workers usually use online platforms or application

programs to levy their services to the service seeker. The service provided by the gig workers has increased because of the drastic development in technology and internet sources. Another reason for the increase in the gig economy is the gig workers is method of work and flexibility in worktime and the gig workers perform different number of jobs and not fixed works with fixed salary. The remuneration of the gig workers are based on the completion of job asked by the people through online platforms like uber, Zomato, Flipkart, etc. The remuneration of each work changes for each time based on the nature of work asked by the public. This paper illustrates the challenges in the gig economy and challenges faced by the gig workers and also explains about the lacuna in the new labour legislation code 2020 recognizing the gig workers.

BACKGROUND OF THE STUDY

Growth of gig economy in the Indian society

The reason for the growth of gig workers in the Indian Society is based on the following aspects:

The rise of mobile technology and the internet: The gig economy has expanded because it is now easier for employees and businesses to communicate online, mostly because of the widespread usage of smartphones and high-speed internet.

Economic Liberalization: The rise of the gig economy has been facilitated by the Indian government's economic liberalization policies, which have increased market openness and competition.

Growing Need for Flexible Work: The gig economy is especially appealing to Indian workers who are looking for flexible work hours that allow them to balance their personal and professional lives.

Factors related to the population: As they seek to supplement their wages, a sizable and increasing number of young, intelligent, and aspirational Indians are the driving forces behind the gig economy.

E-commerce Growth: Due to India's rapidly expanding e-commerce sector, there is a greater need than ever for delivery and logistics services, which has contributed to the growth of the gig economy in these areas¹.

Need for recognition of gig workers in Indian legislations

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). In recent times the Gig economy is getting more development and the number of gig workers have been increased after the impact of covid-19 in the Indian society. The hardships in the pandemic period paves ways for the development in the gig economy by way of gig workers. From 2016 to 2021, the gig economy in India is projected to expand at a compound annual growth rate (CAGR) of 17%². So, the parliament and state legislature give recognition to the gig workers by way of enacting the code on social security 2020, under concurrent list. But this recognition is not sufficient enough for the development of the Gig workers, because this 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 141 of the Indian constitution.

A NITI (National institution of transforming India) Aayog 2022 report on the gig economy projects that by 2030, there would be 2.35 crore gig workers. Gig or contractual hiring is predicted to rise from 8 percent in 2022 to 9 percent on average of all hiring for the workforce in 2023. The automotive,

¹ "Rise of the Gig Economy in India", Drishti IAS 2023, <https://www.drishtiiias.com/daily-updates/daily-news-editorials/rise-of-the-gig-economy-in-india>

² Akshay Mohan Gupta, 'How new Labour Codes in India protect rights of gig workers in Indian economy' Tax Guru, https://taxguru.in/corporate-law/labour-codes-india-protect-rights-gig-workers-indian-economy.html#google_vignette

engineering & manufacturing, GIC, and IT industries will be the main employers of gig labor. 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. The phenomenal growth of gig economy workers—such as food delivery drivers and taxi drivers—who are vital to the ecosystem's functioning is largely due to startups. According to studies by the Boston Consulting Group, the gig economy is more prevalent in developing nations (5–12%) like India than in developed ones (1-4%). The majority of gig workers work in lower-paying industries including delivery, ridesharing, and health and care. Based on this report it is evident to say that the gig economy is the future of India and therefore its recognition in par with the other labours who will fall under the employer-employee relationship.

RECOGNITION AND LACUNA OF GIG LEGISLATIONS:

The provision recognizing the gig workers is section 2 (35). According to this section "gig worker" means a person who performs work and earns from such work which is outside of traditional employer-employee relationship.

The provision recognizing the platform work is section 2 (60) "platform work" means a work arrangement outside of a traditional employer-employee relationship in which organizations or individuals use an online platform to access other organizations or individuals to provide specific services or any such other in exchange for payment.

Thus, the Gig workers include two classes platform workers and non-platform workers. Platform workers include uber driver, Zomato delivery, etc. Here the customer avail services through the online platform such as Uber, Zomato, Amazon, etc.

section 2(86) of the code on social security 2020. This section speaks about the unorganized workers who are self-employed workers who will not fall under the Industrial dispute act and chapter III to Chapter VII of this code on social security 2020. This definition is still ambiguous for the interpretation to include gig workers under the word unorganized workers. The unorganized workers are not defined as workers outside the traditional employer-employee relationship, but they are exempted from benefits given to workers who fall under the employee-employer relationship given under chapter III to chapter VII of this code. The gig workers who fall under the purview of contract for service will be different from the employees fall under the contract of service. So, the word unorganized workers who fall under the contract of service can be interpreted to include gig workers. Unorganized workers are self-employed workers who may work from home or through any online platforms. Thus, the unorganized workers can be again divided to include non-platform workers, platform workers and gig workers. Chapter IX of the code on social security 2020 deals with the provisions relating to the social security of unorganized workers including gig workers and platform workers. But there is ambiguity in determining the difference between gig workers, platform workers and unorganized workers. Section 109 of the code gives power to central government and state government to make schemes and regulations for the unorganized workers. The scheme is based on the following subject:

- (1) By The Central Government (i) life and disability cover; (ii) health and maternity benefits; (iii) old age protection; (iv) education; and (v) any other benefit as may be determined by the Central Government.
- (2) By The State Government (i) provident fund; (ii) employment injury benefit; (iii) housing; (iv) educational schemes for children; (v) skill upgradation of workers; (vi) funeral assistance; and (vii) old age homes.

Section 114 of the code gives power only to central government to make schemes and regulations for the gig and platform workers. The scheme is based on the following subject,

(a) life and disability cover; (b) accident insurance; (c) health and maternity benefits; (d) old age protection; (e) crèche; and (f) any other benefit as may be determined by the Central Government.

The registration of the unorganized workers, gig workers and platform workers can be made based on section 113 of the code on social security 2020. The eligibility of the unorganized workers, gig workers and platform workers are 16 years, and the registration is based on the Aadhaar number.

The problem in the provisions is there is no clear demarcation to identify the difference between gig workers, platform workers and unorganized workers. The three types of workers are merged and mixed together and unable to separate them. For example, an Uber driver who is a person falls under the unorganized worker, but his job is based on the online platform so he will also fall under the purview of platform worker. Here the platform aggregator is considered to be an independent contractor and therefore there is no employer-employee relationship between gig workers and the aggregators. So, the act is still under lacuna in determining Uber driver as an unorganized worker or gig worker or platform worker. Then, the scheme of benefits given under this code on social security 2020 not explaining about the minimum wage for the gig and platform workers. The minimum wage is not fixed in the act. The reason for this is, the work done by the gig and platform worker is task based and not permanent fixed work. So, the work done by the gig and platform workers arises from an individual separate contract and thus makes them fall under the purview of contract for service.

There is still no concept of bonus, provident fund, gratuity for the Gig workers and platform workers. The act of 2020 is still silent in enforcing the rights of gig workers and there is no provision for enforcing rights by moving into court and there are no implemented regulations and schemes in the act. The act giving only to power to make schemes and the act itself not explicitly providing any scheme. The act still does not give provisions for job security for the gig and platform workers and there is no provision for the formation of union by gig and platform workers. There is no provision regulating the proper working hours for the gig workers. The work can be flexible in time, but the entire time should not exceed the value which amounts to exploitation.

NOTE:

No proper recognition to gig workers leads to the exploitation of the labour which leads to constitutional violation. The act of social security is violating article 14, 16 and 23 of the Indian constitution. The current scenario resembles the past in which labour is extracted and separated from the life of the worker.

CONTRACT OF SERVICE AND CONTRACT FOR SERVICE:

The gig workers and platform workers will fall under the category of contract for service based on their nature of work. The nature of work is temporary (part time), task to task based, freelancing, work from home, etc. But this nature only is not sufficient to identify the work done by the gig workers as contract for service. The main test is Supervision and control test³. The gig and platform workers are fixed with their wages based on the platform under which they are working. The platform employer fixes the wage based on the task (work) given to them. So, through online platform the gig workers and platform workers are working under the control and supervision of the Application program (Uber). The App fixes the

³ Sushilaben Indravadan Gandhi v. New India Insurance Company Limited AIR 2020 SUPREME COURT 1977

wages for the Uber driver, it also fixes the route for the destiny. If the uber driver is not following the instructions of the App then he can be made liable. Based on this Concept we can be able to say that the control and supervision is always vest with the platform service provider. So, the gig workers are under the control of their working platform. So, they should fall under the employee-employer relationship. So, the lacuna in the legislation should be filled. Until the lacuna is filled by the legislatures the court has the duty to fill in the lacuna (gaps) by way of liberal and transformative interpretation.

In the case of non-platform gig worker, the control is vest with the head of the management for example in the case part-time professor the control is vest with the head of the department. So, still the relationship between the gig worker and the employer falls under the contract of service that is under employee-employer relationship.

Therefore, the gig and platform workers are entitled to receive all benefits which are given to the traditional workers who fall under the employer-employee relationship. The benefits include, minimum wage, provident fund, maternity benefit, workman compensation, disability benefit, accident claim, etc.,

Thus, the contract between the customer and platforms is considered to be contract for service and therefore if there is any deficiency in the service then the platforms such as uber will be liable under the consumer protection act 2019. Then, the contract between the platforms and workers are considered to be contract of service and they will not fall under the consumer protection act so, the workers are treated as the normal Wokers who will fall under the employer-employee relationship and their liability is fixed by the principal agent relationship according to the maxim qui facit per alium facit per se (anyone who does the act by others is the act done by himself). Hence, the liability of the platforms can be fixed by the vicarious liability based on the acts done by the workers belongs to the platforms.

Therefore, the customer has the option to sue the platforms in case of deficiency under consumer protection act 2019 and the workers have the right to sue the platforms for the benefits which must be provided for the normal workers who will fall under the employer-employee relationship.

FILLING THE LACUNA IN LEGISLATION BY JUDICIARY:

The court has recently interpreted the provisions and declared that the gig workers will fall under the employer-employee relationship. The examples for the interpretations are as follows:

Daily Rated Casual Labour v. Union of India⁴

Facts:

Along with another petition filed by the National Federation of P&T Employees through its Secretary-General and another, this one was submitted by the Daily Rated Casual Workers to the Posts and Telegraphs Department. The Court combined these writs applications into one. The labor force is divided into three skill levels: skilled, semi-skilled, and unskilled. The majority of the unskilled labor is performed by safari workers, assistants, peons, and other individuals who perform comparable tasks like excavating and carrying cargo. Semi-skilled laborers include draftsmen, carpenters, wiremen, A.C. mechanics, and others with technical experience but no degree or diploma. The skilled labor pool comprises employees with the necessary degrees or certificates. The main complaint raised by the employees was that, despite having worked for the department for the previous ten years, their pay was pitiful.

However, in addition to their high salary, permanent workers in the Posts and Telegraphs Department also received superior perks and allowances. Even at the time the Union Government developed the schemes,

⁴ 1987 AIR 2342

they were limited to covering ordinary workers and did not include a way to permanently integrate them into the organization. Even the perks that other permanent workers received, such as pensions, raises, and paid time off, were denied to them. They delivered the government's and their department's directives, which stipulated that only skilled or semi-skilled workers would receive financial advantages and pay increases.

Issues:

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

1. To mandate that the Daily Rated Casual laborers 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 - In this instance, it is untenable to classify employees as either regular or casual because the lowest cadres of the department receive less money than regular employees are required to make.

Violation of Sections 37, 38(2), and 39(d) – In particular, the State "shall endeavor 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 cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the government may not be compelled to extend all the benefits enjoyed by regularly recruited employees," even though these directive principles are not yet legally binding. The petitioners had been employed by the department for almost a year, and they were offering 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 37 of the Constitution.

India is a party to the International Covenant of Economic, Social, and Cultural Rights, 1966, and is required by its Article 7 to provide fair pay and equitable compensation for equal labor. As a result, the State is required under this agreement to guarantee the workers a fair salary and benefits. From these inferences court gave the following judgement:

1. Working under the Posts and Telegraphs Department, the Daily Rated Casual Laborers performed the same tasks as the regular employees. As a result, starting from the moment a writ petition is filed with the Supreme Court, they are entitled to the minimum wage specified in the pay scales, but without any raise. Additionally, the benefits of the dearness allowance and any additional dearness allowance that may be receivable thereupon were granted to the petitioners.
2. 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.

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

The Indian Federation of App - based transport workers, (IFAT) vs. Union of India⁵**Facts:**

⁵ Gauri Kashyap, 'Gig workers' Access to Social Security: Writ Petition Summary (The Indian Federation of App-based Transport Workers)' <https://www.scobserver.in/reports/gig-workers-access-to-social-security-the-indian-federation-of-app-based-transport-workers-ifat-v-union-of-india-writ-petition-summary/>

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 are in violation of Articles 14, 21, and 23 of the Indian Constitution of 1950.

A labor 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 Zomato. IFAT coordinated nonviolent demonstrations in 2020 amid the COVID-19 lockdown, calling for safety equipment and updated payment schedules.

The petitioners ask the court for the following relief:

- A. State that by failing to recognize gig workers as "workers" under social security laws, the Ministries of Commerce and Industry, Labor and Employment, Consumer Affairs, Food and Public Distribution, Electronics and Information Technology, and Road Transport and Highways have violated Article 23.
- B. Order the government to apply Section 2(m) of the Unorganized Workers' Social Welfare Security Act, 2008, which designates all gig workers as "unorganized workers."
- C. Give the government the order to make it easier for gig workers to register on the E-SHRAM site.
- D. Treat gig workers as "front-line workers" and provide them with all advantages that go along with it.
- E. Order the government to supply food grains and the PM Garib Kalyan Ann Yojana to all gig workers, regardless of whether or not they have ration cards.
- F. Give the government instructions to make sure that all financial institutions are adhering to the RBI circulars that soften loan repayment requirements; moreover, make sure that the cars of gig workers are not confiscated or put up for auction as a result of loan repayment default.
- G. State that the gig workers' rights to equality, life, and freedom from compelled labor have been infringed by the responding service aggregators.
- H. Order the service aggregators to deposit a portion of their yearly revenue, with the government providing funding in order to support social security programs.
- I. Order the service aggregators to adhere to the Motor Vehicle Aggregator Guidelines, 2020's insurance, set working hours, minimum remuneration, and grievance redressal criteria.
- J. Order the service aggregators to give monetary assistance to gig workers by December 31, 2021, or when COVID-19 fades.

They ask these based on the following reason which have violated the fundamental rights given in the constitution of India.

1. Gig workers' lack of recognition as "employees" violates their right to equality under Article 14.
2. Gig workers and service aggregators are referred to as "partners" in the contracts between them. According to the petitioners, their connection is similar to that of an employer and employee. In *Dhrangadhara Chemical Works Ltd. v. State of Saurashtra*, the petitioner brings up the ruling that control over the work's execution signifies an employer-employee relationship. The Court held in *Ram Singh v. Union Territory of Chandigarh* that the ability to choose and fire employees, provide compensation, assign tasks, and withhold insurance premiums must all be taken into consideration when determining an employer-employee relationship.
3. The petitioners contend that there is an employer-employee connection since the service aggregators have complete oversight and control over the gig workers. This suggests that gig workers would be considered "workers" for the purposes of receiving social security payments. They cite rulings by the Supreme Court of the United Kingdom and the Court of Cassation, the highest appellate court in

France, when Uber drivers were deemed to be "employees" and the employer-employee connection was acknowledged.

4. Furthermore, the Central Government is required to offer social security programs for unorganized workers by the Unorganized Workers' Social Security Act of 2008. Gig workers will fall within the social security legislation definition of "workers" due to the nature of their jobs and their agreements with service aggregators. But, in contrast to similarly situated people who are acknowledged as "workers," they are at a disadvantage since they are not acknowledged as workers. Their equality is being violated by this.
5. As the Court concluded in *Olga Tellis v. Bombay Municipal Corporation* that the right to life includes the right to a means of subsistence. The petitioners make clear that having a good place to work is part of the right to a means of subsistence. Due to their lack of employment status, gig workers are unable to enforce "fair and decent conditions of work," which violates their right to life and deprives them of social security. Thus, the Right to Life of Gig Workers under Article 21 is violated.
6. According to Article 23, Refusing Social Security Is Equivalent to Exploiting People Through Forced Labor. Service aggregators set guidelines for their employees, including minimum work hours and a code of behavior. Employees are not permitted to turn down jobs or haggle over the cost of each one. The petitioners contend that although the agreement states that employees are free agents, the standard procedure is for employees to "take it or leave it." The petitioners contend that this violates Article 23 of the Constitution since the contracts forbid discussing terms and conditions.

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 were given to traditional workers who fall under the provisions of social security legislations.

Kavita S. Sharma v. Uber India⁶

The Thane District Consumer Forum rendered a landmark ruling in the recent case of *Kavita S. Sharma v. Uber India* ("Kavita Sharma") on October 26, 2022, holding Uber accountable for its drivers. 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. Thus, the interpretation given in this should be considered by the Indian legislature to make laws recognizing the Gig workers.

GIG WORKERS AND THEIR RECOGNITION IN THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013:

There is no protection for women Gig workers under Sexual Harassment of women at workplace act (prevention, prohibition and redressal) act 2013. In the Sexual Harassment of women at workplace act (prevention, prohibition and redressal) act 2013, section 2(o) says about, employees who were fall under employer-employee relationship can get protection under this act of 2013 and section 2(p) says about, the Unorganized workers who can be protected under this act of 2013. But there is no provision for the women Gig workers to get protected under this act of 2013. Now, the legislature has the duty to make an amendment in the code on social security 2020 to include the women Gig workers who are working under

⁶ Nidhi Agrawal and Sukarm Sharma, 'Kavita v. Uber India: divergence of liability and employment in the gig-economy?' <https://www.tcclr.com/post/kavita-v-uber-india-divergence-of-liability-and-employment-in-the-gig-economy>

the control of the employer under the employer-employee relationship. So, that the women workers can be included under the word 'employees' under section 2(o) of the sexual harassment of women at workplace act (prevention, prohibition and redressal) act 2013 for their protection.

FINDINGS AND SUGGESTION:

1. Gig workers are not properly defined in the code on social security 2020, and there is no clear demarcation between Gig workers and Unorganized workers.
2. The definition is based on the nature of work is not sufficient to define Gig workers the definition should be altered by way of proper amendment by considering the control of work by the employer over employee rather considering the nature of work which has made in the case IFAT v. Union of India.
3. There is no policy made under section 114 of the code on social security 2020, because of this lack of distinction which becomes a great challenge to make policies. It was suggested that the government should make policies on social security based on the subject matter given in section 114 of the code on social security 2020.
4. There is no recognition of Gig workers in the sexual harassment of women at workplace act (prevention, prohibition and redressal) act 2013. So, it is recommended to include Gig workers under the word 'employees' in section 2(o) of the act of 2013 by way of proper amendment.

CONCLUSION:

The Indian economy is now greatly influenced by the Gig economy. A recent example of this drastic change in the economy is in 2015, Nidhi Singh and Shikhar Veer Singh, a Bengaluru couple, quit their lucrative careers to launch "Samosa Singh," a cuisine company. Shikhar wanted to establish samosas as a popular snack in the city, thus that's where the concept for the firm came from. To raise money for the startup and expand the kitchen, the couple sold their ₹80 lakh residence. Their firm is now considerably more successful than their prior jobs, turning about ₹45 crores annually and about ₹12 lakhs a day. This profit is not only gained by the idea of the couple but with the help of the employees who had worked behind their success. These employees are Gig workers who is still not properly recognized in Indian legislation. Thus, there is a need for recognition of Gig and self-employed workers in Indian legislation to overcome the problems of insecurity in jobs, instability in income and other social security Issues.

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