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## Examining The Socio-Economic Challenges of Delivery Partners in The Gig Economy: A Critical Analysis of the Social Security Code 2022

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*Have you ever wondered if the dawn of digitalization would thrust the gig economy into unprecedented heights where our cravings can be eased by delivering our favorite food to our doorstep by delivery partners through mobile phones? Are they aware of the socio-economic and legal rights available to them by performing their duty? The Social Security Code, of 2020 was enacted in India aiming to provide social security to the workers in the unorganized sectors; which was later amended in the year 2022 thereby including those working in the gig economy like delivery partners in app-based food delivery platforms. However, the Code is facing challenges in its implementation which spells out a dismal story. This research topic would involve critically analyzing The Code of Social Security (Amendment) Act, 2022, and exploring the socio-economic impact of the gig economy on the delivery partners including issues like job instability, health insecurity, and differences in income, curtailing them from social representation and bargaining. By taking into account the aspects mentioned above, this paper intends to give a clarity and better understanding of the rights and challenges they face. Also, I have tried to come up with the practical and possible measures the government can adopt for the accomplishment of providing social security to these gig workers.*

**Keywords:** *gig economy, delivery partners, amended, economic impact, challenges.*

## INTRODUCTION

In November 2022, the Swiggy employees went on a strike against the exhaustive working hours and demanded high remuneration and labour benefits. On 31st of October 2022, the members of the Food Online Delivery Association made a complaint to the Swiggy office in Kochi on the 'unfair employment conditions, pay-out structure, and human rights violation'.<sup>1</sup> Through the letter they demanded the basic price of Rs.35 for 2.5km, weekly incentives, two days off in a week, removal of third parties like shadow fax, providing them with T-shirts, bags at no cost, etc. Among the following demands, few were approved except for the major issue of improving their payments.<sup>2</sup> The employees continued their strike which was asked to be called off by the labour officer because they were aware of their rights. One of the longest strikes was held at Hyderabad and many such strikes by the delivery partners had been held in India even though the law provides social security through the Code. 'Social security means the measures of protection afforded to employees, unorganized workers, gig workers, and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner utilizing rights conferred on them and schemes framed, under this Code.'<sup>3</sup> According to the Economic Survey 2020–21, India has positioned itself as one of the globe's foremost nations for flexi staffing or gig workers.<sup>4</sup> The gig workers who constitute approximately 1.3% which is expected to rise to 4% of India's active workforce rarely have access to any social security benefits because certain gaps in coverage persist, despite the legal provisions for social security subsist.<sup>5</sup>

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<sup>1</sup> Alenjith K Johny, 'Kochi's Swiggy strike: Another chapter in the continuing struggle of gig workers' (*NewsLaundry*, 25 November 2022) <<https://www.newsLaundry.com/2022/11/25/kochis-swiggy-strike-another-chapter-in-the-continuing-struggle-of-gig-workers>> accessed 30 March 2024

<sup>2</sup> *Ibid*

<sup>3</sup> The Code on Social Security (Amendment) Act 2022, s 2(ii)

<sup>4</sup> 'Navigating Gig Economy's Social Safety Net' (*Drishti IAS*, 15 June 2023) <<https://www.drishtias.com/daily-updates/daily-news-editorials/navigating-gig-economy-social-safety-net>> accessed 30 March 2024

<sup>5</sup> 'Reforming India's Social Security Net' (*Drishti IAS*) <<https://www.drishtias.com/pdf/1706154940.pdf>> accessed 30 March 2024

## CRITICISM ON THE CODE OF SOCIAL SECURITY (AMENDMENT) ACT, 2022

**1. Exhaustive Definition:** By amending the principal act, certain significant changes have been made to section 86 by substituting ‘the words, gig workers, platform workers, freelance workers, agricultural workers, self-employed workers’<sup>6</sup> for the term self-employed workers. For instance, a delivery partner can be a gig worker (the work a person involved in is out of the purview of a traditional employer-employee relationship<sup>7</sup>), a platform worker (the nature of the job is such that a person can pursue the job only through an online platform) and as per the amendment, a gig worker or platform worker can be substituted by the term self-employed worker.<sup>8</sup> Although the above-mentioned terms already come within the ambit of unorganized workers as per section 2 (iii) of the Amendment Act, sections 109 and 114 of the principal act provide distinct social security schemes for unorganized workers and gig workers respectively. Section 109(2) of the principal act usher welfare schemes including provident funds, housing, educational schemes for children, etc. to the unorganized sector, thereby leading to discrimination against the gig workers and platform workers and breaching their right to be treated equally.<sup>9</sup> In *Daily Rated Casual Labour v Union of India & Ors*<sup>10</sup>, the Supreme Court held that treating employees differently based on their classification as casual or regular, resulting in lesser wages for the former, would contradict the principles enshrined in Articles 14 and 16 of the Constitution.<sup>11</sup>

**2. Gratuity provision for fixed-term workers contravenes the Industrial Relations Code, 2020:** Under section 53(1) of COSS, 2022 an employee becomes eligible for gratuity upon the completion of a continuous service not less than two years; provided that this does not apply to a fixed term employee (an employee whose employment terminates at the expiration of the fixed

<sup>6</sup> The Code on Social Security (Amendment) Act 2022, s 2(iii)

<sup>7</sup> The Code on Social Security 2020, s 2 (35)

<sup>8</sup> Kingshuk Sarkar, ‘Under new labour code, an Uber driver can be both gig and platform worker. It’s a problem’ *The Print* (12 October 2020) <<https://theprint.in/opinion/under-new-labour-code-an-uber-driver-can-be-both-gig-and-platform-worker-its-a-problem/521628/>> accessed 30 March 2024

<sup>9</sup> *Ibid*

<sup>10</sup> *Daily Rated Casual Labour v Union of India & Ors* (1988) 1 SCC 122.

<sup>11</sup> Shikhar Verma, ‘Critical Analysis of the Social Security Code in Light of the Gig and Platform Economy’ *India Law Journal* <<https://www.indialawjournal.org/critical-analysis-of-the-social-security-code.php>> accessed 30 March 2024

term) who will receive gratuity on 'pro-rata basis'<sup>12</sup> i.e. proportionate to the fixed term period whereas under section 2(o)(c) of the Industrial Relations Code 2020<sup>13</sup>, the fixed-term workers will be eligible for gratuity if they render service based on a year contract which is in contradiction to the COSS 2022. Also, this brings uncertainty that those fixed-term workers who worked based on a contract of less than one year would be eligible for gratuity under section 53(i) of COSS, 2022.<sup>14</sup>

**3. Discrepancy and Complexities in Conducting Social Security Schemes:** Labour and social security fall under the Concurrent list of the Constitution. The central government and state government are poised to develop social security schemes for the unorganized sector under section 109 of the principal act and section 114, the central government is only given the authority to set and notify the social security schemes for gig workers nevertheless gig/platform workers are a subset of unorganized sector.<sup>15</sup> Hence again creating unnecessary complications.

**4. Compulsory linking of AADHAAR may foster discrimination:** By turning a blind eye towards the fact that still, a small portion of rural India is not accessible to AADHAAR or instead of making it flexible by accepting any other ID cards, it has made mandatory to link this document to receive the social security benefits.<sup>16</sup> Those who have not received this document or haven't linked it with their mobile phones will be excluded from enjoying benefits and thus a violation of Article 14 of the Constitution.<sup>17</sup>

**5. Maternity Benefit:** Maternity benefits are extended to traditional employees under Chapter VI of the Parent Act, but this provision does not apply to 'delivery partners' who are classified as independent contractors. Indeed, this underscores the importance of universalizing maternity benefits to ensure equitable support for all workers, regardless of their employment classification.<sup>18</sup> 'Employers are obligated to provide maternity benefits equivalent to the average

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<sup>12</sup> The Code on Social Security 2020, s 52 (3)

<sup>13</sup> Industrial Relations Code 2020, s 2(o)(c)

<sup>14</sup> *Ibid*

<sup>15</sup> Sarkar (n 8)

<sup>16</sup> The Code On Social Security 2020

<sup>17</sup> *Ibid*

<sup>18</sup> 'Issues in Social Security Code 2020' (*Civils Daily*) <<https://www.civildaily.com/news/universalisation-of-social-security-remains-an-unfulfilled-aspiration/>> accessed 01 April 2024

daily wage for the duration of the employee's absence, encompassing the period leading up to the day of delivery as well as any subsequent days<sup>19</sup> that further don't include workers in unorganized sectors thereby making women in unorganized sectors insecure as they are excluded from receiving benefits such as the average daily wage and other related benefits under this chapter.

**6. Unjust in Provident Fund Scheme:** Under section 15 (1)<sup>20</sup>, The Central Government has the authority to enact a scheme, known as the Employees' Provident Fund Scheme, through notification. This scheme establishes provident funds catering to 'employees or specific classes of employees, and designates establishments or classes of establishments' accordingly which excludes unorganized workers and denies their right to benefit from other schemes like Pension Scheme and Deposit Linked Insurance Scheme.

## THE SOCIO-ECONOMIC ISSUES OF DELIVERY PARTNERS AND POTENTIAL SOLUTIONS

Zomato and Swiggy are app-based technology-related companies that connect customers with restaurants and eateries to order food for delivery or pickup and they are consistently been criticized for their ignorance of the rights of their employees. Following are some of the socio-economic challenges faced by the delivery partners of Zomato and Swiggy and solutions for the same:

**1. Clarity on Employment Status:** The delivery partners in Zomato and Swiggy are classified as gig workers or self-employed workers rather than employees exempting them from the benefits such as pension, paid leave, provident fund, etc. enjoyed by a traditional employee. Clarity in definitions is essential to mitigate confusion and simplify complexities.

**2. Payment Structure:** Evident disparity in the payment structure of delivery partners. Few of them receive Rs. 20 per four km and other few receive Rs.10 per three km. Workers do not

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<sup>19</sup> The Code On Social Security, 2020, s 60 (1)

<sup>20</sup> The Code On Social Security, 2020, s 15(1)

receive a fixed average base pay and it depends upon the region and city of employment.<sup>21</sup> Various factors such as wait time and distance travelled are considered for remuneration. Fixed payment and equitable remuneration should be implemented.<sup>22</sup>

**3. Working Conditions:** Delivery partners are exposed to unhealthy and risky working conditions. Besides the long waiting hours, health issues, fuel prices, inability to meet the medical expenses, and harassment; an amount of commission is taken from the delivery partners if their rating in the app is poor. This is against their right to be heard. Flexibility in working conditions can be executed by incorporating fixed working hours, providing health insurance, respective companies paying compensations when accidents occur, and providing active helpline numbers and call centers.<sup>23</sup>

**4. Work Safety and Standards:** The delivery workers have to use their bikes and have to pay their own for fuel, data charging, and maintenance of the bike apart from the low wages and unrestricted working hours.<sup>24</sup> No attention was given to these workers if any injury or accident occurred. Thus, the Code should include provisions specific to the working conditions such as vehicle safety and life insurance.

**5. Lack of Autonomy:** The characterization of delivery partners as self-employed or independent contractors allows them to use their bikes and work according to their schedule, excluding them from traditional employees.<sup>25</sup> However, the reality is different. They are required to log in consistently to receive minimum wage and incentives, while also bearing the expenses for petrol and bike maintenance themselves.<sup>26</sup>

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<sup>21</sup> Tanishka Sodhi, 'We are slaves to them': Zomato, Swiggy delivery workers speak up against unfair practices' (*NewsLaundry*, 14 August 2021) <<https://www.newsLaundry.com/2021/08/14/we-are-slaves-to-them-zomato-swiggy-delivery-workers-speak-up-against-unfair-practices>> accessed 01 April 2024

<sup>22</sup> *Ibid*

<sup>23</sup> Johny (n 1)

<sup>24</sup> Sodhi (n 21)

<sup>25</sup> Ann Mary Biju, 'Identifying Food Delivery Workers- A Legal and Human Rights Perspective' (*SOCIAL & POLITICAL RESEARCH FOUNDATION*, 2021) <[https://sprf.in/wp-content/uploads/2021/10/SPRF-2021\\_Identifying-Food-Delivery-Workers\\_Final-1](https://sprf.in/wp-content/uploads/2021/10/SPRF-2021_Identifying-Food-Delivery-Workers_Final-1)> accessed 01 April 2024

<sup>26</sup> *Ibid*

**6. Safety of Delivery Partners:** Establishing an active Prevention of Sexual Harassment (POSH) committee within food delivery platforms like Zomato and Swiggy is indeed crucial for ensuring the safety and well-being of female workers. It's not enough to merely have guidelines in place; these guidelines must be actively enforced and supported by a system that addresses grievances effectively. Female workers can file complaints of sexual harassment and violence against them through POSH Cell. Also, this cell plays a role in raising awareness of women's safety and ensuring their rights. Regardless of gender, numerous delivery partners, both male and female, encounter mental and physical harassment from clients, such as snatching food from them without payment and assaulting delivery workers, especially during late-night shifts.<sup>27</sup>

The delivery partners of Zomato and Swiggy are prohibited from organising unions and sharing their grievances regarding work conditions on social media platforms are violations of Article 19(1)(c)<sup>28</sup> and Article 19 (1) (a) of the Constitution respectively.

## DIFFICULTIES IN EXECUTING THE COSS, 2020

**The Intricacy of the Code:** The Code comprises a multitude of intricate provisions, posing challenges in interpretation and comprehension and further affecting its applicability.<sup>29</sup>

**Education and Awareness:** A significant portion of gig workers lack awareness and education regarding their rights and benefits outlined in the Code, indicating a gap in the dissemination of information to the general populace.

**Lack of Investment:** The National Social Security Fund was established to support unorganized sector workers, commencing with an initial allocation of only ₹1,000 crore, introduced in the Union Budget of 2010-2011.<sup>30</sup> In previous years, the preceding government failed to establish such measures. This shows the government's stance on prioritizing the social security of gig

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<sup>27</sup> Asheef Iqubbal, 'Food Delivery Workers in India: Emerging Entrepreneurs or Informal Labour?' (*DEF India*, April 2021) <<https://defindia.org/wp-content/uploads/2021/04/swiggy-zomato-delivery-workers-india-entrepreneurs-labour.pdf>> accessed 02 April 2024

<sup>28</sup> *Damayanti v Union of India* (1971) AIR 966

<sup>29</sup> Navigating Gig Economy's Social Safety Net (n 4)

<sup>30</sup> Reforming India's Social Security Net (n 5)

workers. In addition to enacting the Code, the government must allocate resources towards enhancing the well-being and prospects of gig workers through strategic investments.

**Corruption and Leakage:** Numerous cases have surfaced involving fraud, bribery, nepotism, and political manipulations in the allocation and distribution of social security funds and identification and registration of beneficiaries.<sup>31</sup>

**Technology:** Integration of new technologies is essential for the effective implementation of social security benefits. However, the integration and transitioning of various security schemes into digital platforms may exclude rural areas from enjoying the social security benefits where there is no access to technology and the internet.

## WAYS FORWARD

**Uniform Code and Clarity in Definitions:** As stated above certain provisions in the COSS, 2022 have resulted in complexities and ambiguities regarding the provision of social security benefits. Despite the Code's overarching objective of broadening social security coverage for all employees and workers across organized, unorganized, and other sectors, there remains a distinct disparity in the distribution of benefits, encompassing health insurance, provident fund, and medical leave entitlements. Hence, there is a pressing need to enforce uniformity in the allocation of social security benefits outlined in the code.

**Adaptation to Changing Needs:** The Govt. should make necessary changes in the Code accordingly because social security needs may evolve from time to time due to developments in technology, changes in the gig economy, and unemployment in other sectors, which can result in added labourers in the gig economy and other factors. Thus the Code has to remain relevant.

**Enforcement:** Robust enforcement mechanisms and streamlined administrative procedures are essential to uphold the integrity of the Code. The e-SHRAM portal, launched by the Ministry of Labour & Employment on August 26, 2021, aimed to establish a National Database of Unorganised Workers (NDUW), streamlining the distribution of Social Security

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<sup>31</sup> Reforming India's Social Security Net (n 5)



Schemes/Welfare Schemes from both Central and State Governments to the informal/unorganized sector workforce. As of February 2, 2022, over 24 crore workers had successfully enrolled through the portal, marking a significant step towards enhancing social security coverage.

**Grievance Redressal and Legal Support:** The government is responsible for ensuring legal support to the gig workers by enforcing the provisions in the Code; establishing precise legal frameworks and instituting call centres.

**Skill Development:** The government can host skill development training programs tailored to the specific needs of the gig workers. Through partnerships with various trade institutes, gig workers can gain access to platforms to exhibit their skills, participate in trade fairs, and establish connections with potential employers and fellow professionals, thereby enhancing their prospects.

**Knowledge and Consciousness:** The gig workers have to be educated on their respective fields and their social security benefits and awareness should be given on various Acts including COSS 2022, Industrial Dispute Amendment Act 2010, and The Payment of Wages (Amendment) Act 2017.

## CONCLUSION

Being the world's largest country comprising gig workers, and a large proportion of the effective workforce relies on the gig economy and also as it is highly probable that more than one million people to be engaged in the gig market in the future; the government is responsible for prioritizing their health and well-being which can create more productive workforce. The effective implementation of social security benefits is advantageous to the country as it fosters the development of a welfare state by enhancing social justice and also bolsters economic resilience by empowering workers to be more productive, while simultaneously fostering labour market flexibility through comprehensive support during adversities such as unemployment and medical expenses. Indeed, social security measures should not be perceived as a burden but rather as a prudent investment that yields substantial dividends.