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Employee Rights in the Gig Economy: Legal Structure and Obstacles

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The gig economy, characterised by temporary and flexible contractual employment, has emerged as a significant aspect of the global workforce, particularly influencing India's labour market. This employment model provides flexibility and autonomy for gig workers, including delivery drivers and freelance consultants, enabling individuals to choose their work hours and augment their income. The designation of gig workers as independent contractors instead of conventional employees denies them essential job rights, such as social security and health benefits, and safeguards against wrongful termination. This article examines the legal structure governing gig employment in India and globally, highlighting the issues and deficiencies that render gig workers susceptible to exploitation. The labour laws of India, particularly the Code on Social Security (2020), have progressed by recognising gig workers and delineating fundamental social security provisions; nevertheless, enforcement is inadequate, and complete worker rights are still lacking. This article emphasises legislative initiatives in the EU and U.S. designed to enhance safeguards for gig workers. With the expansion of the gig economy, a judicious legal framework is essential to meet the requirements of gig workers, providing them with fundamental rights while preserving the flexibility that appeals to both employees and employers. Guaranteeing safeguards for gig workers would be crucial for the sustained development of this industry in India.

Keywords: *gig economy, gig workers, labour laws, social security, independent contractor, platform economy.*

INTRODUCTION

A gig economy is a market mostly reliant on temporary and part-time positions occupied by freelancers and independent contractors rather than conventional full-time workers. The gig economy often does not conform to the employee-employer paradigm when experts are employed and assigned particular positions within a company. A gig economy is defined by the employment of people on a flexible, temporary, and contractual basis. A food delivery worker for an app or an individual engaged in project-based employment exemplifies the gig economy. One primary reason firms prefer this arrangement over traditional employee-employer dynamics is that it allows them to choose candidates from a much broader geographical pool rather than being limited to local talent. One primary reason firms like this arrangement over traditional employee-employer dynamics is the ability to select candidates from a broader geographical pool rather than being restricted to local individuals.¹ Recent technological advancements enable individuals to operate as productively from home as they do in a traditional office setting. Another factor for the dominance of the gig economy is its functionality across several industries. Gig employment is flourishing in both low-skill sectors, such as services, and high-skill sectors, such as consulting, demonstrating its prevalence across many industries and addressing diverse demands in contemporary society. It is advantageous for the workers since they may choose when to work, the kind of the job, and the length of their employment. They might pursue it as a supplementary endeavour or for additional revenue. The phrase ‘gig work,’ although originating in the West to denote flexible employment, in the Indian context, encompasses any app-based labour (such as delivery and residential services) that individuals rely on for their primary livelihood and survival rather than as supplementary income.²

The gig economy is swiftly altering the global employment market, especially with the emergence of platforms such as Uber, Swiggy, Zomato, and TaskRabbit.³ This transition has

¹ Radhika Dinesh and Tathya Sarkar, ‘WORKERS’ RIGHTS IN GIG ECONOMY: LEGAL FRAMEWORK AND CHALLENGES’ (*Manupatra*, 12 August 2024) <<https://articles.manupatra.com/article-details/WORKERS-RIGHTS-IN-GIG-ECONOMY-LEGAL-FRAMEWORK-AND-CHALLENGES>> accessed 13 October 2024

² University of Pennsylvania, *Report on Working and Living Conditions of App-based workers in India* (2024) 7

³ ‘Gig Works Economy: An Urban Growth Driver’ (*Numeros Motors*) <<https://numerosmotors.com/gig-works-economy-urban-growth-driver/>> accessed 13 October 2024

generated several benefits, although it has also introduced certain obstacles, especially with employment legislation and worker protection. The rise of the gig economy in India has distinct challenges owing to the extensive informal labour market, the developing regulatory framework, and the prevailing socioeconomic realities. This article examines labour legislation about the gig economy, focusing specifically on India. In this article, we will analyse the concept of gig workers, the advantages and disadvantages of gig employment, the global and Indian legal frameworks about gig labour, and, ultimately, the current discussions around worker rights and safeguards in this dynamic sector.

DESCRIBING THE GIG ECONOMY AND GIG WORKERS

The gig economy is defined as a job market marked by short-term or freelance vocations, frequently facilitated by internet networks. Gig workers, unlike traditional full-time employees, often engage in project-based and temporary employment. Instead of getting a fixed salary or hourly wage, they are remunerated on a per-task, per-delivery, or per-service basis. The category of gig workers encompasses a diverse array of vocations, such as delivery drivers, freelance writers, and information technology consultants. Gig workers are often classified as independent contractors rather than employees, a key distinction that separates the gig economy from conventional employment.⁴ The classification of independent contractors who lack the legal privileges afforded to employees, such as minimum wage, social security, health benefits, and protection against wrongful termination, has significant implications for workers' rights and safeguards.

THE ADVANTAGES AND DRAWBACKS OF THE GIG ECONOMY

The gig economy offers several advantages for individuals and companies alike. Gig platforms provide workers the option to choose their work schedules and locations, which is a substantial advantage.⁵ A multitude of folks, including students, part-time employees, and those seeking to

⁴ Abhinandan, 'Gig Worker: Meaning, Types, & Significance' (*AuthBridge*, 27 June 2024) <<https://authbridge.com/blog/gig-worker-meaning-types-amp-significance/>> accessed 13 October 2024

⁵ 'The Gig Economy: Shaping the Future of Work and Business' (*Park University*, 31 July 2024) <<https://www.park.edu/blog/the-gig-economy-shaping-the-future-of-work-and-business/>> accessed 13 October 2024

augment their income, find this particularly alluring. The entry prerequisites for gig workers are often simple; for instance, serving as a delivery driver for platforms like Swiggy or Zomato does not need advanced education or specific skills. Gig workers often benefit from minimal entrance barriers. Companies may access a substantial, flexible workforce via the gig economy, therefore eliminating the long-term costs associated with full-time employment. The gig economy, however, has some drawbacks. In several instances, gig workers lack job security and a reliable income. As independent contractors, they are ineligible for benefits like health insurance, pensions, or paid leave. Moreover, gig workers have less negotiating power regarding salary negotiations or the establishment of their working circumstances. Consequently, there are concerns that the gig economy is exacerbating the emphasis on labour, marked by a growth in the number of people trapped in low-wage and unstable jobs that provide no legal protections.

GLOBAL LEGAL STRUCTURE FOR GIG EMPLOYMENT

Worldwide, employment legislation is failing to adapt to the rapid expansion of the gig economy. Numerous nations, notably the United States and the United Kingdom, have seen an increase in legal disputes over the classification of gig workers as either employees or independent contractors.⁶ Judicial bodies in different nations have issued varied decisions, with some acknowledging gig workers as employees entitled to benefits and protections, but others have affirmed their status as independent contractors.

The European Union (EU) has been advocating for enhanced safeguards for gig workers in Europe. The European Commission has proposed new laws to provide platform workers access to fundamental rights, including sick leave, health insurance, and pension payments. Numerous European nations, such as Spain and France, have implemented legislation that provides enhanced rights for gig workers, with certain countries requiring platforms like Uber and Deliveroo to categorise their workers as employees. The discourse in the United States has focused on California's AB5 legislation,⁷ which aimed to reclassify many gig workers as

⁶ Luyando Martha Katiyatiya and Nombulelelo Lubisi, 'The current social protection discourse, gig economy within the advent of COVID-19: some emerging legal arguments' (2024) Labor History <<https://www.tandfonline.com/doi/full/10.1080/0023656X.2024.2340610>> accessed 13 October 2024

⁷ California Assembly Bill 2019, ch 296

employees. Despite the original enactment of the law, corporations such as Uber and Lyft effectively opposed it, resulting in the approval of Proposition 22, which exempted these companies from the legislation.⁸ Nonetheless, persistent litigation and legislative initiatives are maintaining the subject in a state of uncertainty.

GIG ECONOMY AND LABOUR LAWS IN INDIA

India's labour rules, not designed to accommodate gig work, are now imposing significant regulatory challenges on the business. Currently, gig workers in India are classified as independent contractors, therefore lacking the benefits afforded to regular employees. This category includes protections provided by legislation such as the Minimum Wages Act,⁹ the Industrial Disputes Act,¹⁰ and the Employees' Provident Fund Act¹¹.

In recent years, there has been an increasing recognition of the need to safeguard those operating in the gig economy in India. The Code on Social Security, set for implementation in 2020, signifies a substantial advancement. The Act includes measures that provide social security benefits to workers engaged in platform and gig economies. Social security funds for gig workers must be created, and platform corporations are obligated to pay these funds to assist. The law does not extend to reclassifying gig workers as employees.¹² This indicates that they persistently lack several essential rights granted to formal workers. These rights include assurances of a minimum wage and precautions against wrongful dismissal. India's gig workforce is positioned seventh globally. India's freelancing population surpasses 15 million, constituting almost 40 per cent of the global total. Experts project that by 2024, the valuation of the Indian gig economy might reach \$455 billion.¹³ Despite the flourishing Indian gig economy,

⁸ Levi Sumagaysay, 'Uber, Lyft, DoorDash workers remain contractors due to California Supreme Court ruling' (*Cal Matters*, 25 July 2024) <<https://calmatters.org/economy/2024/07/prop-22-california-gig-work-law-upheld/>> accessed 13 October 2024

⁹ Minimum Wages Act 1948

¹⁰ Industrial Disputes Act 1947

¹¹ Employees' Provident Fund and Miscellaneous Provisions Act 1952

¹² 'Social Security Code: Provisions for Gig and Platform Workers' (*Corrida Legal*, 2024) <<https://corridalegal.com/social-security-code-provisions-for-gig-and-platform-workers/>> accessed 13 October 2024

¹³ Veena Mani, 'Tech gig economy grows: India to have 23.5 million workers by 2030' *The Times of India* (Bengaluru, 17 June 2024) <<https://timesofindia.indiatimes.com/city/bengaluru/tech-gig-economy-grows-india-to-have-23-5-million-workers-by-2030/articleshow/111048791.cms>> accessed 13 October 2024

the working conditions for its workers are among the worst globally, with no legal protections in place, insufficient earnings, deplorable working conditions, and an absence of social support.

Gig workers in India have substantial fair treatment and protection gaps despite recent regulatory initiatives. The gig economy's temporary, flexible, and sometimes insecure work arrangements are not reflected in traditional labour laws. Four new labour codes harmonised and modernised India's employment regulations in 2019 and 2020. The 2020 Social Security Code offers gig and platform workers social security benefits. As said, significant gaps exist. A comprehensive gig worker legislation is extremely urgent. Legislation is needed to define gig workers' rights, platform businesses' obligations, and exclusive dispute resolution.

SOCIAL SECURITY FOR WORKERS IN INDIA

The Indian government has shown a commitment to improving the working conditions of gig workers. The Code on Social Security¹⁴ is part of an extensive labour law reform initiative aimed at consolidating several particular labour laws into four separate codes. The codes include the Code on Wages, the Code on Industrial Relations, the Code on Occupational Safety, Health, and Working Conditions, and the Code on Social Security.

The Code on Social Security is especially pertinent to gig workers since it acknowledges platform workers for the first time and aims to provide them access to social security services. Gig labourers are especially significant to the Code.¹⁵ It requires both the federal and state governments to devise programs that provide platform and gig economy workers with retirement security, health and maternity benefits, as well as liability and disability insurance. Notwithstanding this, the enforcement of these regulations is nascent, and a considerable proportion of gig workers persist in functioning without adherence to these safeguards.¹⁶ The dispersed and fragmented characteristics of the gig economy are the primary source of the difficulties encountered in establishing social security systems for gig workers. Gig workers,

¹⁴ The Code on Social Security 2020

¹⁵ *Ibid*

¹⁶ Naveen Kumar, 'Regulatory Framework and the Protection of Basic Rights of Gig Workers' *Bar and Bench* (16 May 2024) <<https://www.barandbench.com/law-firms/view-point/regulatory-framework-and-the-protection-of-basic-rights-of-gig-workers>> accessed 13 October 2024

unlike employees of a single employer in conventional businesses, may concurrently engage with many platforms. Concerns have been expressed over which corporation should bear the responsibility for contributing to social security and how benefits may be allocated across several platforms.

THE DEBATE ON WORKER CLASSIFICATION IN INDIA

The classification of workers inside the gig economy in India is one of the most contentious issues that has emerged. Currently, gig workers are classified as independent contractors, rendering them ineligible for the benefits and protections associated with traditional employment. Conversely, there has been an increasing desire from labour unions and advocacy organisations to reclassify gig workers as employees. If gig workers were classed as employees, they would qualify for protections like minimum wage, social security, health insurance, and rights against wrongful termination that are unavailable to independent contractors.¹⁷ Platform firms assert that such a reclassification would diminish the flexibility of gig work and increase operational costs, perhaps resulting in a decrease in employment availability for gig workers.

Although Indian courts have yet to provide a definitive ruling on the categorisation of gig workers, much progress has been made within the legal framework. In 2021, the Karnataka High Court ruled in favour of a union representing Ola and Uber drivers, affirming that the drivers' demands for increased compensation and perks were justified¹⁸. The ruling did not reclassify gig workers as employees; nonetheless, it indicated a significant advancement in acknowledging the rights to which gig workers are entitled.

LEGAL SYSTEM IN PLACE

In 2019, the government of India introduced 4 new labour codes to consolidate 29 central laws. These are:

1. Social Security Code

¹⁷ Harsheen Kaur Luthra, 'The Unsettled Status of Gig Workers in India: Towards a Comprehensive Legal Framework' (*Labour and Employment Law Blog*, 04 October 2024) <<https://cll.nliu.ac.in/the-unsettled-status-of-gig-workers-in-india-towards-a-comprehensive-legal-framework/>> accessed 13 October 2024

¹⁸ *Ms X v Internal Complaints Committee, Ani Technologies Private Limited* (2024) SCC KAR 102

2. Occupational Safety, Health and Working Conditions Code
3. Code on Wages
4. Industrial Relations Code

1. Social Security:¹⁹ The threshold for obligatory standing orders has increased from 100 to 300 employees according to the new Code, facilitating the processes of firing or hiring individuals. Companies with over 300 workers must get governmental consent prior to closing, laying off staff, or reducing their employment. A notification must be sent sixty days before any strike, and strikes are forbidden during and for sixty days after the completion of any tribunal proceedings. A re-skilling fund for displaced workers is established under the Code, mandating employers to contribute an amount equivalent to 15 days' income into the fund.

2. Occupational Safety, Health and Working Conditions Code: The updated Code makes several key changes to labour regulations for factories and certain work environments:

- **Factory Classification:** Under the new Code, a facility is now considered a factory if it employs at least 20 workers and uses electricity or if it has at least 40 workers without using electricity. This lowers the threshold, making it easier for smaller establishments to fall under factory regulations, which may subject them to more stringent labour laws and safety standards.
- **Dangerous Work Environments:** The Code removes previous limits on the number of workers allowed in dangerous or hazardous environments. This change may increase flexibility for employers to scale operations in such areas but also highlights the need for strong safety protocols to protect workers.
- **Contractors and Manpower Regulation:** The Code now applies to contractors who employ 50 or more workers. This means that large-scale contractors must adhere to regulations concerning labour standards, welfare provisions, and other obligations typically required of factory owners, ensuring that even outsourced labour meets safety and fairness standards.

¹⁹ 'Overview of Labour Law Reforms' (PRS India, 2024) <<https://prsindia.org/billtrack/overview-of-labour-law-reforms>> accessed 14 October 2024

Working Hours: It establishes a maximum of eight hours for a standard workday. Any time beyond this may qualify as overtime, requiring additional compensation. This cap aims to safeguard workers' health and well-being by preventing overly long shifts, particularly in physically demanding jobs.

The Code reclassifies a factory to include establishments with 20 employees using electricity and 40 without. It eliminates manpower restrictions for dangerous environments, pertains to contractors employing over 50 people, and establishes a maximum daily work duration of eight hours. Women are permitted to work in any institution, including night shifts, provided there is agreement and appropriate safety precautions are in place. Employers are required to provide appointment letters. Interstate migrant workers, earning up to Rs. 18,000 per month, get portability advantages for rations but forfeit temporary accommodation allowances. The Code further establishes a travel allowance for transit from the employee's home state to the work site.²⁰ On July 24, 2023, Rajasthan became the first Indian state to implement the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act²¹, designed to govern platform-based gig workers.²² The legislation characterises gig workers as persons who generate income via contractual labour with defined payment conditions, distinct from conventional employment. It creates a Rajasthan Platform-Based Gig Workers Welfare Board to register workers, aggregators, and main employers, supervise social security initiatives, and administer a welfare fund. Transgressions may result in sanctions, and employees may pursue remedies for breaches of statutory rights via appointed agencies. This law corresponds with India's progressive strategy for recognising and offering benefits to gig and platform workers before the National Social Security Code of 2022, which has not yet been completely executed throughout states. On 14 June 2021, the National Human Rights Commission submitted a writ suit to the Hon'ble Supreme Court, seeking improved circumstances for gig workers, platform workers, and migrant workers. The Hon'ble Supreme Court instructed the Central and State Governments to complete the registration procedures necessary for unorganised workers to

²⁰ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979

²¹ Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act 2023

²² *Ibid*

benefit from the initiatives implemented by the Central and different State Governments.²³ The Hon'ble Court instructed all State Governments to submit affidavits detailing the methods of distributing dry rations to workers under the Atma Nirbhar Bharat Scheme.

3. Code of Wages Act 2019:²⁴ The 2019 Code of Wages Bill consolidates four existing statutes on salary and bonus remuneration, including all workers. The Central Government determines pay for areas like mining and railroads, while states manage other sectors. It sets a minimum pay and requires evaluations every five years. The Bill mandates regulations for working hours and overtime, allowing pay deductions of up to 50%. Gender pay discrimination is prohibited, with penalties including up to three months of jail and a fine of Rs. 1 lakh for infractions.

4. Industrial Relations:²⁵ The revised Code increases the threshold for obligatory standing orders from 100 to 300 employees, therefore streamlining the processes of recruiting and termination. Government authorisation is necessary for closures, layoffs, or retrenchments in businesses employing more than 300 people. It requires a 60-day notification before strikes and prohibits strikes during and for 60 days after tribunal proceedings. The Code establishes a re-skilling fund for laid-off employees, requiring businesses to contribute a sum equivalent to 15 days of the employee's last wage.

PROBLEMS WITH THE CURRENT LEGAL FRAMEWORK

The Code on Social Security, 2020, characterises a gig worker as an individual who derives income from non-traditional, short-term contractual employment, including taxi drivers and freelancers. Notwithstanding this categorisation, gig workers possess limited legal acknowledgement under prior laws, like the CLRA²⁶ and UWSSA²⁷. A substantial segment of gig workers consists of platform workers doing jobs on digital platforms such as Uber and Zomato.²⁸ Nevertheless, these workers often encounter erratic earnings and insufficient

²³ Ministry of Labour and Employment, *Annual Report 2023-24* (2024) pgs 7-8

²⁴ The Code on Wages 2019

²⁵ The Industrial Relations Code 2020

²⁶ Contract Labour (Regulation and Abolition) Act 1970

²⁷ Unorganised Workers' Social Security Act 2008

²⁸ Nargees Basheer et al., 'The Legal Status of Gig Workers in India' (*Aarambh Legal*, 20 June 2024)

<<https://aarambhlegal.com/the-legal-status-of-gig-workers-in-india/>> accessed 14 October 2024

safeguards since platform labour typically comprises low-skill activities, leaving them vulnerable to abuse. The 2020 Labour Codes, including the Code on Social Security, have included some rules for gig workers, although restricted in scope. Sections 112 to 114²⁹ permit the development of facilitation facilities, require worker registration for benefits and empower the government to develop social security plans. Nonetheless, these programs are discretionary and often need payments from employees, whose earnings are generally modest, resulting in many individuals without sufficient safeguards. Furthermore, requirements for employer payments have resulted in decreased employment, particularly evident in the case of maternity leave for female gig workers. Furthermore, the POSH Act³⁰, albeit offering standards for workplace harassment, inadequately addresses digital workplaces, so jeopardising the safety of platform workers. These deficiencies highlight the need for targeted legislation to safeguard the rights and protections of gig workers in India.³¹

CONCLUSION

The growing environment of India's gig economy highlights the need for a balanced strategy that safeguards the rights and mitigates the vulnerabilities of gig workers amidst technological innovation, flexible work arrangements, and regulatory constraints. The gig economy, defined by its dependence on temporary or project-based employment enabled by digital platforms, has revolutionised corporate operations and individual job engagement. This paradigm change, however, highlights intricate legal and ethical issues, especially regarding the status and rights of gig workers. A significant difficulty for gig workers in India is the uncertainty over their job status. Conventional labour rules sometimes fail to sufficiently include gig workers, resulting in deficiencies in social security provisions, including health insurance, maternity benefits, and pension plans. The legal definition of 'gig worker' or 'platform worker' is a difficult subject, affecting their eligibility for essential employment rights. The emergence of the gig economy offers both prospects and obstacles for India's job market. Although gig employment provides

²⁹ Code on Social Security 2020, ss 112-114

³⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

³¹ 'Rules and Regulations Governing Gig Workers in India' (*Juris Centre*, 10 September 2024)

<<https://juriscentre.com/2024/09/10/rules-and-regulations-governing-gig-workers-in-india/>> accessed 14 October 2024

flexibility and additional earning opportunities, the absence of labour safeguards for gig workers has ignited significant discussions around worker rights and social security. As India navigates the legal and regulatory complexities of the gig economy, it is essential to achieve an equilibrium between freedom and protection. The prosperity of India's gig economy will eventually hinge on the capacity to guarantee that gig workers are not marginalised in the quest for economic advancement and innovation.