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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANALYSIS INTO THE FACILITATION OF THE GIG ECONOMY IN INDIA UNDER JOB SECURITY THROUGH LEGISLATION

AUTHORED BY - KEVIN NIMALAN A B

Abstract

The gig economy in India has experienced rapid growth, driven largely by digital platforms such as Uber, Zomato, and Swiggy. While the gig economy provides workers with flexibility and income-generating opportunities, it often lacks the protections associated with traditional employment. Gig workers, typically classified as independent contractors, are excluded from essential benefits such as health insurance, unemployment compensation, and retirement plans, which exacerbates income instability and job insecurity. In response to these challenges, India has taken legislative steps to address the social security needs of gig workers, most notably through the **Code on Social Security, 2020**, and the **Code on Wages, 2019**. These legal frameworks aim to extend certain protections to gig workers, marking a significant shift towards greater job security in the informal economy. This research paper analyzes the evolution of gig economy legislation in India, assessing the extent to which these laws provide tangible job security and the implications for gig workers. Through a detailed examination of these reforms and comparative analysis with global best practices, this paper aims to identify gaps in the current framework and suggest potential improvements to better integrate gig workers into India's social security system. The paper evaluates the effectiveness of existing legislation and proposes pathways for future regulatory reforms that could enhance worker protection.

Introduction

The gig economy has transformed the Indian labor market over the last few years. From the likes of Uber, Swiggy, to Zomato, the number of people who have gone on to join the workforce in highly flexible and autonomous ways is in the millions today. It has made the gig economy, short-term contracts and freelancing in particular, very attractive to everyone who wants a form of employment outside of the traditional confines, whether as supplemental sources of income

or in synchronization with lifestyle choices¹. Thus, while it evolved beyond the traditional employment structure, it also subjected its gig workers to immense risks. Since they are not handled with the formal recognition and protections accorded to permanent workers, gig workers frequently receive uncertain streams of income and are also denied some important benefits like health insurance, unemployment compensation, and retirement savings plans. For such reasons, the contention is that work through gigging is questionable for long-term sustainability, and the welfare of people who depend on it².

In doing so, the evolving workforce presents to India challenges in which policymakers seek to bridge the gap between the flexibility of gig work and the protections offered to traditional employees. This includes some of the above legislative steps-the Code on Social Security, 2020, and the Code on Wages, 2019-to extend certain legal protections to gig workers. These laws show an awareness of a heightened prominence of the gig economy but reveal much to be said about their practical impact and actual adequacy with regard to the needs of workers³.

The paper explores the legislative measures undertaken in India to enhance job security for gig workers through a critical assessment of their scope and limits. Drawing on comparative analysis among global models and domestic policies, research aims to provide insights into how India can better protect gig workers within its social security framework and create a more stable environment for this emerging workforce.

Review of literature

Statutory provisions

The fair labor standards Act of 1938, 29 U.S.C 201

This is a U.S federal law that establishes minimum wage, overtime pay, record-keeping and youth employment standards affecting full time and part-time workers in the private sector and in federal, state and local governments. *Relevance:* The U.S congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary

¹ ASSOCHAM (2021): "The Rising Gig Economy of India," Assocham-Primus Report, <http://primuspartners.in/wp-content/uploads/2021/02/Gig-Economy-Report.pdf>.

² Boston Consulting Group and Michael & Susan Dell Foundation (2021): "Unlocking the Potential of Gig Economy in India," <http://media-publications.bcg.com/India-Gig-Economy-Report.pdf>.

³ Bregiannis, F, W J M Bruurmijn, E Calon and M A D Ortega (2017): "Workers in the Gig Economy: Identification of Practical Problems and Possible Solutions," Paper Submitted for the Geneva Challenge 2017, Tilburg University.

for health, efficiency and general well-being of workers. The social security to the gig workers exactly aims to bring this. Thus, one needs to see how they have brought up this and also follow up.

The Code on Social Security, 2020

This is an important legislation in India that aims to consolidate and amend laws relating to social security for workers across various sectors, including those in the gig economy. Some of its important provisions are mainly defining the gig workers, platform workers and unorganized workers. This code mandates the registration of gig and platform workers with the social security system to avail of benefits. *Relevance:* As the paper primarily focuses on the gig economic scenario in India and importantly as the code includes gig economy workers, It is very necessary to find out why this code hasn't been successful and states such as Karnataka and Tamil Nadu are currently attempting to frame an independent state legislature.

The Unorganised Workers' Social Security, 2008

This historic Indian law was created to give social protection to workers in the unorganized sector. "Self-employed worker" is defined in its definition clause as any individual who works for pay on a daily or monthly basis in any unorganized sector. Additionally, it defines the "unorganized sector" as any business owned by independent contractors or persons that produce goods or render services. *Relevance:* This act directly impacts the gig economy by recognising them as part of the unorganized sector, thereby extending social security benefits to them. It also becomes important to explore the differences between this Act and the previously mentioned code to understand what was lacking here and what is the status quo.

The fair Work Act, 2009

This is the main piece of legislation in Australia that controls workplace relations. It lays out the rights and responsibilities of workers, employers, and employee organizations from a variety of industries, creating the legal foundation for fair work practices. The "National Employment Standards" (NES), one of the main features of this act, set forth ten minimum employment entitlements that must be given to all employees.

relevance: The NES covers the employment that is not covered under the mainstream national industrial system. These employment remains regulated by the 10 mandatory minimum employment entitlement. This is something India can adopt. It becomes necessary therefore, to

explore how this NES is followed as a system and its disadvantages & advantages. There is also an ongoing debate about the classification of gig workers in Australia; cases that involve Uber and Deliveroo have raised questions about whether gig workers should be considered employees under the Fair Work Act.

Journals, Magazines and Articles

Zoe Adam's, Simon Deakin & Hannah Reed, Regulating work in the Gig Economy: What are the options? 47 Indus.L.J 498 (2018)

This article tracks research into the gig economy and its regulatory challenges, then attempts to trace legal options for offering protections typically reserved for traditional employees-collated against the existing labor laws and proposed regulatory frameworks that could serve the specific needs of gig workers without losing the flexibility defining gig work.

Ruth Dukes, The Gig Economy and its legal implications: A critical analysis, 60 Int'l J.L. Mgmt. 431 (2019)

This article provides a critical analysis of the gig economy law status, focusing more on issues that relate to employment. The authors claim that the current existing employment law cannot fit into the gig economy and insist on new categories of law that would more accurately reflect reality about gig work. Here, relevance to changes in legislation and some recent court cases are considered and discussed in the paper.

Amrita Nair-Ghaswalla, Rethinking the Future of Work in the gig economy, Economic Times (April 21, 2020)

It conducts a close examination into the very rapid growth of the gig economy in India while discussing the effects on traditional structures of employment. The writer argued for a rethink of labor laws and social security provisions so that gig workers are well-covered like other traditional workers. While this is very important, the article also delves into the role of technology in the future of work.

Aditi Narayanaswamy, The legal challenges of the gig economy, The Hindu (July 9, 2020)

The article is on the legal fuzzy edges the gig economy falls upon, particularly within the Indian context. It further elaborates on issues of difficulty in defining gig workers and the implications of recent court orders and potential reform needed to place these challenges. It also underscores a call for a legal definition with corresponding protections so as not to leave exploitation

opaque.

Defining Gig workers

A gig worker operates outside the mainstream employer-employee system, a framework that has undergone significant changes in the past two years or so. The Indian government, under the Code on Social Security, 2020, defines gig workers as individuals engaged in economic activities that are not considered in the normal model of employment⁴⁴. It's a situation wherein gig workers are paid for certain tasks or services usually done on a freelance or contract basis, such that their pay is coupled directly with the completion of those tasks. It's more like piece work labor wherein the payment of the laborer is connected to the output rather than hours worked⁵.

The pattern of the gig economy is changing with the emergence of digital platforms that connect the producers or workers to consumers. Among such companies is Uber, Swiggy, and Zomato in India, which gives employment to millions of people. Instead, such platforms usually provide no-qualification jobs with low qualifications further to expand access to a wide range of workers. These jobs are commonly marketed as flexible, often positioned to make workers perceive greater autonomy in their work arrangements than those in traditional employment⁶.

An expansion of the gig economy poses critical questions about the nature of work and labor rights in this domain. As the category between contractor and employee rapidly blurs, it becomes necessary to ask whether workers in these gig economies are actually experiencing flexibility and control over their employment or are actually being burdened by a new form of regulation that undermines their job security⁷.

⁴ Deepika M G, Madhusoodhan M, Labour Laws for Gig Workers in the Context of Labour Law Reforms, Vol. 57, Issue No. 30, 23 Jul, 2022, Economic & Political Weekly.

⁵ Workers in Gig and Platform Economies, Vol. 57, Issue No. 8, 19 Feb, 2022, Economic & Political Weekly.

⁶ Carlson, R (1996): "Variations on a Theme of Employment: Labor Law Regulation of Alternative Worker Relations," South Texas Law Review, Vol 37, No 3.

⁷ Cherry, M A and A Aloisi (2017): "Dependent Contractors in the Gig Economy: A Comparative Approach," American University Law Review, Vol 66, No 3.

Liberty as conceived in the Gig Economy

So, one of the most outstanding selling points of the gig economy is the promise of liberty—the workers have to choose their own hours, types of tasks they undertake, and even how much they work⁸. It is, perhaps for this reason that people always appreciate gig work as highly propelled by supposed autonomy. But the truth of the matter is, a closer look at the gig economy reveals that the feeling of such freedom has become very much of an illusion.

For many such workers, gig work isn't always a choice. Workers become gig workers due to a lack of better opportunities or even to supplement barely enough money coming from other sources. Whatever flexibility the gig economy boasts as its hallmark is overpowered by the abdication of a structured support system⁹. Gig workers forgo much of the protection of a traditional employment relationship: guaranteed wages, incentives, and job surety.

In practice, much control is often exercised by platforms over whom gig workers work. For instance, even as Uber sells flexibility to drivers, it also exercises a significant degree of control over the operation of its service. Uber sets the prices of rides, the number of trips a driver has to take to gain certain incentives, determines distances that drivers have to cover, and even determines the condition and type of car that they can use. This type of supervision along with demand and pay rates that pend in algorithms puts gig workers in a susceptible position where their so-called choice is drastically constrained¹⁰.

The majority of gig workers have to live through lengthy working hours, which undercuts the claim of autonomy even further. If there is no kind of oversight regulation of workers, they are solely bound to accept more hours or more jobs just to survive that may lead to exploitation. Many such gig workers, including Uber drivers and delivery personnel of Swiggy and Zomato, experience a type of undue coercion—not in the sense of being coerced into labor, but because of economic pressure and the demands of the platforms themselves¹¹. The conditions trap people into an endless cycle of long hours and minimal pay with very little by way of recourse

⁸ Collier, R B, V B Dubal and C Carter (2017): "Labour Platforms and Gig Work: The Failure to Regulate," IRLE Working Paper, No 106, September.

⁹ Das, Acavedo, D (2018): "Unbundling Freedom in the Sharing Economy," Southern California Law Review, Vol 91, No 5.

¹⁰ De Stefano, V (2016): "The Rise of the Just-in-time Workforce: On-Demand Work, Crowdwork and Labour Protection in the Gig Economy," Condition of Work and Employment Series, No 71, ILO, Geneva.

¹¹ Gourevitch, A (2013): "Labor Republicanism and the Transformation of Work," Political Theory, Vol 41, No 4, pp 591–17

to change the situation or seek better working conditions.

So, whereas the gig economy promises freedom, the reality tends to be the antithesis. Labor rights and economic distress severely limit the desired freedom by the gig workers and the degree by which digital platforms exert control. This situation calls for a critical analysis to ascertain whether it is capable of rendering actual autonomy as promised or acts as a labor exploitation in its new form.

Classifying the Gig Economy

One critical issue or challenge relates to the proper classification of workers in the gig economy. Should gig workers be considered employees entitled to full labor protections or independent contractors? This matter gets to the heart of how legal frameworks might be able or ought to be providing protections like job security, social benefits, and fair wages for gig workers.

The degree of control that the employer exerts over the worker determines the classification of the employer-employee relationships; higher degree of control over the worker signifies the worker as an employee. When employers dictate workers' working schedules and methods of operation etc. they are also mandated under statutory obligations to grant entitlements such as minimum wage, social security, healthcare benefits to their employees¹². On the other hand, there are independent contractors that are mainly given a more independent relationship with which they carry out their tasks with minimal oversight. Mostly in highly skilled roles, and often compensated based upon results rather than the time worked. This classification removes them from many labor protections but grants them more freedom in managing their work¹³.

There are several legal tests that operate to determine the level of control and the independence accorded in such working relationships. Such tests are often relied upon by courts around the world as a way to determine the independence of a worker or whether he is operating under control by a platform or employer. Recent UK Supreme Court ruling declares Uber drivers employees, not independent contractors. The court cited that fact of Uber's significant control exercised over its drivers, from their pricing to any kind of engagement with customers and

¹² Countouris, N (2016): The Changing Law of Employment Relationship: Comparative Analyses in the European Context, Routledge, London.

¹³ Graham, M and J Woodcock. (2018): Towards a Fairer Gig Economy, Meatspace Press, London.

even conditions imposed on their work¹⁴. It led the court to put Uber drivers under the umbrella of employee rights, thereby entitled them to a minimum wage and paid leave.

This judgment throws open the basic argument in the gig economy: online platforms such as Uber, Swiggy, and Zomato often don't declare workers as employees because declaring them as such would come with the baggage of also extending labor law mandates, including job security, unemployment insurance, and health concessions. Such workers can be registered as independent contractors for less operational cost and even liability associated with full-time employment¹⁵.

In India, the Code on Social Security, 2020, was a landmark legislation in the recognition of the formal legal structure for gig workers. For the first time, Indian legislation attempted to bring gig workers within the social security fold. But the code also coined a new category for gig workers, referring to them as something not quite either full-time employees or independent contractors. While this classification recognizes the special nature of gig workers and their contribution to the economy, it simultaneously positions them outside the traditional sphere of "employee," thereby denying them many statutory protection benefits associated with being an employee-only; these include pension schemes, gratuity funds, and healthcare benefits¹⁶.

This classification system creates a paradox: giving a form of recognition to the gig worker through legislation but not granting them full benefits given to the traditional employee. This separation allows gig platforms to maintain their business model without assuming the financial burden of employee benefits, continuing to position gig workers in a precarious situation with limited social protections.

Classification may also become a contentious issue as gig work expands: whether they should be classified as employees or kept in a different class. The classification issue hits right at the heart of labor rights in the gig economy; future reforms will likely be pinned in the balance between the protection of workers and the flexibility which platforms argue is essential to their

¹⁴ Haldar, A and S Deaken (2015): "How Should India Reform its Labour Laws," Economic & Political Weekly, Vol 50, No 12, March.

¹⁵ Kaine, S, D Oliver and E Josserand (2017): "Precarity in the Gig economy: the Experience of Ride-share Drivers," Paper presented to the Association of Industrial Relations Academics in Australia and New Zealand Conference, Canberra, 8–10 February.

¹⁶ Kondo, A and A Singer (2020): "Labour Without Employment: Towards a New Legal Framework for the Gig Economy," ABA Journal of Labor and Employment Law, Vol 34, No 3, pp 331–58

operations¹⁷.

Conclusion

The rise of the gig economy in India thus calls for us to rethink what constitutes workers and how we classify them. Instead of trying to fit these gig workers outside traditional employee status, a very strong argument can be made that the definition of "employee" can merely be more inclusive of diverse forms of work arrangements. This would result in the expansion of the scope of the statutory protection available to more employees and would allow them to receive their rightful and due rights and benefits based on the law.

Even though the Code on Social Security, 2020 brings certain uniqueness and recognition for gig workers, it does not align with the minimum standard as far as mandatory coverage is concerned because it sets up a different category of workers who are often not eligible for full employee benefits. The proper safeguarding of the interests of gig workers demands urgent need for comprehensive legislation that seeks their integration into the existing statutory framework.

Inspiration can be drawn from previous laws enacted, such as the 2008 Act on Unorganized Workers' Social Security, to frame how rights for gig workers can be defined and protected. We must recognize the nature of work today-gone diverse and ever-changing-and construct a more robust legal system so that the gig worker will not be left in a condition of vulnerability due to the possible changes in the job landscape. Therefore, an inclusive definition of employment will empower gig workers with security and protections for moving forward into this gig economy while retaining the flexibility that makes this mode of working appealing.

¹⁷ Stewart, A and J Stanford (2017): "Regulating Work in the Gig Economy: What Are the Options?", Economic and Labour Relations Review, Vol 28, No 3, pp 382–401.