

GIG WORKERS AND THEIR PLIGHT

ABSTRACT

The earliest use of a gig in any typical temporary, paid position was in 1952 by Jack Kerouac. The gig economy in India and around the world is rising at an unprecedented rate. The increase in this economy is driven by the expansive growth of digital platforms. According to the official data released by NITI AYO, the Indian gig workforce is expected to rise from 7.7 million in 2020-21 to 23.5 million by 2029-30. Legal categorization of these workers is still debatable, with many classifying them as independent contractors while some advocate for considering them under the label of 'employees. Typically, classifying these workers as employees imposes a legal duty on digital platforms to offer a comprehensive range of benefits, such as paid sick leave, overtime pay at time-and-a-half, employer-provided health insurance, collective bargaining rights, and unemployment benefits.

Key words: Gig economy, digital platforms, independent contractors, legal obligation, full suite benefit

INTRODUCTION

The term gig, referring to "any typical temporary paid position," was first recorded in a 1952 article by Jack Kerouac, where he wrote regarding his job as a casual brakeman for the Southern Pacific Railroad. Advanced technology has resulted in the widespread adoption of digital platforms. If we talk about gig workers, what is the nature of their work? What is the total number of gig workers in our economy? What kind of social security do these workers enjoy? Where are they employed? Gig workers are those kinds of workers who are not employed under the traditional employer-employee relationship. There is a separate category called "non-standard employment" under which these employees are employed; under this, work is offered on a contingent and non-permanent basis. Such types of workers are usually engaged in

income-earning activities outside the formal sector. The categorization of these gig workers as "independent contractors" makes them ineligible for the various perks that they can avail under an employee-employer relationship, like minimum wage, paid leave, accident compensation, and health benefits, etc. These workers are dependent on customer reviews

and ratings, making them perpetually unstable. These conditions often lead to financial precarity and insecurity among these workers. According to a NITI AAYOG report,¹ there were 7.7 million gig workers in India in 2020-21, likely to surge to 23.5 million in 2029-30. These workers constitute 1.5% of the total workforce in India.

CHALLENGES FACED BY THESE WORKERS

These workers face many hardships during their work period, like uncertain wages, health benefits, and accident insurance, which makes it hard for them to earn a livelihood. According to a report by the World Health Organization and International Labour Organization released in 2021 the expansion of the gig economy can be seen as one of the paramount factors for the increase in workers' death, especially those who work for more than 50 hours a week as compared to those who work for 30-40 hrs a week. In a normal working lifestyle, employees work in a limited time frame, usually 7-8 hrs, unlike gig workers who work on a 24*7 basis. This hazardous work structure often leads to burnout and stress among these gig workers. This type of employment is also limited in hands-on knowledge, which the employee might gain in a traditional employee-employer relationship. Thus, we can say that their skill development, training, and progression in the chosen field are hindered. They are classified as independent workers, under which they are paid on an hourly/task basis depending on their skills. Many digital platforms like Zomato, Swiggy, Amazon, etc. use such types of workers as they are relieved from the additional obligations that they must perform in the usual course of employment (employee-employer). Moreover, there is rampant gender disparity in this field across the world. Like, if we take the example of the United States of America, female gig workers make up 55% of the total gig work population, as compared to India, where 28% of the gig workforce consists of women. Gig work has witnessed a similar gender disparity, which exists within traditional work. Female workers are attracted to these digital platforms due to their flexibility. Women gig workers are subjected to sexual harassment during work, and as there is no proper mechanism for reporting such violence, they are unable to act against such instances. Moreover, a writ petition was filed by the Indian Federation of App-Based Transport Workers (IFAT) in 2020 under which they challenged the denial of social security benefits to gig workers under the *Unorganized Workers Social Security Act, 2008*².

¹ NITI Aayog, *Perspectives and Recommendations on the Future of Work: India's Booming Gig and Platform Economy, Policy Brief* (2022) <https://www.niti.gov.in/sites/default/files/2023->

² [Supreme Court Urges Union to Implement 2020 Social Security Code for Gig Workers, Including Zomato, Swiggy, Ola, and Uber](#)

Financial uncertainty often results in increased mental health consequences, which are often overlooked. A recent survey by the All-India Gig Workers Union discovered that over 60% of gig workers reported symptoms of anxiety and depression, driven by financial and mental instability. Another hardship faced by these workers includes excessive dictation or control shown by these platforms by deciding how much a worker earns, how many orders each one of them receives, and even controlling their employment as well. In certain circumstances, these workers face an account deactivation problem due to the ratings given by customers (sometimes unfair), which leaves them in a situation where no legal recourse or income source is left for them.

AVAILABILITY OF LEGAL PROTECTION

As of now, a proper regulatory framework does not exist that provides these workers with legal protection. Though an attempt was made by the central government in 2020 by bringing the Code on Social Security, which extends social benefits to all workers, including those in the organized and unorganized sectors, which also includes these gig workers. The primary goal of the government in bringing this code was to provide social security benefits to all the workers, regardless of their employment status or sector. This code has replaced many existing laws, such as the Employee Provident Fund Act, 1961, and the Maternity Benefit Act, 1961. This code includes gig workers, platform workers, and other previously excluded categories, expanding the social security horizon. This code advocates for implementing EPF, EPS, and EDLI for employees employed in various sectors. The government could now notify schemes for unorganized sector workers (such as home-based and self-employed workers), gig workers, and platform workers. This code also provides for the setting up of the “National Security Board,” which will assist the government on matters related to the administration of the code and will also investigate the schemes framed for different types of workers. Through this code, gig workers will be entitled to life and disability coverage, maternity benefits, and pension schemes, etc. This code, if implemented properly, will provide legal recourse to the workers if they are not paid gratuity and contributions on time. The code also makes it mandatory for the gig workers to provide their Aadhaar card to avail of these social security benefits. Various concerns are raised regarding the violation of right to privacy of the workers which is considered as a Fundamental right under the Article 21 of our Indian Constitution,³

³ *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1 (SC) (India).

Definition of platform workers is given under the section 2(61) of the Code on Social Security, 2020 and under the same code section 2(86) provides us the classification of unorganized workers as those who are engaged in irregular or self-employment.⁴ Rajasthan is the first State in India to implement the Rajasthan Workers Act, 2023, which is India's first state-level legislation specifically addressing gig workers' rights. Under this Act, platform registration, data sharing obligations, and establishment of a welfare board have been made mandatory.⁵ Many other states in India are looking forward to this Act while formulating rules and regulations for the protection of gig workers and other platform-based workers.

CONCLUSION

With the surge of the gig economy, new opportunities are created for the people of India, with great transformation in the landscape of employment. Now, as the gig economy is at its peak, it becomes important for the government to address its growing concerns. These workers are now exploited by large digital platforms by using them for their use and not providing any social, medical, and financial benefits. India stands fifth in the world in terms of the number of gig workers employed, and it is projected that by 2030, it will move to third place. This growth is stimulated by digital platforms like Uber, Zomato, Ola, and Swiggy, which are continuously expanding their services, in turn creating more gig jobs. Though it is a well-acknowledged fact that by engaging in the gig economy, workers enjoy flexibility while working, it also causes consistent mental trauma and financial uncertainty. The Supreme Court has also analyzed various aspects related to this type of employment in various cases such as in ***Uber India Technology Private Limited v. Govt. (NCT of Delhi), 2015*** where the hon'ble court concluded that there must exist a transparent and clear employee-employer or master-servant relationship where the supervision and control is exercised by the employer only.⁶ ***In All India Gig Workers Union vs Uber India Systems Pvt. Ltd.***, the legal battle for gig workers' rights is highlighted. In this case Uber refused to provide minimum wage and social security to the employees. To resolve such conflicts, a proper classification should be done between independent contractors and employees, e.g. if we take the example of the United Kingdom

⁴ The Code on Social Security 2020, No 36, Acts of Parliament, 2020 (India).

⁵ The Code on Social Security 2020, No 36, Acts of Parliament, 2020 (India)

⁶ *Uber India Technology Private Limited & Others v Government of NCT of Delhi & Another*, WP (C) 6004/2015, decided 8 July 2015 (Del HC) (India).

which has formed a category called “worker” which serves as the middle path between independent contractor and employee, through this categorization, some benefits like paid leave etc., are provided to the workers while maintaining flexibility. Formulating and implementing strategies like this will help these workers in many ways by providing them with minimum wages, insurance benefits, and protection from hazardous working conditions, like working in harsh climates, pandemics, or under-sensitive deliveries. Various processions and protests are carried out by these workers throughout India, like a recent one in Varanasi where 150 Blinkit gig workers went on a strike demanding reasonable wages, cotton clothes, and better working conditions. Even a “Black Diwali Day” was also observed by these gig workers in eleven cities of India on 31st October, 2024. This strike was conducted by the Gig and Platform Workers Union (GIPSWU), India’s first-ever women-led gig worker union based in New Delhi. According to the recent research carried out by this institution, gig workers also frequently experienced assault, discrimination and harassment while carrying out their jobs. Various websites like The Print and Wire have recorded instances of violence against these workers. Moreover, it is pertinent to note that Sexual Harassment of Women at Workplace (POSH ACT, 2013) mandates that every employer must set up an internal complaints committee (ICC) to redress complaints raised regarding harassment at the workplace specifically. Key labour laws like the Factories Act, 1948 and the Workmen’s Compensation Act, 1923, focus on worker safety and accident compensation, mainly for traditional jobs. The Trade Union Act, 1926, enables collective bargaining through unions. Therefore, we can conclude that these incidents represent the pressing need for addressing the hardships faced by these gig workers to make them work in a conducive environment.

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DEVESH SHARMA

SECOND-YEAR LAW STUDENTS

CHANAKYA NATIONAL LAW UNIVERSITY