
A STUDY ON THE GIG ECONOMY IN INDIA

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INTRODUCTION

“Laws were passed for both individuals and corporations. An entirely new category—people operating as businesses—was established by the sharing economy.” The "gig economy" situation is succinctly summed up in a comment made by Brian Chesky, co-founder of Airbnb. An independent worker may be hired by individuals or companies for a set period of time under the terms of the gig economy. Artists would refer to jobs that lasted a set amount of time as "gigs" informally. Temporary hires and firings of contract workers are made possible through the gig economy. They work in a number of sectors where web-based platforms are required for the delivery of human service. Owners of platforms serve as an intermediary for service providers and the agents who deliver the services. Typical examples include Amazon, Ola, Uber, Zomato, Swiggy, and so forth. Platform providers are agents who charge or receive a commission from both the customer and the service provider. A "gig worker" is a person who accepts a temporary assignment that must be finished within a certain amount of time under unusual work arrangements. Conversely, "platform workers" generally refer to employees of companies that offer services to customers directly through web-based platforms. Because of their benefits—which include the ability to choose their own work schedules, holidays, workdays, and preferred companies—temporary employees now make up a larger portion of the workforce.

Employees here are free to select their organisation for a specified duration, as opposed to being forced into a position. From the perspective of independent contractors, the gig economy might enable them to strike a better work-life balance than traditional occupations would. Gig platforms offer them the flexibility and increased autonomy they desire for their personal and professional lives. Vulnerable employment has now become more accessible thanks to the gig economy. The current trend is to substitute independent contractors and freelancers for full-

time employees. The gig economy is anticipated to grow in importance within the informal sector over the next ten years; in India, the Boston Consulting Group projects that there may be up to 90 million gig workers in the next eight to ten years. Although it has a high cost, working as a freelancer offers some freedom. The employment relationship is among the main issues with the gig economy.

I.e. Because of the unpredictability of their employment, gig workers are frequently vulnerable to conditions like low pay, long hours, unpaid sick leave, unsafe working conditions, and a lack of dispute resolution procedures. The proposal for a 2019 Social Security Code (the "Code") was introduced by the legislature in response to the problem. For freelancers, the code only provides isolated security. It presents "gig work" as a concept and suggests social security benefits for these employees. Using this article, the author hopes to draw attention to concerns about gig workers' identities—that is, whether they qualify as "employees," the need for legal protection for them, and whether the recently proposed Social Security Code will be enough to improve their lot in life. The study will be a doctrinal investigation grounded in both a descriptive and an explanatory study. This paper aims to provide an overview of the gig economy's rise in India, as well as the challenges and opportunities faced by gig workers. It will also discuss the regulatory framework and its shortcomings, as well as provide recommendations and findings regarding the aforementioned issues.

EMERGENCE OF GIG ECONOMY IN INDIA

India has emerged as the fifth-largest gig worker labour market globally, following the United States, China, Brazil, and Japan. India, home to 15 million skilled workers, provides nearly 40% of the global freelance labour force, contributing to the growing demand for contract positions and the freelancing industry. ASSOCHAM research indicates that by 2024, the gig economy in India is expected to grow at a compound annual growth rate (CAGR) of 17% to US\$455 billion, with the potential to grow at least twice as fast as pre-pandemic projections. Another estimate states that 350 million gig jobs will exist in India by 2025, offering a great opportunity for job seekers to thrive in and adjust to changing work environments. The reality that "India is a cheap labour market" is something we cannot ignore. The majority of employee benefits can be extracted by businesses due to the availability of "cheap labour."

In traditional work systems, a large number of workers or employees are unable to cover their expenses; consequently, they receive lower pay and are restricted to a single company. People

of all ages and backgrounds can work in a range of industries thanks to the gig economy. Many studies indicate that in the last five years, a sizable portion of the populace has hopped on the gig train. The gig economy is shifting the flow of labour from low-skilled to higher-skilled services due to its autonomy and flexibility. Numerous blue-collar workers have been employed by Uber, Ola, Amazon, Swiggy, UrbanClap, Justdial, and other businesses.

OPTIMISTIC AND CRITICAL VIEW OF GIG WORK

Employers may "benefit from working with freelancers in a number of ways, including a flexible workforce that is able to change, This fairly idealistic picture of the gig economy promises "increased productivity, cost savings, and greater access to hyper-specialised expertise." Gig workers enjoy a great deal of flexibility in their work environments. They can work from home at any time, they have complete control over their schedules, and they can decide how many hours they work each day and for how long. For workers who wish to escape the confines of corporate hierarchy and bureaucracy, gig work may therefore be liberating. This is the positive view of the industry. In nations such as India, where casual work environments are the norm, a large number of blue-collar workers already experience job insecurity, income instability, and insecure working environments. Conversely, the gig economy is a preferable choice. Compared to informal employment arrangements, it is distinguished by its more egalitarian structure and ease of entry. There are no unofficial networks in the gig economy that could create entrance barriers for outsiders.

People in need have also been able to supplement their income through gig work, which helps them to get by until they can find employment. Along with its benefits, gig work has

certain drawbacks. A primary critique directed towards gig work is the vagueness surrounding the work connection, which needs to be decided upon explicitly. The emergence of the platform-driven gig economy has given rise to a new type of employer-employee relationship that is distinct from the conventional relationship between an employer and employee as defined by the majority of labour laws. In terms of labour law, gig workers are not protected by any specific laws or case law. Platforms from all over the world have seized upon this opening. Uber, Zomato, Swiggy, and other companies claim that since there are no set work hours or physical locations, they are not covered by the laws governing labour.

In addition, the employer uses a legal loophole in labour laws to get away with mistreating its

employees. They call their workers "delivery partners" instead of "employees" to avoid paying minimum wage, providing benefits like employee state insurance (ESI) and PF (Provident Fund), and other obligations. The actual terms of payment are established by a convoluted set of formulas that are entirely at the aggregators' discretion and subject to modification without worker input or consent. The food delivery businesses assert that their app is a "platform" or "internet service" that connects the customer, the restaurant, and the person delivering the food.⁹ Because of this, businesses like Zomato and Swiggy, who employ more than 50,000 delivery executives, attempt to avoid having a high retention rate.

This is due to the fact that the vast majority of people who work on the platform will be not subject to the majority of employee protection laws. An additional concern is that these aggregators have the ability to alter their worker compensation at any time, frequently to their detriment.

The example of Zomato could be used to explain this. Zomato modified their reward programme towards the end of 2019 by switching from Rs. 20 per touchpoint to Rs. 18 per touchpoint, all without consulting delivery executives. The workers were not given any say in the reduction of this 'basic pay' to Rs. 15 during the pandemic. In addition, the conditions under which these gig workers operate are frequently hazardous and subpar. The majority of delivery partners put in long hours, rushing through congested areas, enduring bad weather, weaving across busy roads, making late-night deliveries, and occasionally interacting with irate clients in an effort to supplement their income. In spite of the fact that businesses like Swiggy and Zomato provide voluntary programmes like the Hunger Service Fund and Swiggy Smiles Programme that offer medical and accidental insurance to their workers, some reports claim that these programmes only cover a small subset of individuals that they refer to as "employees" and barely affect the workers who carry out the essential tasks. Protecting data confidentiality and obtaining intellectual property for products created by freelancers are also significant issues for employers as well as services. Since casual employment does not have "non-compete" agreements, the independent contractors may be concurrently employed by multiple competitors, endangering the business's objectives. Therefore, employing temporary employees and giving them access to private information may be cause for concern. Because the gig economy is altering the foundation of the employer-employee relationship and worker rights, it is crucial to include gig workers in legal frameworks and social security benefits.

REGULATORY FRAMEWORK IN INDIA

The following is a list of the four main labour laws for employees that were combined from 44 different labour laws; only one of them recognises gig workers:

- **The Industrial Relations Code (2020)**
 - only pertains to workers who are employed by an industry unit. Gig workers are ineligible because they might not have a set place of employment. Therefore, gig workers are exempt from all laws pertaining to collective bargaining, hiring and firing practices, and the ability to form unions.
- **The Occupational Health, Safety, and Working Conditions Code (2020)**
 - does not relate to contract workers. This is concerning, particularly in light of the fact that a large number of gig workers put themselves in danger by continuing to work during the pandemic.
- **The Wage Code (2019)** does not apply to gig workers, so they are not even eligible for minimum wages.
- **The 2020 Code on Social Security** is the last one, It is the only code that offers protections for unorganised labour, gig workers, and platform workers. The Code contains provisions for health and maternity benefits, old age security, education, provident funds, accident benefits, life and disability insurance, and other things. "A person performing a work or participating in a work arrangement and earning from such activities outside of traditional employer-employee relationships" is the definition of a gig worker under section 2(35) of the Code. Most of the work is temporary, and it must be finished within the agreed-upon time frame. "A worker working for an organisation which uses an online platform for providing specific services to individuals or organisations" is the definition of a platform worker given by the Code in section 2(61). Take Uber, Ola, Zomato, etc. as examples. Moreover, an unorganised worker is defined as "a self-employed, home-based, or wage worker in the unorganised sector" in section 2(86).

Rather than extending the statute's definition of employee, it has defined each of the three terms

separately, thereby dividing these groups of workers. In addition, the Code mandates that platforms such as Uber, Zomato, Swiggy, and Ola contribute a portion of their annual revenue (1-2%) to their platform workers' social security. By self-evaluation and submission of a document demonstrating the number of gig workers associated with it at the beginning of each fiscal year, the aforementioned contribution must be made by June 30 of each year.²¹ The National Social Security Board, which will supervise the welfare of gig economy workers, was established by the government with five members from aggregator companies and five representatives from the gig worker community, suggesting that the government acknowledges the need for security for gig workers. As per the Code, the Union government is required to establish a Social Security Fund specifically for workers in the gig economy.

However, gig workers are not covered by the Code's provisions pertaining to wages, workplace safety, or industrial relations under social security law. The following concerns with the draft have been discussed:

- The primary problem with the Code is that it does not grant them fundamental employment rights like minimum wages and workplace safety.
- The numerous distinctions between the various worker categories that the Legislature has created have only served to increase the confusion. It has been proposed that platform and gig workers are not distinct groups but rather parts of a broader workforce that is hired outside of the traditional employer-employee relationship.
- Although the Code safeguards the social security rights of platform (or gig) workers, it also grants the government considerable latitude by utilising phrases such as "may," "from time to time," and "from time to time." This gives rise to ambiguity for both employers and employees. Experts contend that if there aren't clear deadlines for the adoption and implementation of these kinds of programmes, they'll either become "dead letters of the law" or take so long to implement that their main goal will be lost.
- One significant issue that comes up is the concentration of power and authority. Both the Board, which is in charge of creating the plans, and the funding source for those plans have been established at the federal level. The registration aspect has also been delegated to a central authority. But since Labour is on the concurrent list, this concentration might make it harder to implement these systems successfully.

Social security benefits are a good place to start, but they won't go far enough to fully safeguard the rights of gig workers. Gig workers need to be guaranteed a stable job, be entitled to a universal minimum wage that covers all types of work, and be able to organise into legally recognised unions. It's strange that the government recognises the importance of providing gratuities and life insurance to gig workers but ignores workplace safety and minimum wage. In addition, gig workers need to establish legally recognised unions in order for collective bargaining to determine their pay as opposed to the whims and inclinations of the service aggregators alone.

LEGAL DEVELOPMENTS IN INDIA AND OTHER COUNTRIES

"It is the very fact that an employer is often in a position to dictate such contract terms and that the individual performing the work has little or no ability to influence those terms that give rise to the need for statutory protection in the first place," the United Kingdom Supreme Court declared in a recent ruling against Uber.²⁵ As "workers," Uber drivers were deemed by the court to be entitled to benefits like paid vacation time and minimum wages under the UK Employment Rights Act of 1996. A similar ruling was made by the Dutch High Court last month, which determined that Uber's legal relationship with these drivers met all the requirements for an employment contract. Similar decisions have been made throughout Europe as well, with Spain and Italy emerging as new fronts in the fight for gig workers' rights and the French government and European Commission actively seeking input on proposed laws that would further protect platform workers.

The Assembly Bill 5 (AB5), which codified the legislation established in the Dynamex case²⁷ and expanded the definition of employee to include gig workers and other similar individuals, broadens the definition of employee that is typically accepted in the United States. It accomplishes this by employing a three-tier assessment process that has significantly narrowed the pool of people who are eligible to be considered independent contractors. The 'ABC Test,' a new standard established by the court, requires an employer to prove that its workers are independent contractors with no claim to social benefits. The ABC Test has three requirements that must be satisfied in order for this to be displayed, and the court stated that these are as follows:

1. According to a contractual right or in actual practice, the hiring entity does not supervise or control the worker when it comes to the way he completes his work; the worker completes

tasks outside of the hiring entity's regular business operations or is not typically thought of as an employee given the type of work he completes for the hiring entity; and the worker typically works for a self-established trade, profession, or business that is related to the work performed by the employing organization.

2. Disagreements that frequently arise between employers and independent contractors as well as between employers and contract workers. One of the earliest rulings on the matter, *Dhrangadhara Chemical Works v. State of Saurashtra*,²⁹ states that the supervision and control test is the most fundamental standard for determining the existence of an employment relationship. If the employer decides what kind and how the employee will complete their work and oversees it, this suggests a relationship between an employer and employee. It needs to be determined. According to each case individually, accounting for all pertinent details and circumstances.

3. Subsequent judgements, however, examined whether an individual is considered an employee if they work directly as a contractor or are allowed to do so by a vendor who, in turn, has a manpower supply contract with the final employer. In these cases, it was determined that factors other than supervision and control were involved in the decision-making process. In reality, the Indian Supreme Court (referred to as the "Supreme Court") adopted a broad perspective that encompassed, among other things, the employer's right to hire and fire employees, pay compensation, and deduct insurance premiums. If the employer controls the methods and means by which the contractor accomplishes his task, then there is an employer-employee relationship between the employer and the contractor's employees.

The Supreme Court highlighted the important deciding factors in another case³², ruling that employees are not always considered to be employees of the company just because management has authority over proper work execution, dismissal, and disciplinary actions.

Recently, on September 20, 2021, The Indian Federation of App-based Transport Workers (IFAT) filed a public interest lawsuit in India's Supreme Court on behalf of gig workers. In order for "gig workers" or "platform workers" to be covered by the Unorganised Workers' Social Security Act, 2008 (UWSS Act) and receive statutory protection in the form of social security benefits, the petition argued that they should be categorised as "unorganised workers."

RECOMMENDATIONS AND CONCLUSION

The gig economy appears to be in need of significant reform and to have room for it. To achieve this, a variety of strategies can be applied. First and foremost, gig workers should be covered by the government's confirmation and enforcement of existing labour laws.

Creating a qualifying test to expand the definition of employee to include gig workers is the second strategy, which is currently being used in the US. Consequently, workers will enjoy the same degree of benefits and security as legitimate, regular employees. In a similar vein, the definition of an employer could be broadened to encompass the party responsible for these employees' social security. The third option would be to place restrictions on the service aggregators, which would make it illegal for them to terminate or suspend workers' employment at will. This would give gig workers greater security and protect them from arbitrary terminations. Fourth, gig-work contracts need to contain a mediation-arbitration clause, and a commission (like Australia's Fair Work Commission) needs to be set up to keep an eye on issues pertaining to gig workers. Equal rights for workers would be achieved, and they would have a neutral forum in which to voice their grievances. In the presence of such an Alternative Dispute Resolution Body, the suspended workers would have been entitled to a fair trial and to be heard, as opposed to an arbitrary and sudden suspension.

Finally, by including anti-discrimination clauses, these contractual employees will have the freedom to openly criticise the "dangerous corporate practices" of the platforms without worrying about facing reprisals. This would provide workers the power to form unions or other collective organisations and protest unfair labour practices like higher control, lower pay, and so forth. In conclusion, it can be concluded that gig workers are becoming more and more prevalent in India. Therefore, it is essential to have an efficient regulatory framework that acknowledges their rights and obligations. The Social Security Code of 2020 is a great first step towards protecting and regulating these gig or platform workers, but there are still a lot of issues to be resolved, including minimum salary requirements and the absence of regulations pertaining to occupational safety. To let such a significant segment of the economy operate unchecked is to do these people a great injustice. In many respects, it is imperative that gig workers be treated with the same legal protections as regular employees. If the aggregators continue to treat them as non-employees, then they ought to be treated as such and accorded benefits like the ability to organise into unions, a universal minimum wage, and workplace

protections more appropriate for the gig economy. Whatever path policymakers decide to take, swift changes to the gig economy are imperative. The rights of millions of people are in jeopardy, so it is imperative that any gaps be filled right away.

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