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UNCERTAINTY OF THE GIG ECONOMY

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INTRODUCTION

The gig economy has become a distinctive element of the labour market in this era. This economy, which includes freelancing, platform-based work, short-term work, and crowd work, has completely changed the way individuals earn a living. From food delivery to digital content creation, this model offers flexibility, autonomy, and income-generating opportunities. By 2029–2030, the gig economy is anticipated to rise to 23.5 million workers¹. But underneath this system lies a maze of legal uncertainties, especially about social security, labour rights, and employment classification.

WHO ARE GIG WORKERS?

The latest labour code defines a gig worker as “a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship”². They can be classified into two categories, namely:

- **Platform-based workers** - Workers who offer services using online platforms (such as Uber, Swiggy, and Zomato).
- **Freelancers** - Professionals who operate independently for several customers based on their contracts, such as consultants, writers, and designers.

ABSENCE OF CLASSIFICATION

The classification of gig workers as either traditional employees or independent contractors remains a heated issue globally. They frequently carry out tasks like those of regular employees, despite having some characteristics in common with independent contractors, such as

¹ NITI Aayog. (2022). India’s Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work. June, 2022.

² The Code on Social Security, 2020, § 2(35), No. 36 of 2020, (India).

flexibility and contractual terms. Since a contract governs the terms of their work, they are comparable to independent contractors. But they perform the same type of work as regular employees. Their legal status is unclear due to their hybrid nature³.

Gig workers have been classified as employees by courts in some jurisdictions, including France and Switzerland. However, in countries like Brazil and Australia, legal authorities have classified gig workers as independent contractors⁴. In India, the “Control and Integration Test” helps determine whether a "contract of service" (for employees) or a "contract for service" (for independent contractors) exists. This test primarily focuses on the extent of the employer's control over the employee and manner of the work assigned⁵. Platforms may face severe financial consequences if gig workers are classified as employees, which could lead to a decline in employment opportunities and customer satisfaction. If they were treated as independent contractors, they would still be subject to exploitation and be denied basic rights like medical leave and overtime compensation⁶.

UNCERTAINTY IN THE LEGAL LAYOUT

The Code on Social Security, 2020, marks an impressive attempt by the Indian legislature to bring the gig economy into the labour laws. For the first time, the gig workers have been recognised and provided with social benefits. However, this recognition is largely uncertain and lacking in various aspects. Firstly, even though this code was passed by the legislature on September 28th, 2020, it has not yet come into force. Secondly, the absence of a specific law for the gig workers, and lastly, this code only addresses a few aspects, such as helplines, registration, and social security schemes. Without clear guidelines, monitoring methods, and institutional responsibility, the actual implementation of social security is still ambiguous and more of a goal than something that can be enforced.

SALIENT FEATURES OF THE CODE⁷

Chapter IX of the Code on Social Security, 2020 deals with “Social Security for Unorganised

³ Anand Pawar & Ankit Srivastava, GIG Workers and Employment Laws: An Indian Perspective V SML. L. REV. 88 (2022), <https://doi.org/10.70556/hpnl-slr-v5-i1-2022-04>

⁴ Mathur S, Labour Law, and the Gig Economy: Towards a Hybrid Model of Employment, INDIACORPLAW (Dec. 25, 2022), <https://indiacorplaw.in/2022/12/labour-law-and-the-gig-economy-towards-a-hybrid-model-of-employment.html>.

⁵ Dharangadhara Chemical Works Ltd vs State of Saurashtra, 1957 AIR 264.

⁶ Jeong, Gyubin, Comparative Employment and Labor Law Study: Diverse Approaches Towards Providing Protections for Gig Workers in Various Jurisdictions (November 28, 2021), <https://ssrn.com/abstract=3973165>

⁷ The Code on Social Security, No. 36 of 2020, (India).

Workers, Gig Workers, and Platform Workers”. Sections 112, 113, and 114 contain provisions about gig workers and platform workers.

- Section 112 enables the appropriate government to set up a helpline, facilitation centre, etc., for unorganised workers, gig workers, and platform workers.
- Section 113 makes it mandatory for those workers to register under the Act.
- Section 114 allows the Central Government to provide social security schemes for gig workers and platform workers on various matters.

PROBLEMS OF THE GIG ECONOMY⁸

1. Workers in the gig economy often experience unstable and low pay, which can lead to excessive workloads.
2. The health of gig workers is negatively impacted due to prolonged working hours, strict deadlines, and short intervals.
3. The absence of labour laws and social security schemes makes them vulnerable in various aspects, such as termination without notice, insurance, medical emergencies, medical leave, retirement schemes, etc.
4. They lack social interaction due to limited networking, autonomous workplace, and limited professional connections.

CONCLUSION

As the gig economy allows for creativity and flexibility, it also exposes its workers to serious structural and legal difficulties. Legislative action must be taken immediately to address the ambiguity surrounding worker classification, the absence of welfare entitlements, and a governance system. India needs to develop a hybrid form of employment model that helps to balance between fundamental labour rights and the flexibility of gig work. To prevent the gig economy from becoming an exploitative labour model, a rights-based strategy supported by enforceable laws, platform accountability, and institutional support is essential. In addition to new technologies, the future of work necessitates advanced regulations that safeguard individual rights, safety, and dignity.

⁸ Radhika Dinesh & Tathya Sarkar, WORKERS RIGHTS IN GIG ECONOMY- LEGAL FRAMEWORK AND CHALLENGES, <https://articles.manupatra.com/article-details/WORKERS-RIGHTS-IN-GIG-ECONOMY-LEGAL-FRAMEWORK-AND-CHALLENGES>