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GIG worker protections: designing a new labour category for the digital economy

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ABSTRACT

The rapid growth of gig and platform-based work in India has created unprecedented opportunities for flexible employment but has simultaneously exposed workers to heightened occupational safety and health risks. Traditional labour laws often fail to address the vulnerabilities of this workforce, which includes delivery personnel, ride share drivers, and freelance digital service providers. The enactment of the Occupational Safety, Health, and Working Conditions Code, 2020, under India's new labour codes, marks a critical step toward integrating gig workers into the formal safety and welfare framework. This article examines the scope and effectiveness of these provisions in protecting gig workers from occupational hazards, ensuring access to health facilities, accident compensation, and welfare measures. It critically evaluates challenges in enforcement, including the informal nature of platform work, lack of employer accountability, and digital monitoring limitations. By analysing case studies, government notifications, and comparative international practices, the study underscores the need for adaptive policy mechanisms that balance flexibility with worker protection. The article concludes that strengthening regulatory oversight, mandating platform accountability, and extending social security benefits are essential to safeguarding the health and wellbeing of gig and platform workers in India's evolving digital economy.

INTRODUCTION

The gig economy in India has emerged as a rapidly expanding segment of the labour market, characterised by flexible, temporary, and on-demand work mediated through digital platforms such as Uber, Ola, Swiggy, Zomato, and Urban Company. Enabled by rising smartphone penetration, platform-based service models, and the demand for real-time convenience, platform work has increasingly appealed to individuals seeking supplemental income or flexible working hours¹. For businesses, the gig model reduces fixed labour costs and enables operational scalability, contributing to its widespread adoption across urban markets². However, the legal status of gig workers remains uncertain because they typically fall outside

¹ NITI Aayog, *India's Booming Gig and Platform Economy* (June 2022)

² International Labour Organization (ILO), *World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work* (2021)

the classic employer–employee framework, resulting in limited access to minimum wages, social security entitlements, job security, and collective bargaining mechanisms³. As India moves towards a digitalised service economy, the need for a comprehensive regulatory framework—particularly under the Code on Social Security, 2020 and state-level aggregator guidelines—becomes essential to ensure fair working conditions, dispute-resolution mechanisms, and the protection of gig workers’ rights⁴

UNDERSTANDING GIG WORK IN DIGITAL ECONOMY

Digital labour platforms have emerged as a promising avenue for creating earning opportunities, particularly in low and middle-income nations with substantial informal workforce segments. In India, the digital gig economy has experienced remarkable growth, with an estimated 6.8 million digital gig workers in 2019-20 and projections suggesting this number could reach 23.5 million by 2029-30. This expansion is driven by widespread smartphone adoption, extensive internet penetration, and the platforms’ ability to provide efficient and predictable service provision.⁵

For the first time, the definition of ‘gig workers’ and ‘platform workers’ and provisions related to the same have been provided in the Code on Social Security, 2020 which has come into force on 21.11.2025.

The Code provides for framing of suitable social security measures for gig workers and platform workers on matters relating to life and disability cover, accident insurance, health and maternity benefits, old age protection, etc. The Code provides for setting up a Social Security Fund to finance the welfare schemes. The Code also has provisions to constitute a National Social Security Board for the welfare of gig workers and platform workers.⁶

COMPARATIVE JURISPRUDENCE ON GIG WORKER CLASSIFICATION

1) United States:-

In the United States, the California Supreme Court addressed key issues related to gig workers in the case *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*⁷. Prior to 2004, Dynamex, a delivery service company, treated its drivers as employees. In 2004, the company reclassified these drivers as independent contractors, thereby requiring them to bear the costs of vehicle maintenance, fuel, tolls, and other transportation-related expenses. Although drivers were free to decide their working hours, Dynamex negotiated the service fees with clients, which limited the drivers’ ability to influence their earnings. The California Court of Appeal held that such reclassification amounted to worker misclassification and observed that it was

³ S.C. Srivastava, *Indian Labour Law and Policy* (Oxford Univ. Press 2020).

⁴ Vidhi Centre for Legal Policy, *Protecting Workers in the Platform Economy* (2021)

⁵ Sudhanshu Sharma, Jenny Susan John, *Economic Lives of Digital Platform Gig Workers: Case of Delivery Drivers In India*, IDInsight (27 Feb 2025), <https://www.idinsight.org/publication/economic-lives-of-digital-platform-gig-workers-india/>

⁶ Press Information Bureau, *Social Security Measures for Gig and Platform Workers*(2025)

⁷ Labour and Workforce Development Agency, *ABC Test*, (2025)

harmful and unfair to workers, as it shifted business costs onto drivers while denying them the statutory protections available under labour law.

Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions:

- The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- The worker performs work that is outside the usual course of the hiring entity's business;
- The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

2) United Kingdom

In the United Kingdom, gig workers can be classified as an "employee", a "worker", or "self-employed". Workers are entitled to certain employment rights, though limited. The Supreme-Court case *Aslam and others v. Uber BV and others*⁸ clarified key issues regarding gig workers. The court while delivering the judgement, considered the following elements:

1. Uber controls the fare structure for each trip, meaning drivers do not have the freedom to set their own prices, unlike what would be expected in a self-employed arrangement.
2. The terms of the contract are established by Uber, with drivers having no input or negotiation power; they are only able to accept or reject the set conditions.
3. Uber closely monitors drivers' performance ratings, with the authority to terminate the working relationship if a driver does not meet expectations after multiple warnings.
4. The Court recognized this as a clear example of subordination, a key indicator of an employment relationship.
5. Uber also oversees the volume of ride requests that drivers receive and may impose penalties on those who cancel too many rides.⁹

THE EVOLVING REGULATORY FRAMEWORK IN INDIA

The legal template that currently exists in Indian gig economy is a patchwork of developing legislation, constitutional law and changing judicial statements. Although there has been a

⁸ [2021] UKSC 5

⁹ Kingshuk Sarkar, "Why UK Supreme Court's Uber Driver Verdict Can Impact Indian Gig Workers", The Leaflet available at <https://theleaflet.in/analysis/why-uk-supreme-courts-uber-driver-verdict-can-impact-indiangig-workers>

legislative effort, central on the part of the legislators to enact, the actual implementation has not been swift leading to a wide gap between the policy desires and on the ground events.

Labour welfare and social security is a part of the concurrent list under Schedule VII of the Indian Constitution. In recent years, states like Karnataka and Rajasthan have introduced legislation concerning gig workers and the gig economy, along with the Union government's Code on Social Security, 2020.⁷ However, these legislations are either draft or passed without supporting rules to ensure proper implementation. The recent labour codes put gig workers within the ambit of labour law for the first time. The definition of employee under section 2(k) of Code on Wages, 2019 has been made very wide.¹⁰ It could be said that it includes all sorts of work under its definition of "employee" including gig worker. Under the Social Security Code, "gig workers" have been distinguished from "employees" under sections 2(35) and 2(26) of the Code respectively.

Chapter IX provides social security schemes for gig workers, platform workers, etc. However, the whole availability and working of the schemes such as life and disability cover, accident insurance, health and maternity benefits, etc. is dependent on the notification of the Government and would be subject to change.¹¹ Moreover, Section 6 provides for the National Security Board, which would recommend the central government for framing schemes for unorganised, gig and platform workers.

Section 45 allows the Central Government to extend and expand the benefits of Chapter IV to gig workers.¹² Section 141 states that the Social Security Fund can be established by the central government. Moreover, Section 114(7) provides that the government may provide exceptions based on the turnover of the company.¹³ Though this looks fine, it has a fatal flaw in that it is relatively easier for companies to manipulate data on turnover, and in such a scenario where the word "turnover" has not been clearly defined.

CONCLUSION

While the role of the gig economy in the development of the country is clear by now, a downward trend can be seen in the standard of living of gig workers. Although the government through a series of legislations has tried to recognize gig workers with central legislation and various States have proposed similar bills in the State assembly. But there seems to be an apathy regarding the implementation as no efforts can be seen for framing rules for their implementation of the proposed bills, because of which uncertainty exists. The ambiguity can also be seen in court's interpretation of gig worker's rights and duties as in some cases the court have considered them employees and held them liable while in the other have not even recognized them, leaving them vulnerable. This should be seen in context that day by day more people are becoming gig workers to earn their living. Through a global perspective it is seen that various countries have tried to recognize gig workers and labelled them as independent contractors, like the US (although it is not the same for every state) and Brazil (with some govt. scheme to protect gig worker's interest) while the UK has adopted some test to classify them as workers or independent contractor. India at present severely lacks in this regard keeping in

¹⁰ The Code on Wages, 2019 (29 of 2019)

¹¹ The Code on Social Security, 2020 (36 of 2020) s 114.

¹² The Code on Social Security, 2020 (36 of 2020) s 45.

¹³ The Code on Social Security, 2020 (36 of 2020) s 114.

view how dire situation most of these workers are. The proposed bills seem an inadequate and haphazard attempt to tackle the situation without considering the voices of gig workers.

Ultimately, the proposed bills need to be comprehensive to develop a balanced approach, incorporating legal safeguards, social security, and fair labour practices, which will help secure a brighter and more just future for all gig workers in India, enabling them to thrive in a rapidly evolving labour market.