

LEGAL FRAMEWORK STREAMLINES GIG ECONOMY IN INDIA AND OTHER JURISDICTIONS” AN EXTENSIVE ANALYSIS FOR SUSTAINABLE GROWTH

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ABSTRACT

Emergence of technology and internet of things paved avenues for substantial growth of gig work throughout nations. The contemporary time witnessing the enhanced growth of Gig workforce in India and throughout the globe. Due to flexible timings and extensive preference for opting the employment in Gig work fascinated large number of workers to engaged in it. This burgeoning gig jobs dwindled the employer’s liability and resonating an exponential revolution in the labour market. This intensified shift in the labour market would create a precarity to the workforce and it demands a new legislative frame work to streamline it for sustainable development. This research article analyses the legal framework existed in India is ample enough to demarcate the social security measures for Gig workforce. There exists a considerable dearth of robust legislative frame work in India. This research study intends to explore international legal frame work pertaining to securing social security measures for Gig workforce. This research work endeavor to provide a decisive trajectory for establishing an optimal legal frame work for enhancing sustainable and harmonious growth of Gig workforce.

Key Words: *Gig Economy, Gig Workforce, Gig Legal framework, Gig-Sustainability*

INTRODUCTION

The existing labour laws are limited to streamline the social security mechanism of Gig workers. The gig workforce is rapidly expanding but the laws are not able to address the problems pertaining to security cover for gig workers. In gig work there exist a free market system of business transaction where independent workers are engaged only for a limited time to perform the assigned work. In this emerging gig economy, there is no employer employee relations. In coming decades gig economy occupies a predominant position in the unorganized sectors. Unless if the laws are capable enough to regularize the social security provisions for gig workforce, it would pave way for vulnerable employment in very near future. The very nature for the booming of this gig nature of work is its high flexibility and the autonomy. Only reforms in laws and regulations can take a forward way for its sustainable growth in the society. The booming of ride hailing work and on-demand delivery works pose an immediate requirement for regulatory mechanisms for social securities such as accident claim, insurance etc. Because of limited liability towards gig workforce now organizations are coming up to assign myriad of jobs to platform-based workforce. This research article tends to provide a comprehensive overview about the legal framework for regulating the digital platform-based

business and nondigital mode of gig business model. "The European Union has also passed directives to recognise the rights of persons in certain non-standard employments like platform work, if they work for over an average of three hours per week over a four-week period."¹

REVIEW OF LITERATURE

Stewart, A. and Stanford, J., 2017 notes five major options in this regard: enforcement of existing laws; clarifying or expanding definitions of 'employment'; creating a new category of 'independent worker'; creating rights for 'workers', not employees; and reconsidering the concept of an 'employer' and they review the pros and cons and urge regulators to be creative and ambitious in better protecting the minimum standards and conditions of workers in these situations.²

Collier, R.B., Dubal, V. and Carter, C., 2017 stated that Labor platforms not only accelerate this trend, but also compensate for it, by providing supplemental work to jobs that yield inadequate income or irregular hours. They also relate both to other pathologies and to new forms of dynamism in the economy by, for instance, compensating for inadequate pensions and retirement savings and providing income for start-up entrepreneurs. They provide a conceptual and theoretical overview of these rapidly growing platforms, focusing on how they represent both continuity and change in the transformation of the world of work and its regulation.³

Kaine, S. and Josserand, E., 2019 explore aspects such as job quality, forms of collectivist, identity development, and algorithmic management and control. They also delineate avenues for further research regarding conditions for gig workers, the impact of gig work and information, technology and gig work.⁴

Roy, G. and Shrivastava, A.K., 2020 examines the important roles of stakeholders in gig economy and highlights how various factors affect the growth and importance of gig economy in Indian and global context.⁵

Doherty, M. and Franca, V., 2020 argues that, rather than focussing on individual employment status and litigation, it is by developing a regulatory framework supportive of, and that involves key stakeholders in, strong sectoral collective bargaining that work in the 'platform economy' can be adequately regulated to the benefit of workers, business and the State.⁶

NITI Aayog, 2022 report mentioned that gig economy workers often face challenges in accessing social security benefits, such as health insurance, pension schemes, and unemployment benefits. Traditional labour laws in India have primarily focused on providing social security coverage to formal sector employees. Extending social security coverage to gig

¹ Directive on transparent and predictable working conditions in the European Union", May 24, 2019.

² Stewart, A. and Stanford, J., 2017. Regulating work in the gig economy: What are the options?. *The Economic and Labour Relations Review*, 28(3), pp.420-437.

³ Collier, R.B., Dubal, V. and Carter, C., 2017. Labor platforms and gig work: the failure to regulate.

⁴ Kaine, S. and Josserand, E., 2019. The organisation and experience of work in the gig economy. *Journal of Industrial Relations*, 61(4), pp.479-501.

⁵ Roy, G. and Shrivastava, A.K., 2020. Future of gig economy: opportunities and challenges. *Imi Konnect*, 9(1), pp.14-27.

⁶ Doherty, M. and Franca, V., 2020. Solving the 'gig-saw'? Collective rights and platform work. *Industrial Law Journal*, 49(3), pp.352-376.

economy workers is imperative to mitigate the risks associated with income insecurity and ensure their financial well-being.⁷

Research Gap

From the review of literature, it was assessed that there was no study conducted in the context of how present legal frame work streamlines gig economy and to suggest an avenue for a constructive legal framework for gig workers without infringing the very nature of Gig working model. So, the researcher intends to have a comprehensive study on “Legal Framework Streamlines Gig Economy in India and Other Jurisdictions: An Extensive Analysis for Sustainable Growth.”

Research Hypothesis

“An Optimal legal framework affords a conclusive avenue for establishing a constructive and sustainable Gig economy.”

Research Objectives

1. To study aims to analyses the present legislations for regulating Gig economy in India.
2. To explore the legal status of Gig workers in various jurisdiction.
3. To suggest measures to establish an optimal legal framework to secure a constructive and sustainable Gig economy.

Gig Economy in India

The rapid growth of gig economy in India demanded to have a robust legislation to regulate the platform-based workforce. The gig workforce is out of the purview of traditional employer and employee relationship It includes contractors, freelancers, self-employed, independent workers. The recognition of gig workers under law as an employee is not fully recognized. Due to the emergence of technological innovations and internet of things paved revolution in labour market. This tremendous shift in the working model changed the traditional employer employee relationships. This subsequently resulted in considerable gaps in social security coverage among the workers who are in gig-based works. In the real sense the present legislations are not capable enough to addresses the social security coverage for gig workers because they are not certainly termed as employees. The gig workers are recognized as self-employed, independent contractors, freelancers etc.

Indian Laws for regulating Gig Workforce

The traditional perspectives of work environment have a significant transformation due to the emergence of gig works, thereby pose challenges in the entire labour regulatory frameworks. The birth of this new gig workforce is demanding a separate regulatory mechanism to administer in matters such as social security, accident claims, old age pensions, sickness benefits, maternity benefits. In the present legal framework, it is very crucial to address the issues pertaining to gig economy and the workforce in the new employment landscape which is significantly out of the traditional employment relationship between employers and workers.

⁷ National Institution for Transforming India (NITI Aayog), 'Digital Platforms and Gig Economy: Transforming Indian Workforce' (NITI Aayog, 2022)

The gig workers under the current legal status they are deprived from claiming protections under Minimum Wages Act, Provident Fund Act, Payment of Bonus Act and Payment of Gratuity Act.

Code of Social security, 2020

The Social security code set forth provisions for social security schemes for gig workers. In India the gig workers are classified under two heads one is platform-based Gig workers and the other is non-platform-based gig workers. Platform based workers engaged their job through web-based platforms such as uber, olla, Swiggy, Zomato etc., non-platform-based workers they engaged in jobs for a temporary basis without interception of online webs.

Section 2 (35) "gig worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.⁸

Section 2(60) "platform work" means a work arrangement outside of a traditional employer employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment;⁹ **Section 2(61) "platform worker"** means a person engaged in or undertaking platform work.¹⁰

The definitions pertain to the gig and platform workers are not certain and it is unclear. This social security code mandates different social security schemes for all these categories of workers. The definitions given for Gig worker and platform work are seems to be overlapping. In this regard a driver can opt his work through web bussed, therefore because of web-based nature of work he would be lie outside the purview of traditional employer employee relations. self-employed or engaged as an unorganised worker.

The code on social security provides structural framework for social security to Gig workers in India. The Workers involved in this gig economy have exempted from the conventional method of social security provisions. The code envisaged that the central government may frame schemes for providing social security to gig workers.¹¹ The code provides provisions to set out National Social Security Board, which implement and administer the welfare provisions for gig and platform workers.¹²

The social security code has not specifically mentioned about the details pertaining the source of funding to the schemes, it only spelt out that the CSR funds may be steered for funding the schemes. The code directs the aggregators listed under schedule seven of the code has to contribute one to two percent of their annual turnover to the funding of the social security schemes for gig and platform workers. However, the Central Government by notification exempt any aggregators at any time from contributing to the social security schemes. The social security (central rule) 2020 envisaged the registration of eligible gig and platform-based workers in a government portal by an Aadhaar based self-declaration about their working status then an "Unique Registration Number" be generated. Aggregators have to furnish their data

⁸ Code on Social Security, 2020.

⁹ *ibid*

¹⁰ *ibid*

¹¹ Code on Social Security, Section 114

¹² Code on social security 2020 section 114 (6)

base pertaining the particulars of their gig workers and can link their database with the unique registration number.

Individuals who are engaged in gig works for not less than ninety days and who are between sixteen and sixty years of age are eligible for registration in the government portal specified by the Central Government.¹³ The social security contributions are traditionally contributed by or either appropriate Government, employers and workers but in the new realm of business model the onus of contribution to the social security schemes for the workers are shifted from to a facilitator who facilitate the works called as Aggregators. They are establishing platforms and paved an avenue for linking the workers, service providers to the end users called consumers and customers.

Gaps Identified in Social Security Code 2020 and Social Security (Central) Rules 2020

The following are some of the gaps this researcher speculated in the extensive analysis of the code on social security 2020 and the rules.

The definition for “Gig Work” is not certain, it creates a scope for potential litigation due to the lack of proper guidance in the definition as to determine which works be considered as Gig works.

With regard to offering social security schemes there exist discrepancies for gig workers, platform workers and unorganised workers because the code mandate the Central Government and the State Government to frame welfare schemes but concerning the gig workers the code state that the Central Government “may” enact schemes for gig workers. The use of the use of “may” and “shall” in different clauses of the same section of a statute would create discrepancies.

There is no clear demarcation as to social security schemes for unorganised workers and Gig workers. All the three categories of workers are encompassed under ninth chapter of the code quoting a thin line of differentiation among these groups. This would create difficulties during implementations.

It is envisaged there might arise possible implementation challenges. Because there are separate rules existed for some category of Aggregators such as “Motor Vehicle Aggregator guidelines, 2020” under which the aggregators has to contribute for the term insurance to all the drivers and also they have to provide health insurance. For instance, this would cause duplication of cost to aggregators in providing social security for gig workers.

Under some circumstances the Central Government by official notification can exempt any aggregators from contribution to the social security funds but there must be alternate social security cover should afford to workers in gig economy such cover shall in no way less favourable than the social security cover envisage under this code.

Though the potential for accessing social security benefits requires that the workers engaged in gig economy have to update their data’s in online this requires effective guidance. The code does not mandate the appropriate Government to establish tollfree centres to give guidance and disseminate information pertaining to social security schemes, registrations etc.,

The Aggregators and the individuals who engaged in the gig works need to register in online their Aadhaar based self-declaration otherwise they would be deprived from claiming the

¹³ Social Security (Central) Rules 2020, rule 50(2).

benefits under the social security schemes. But the code fails to appoint a specific authority to oversee this registration process.

An Overview of Gig Context in various Jurisdiction: American States and in European Unions people's engagement in gig nature of work is considerably more and these two jurisdictions shed light on the gig phenomenon throughout the global.

United States of America

Workers Classification: Employee Vs. Independent Contractor

Classification of the Gig workers based on their terms and conditions pertaining to the work individuals are classified as employees, independent contractors, Self-employed. If they are classified as employees then they are eligible to reap all the benefits provided under employment laws. In **Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County, [2018]**,¹⁴ the Californian Supreme Court held judgments on the classification of workers. The decision in this case was led to the emergence of a new codified law called "Assembly Bill 5". The bill stated that if an intermediary considers a worker as an independent contractor, then the burden of proof lies upon the intermediaries that the particular individual is not an employee. Large number of gig platforms oppose this AB5 bill, later Proposition 22 was come into force in favour of platform intermediaries in transport and delivery sectors. Later the proposition 22 get approved by California voters and emerged as law titled "Protect App based Drivers and Services Act, 2020"

Later in the year 2021 in "Hector Castellanos and Ors. v. State of California and Katie Hagen (2021)"¹⁵ the judge of Alameda county superior court declared "Proposition 22" as unconstitutional.

The Concept of "Worker" in European Union

To secure the workers minimum rights and transparency in the working conditions of work the European Union issued directives. The motive behind the directives is to curb the practices of declaring a person as self-employed rather than recognising him as worker. The individuals who crossed on an average three hours per week or twelve hours per four weeks works are entitled to have minimum workers' rights and are entitled to claim employment benefits.

CONCLUSION

In this contemporary era there arise a revolutionary change in the labour market due to the advancement of technology and internet of things. The Gig economy is booming throughout the globe due to the work flexibility and its temporary nature. The Gig workers cannot be neither treated as workers nor treated as independent contractors in a full sense but they are evolving as a third category of workforce. Separate legislative measures are needed to strengthen this gig economy for a harmonious and sustainable growth.

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