



Emerging Legal Challenges of the Gig Workers in India's Unorganised Sector

Antu Rani Majumdar

Research Scholar, Amity University Kolkata, Email Address : antumajumdar81790@gmail.com

Dr. Malay Adhikari

Assistant Professor, Amity University Kolkata, Email Address: madhikari@kol.amity.edu

Prof. (Dr.) Pradeepta Kishore Sahoo

Principal, Law College Durgapur, Email Address: pradeeptakis.sahoo@gmail.com

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ABSTRACT

Some significant impacts have resulted from the development of the gig workers in terms of employment patterns in India, particularly in the unorganised sector. By engaging in gig activities such as food delivery, car services, logistics, house cleaning, freelancing, among others, using technology-based platforms, one earns income based on flexible schedules. On the downside, however, there exist numerous socio-economic and legal issues confronting gig workers. Gig workers refer to those individuals who work independently rather than being employed by an organisation. In other words, they are not entitled to any basic rights protected under labour legislation. In fact, it is also a forward-looking Act because it addresses gig workers although it does not provide any system for its execution. In this article, an attempt is being made to understand the new challenges faced by gig workers in India's Unorganised sector. For this purpose, the method of socio-legal analysis shall be undertaken with the aid of current labour laws.

1. INTRODUCTION

The term Gig Workers refers to the labour market, which consists of flexible, temporary, and task-based employment opportunities facilitated by digital platforms. The workers are hired to perform specific tasks



and not continuously. In India, there have been significant changes in gig employment, including ride-hailing services, food delivery services, courier services, domestic helpers, and freelance platforms.

The Gig Workers has opened up immense avenues for employment among youth, migrants, women, and other socio-economic backward classes of society. However, several gig workers encounter issues similar to those faced by the unorganised sector. They lack job security, social security, steady income, and any mechanism to address their grievances or identify them as workers.

But the theory underlying Indian labour laws was previously applicable only to the organised sector of labour. As a result of classifying gig workers as "independent contractors" or "partners," they have been excluded from certain parts of the law. Therefore, the rise of gig work within the unorganised sector of labour is a significant legal problem today.

2. OBJECTIVES

The objectives of the study are:

1. To analyze the status of gig workers in the unorganised sector.
2. To evaluate the applicability of labour laws in India to gig and platform workers.
3. To bring out the problems faced by gig workers.
4. To suggest measures for protecting gig workers effectively in India.

3. LITERATURE REVIEW

3.1. Books and Theoretical Foundations

There have been a number of books written on the first set of theories of platform capitalism, such as "Platform Capitalism" by Nick Srnicek. This book will serve as an excellent base when discussing the development of the labour relationship model of digital platforms, in which the risks involved will change from the employer side to the employee side.

Moreover, in the opinion of some labour lawyers, the gig Workers plays a pivotal role in creating ambiguity about the labour relationship models existing both officially and unofficially, hence moving the process of unorganisedization into the digital age.



3.2. Journal Articles and Empirical Studies

Issues relating to the problems of law involved in the categorization of gig workers become a point of focus in contemporary literature related to the matter at hand. From the viewpoint of different research articles, gig workers are considered as independent contractors employed by companies like Uber, Ola, Swiggy, and Zomato. Therefore, in this regard, these workers do not enjoy any minimum wage, social security, and industrial disputes protection rights.

The article in Adm. Sciences (2024) has presented some very interesting information about the influence of algorithmic management and task assignment from the firm's side that limits the freedom of gig workers.

3.3. Legal and Policy-Based Literature

The literature on the legal aspect indicates the problems related to labour laws for the workers of the Gig Workers. The analysis of the provisions in the Code of Social Security, 2020 reveals that there is official recognition of the workers of the gig Workers without any enforceable rights. This makes the official recognition meaningless.

The literature on the Constitutional Law reveals that the rights guaranteed under Articles 14, 19, 21, and 23 of the Constitution are available to the gig Workers workers; however, the problem of enforcing the rights arises owing to the absence of the employer.

3.4. Reports and Institutional Sources

From the research conducted by ILO, it becomes clear that the problem of social security and income security faced by the gig workers remains the same around the globe just as in India. From the World Bank's research, some trends that are emerging with regard to gig work are noted in developing economies where there are no safety measures in place.

There are various problems associated with gig work mentioned in the research which include lack of provision of minimum wages, provision of insurance benefits, withdrawal of money from gig platforms, and handling complaints. Hence, it can be said that gig Workers is nothing but an updated form of the unorganised workers.



4. RESEARCH GAP

It seems that there is some kind of discrepancy between legality and enforcement. Although it seems like the problem faced by Gig Workers are receiving increased attention in the discourse of policies, it remains uncertain if the right of the workers can be exercised through the digital platform due to the working conditions of these workers. There is also a lack of research concerning algorithmic management.

5. THE STATUS OF GIG WORKERS IN THE UNORGANISED SECTOR

Gig workers are referred to as those individuals who make their living through temporary and contractual employment as opposed to conventional employment. These are an important component of the informal economy in India and comprise delivery personnel, drivers, and self-employed persons. The gig workers lack any form of job security, regularity of income, leave wages, medical coverage, and social security schemes. Gig workers earn on the basis of the demands and terms set out by the online platform. Nonetheless, even though covered under the Social Security Code, 2020, gig workers require more protection.

6. LEGAL FRAMEWORK ANALYSIS

6.1. Constitutional Provisions

The Indian Constitution is at the core of the legislative framework regarding the protection of worker rights, including those of gig workers who are considered unorganized workers. Gig Workers, although not specifically mentioned in any labour law, have several provisions in the Fundamental Rights and Directive Principles of State Policy (DPSP) of the Indian Constitution.

Article 14 – Equality before law

Article 14 ensures protection against any discrimination and arbitrariness. Discrimination in the form of unequal wages, discriminatory behavior during user deactivation, or unjust policies by the platform can be considered violations of Article 14 and right to equality and non-discrimination.



Article 19(1)(g) – Right to Occupation

It assures freedom to choose any profession or occupation to all citizens. The gig workers rely on Article 19(1)(g) for their fundamental right to choose their occupation via the digital platform. But unexpected deactivation of the account would impinge upon their right to occupation.

Article 21 - Right to Life with Dignity

These rights concern the economic, social, and occupational interests of the individual. Such matters as unemployment, poor work conditions, and varying wage incomes may adversely impact the dignity of gig workers.

Article 23 - Right against Forced Labour

This Article is concerned with the prohibition of forced labour and exploitation of workers. In case forced labour is imposed on the gig workers for monetary considerations, this Article comes into application.

Article 39 – Livelihood and Equal Pay for Equal Work

This directive principle ensures providing opportunities for adequate livelihood and equal pay for equal work. This directive principle applies in view of low and uneven incomes of gig workers.

Article 41 – Right to Work and Social Security

The intervention of the state is called for when there exists unemployment, sickness, old age, or disablement according to Article 41. The provision under Article 41 extends social security provisions to gig workers.

Article 43 – Adequate Wages and Conditions of Labour

According to Article 43, adequate wages and satisfactory conditions of labour shall be available to all workers. Article 43 guarantees fair wage rates, restricted working hours, and labour legislation for gig workers.

It can be seen from the above discussion that the Constitution of India offers comprehensive labour protection by means of Fundamental Rights and Directive Principles of State Policy. Despite being no specific provision for gig workers in the Constitution of India, interpretation of Articles 14, 19, 21, 23,



39, 41, and 43 in their proper spirit leaves little room for any such denial. This, indeed, makes it clear that the issue is not with constitutional provisions, but with their implementation in the gig sector.

6. 2. Unorganised Workers' Social Security Act, 2008

The Social Security Act for Unorganized Workers (2008) has been prepared due to the need of having an effective Act that would fulfill the welfare needs of the unorganised workers, which form a significant portion of the Indian workforce. This Act has been designed for providing social security to unorganized workers.

Despite its progressive character, however, there were some shortcomings in the scheme of the Act. First, there was no enforcement mechanism for the statutory entitlement to social security and all that the Act provided for was a procedure of formulating schemes. This left the scheme entirely voluntary and hence, its efficacy suffered greatly because of it. Second, there was no process by which unorganized labour could be detected and registered. Since there was no centralized registry, many people were left out and therefore denied the benefit of welfare schemes. Finally, there were no effective mechanisms for the implementation of the schemes themselves.

Exclusion of Gig Workers

In addition to the discussed problems, there is another problem that may be associated with the exclusion of gig workers from the Act of 2008. First of all, it should be stated that the platform Workers emerged after the adoption of the Act of 2008. This implies that people employed by companies operating in the sphere of delivery and transport services cannot be considered gig workers under the Act of 2008.

Moreover, even though gig and unorganized workers share many common features (precarious nature and unorganised character of work), neither of the two groups is covered by the provisions of the Act of 2008.

6.3. Code on Social Security, 2020

One of the most essential features that become relevant as a result of the implementation of the Code includes the idea of conferring legal status upon gig workers and platform workers. Gig workers entail workers who do not have an employer but still work or establish working relations without being employers themselves. Another kind of worker recognized by the code entails platform workers who entail workers who utilize platforms while dealing with companies and individuals.



Limitations and Implementation Challenges

It is important for us to know that despite its improvements compared to previous codes, there are limitations with the Code that need to be taken into consideration. To begin with, it needs to be understood that there are discretionary provisions in the Code that do not necessarily have to be followed. In addition to this, the benefits that may accrue in the future cannot necessarily be known since there are other programs in place that would help in achieving these gains.

Code on Social Security, 2020 is an important landmark as far as recognition of gig workers and wider social security coverage is concerned. Nonetheless, the success of such a Code shall rely on its effective implementation, regulation, and enforcement mechanisms. Without all of these, the mere recognition of gig workers may become no more than a symbolic exercise as opposed to a revolution.

6.4. Industrial Relations Code, 2020

The Code on Industrial Relations, 2020 is a collection of numerous acts regulating trade unions, industrial disputes, and conditions of employment. The primary aim of the Code is the regulation of the relationship between the employer and employees, ensuring industrial peace, and settling any disputes that arise. But the significant flaw of the Code with respect to the gig workers is its limited interpretation of ‘worker’ and ‘industrial establishment.’

Exclusion of Gig Workers

On the contrary, it can be stated that gig workers are considered independent contractors or self-employed individuals. This has been decided based on the business model of the platforms. In reality, gig workers cannot be considered as “workmen” or workers as per the provisions of the Industrial Relations Act. The problem that arises here is that:

- First, gig workers cannot make any issues concerning them fall under the scope of industrial relations law.
- Second, gig workers do not have any safeguard against any arbitrary termination of employment.
- Third, gig workers cannot file any grievances in industrial courts.

This implies that the Industrial Relations Act, 2020 follows the traditional model of employment relationship without paying attention to the dynamic shift in the labour force amid the platform Workers



era. Ignoring the presence of gig workers forms one of the important limitations in dispute resolution and labour collective bargaining for gig workers.

6.5. Occupational Safety, Health and Working Conditions Code, 2020

The need to highlight here is that the purpose of the Occupational Safety, Health and Working Conditions Code, 2020 (OSHC Code) is for there to be only one law governing all the aspects relating to safety, health, and working conditions. The law intends to foster the health and safety of workers while on their job sites, regardless of what industry or organization they hail from.

But it can be seen that although the purposes of the law are wide-ranging, it primarily focuses on the conventional occupational industries such as factories, mines, construction sites, etc.

"Gig Workers are employed in decentralized and mobile settings, like road transportation (couriers), one-person households (cleaners), or even cyberspace (freelancers)." This is not considered a place of employment under the definition of the Code.

Limitations

- **Ignoring the Employers' Obligations:** In the case of these platform companies, they are not considered official employers who are responsible for the safety at their workplace.
- **Ignorance of Workplace Safety Standards:** There are no standards that relate to safety at the workplace, which could assist in reducing the risks faced by the delivery men, drivers, and other gig workers, like accidents, long shifts, and severe weather conditions.
- **Non-compliance with Regulations:** Unlike the conventional working scenario, there is no mechanism in place where the standards could be enforced on the gig workers.
- **Lack of Health Care Facilities:** Gig workers do not have access to any health care facility or medical examinations, besides the lack of compensation for workplace injuries.

The Code on Occupational Safety, Health and Working Conditions, 2020, represents one such initiative towards the process of codification of occupational safety and health laws. The Code cannot be termed as comprehensive due to the very fact that it is specific to industries and organizations. The Code does not address the fragmented and digitalized nature of gig work. As a result, gig workers are left unprotected under the occupational safety and health laws.



7. EMERGING CHALLENGES UNDER INDIAN LABOUR LAW

Many challenges have emerged due to the advent of the Gig Workers within the labour law regime of India. One of the primary reasons for these challenges is the absence of any employer-employee relationship. Some of the other important challenges include the following:

7.1. Misclassification of Employees

One of the major issues facing the Gig Workers is the misclassification of employees as independent contractors. This is seen especially in ride-hailing and delivery services companies through their online platforms. Platforms classify their workers as either “partners” or “service providers,” thus escaping any form of liability that may arise from such employment. Consequently, the platforms do not need to fulfill their responsibility financially or socially towards ensuring that minimum wage, social security benefits, paid leaves, and anti-displacement rights are provided to their workers. Legally, there is an overlap where employees perform critical tasks without being employees.

7.2. Absence of Minimum Wage Protection

They get paid depending on how much work they can do or on the basis of each individual job that they deliver, unlike the other employees who are entitled to a fixed monthly pay. The incomes that these people make are quite unstable because their salaries depend on how in-demand their services are on the platform. For the most part, they barely make more than the poverty level income after their expenses are taken into account.

7.3. No Job Security

There is no formal understanding between the Gig Workers employees and the company that provides them with continuous employment opportunities. At any point in time, an account can be blocked based on the negative comments left by customers or because of the poor ratings given either by the company executives or the company’s computer system.

7.4. Lack of Social Security

On the other hand, the vast majority of the people involved in the Gig Workers do not enjoy the privilege of being part of any social security scheme, such as pension schemes, medical services, sick pay,



maternity benefits, and accident compensation. There is one case study that shows how social security schemes can be used to incorporate workers within the organization.

7.5. Algorithmic Control

The use of algorithms within the context of assigning tasks, paying wages, evaluating performances, and rewarding employees constitutes one of the notable features of the gig workers. However, the lack of understanding about the manner in which algorithms function contributes to the creation of a scenario where there is ambiguity about how they work, leading to the emergence of digital managerial control.

7.6. Occupational Risks

Gig Workers especially those who operate within logistics and transportation face notable risks regarding their occupation. These include car accidents, poor weather, bodily exhaustion, work over hours, and mental strain. Unlike regular workers in the traditional job market, gig workers lack any workplace safety, insurance coverage, or any protection from occupational hazards.

7.7. Weak Collective Bargaining

The Gig Workers themselves are spread geographically, and their administration is electronically based, making organizing quite hard for them. Unions do not play an important role here because they do not function well in the context of the gig Workers. In addition, collective bargaining becomes rather difficult due to contractual issues.

7.8. Rapid Expansion of Gig Work Among Youth and Migrants

There have been huge numbers of gig workers in India. Gig workers can be found on platforms like Uber, Ola, Swiggy, Zomato, and freelance platforms. Because of their characteristics, they attract people who would want to start working without any prior education. As a result, there has been an uncontrolled rise in the number of Gig Worker, thus making them rely on this type of income source.

7.9. Vulnerabilities of Women and Migrant Gig Workers

The vulnerability is further magnified when it comes to women and migrant workers participating in the Gig Workers. Women are particularly susceptible to security threats, harassment, and limitations on their access to lucrative mobility positions such as drivers and couriers. But migrant workers have to contend



with linguistic and social discrimination, insecure working conditions, and even homelessness. In light of these factors, both migrant workers and women are likely to be drawn to low-paying activities.

7.10. Weak Implementation Mechanisms

In situations where there are policies, the system through which it is implemented becomes highly inefficient. There is no national-level registration of workers in the Gig Workers. In addition to this, these systems which exist are only at the formative stages of development. This results in poor cooperation between the centre and the states in the implementation of the social security measures, thus leaving a majority of qualified individuals underutilized.

The issues mentioned above clearly demonstrate the situation where despite the Gig Workers providing opportunities for flexible work, there have been some issues related to labour insecurities. It happened because the Gig Workers are uncertain, labour standards were not enforced, and there were technological means of controlling workers leading to the degradation of dignity among gig workers. It became necessary to bring changes into labour law to address the challenges of the digital Workers.

8. SUGGESTIONS

8.1. Clear Employment Classification

The reforms that need to be made in the Gig Workers industry include the implementation of a structure that would help in determining the status of employees based on the law. There must be some objective criteria in the law that can help in determining whether the Gig Worker is an employee, a dependent contractor, or an independent worker. These reforms will help in eliminating any confusion in determining the status of employees and any exploitation of loopholes by corporations when it comes to classifying employees.

8.2. Minimum Earnings Guarantee

The problem that comes up for most Gig Workers is the unpredictability of their income due to payment on a per-unit basis. What needs to come up here is a concept of minimum wage or a wage floor system. This could be implemented based on per hour or per unit basis, where the worker will be able to earn his basic necessities after paying off his expenses.



8.3. Universal Social Security

It becomes very clear from the above situation that the foremost necessity in order to fulfill the demands of this situation is the immediate need for making an effort in developing a social security mechanism for Gig Workers labours where both the government and digital platform will need to make efforts equally towards welfare schemes. Another thing is to develop the welfare board for managing welfare schemes in areas like health insurance, pensions, disabilities, etc.

8.4. Accident and Health Coverage

Since Gig Workers jobs are highly risky due to exposure to hazards from accidents and diseases, the law should make it obligatory for such workers to get insurance cover for accidents and diseases. This is because gig workers are expected to work in hazardous places without having any insurance cover whatsoever.

8.5. Due Process before Deactivation

One such problem which arises with respect to gig economies is the arbitrary deletion of the account from the platform. This matter should be dealt with care since it is essential that proper notice be given to the gig workers with regards to the same, along with a reason for such deletion.

8.6. Data Transparency

The algorithms used in the context of the platform are very advanced when it comes to aspects such as pricing, allocation of tasks, rating systems, and rewards. But there is zero information available on how all this is done. When it comes to laws, there must be some form of accountability involved in this aspect, whereby companies have to explain themselves about their ratings and allocations.

8.7. Collective Representation

Collective bargaining among gig workers is not feasible because of the scattered presence of gig workers in the work environment. Hence, legal recognition of collective bargaining among gig workers' trade unions or associations becomes necessary in order to negotiate with the platform companies on par regarding wages and working conditions.



8.8. Gender-Sensitive Policies

It is unwise to ignore the issues that gig workers face based on their gender, as they might experience a variety of dangers, including security threats, sexual assault, and fewer chances for employment in some sectors. Thus, it will be necessary to develop policies that incorporate several security considerations, emergency situations, maternal health care, flexibility in work, and gender issues.

The proposed recommendations attempt to transform the gig Workers into a model that involves proper regulation and labour rights. It is evident that the demand for legal classification, financial security, social security, and transparency arises from the necessity to address the legal concerns associated with the Gig Workers among the unorganised sector in India.

9. CONCLUSION

On top of that, the idea of Gig Workers is now another important factor in examining the unorganised sector of India's labour market, because whereas the Gig economy does provide them with employment opportunities, on the flip side, it also poses a number of dangers to them. Although the idea of Gig Workers may seem to be entrepreneurial in nature, but at the end of the day, it merely hides the power imbalances that exist.

It is true that the Indian Government has taken a commendable initiative in acknowledging gig workers in terms of their right to social security under its Code on Social Security Act, 2020. Nevertheless, recognition alone cannot help us create a modern-day labour regime based on wage justice, social security, workplace safety, algorithmic accountability, and access to justice.

No future of work in India should come with an undermining of the paradigm of labour dignity. The growth of the country's Workers needs to consider innovation with equal measures of equality and justice.

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