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# Legal Recognition of Gig Workers as Employees: Implications for Overtime and Benefits

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## ABSTRACT

*Change is growth. The work economy as we know it has gone through tremendous change due to technological advancements. The traditional employment classifications are challenged on an intrinsic level by the emergence of gig economy. With this new model of work system, there are pivotal economic and legal issues between workers right and emerging business models. It becomes pertinent to examine the legal, economic and social implications of giving gig workers their due recognition as employees, keeping special focus on overtime compensation and eligibility for other benefits.*

*This generation of work-force is more focused on having a work life balance and the flexibility to work on their own terms. This need for independence is completed by gig economy through temporary work like food delivery, freelancers and contractors, etc. currently comprising of 15% of the total workforce in India. After the revolution brought about by Jio, with the increase in affordable Smartphone technology and internet access, platform based work has been on a steady rise in the diverse workforce in India.*

*Gig economy is expected to grow up to 23.5 million workers by 202-30. Since this economy is tremendously growing this unorganized sector needs intervention. The Code on Social Security, 2020 is the first Indian legislation to formally give recognition to “gig workers” and “platform workers”.*

*The study seeks to understand the relationship between the legal,, social and economic implications of gig worker classification and the subsequent challenges in including them into the formal traditional labor protections.*

**Keywords:** *Gig Economy, Platform Based Work, Gig Workers, Platform Workers, Labour.*

## I. INTRODUCTION

The rapid globalization and subsequent technological advancements have led to the emergence of a new economic platform which is digital in nature known as the “Gig Economy”. It is most commonly defined as “a market system wherein individuals or companies hire independent

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contractors”.<sup>3</sup> This technological transformation that India is at the forefront has also exposed India’s poor legal infrastructure regarding protection of workers. The “gig economy” may majorly involve temporary work but it has long term challenges like perilous work conditions which may prove harmful and inadequate benefits in the face of such unsafe conditions of work. Therefore, it is pertinent that the gig-workers are given protections like overtime compensation and health benefits that are readily provided to traditional employees.

The workers of such economy are called as “gig workers” or “platform workers”. The term “gig” is a slang which is used to denote jobs which have a set duration. This means that “gig worker” is someone who has a temporary job, short-term and transitory in its nature, which requires to be completed within a particular amount of time fixed at the time of hiring. The other term, “platform worker” gets its name because of the various web-platforms that the companies use to offer services to their customers. Both these categories of workers require the same reforms in employment law and for this purpose; the research article treats them as one.

According to the definition provided in the *Code on Social Security, 2020*,<sup>4</sup> “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” and “platform worker” as “a person engaged in or undertaking platform work”<sup>5</sup>



Figure 1: Defining a gig worker

Even with the contractual nature of employment, many advantages like, making their own schedule, shift times and choosing their own employers and having a better work life balance, entice the workers. However, when one seriously considers the repercussions of prolonged temporary work which is not properly regulated by law, the advantages lose their luster.

As per NITI Aayog’s report on “India’s Booming Gig and Platform Economy”, the estimated

<sup>3</sup> Anand Pawar & Anki Srivastava, ‘GIG Workers and Employment Laws: An Indian Perspective’ (2022) 5 (88) SML.L.Rev.

<sup>4</sup> Act no. 36 of 2020

<sup>5</sup> “platform work” is defined in section 2 (60) as “s a work arrangement outside of a traditional employeremployee 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”

number of workers working as gig workers in temporary jobs in the financial year of 2020-21 was evaluated to be approximately 7.7 million workers. This number is 15% of the total workforce in India.<sup>6</sup> It is estimated that this number would rise and reach up to 23.5 million by the year 2029-30.

The traditional Indian labor laws which are designed keeping in mind the conventional “employer-employees” relationships fail to incorporate in their legal framework the nuances attached to platform-based work.

## II. CHARACTERISTICS OF GIG WORKER

The cheap smart phones and the cheaper data made available to the millions forms the cornerstone of Digital Revolution in India. Since the expansion of gig jobs is tied to the rapid expansion in the market trends and technological advancements, the characteristics of gig workers become important to be discussed. According to the International Labour Organization (ILO), the gig economy can be understood as being made-up of two job types, “micro-tasks that can be performed online and organized on a global scale (*crowdwork*) and services enabled by online companies using websites and mobile apps that are typically performed locally (i.e. on-demand services).”<sup>7</sup> Additionally, ILO recognizes the varied different definitions associated with gig work and hence lays the rule to consider the definition first while dealing with statistics of gig economy.

The lack of formal contracts makes the nature of their employment informal. They work on project-basis or task-basis through digital platforms. The most common job profiles adopted by individual working as gig-workers include food delivery, cab drivers, freelancers, outsourcing agents, etc. this informal relationship between employer and worker makes this employment temporary and without long-term work. While this flexibility may work in short-term basis, however, it seldom provides them with financial stability and employment benefits.

These workers enjoy free reign over how their work life is scheduled. This autonomy is the primary attraction of gig work allowing them to balance work with their other commitments. This also gives them the choice to either be a full-time worker or part-time worker. This opens the market to not only those who are seeking a primary source of income but also to those who want a secondary source of income, like students, homemakers, etc.

The reliance on digital platforms forms another significant characteristic of gig work in India.

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<sup>6</sup> NITI Aayog, ‘India’s Booming Gig and Platform Economy: Perspectives and Recommendations on the future of Work’ June 2022

<sup>7</sup> The future work initiative, (2013) ILO

These web platforms work as a connecting bridge between the workers, clients and customers. The digital platforms also make it easier for the gig workers to receive the payment for their work.

The gig economy is all inclusive and people from every wake of life having varied educational qualification and differing skills find employment in the gig economy. From skilled professional like freelance software developers to man-skill labor like the beautician from UrbanClap, all are considered gig-workers.

Because of the above-mentioned characteristics, there is variability in the earnings. This income instability is often because of the pay-per-task model of gig work. Other factors on which earnings may differ include demand, location, time, customer review, etc.

### **(A) Exciting nature of gig economy**

The gig economy has seen rapid scale expansion, take for example Uber, which was founded in 2009 in USA, currently is active in over 900 cities.<sup>8</sup> This shows that the people engaged in gig economy view it positively.

For the employers, the gig works cover the gap they face while attempting to locate the qualified labor while there is peak demand. This covers the void created by lack of transparency and visibility by allowing employers to hire in real time to meet both the constrained demands and the latent demands.

With the requirement of hiring someone full time reduced, the pool of employees to hire increases and allows the employers to choose workers as required by them.

The involvement of technology in the gig platforms means there in alignment with the needs of the employers and the economic incentives demanded by the worker. This means there is payment of the productive time which is beneficial to both. On one hand, it helps employer cut down on cost, and the payment made only for the productive time of the gig worker allows him to free up rest of the time in his day, i.e., the non-value-added time which is not possible in a traditional work setup as they have fixed durations of hours that they are required to spend working in their office. This free time can be organized in such a way to allow for other productive work which in turn would lead to a higher pay per unit of time for the gig worker, thus growing the earning potential.

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<sup>8</sup> Arruda, W. '6 Trends That Will Shape the Gig Economy in the 2020s'. (2020) Forbes, U.S. Bureau of Labor Statistics.

### III. RIGHTS AND BENEFITS OF GIG WORKERS

Gig workers are often considered as “independent contractors” as opposed to “employees” in the traditional sense. This differentiation is better understood by the fact that most gig-platforms list their drivers as “partners” and not as “employees”. This means they are creating a clear distinction between the two where employees include those individual that the employers control, i.e., the individual provides services to the employer and the employer determines what, how and till when an employee is required to do and complete the task. An individual who is considered as an “employee” typically receives periodic fixed wages and is considered to be employed for a long period of time, i.e., hired labor for the foreseeable future. On the other hand, the employers only control the end product given by the gig workers and not their whole time.<sup>9</sup> This distinction means that they do not enjoy the same legal rights as a traditional employee.

With the case of ‘*The Indian Federation Of App Based Transport Workers (IFAT) v. Union Of India*’ still pending for the Supreme Court to decide whether the gig workers fall under the scope of “unorganized workers”, the Code on Social Security comes into a turbulent time. The petition filed by IFAT argues that the fact that gig worker are classified as “partners” and not as “employees” violate the gig worker’s fundamental rights such as “right to equality, right to life and prohibition of forced labor”, i.e., Articles 14, 21 and 23 respectively. The arguments stemmed from the fact that denying fair working conditions to gig workers amounted to their exploitation. Therefore, placing workers in danger without basic protection was forced labor. At the same time by not providing social security, the companies like Ola, Uber, etc have violated the gig worker’s right to livelihood and decent working conditions.

Take for example the difference in recognition provided to Uber drivers, according to California Supreme Court; the law does not recognize them as “employees” and therefore not entitled to employee rights as they are considered “independent contractors”. On the other hand, as per a recent decision by Supreme Court of the United Kingdom, Uber drivers must be recognized as employees<sup>10</sup>.

The gig workers in the present economy see themselves as small independent business owners which are creating a micro-entrepreneurship within the market. This is becoming their full-time

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<sup>9</sup> P. Dubey, ‘Gig & Platform Workers: A Way Towards Formal Labour Recognition’ (2022) 57 ISLS NAGPUR MULTIDISCIPLINARY L.R.

<sup>10</sup> *Uber BV and Others v Aslam and others*. The appellants in this case is a group of companies involved in providing vehicle hire services in the UK and also internationally. The issues in the case deliberated upon whether the personal services provided by the respondents constitute them as “workers” and if so then what would be their “working time”.

livelihood. They differ on four major elements: demographic profile, job drivers, job triggers and work and earning patterns.

#### **IV. COMPARISON BETWEEN TRADITIONAL EMPLOYEES AND GIG WORKERS**

**1. Demographic profile:** The younger generation is typically the most attracted towards gig work in India. It has been noticed that gig work is more gender inclusive, there is more female participation. Gig workers are less educated than traditional employees.

**2. Employment status:** Often classified as self-employed<sup>11</sup> or independent contractors, gig workers have autonomy over their work schedule but do not have guaranteed work. On the other hand, regular employees have stability of income and permanent employee status.

**3. Pay-per-work:** Gig workers are paid on the basis of quality of their work and their income is dependent on the work available to them whereas traditional employees are paid according to their current salary contract and regardless of the quality of their work. This means that to them minimum wage is guaranteed.

**4. Working hours:** Gig workers have irregular working hours. This flexibility is a major attractor of the gig work. This allows a work life balance and the personal life of the workers is least affected. On the other hand, working hours of the traditional employees are fixed.

**5. Work triggers:** gig work is generally taken to cover expenses other than the monthly household expenses, for example, medical expense.

**6. Job security:** There is no job security for gig workers. They are often fired without any reason as there is no fear of legal repercussions whereas traditional employees are protected by labor laws. This is the main job driver for traditional employment.

**7. Overtime benefits:** Gig workers have flexible working hours meaning there is no overtime for them and hence no overtime-pay. On the other hand, traditional employees get paid when they work overtime.

**8. Paid leaves and other benefits:** There is no provision for paid leaves for gig workers; on the contrary, traditional employees can take paid leaves and have other benefits like insurance, retirement fund, provident fund, etc.

##### **(A) Similarities**

Gig workers share characteristics with both “independent contractors” and employees. As the terms of their work are regulated by a contract, they are similar to “independent contractor”.

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<sup>11</sup> “self employed workers” fall under the ambit of Unorganized Workers Act 2008

However, with the kind of work undertaken by gig-workers being no different than regular employees, they also have characteristics of them.

Several tests like the “degree of control of employer and the intention of parties” are used by the Courts to determine whether and individual is an employee or “independent contractor”.

### **(B) The existing laws and regulations**

While considering the right of social security as the fundamental right available to gig workers, the legal framework in India does not consider gig workers as employees. But by passing the *Code on Social Security, 2020*, the legislation has sought to clarify the definition. The term “gig workers” under the Code broadly covers individuals who earn through a work alliance that is outside of traditional “employer-employee” relationship whereas “platform workers” were defined to include those individuals who use online platform to access work.

The Code outlines provisions for these and ensures that they get a range of social security benefits which would be within the limits that the central government determines. These benefits include coverage for life and disability, accident coverage, healthcare, childcare services, maternity support and benefits, crèche, retirement protection and as well as various other support and benefits.

- i. Labor laws: Gig workers are excluded from major labor protections as such they are not entitled to minimum wage, overtime pay or any other workplace safety measures. Act like, *Workmen’s Compensation Act*<sup>12</sup>, 1923, the *Industrial Disputes Act*<sup>13</sup>, 1947, the *Employee’s State Insurance Act*<sup>14</sup>, 1948, the *Employee’s Provident Funds and Miscellaneous Provisions Act*<sup>15</sup>, 1952, the *Maternity Benefit Act*<sup>16</sup>, 1961, the *Payment of Gratuity Act*<sup>17</sup>, 1972, and the *Unorganised Workers’ Social Welfare Security Act*,<sup>18</sup> 2008 do not consider gig workers as “workman”.
- ii. Social Security and Benefits: Save for *the Code on Social Security, 2020*, gig workers have been excluded from the national social security system which includes pensions, provident funds, unemployment benefits and disability insurance.

Owing to these lacks of regulations, the gig workers are not properly appreciated in the economy. Overtime compensation is one the main incentive for employees to work diligently

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<sup>12</sup> Act No. 8 of 1923

<sup>13</sup> Act No. 14 of 1947

<sup>14</sup> Act No. 34 of 1948

<sup>15</sup> Act No. 19 of 1952

<sup>16</sup> Act No. 53 of 1961

<sup>17</sup> Act No. 39 of 1972

<sup>18</sup> Act No. 33 of 2008



and earn income. Any work done outside of their normal working hours is considered overtime in the traditional sense of employment. Since the working hours of a gig worker are not defined, they are not entitled to such benefit of overtime. Even when the worker works more hours than the traditional employee to meet their personal deadline, the overtime compensation is not considered as they are paid on the basis of their unit of work. This is cost effective for the employers as they get to pay less for better quality of work.

Similarly, when considering benefits like retirement pension, maternity benefits, etc, since they work with multiple employers, they miss out on these incentives too. The traditional employees get a part of their pay stored away in a provident fund by their employers which act as a “nest egg” when they retire to facilitate their passive earning after retirement. This is the pull of government jobs and traditional employment. Such incentives provide financial security to the individual and keep them motivated to remain employed. Maternal benefits provided to women include paid leave, and sometimes hospital insurance of birth too. These benefits allow the new mother to enjoy her motherhood at the same time having the assurance of a job when she returns. However, no such assurance is there to gig workers. Therefore, there is need to reclassify them as employees after considering the following challenge:

- They work on temporary basis as such they do not have a single employer rather they have multiple employer. This makes it difficult to ascertain which employer is liable to what amount of fund.
- The “independent contractor” classification is a huge motivating factor for the employers to hire them.

In 2024, under the Fairwork Ratings, only two platforms namely, Bigbasket and Urban Company were given first point under Fair Pay for their work of “instituting a minimum wage policy for all their workers” so that they earn at least local minimum wage on an hourly basis after taking into account their work-related costs. For providing adequate safety equipment, the report gave Amazon Flex, Bigbasket, BluSmart, Swiggy, Urban Company, Zepto and Zomato first point under the provisions of Fair Conditions. And Bigbasket, Swiggy, Zepto, Zomato and Urban Company were awarded second point because they provided “accident insurance” with no additional cost.<sup>19</sup>

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<sup>19</sup> Fairwork, ‘Labour Standards in the Platform Economy: Fairwork India Ratings 2024’ (2024) <[https://fair.work/wp-content/uploads/sites/17/2024/10/Fairwork\\_India\\_Report\\_2024.pdf](https://fair.work/wp-content/uploads/sites/17/2024/10/Fairwork_India_Report_2024.pdf)> accessed 20 November 2024

## **V. JURISDICTION AROUND THE GLOBE**

- i. USA: Gig work as defined by the state of California, USA, consists of a three-pronged test. The purpose of the test is to draw a comparison between gig workers and employees and place them on equal footing which would compel the companies to provide gig workers with benefits.<sup>20</sup> Theoretically this may seem a like a nice solution to the dilemma of regulations regarding gig work but both the stakeholders, i.e., gig workers and employers had mixed reactions to this. The implications that cost would increase if they provided added benefits is worrying the companies, as well as the impending loss of their jobs because of this increased cost is making the gig workers apprehensive as there is the expectation that companies are likely to fire temporary workers rather than adhering to strict laws and risk running high expenses.
- ii. UK: Under the new legislature in the UK there is responsibility put upon the employers to provide benefits and rights to gig workers. These right would include the right to request permanent roles and have paid time-off which include sick leave, maternity and paternity leave.<sup>21</sup> The new legislation requires that the firms furnish a ‘statement of rights’ to every individual on their first day of employment which would lay down the paid leaves they are entitled to. <sup>22</sup>The new legislation aims to tackle the problem of continuous service faced by gig workers as it makes provision where the worker has the right to request for a temporary or fixed-hour contract after 12 months of employment.
- iii. In jurisdictions of Brazil and Australia, gig workers are classified as “independent contractors”.

## **VI. SOCIAL AND MENTAL HEALTH IMPLICATIONS**

Even with the flexibility of gig work, there are certain social and mental health challenges for the workers. As they work independently, there is lack of regular interaction with colleagues which often leads to social isolation. This becomes the reason for there being no community to support when the work environment is not conducive to their growth. This isolation leads to loneliness and depression. This lack of workplace environment is also the reason for there is no social bonding among gig workers.

The unpredictable earning leads to financial stress. Since, the major population employed as gig worker considers this work as their primary source of income; they often face uncertainty owing

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<sup>20</sup> California Assembly Bill 5 (AB5).

<sup>21</sup> Crerar, ‘Workplace reforms will protect gig economy workers.’ (2018) BBC

<sup>22</sup> ‘Gig economy workers' rights to be given boost in overhaul.’ (2018) The Guardian.

to their unpredictable work availability. The lack of retirement savings also exacerbated this financial insecurity leading to economic anxiety.

As already mentioned, gig workers are not eligible for employer-provided healthcare benefits, they pay healthcare out of their pockets which leaves them with huge medical bills. Benefits like sick leaves and maternity benefits are also lost to them. Since the healthcare infrastructure is limited in India, significant numbers of gig workers are unable to afford private healthcare.

## **VII. TRADITIONAL TEST V MODERN REALITY**

Though gig work seems like a lucrative option, there are various challenges involved. Therefore, the participation willingness is dependent on the sector the worker belongs to and the job motivation that drives them. Sometimes even though gig work hurts them mentally, financially and physically, individuals still choose to do it because they do not have any other option available to them. Hence, it becomes important not to consider every gig worker as a happy and satisfied worker and only focus on the challenges and the contingent reasons which would help to eliminate them so that participation is enhanced.

- i. Amount of income:** as compared to similar profiles of regular jobs, gig workers are of the view that they are paid more to perform the same task. This perception is developed due to lack of ceiling on potential income. However, not all gig work rewards the same and therefore there is no parity between the incomes generated.
- ii. Work-time flexibility:** The worker is more in control of their time and this convenience empowers them as they have the power over their work schedule. But this flexibility is sometimes is a garb hiding inconvenient working hours and too much work to be completed in a short amount of time.
- iii. Learning and personality development:** The lack of adequate learning opportunities presents as a challenge as to why more individuals do not choose gig work. Gig workers often do menial task which do not reflect nicely on their overall professional skill.
- iv. Regular salary increments:** Although as per its definition and nature gig work is transactional but at times the workers view it as a long-term opportunity and therefore they look for regular increments.
- v. No benefit when work incomplete:** - The earning of gig worker is based on the projects completed by them. If the projects do not satisfy the company then the workers will not get any benefit for their work which includes their investment and time spent to complete it.

- vi. No Promotion: - Since gig work is of flexible nature and gig employees are considered short term workers, they do not get benefits like work promotion, work identification benefits and salary enhancement. Also there is no experience consideration provided to them.

## VIII. CONCLUSION

The “gig economy” in India is unregulated and informal even when it employs a large portion of the Indian population. There is a steady rise in the trend of gig work and the individuals employed in this economy are set to reach approximately 23.5 million by 2029-30.

There is a pressing need for regulation in a sector that affects such a large population of the country. The gig workers are differentiated from regular workers and often face challenges because of it. The employers generally give the “risk” work to be done by gig workers so that they can cover themselves legally as gig workers are considered “independent contractors”. This allows the employers to fire them without any notice or reason. It has been seen that employers often fire them in order to refuse their payment.

Gig workers are not entitled to benefits like maternity leave, overtime pay and provident funds, etc. this remains a critical area of concern.

Conditions of gig workers were referenced in the G20 declaration of 2023 where the report promised to address skill gaps, and ensure inclusive social protection policies.<sup>23</sup> However, not much output has been yielded as of yet.

‘Rating’ feature is considered one of the most eminent and distinctive feature of the gig platforms. With its use the gig workers are made to be directly answerable to the consumer. This helps eliminate the ‘employer-employee’ dynamics that arise in traditional work setup. However, this also subjects the workers to arbitrary views of the customer which could affect their future work.

The level of flexibility and autonomy rank very high on the scale of benefits to gig work but it is not all “happy work”. There also exist cons to the pros of gig work. One of the biggest cons is that no social security benefits are provided to gig workers by the companies which results into lack of financial stability and security.

Reforms like platform users’ contribution would help wherein the users would be required to pay a certain amount after the services that would contribute to the gig worker as their “tips”. The platform owners i.e., the employers must recognize the power they hold over them and

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<sup>23</sup> G20 New Delhi Leader’s Declaration, (9-10 September 2023) < <https://www.mea.gov.in/Images/CPV/G20-New-Delhi-Leaders-Declaration.pdf> > accessed 20 November 2024

accept responsibility for workers' safety and well-being because of the. An attempt for the same was done by the Indian government through the portal of “E-Shram” which created a national database of unorganized workers. There is much expectation associated with the yet to be notified rules of Rajasthan Platform Based Gig Workers (Regulation and Welfare) Act, 2023.

Gig work is termed as “temporary” work, however, there have been no attempts made to classify the time limit of this “temporary” work. How long will a worker be considered as a temporary worker? Can a gig worker become a permanent worker, given the fact that in India many gig workers consider it as a permanent source of their income? These are some of the questions that need further research and deliberation.

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