GIG ECONOMY AND LABOUR RIGHTS: A SOCIO-LEGAL ANALYSIS

Laiba Fatima, Disha Law College

ABSTRACT

Labour laws in India govern the rights and responsibilities of workers and employees across various industries, ensuring fair wages, workplace conditions, and social security benefits. In recent years, the traditional labour landscape has undergone a significant transformation with the rise of gig work. This article examines the legal status of gig workers, analysing existing laws designed to protect them. It also provides a comparative international perspective, exploring how different countries regulate gig employment. The role of the International Labour Organisation (ILO) is highlighted, focusing on its initiatives to address the unique challenges gig workers face in the global labour market a key point of discussion is the ongoing debate over whether gig workers should be classified as employees. The article explores the potential advantages and disadvantages of such a shift, considering its impact on worker protections, flexibility, and the broader economy. It also assesses the implications of integrating gig workers into formal employment structures, balancing concerns over job security with the evolving nature of work.

Keywords: Gig workers, Platform-based gig workers, ILO regulations, Labour rights, social security.

I. Introduction

The rapid digitalisation of economies worldwide is driving a fundamental shift in work and employment. According to the International Labour Organisations (ILO) 2021 World Employment and Social Outlook Report, the number of digital labour platforms has increased fivefold over the past decade. These platforms provide diverse skill opportunities for workers while enabling businesses to expand their market reach. India has emerged as a major global hub for gig and platform-based work, as highlighted in the Economic Survey 2020-21. In 2020-21, an estimated 7 million (77 lakh) workers were engaged in the gig economy, comprising 2.6% of the non-agricultural workforce and 1.5% of the total workforce. This number is projected to rise to 23.5 million (2.35 crore) workers by 2029-30, representing 6.7% of the non-agricultural workforce and 4.1% of the overall workforce. The continued expansion of e-commerce and digital platforms is expected to drive this growth further. The gig economy offers numerous advantages, attracting workers with its flexibility, autonomy, and the ability to choose assignments and employers. Many individuals prefer platform-based or contract work as it allows them to manage their schedules and maintain a better work-life balance. However, the rapid growth of the gig economy, coupled with advancements in technology, has disrupted traditional employment structures. This shift raises critical questions about labour law frameworks and the evolving distinction between independent contractors and employees. As these boundaries become increasingly blurred, there is an urgent need to reassess and adapt existing labour regulations to protect gig workers while preserving the flexibility that defines the gig economy.

II. Literature Review

Research on the gig economy highlights its dual nature-offering economic flexibility and autonomy while creating legal ambiguities in worker classification. Scholars argue that gig work empowers individuals by providing employment opportunities beyond geographical constraints, but critics emphasise the erosion of traditional labor rights. Key issues include:

-**Worker Classification:** The distinction between employees and independent contractors remains contested, impacting wage structures and access to benefits.

- **Wage Volatility:** Gig workers experience income unpredictability due to demand fluctuations and algorithmic decision-making by platforms.

- **Social Security Gaps:** The lack of unemployment insurance, health coverage, and retirement benefits exposes gig workers to financial insecurity.

- Legal Precedents: Court cases and policy reforms in jurisdictions such as California (AB5 law), the UK (Uber drivers' rights), and the EU's Platform Work Directive provide insight into emerging regulatory frameworks.

The literature further examines government responses, with some countries implementing social safety nets while others adopt a laissez-faire approach, allowing market dynamics to dictate labour conditions.

III. Recommendations and Policy Interventions

To address gig workers' vulnerabilities, the following policy interventions are proposed:

- **Redefining Worker Classification:** Governments should establish clear legal definitions distinguishing gig workers from independent contractors and employees, ensuring appropriate benefits and protections.

- **Minimum Wage and Earnings Transparency:** Digital platforms should implement transparent pay structures with minimum wage guarantees to prevent exploitation.

- **Social Security Integration:** Mandating contributions to gig worker insurance and pension funds will ensure long-term financial stability.

- **Algorithmic Accountability:** Regulatory oversight on platform algorithms can prevent biased job allocation and ensure fair compensation.

- **Worker Representation and Collective Bargaining:** Labor laws should facilitate gig worker unionisation and negotiation rights to strengthen their bargaining power.

- **Corporate Responsibility Mandates:** Governments can introduce corporate responsibility policies requiring platforms to contribute to social security schemes and uphold fair labor practices.

IV. Current Legal Status of Gig Workers

The term "gig" initially referred to jobs with a fixed duration. A "gig worker" is someone who accepts short-term tasks that must be completed within a set timeframe, often under non-traditional working conditions. In India's gig economy, there are two categories: platform workers and non-platform workers. Platform workers engage with online algorithmic matching platforms, such as Amazon or Uber, to connect with clients. Non-platform workers, on the other hand, are those involved in temporary or short-term employment outside of these digital platforms, including sectors such as construction and day labour, where technology is not typically involved.

A "gig worker" is defined as a person who performs work or participates in a work arrangement and earns from such activities outside of the traditional employer-employee relationship Key labour laws, such as the Factories Act of 1948, which focuses on safety, health, and welfare measures for factory workers, and the Workmen's Compensation Act, 1923, which provides compensation to workers or their families in case of workplace accidents resulting in death or disability, were designed with traditional workers in mind. Additionally, the Trade Unions Act, 1926 allows for the formation of trade unions to facilitate collective bargaining, and the Minimum Wages Act, 1948 ensures that employers pay workers a prescribed minimum wage.

Despite these safeguards for other workers, gig workers remain outside the scope of these legal frameworks, leaving them without similar rights and benefits. Their exclusion from these protections stems from their status as "Independent Contractors." Aggregators, such as ride-hailing or food delivery platforms, have classified gig workers as "Independent Contractors," "Partners," or "Individual Entrepreneurs," claiming that the relationship between the aggregators and gig workers is not that of an employer and employee or agent and principal. The distinction between an independent contractor and an employee raises questions about the basic structure of employment contracts in the gig economy.

V. Laws Governing Platform-based Gig workers

i. Code of Social Security, 2020

ii. Rajasthan Platform Based Gig Workers (Registration and welfare) Act,2023

iii. Karnataka Platform-based Gig Workers (Social Security and Welfare) Bill, 2024

VI. International perspective on status of platform-based gig workers

In the **United States,** the California Supreme Court addressed key issues related to gig workers in the case Dynamic Operations West, Inc. v. Superior Court of Los Angeles16. Prior to 2004, Dynamic, a delivery service company, classified its drivers as workers. However, in 2004, it reclassified them as independent contractors, requiring drivers to manage their own vehicles, fuel, tolls, and other transportation expenses. The optimal time to work for Dynamic was entirely up to the drivers. Dynamic and the clients would negotiate the fees to be paid to these drivers. The court of appeal determined that the misclassification of independent contractors was "harmful and unfair to workers." Thus, the court adopted the ABC test to distinguish between employees and independent contractors. The test assumes that workers are employees unless the company can prove three things:

1. The worker operates without control or direction from the hiring entity.

2. The work performed is outside the usual course of the business.

3. The worker is independently engaged in a separate trade or business

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 others18 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 recognised this as a clear example of subordination, a key indicator of an employment relationship.

In **Brazil**, the employment status of gig workers has been a debatable issue. Various Labour Courts initially ruled in favour of classifying Uber drivers as employees. However, in a landmark ruling, the Superior Court of Justice of Brazil determined that Uber drivers were independent contractors, setting a precedent that may influence future rulings on similar cases.

In **France**, while a proposed bill to create a specific employment status for gig economy workers failed, the Court of Cassation ruled that an Uber driver had an employment relationship with Uber. The court pointed to the control Uber had over the drivers, such as setting fare prices, dictating routes, and imposing conditions on the service provided. This decision, along with another ruling that classified a delivery worker as an employee, may positively influence the legal landscape for gig workers in France20.

In **Switzerland**, a ruling in March 2023 confirmed that gig economy drivers should be classified as employees rather than independent contractors.

VII. International Labour Organisations Approach to Protecting Gig Workers

The International Labour Organisation (ILO) has yet to establish a dedicated convention or recommendation specifically for gig or platform-based workers. However, a significant step forward is marked by the ILO's new report, "Realising Decent Work in the Platform Economy". This study aims to explore the development of an international labour standard to address the challenges and opportunities posed by the rise of platform work. The report provides comprehensive information on the current regulations and practices around the world, shedding light on how different countries are managing the platform economy22. It includes a questionnaire for governments to express their views on potential labour standards, with a submission deadline of August 31, 2024. These responses will be discussed in the upcoming International Labour Conferences in 2025 and 2026 and may lay the groundwork for a future international standard on decent work in the platform economy.

VIII. Issues in classifying Gig Workers as Employees

The relationship between gig workers, customers, and aggregators is often referred to as a triangular relationship, which complicates the regulation of gig workers. The core issue lies in the fact that gig workers display characteristics of both independent contractors and employees. Take, for example, Uber drivers: they may be seen as employees because Uber exercises some control over them in areas such as fare collection, complaint management, setting standards of conduct, and fixing prices, all of which point to an employer-employee relationship. Additionally, the platform uses algorithms to offer tasks, define working hours, calculate remuneration, implement ratings and rankings, and determine whether workers can continue providing services. Platforms may also monitor workers through random screenshots, time tracking, and task logs. Algorithms act as a form of automated supervision using customer ratings and rankings23. However, Uber drivers also have some autonomy, such as choosing their work assignments, refusing clients or locations, setting their schedules, and working with multiple platforms, which aligns more with the characteristics of independent contractors.

If gig workers were to be classified as employees, aggregators would need to follow a range of employment laws and regulations. These include adhering to standards for working hours, rest breaks, minimum wages, ensuring workplace safety, and providing proper documentation. Failure to meet these obligations could result in legal disputes or fines. One of the main appeals of gig work, however, is the flexibility it offers workers, allowing them to decide when and where they work. Additionally, consumers receive help from these services, which are accessible 24/7 and meet their fast-paced lifestyles. If gig workers are classified as employees, they may lose the freedom to control their schedules, which could alter the very nature of gig work. The independent contractor model allows aggregators to scale quickly and minimise costs, which makes the business model attractive. However, if gig workers are classified as employees, this could lead to increased costs for aggregators due to wages, benefits, taxes, and insurance. These added expenses may affect the profitability of platforms, especially in markets with high labour costs. To compensate for these costs, aggregators may raise prices for consumers or reduce workers' pay. On the other hand, if gig workers stay classified as independent contractors, this could continue exploitation and the denial of basic labor rights.

The debate over whether gig workers should be classified as employees often revolves around the test of control, which evaluates the level of authority an employer has over workers. This test has resulted in conflicting outcomes in various countries, with courts often make different interpretations of the status of gig workers. Consequently, there is no universally agreed-upon definition of the employment relationship for gig workers, making the issue even more complex to address.

IX. Conclusion

The gig economy has undeniably transformed the employment landscape, offering workers flexibility and autonomy while providing businesses with a scalable workforce. As digital labour platforms continue to expand, gig and platform-based work will play an increasingly significant role in the global and Indian economies. However, the rapid rise of this sector also highlights critical challenges, particularly regarding labour rights, social security, and job security. The lack of a clearly defined legal status for gig workers has created uncertainties around wages, working conditions, and employment protections. While classifying gig workers as employees may offer greater job security and benefits, it also raises concerns about maintaining the flexibility that attracts many to gig work. Finding a balanced approach-one that ensures fair wages, access to social security, and workplace protections while preserving the autonomy of gig work is crucial for the sustainable growth of the sector. As the gig economy continues to evolve, policymakers must proactively adapt labour laws to address these emerging challenges. Striking the right balance between regulation and flexibility will be key to ensuring that gig workers are not left vulnerable while allowing businesses to thrive in an increasingly digital and dynamic economy.

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