

GIG WORKERS IN INDIA: BRIDGING LEGAL GAPS AND ENSURING SUSTAINABILITY

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ABSTRACT

India is the fifth largest gig economy in the world and is bound to be the third by 2030. Moreover, the Gig economy is going to lead economic growth and reduce unemployment. With the rise of platform-based employment, gig workers have become an essential part of India's labour market. However, they continue to face issues such as job insecurity, lack of social protection, and inadequate legal safeguards. This paper examines the current status and gaps in India's existing labour laws, highlighting the absence of comprehensive legislation. It also examines the court interpretation on various issues related to gig workers and the difficulty of classifying gig workers as employees through direction and control test. Moreover, a nuanced and balanced approach has been taken keeping the aggregator platforms in mind, to devise a solution.

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Additionally, the paper draws comparisons with international legal frameworks governing gig work in other countries, examining how nations such as the United States, and the United Kingdom, and developing countries like Brazil have approached the regulation of the gig economy, looking into the classification of employees, workers and independent contractors. By analyzing global trends and best practices, the paper identifies potential policy reforms that could be implemented in India to ensure a balance between aggregator platforms and gig workers, ensuring workers are afforded better social security, fair wages, and access to essential benefits, while platforms remain sustainable. By addressing these challenges, the paper proposes a more balanced and sustainable gig economy that benefits workers as well as the companies and in turn the nation's overall economic growth.

Keywords: *Insolvency The Code on Social Security, 2020, Gig economy, Gig worker, Platform worker, Aggregator platforms, Social Security.*

I. INTRODUCTION

Since time the landscape of work and employment has been changing from the primitive society to an industrial era which requires workers to engage in hazardous working environment and to tackle these, various industrial laws has been created to resolve those issues but with the introduction of technology the way of working has also changed

and the laws are becoming obsolete day by day, failing to tackle modern-day issues. This introduction of modern technology has enabled people to no longer engage in traditional ways of employment, instead aggregator platforms like Uber and Zomato has enabled people to work for different platforms at the same time. These people are generally regarded as gig workers.

The European Commission defines the gig economy as an economy in which digital technologies enable teams to be assembled around a given project, and often across borders, while platforms seamlessly connect buyers with sellers.¹ In India, section 2(35) of the Code on Social Security, 2020 (“CSS”) defines “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”.² These gig workers participate through different online platforms like Uber, Zomato, Zepto etc. Section 60 of the code defines “platform work” as a form of work arrangement outside of a traditional employer-employee relationship where 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.³ Section 61 further defines a “platform worker” as a person who is engaged in or undertakes such platform-based work.⁴

The gig economy market is expected to grow at a compounded annual growth rate (CAGR) of 17% to reach a gross volume of \$455 billion by 2024, according to a white paper by the Forum for Progressive Gig

¹‘Gig Economy European Foundation for the Improvement of Living and Working Conditions’ (www.eurofound.europa.eu, 23 March 2018) <<https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/gig-economy>> accessed 3 January 2025.

²The Code on Social Security 2020 (36 of 2020).

³The Code on Social Security 2020 (36 of 2020) s 60.

⁴The Code on Social Security 2020 (36 of 2020) s 61.

Workers.⁵ As per NITI Aayog, number of gig workers could increase to 23.5 million by 2029–30.⁶ With this huge growing thing, it has become more imperative to look into the rights of workers associated with the gig economy and safeguard them.

The paper looks at the current framework of regulating gig workers in India, issues with various proposed legislations, courts interpretation regarding status and lack of coherence, comparative view of various countries, critical analysis of the issue and solutions which can be incorporated.

II. PRESENT LEGAL FRAMEWORK OF GIG WORKERS IN INDIA

Labour welfare and social security is a part of the concurrent list under Schedule VII of the Indian Constitution. In recent years, states like Karnataka and Rajasthan have introduced legislation concerning gig workers and the gig economy, along with the Union government's Code on Social Security, 2020.⁷ However, these legislations are either draft or passed without supporting rules to ensure proper implementation.

A. Code on Social Security, 2020

⁵Peerzada Abrar, 'India's gig economy may add 90 million jobs, contribute 1.25% to GDP' (*Business Standard*, 28 November 2024) <https://www.business-standard.com/economy/news/india-s-gig-economy-could-add-90-mn-jobs-enabled-by-large-multinationals-124112800721_1.html> accessed 2 January 2025.

⁶'India's Booming Gig and Platform Economy Perspectives and Recommendations on the Future of Work' <https://www.niti.gov.in/sites/default/files/2023-02/25th_June_Final_Report_27062022.pdf> accessed 2 January 2025.

⁷Kingshuk Sarkar, 'Karnataka and Rajasthan Legislations on Gig Work' (2024) 59 (42) *Economic & Political Weekly* 13 <<https://www.epw.in/journal/2024/42/commentary/karnataka-and-rajasthan-legislations-gig-work.html>> accessed 2 January 2025.

The recent labour codes put gig workers within the ambit of labour law for the first time. The definition of employee under section 2(k) of Code on Wages, 2019 has been made very wide.⁸ It could be said that it includes all sorts of work under its definition of “employee” including gig worker.

Under the Social Security Code, “gig workers” have been distinguished from “employees” under sections 2(35) and 2(26) of the Code respectively.

Chapter IX provides social security schemes for gig workers, platform workers, etc. However, the whole availability and working of the schemes such as life and disability cover, accident insurance, health and maternity benefits, etc. is dependent on the notification of the Government and would be subject to change.⁹ Moreover, Section 6 provides for the National Security Board, which would recommend the central government for framing schemes for unorganised, gig and platform workers.

Section 45 allows the Central Government to extend and expand the benefits of Chapter IV to gig workers.¹⁰ Section 141 states that the Social Security Fund can be established by the central government. Moreover, Section 114(7) provides that the government may provide exceptions based on the turnover of the company.¹¹ Though this looks fine, it has a fatal flaw in that it is relatively easier for companies to manipulate data on turnover, and in such a scenario where the word “turnover” has not been clearly defined.

⁸The Code on Wages, 2019 (29 of 2019).

⁹The Code on Social Security, 2020 (36 of 2020) s 114.

¹⁰The Code on Social Security, 2020 (36 of 2020) s 45.

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

B. Karnataka Gig Workers (Conditions of Service and Welfare) Bill, 2024

The bill is still in the recommendation stage, this bill very aptly covers all the definitions like gig worker, platform and aggregators etc. The bill talks about the establishment of welfare board and registration of gig workers as well as their aggregators. Section 6 of the bill lays importance about the engagement with workers associations.¹² Section 12¹³ takes a progressive approach by ensuring an obligation to enter into a fair contract, which is unlikely because of domination of power and it is given that the language of mentioned contracts must be in Kannada and English along with languages listed in the eighth schedule in the constitution. The bill focuses on increasing transparency by including measures like auditing, laying down the grounds for termination,¹⁴ providing a human contact for enquiries and setting up a redressal committee.¹⁵ The fund can be collected by levying a percentage on the transactions done in the app or annual state specific turnover. The former method is easier to monitor by both the govt and gig workers. Certain areas still need additional focus and consideration, like female gig workers currently lack clear protection against sexual harassment, leaving them vulnerable in workplace without appropriate redress. Additionally, there is no provision mandating compensation for gig workers in the event of death, disability, or loss of pay caused during work.

There is also ambiguity around what constitutes a ‘safe’ and ‘risk-free’ working environment, which aggregators must provide. Creating clear

¹²The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024 cl 6.

¹³The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024cl 12.

¹⁴The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024 cl 15.

¹⁵The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024 cl 19.

standards and industry-specific occupational health and safety regulations would help to address this gap. Moreover, any significant changes to platform algorithms that impact workers should be communicated at least 14 days prior to implementation, ensuring transparency and fair adaptation.¹⁶

C. The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023¹⁷

This bill passed in July 2023, can be seen to extend the benefits of social security and Code on Social Security, 2020¹⁸ to the state of Rajasthan. The Act provides for establishment of a welfare board which will register and administer welfare cess. Moreover, the act also makes it mandatory to register employees, gig workers and aggregators and imposes requirements of data sharing by aggregators.¹⁹ The Act also mandates a transaction fee as decided by the State government on each gig-related transaction, of 1-2% per transaction.

This Act went a step further by imposing huge penalties for non-compliance, such as imposing fines of up to Rupees 5 Lakh for first instance of violation, which would extend to Rupees 50 Lakhs subsequently. However, despite being passed more than a year ago, no subsequent rules have been passed to enable implementation of the Act, to that extent the rules are still at draft stage.

Even though the Centre and several states have proposed drafts recognizing the status of gig workers, their implementation remains

¹⁶The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024, cl 23, 24.

¹⁷The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (29 of 2023).

¹⁸*Social Security* (n 2).

¹⁹The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (29 of 2023) s 8, 9.

uncertain. These drafts still contain several gaps that need to be addressed. As of now, there are no clear rules on how these laws will be enforced in a way that protects gig workers' interests without placing an excessive burden on platforms.

III. COURT'S INTERPRETATION

A. Indian Federation of App-Based Transport Workers v UOI²⁰

This current case was filed in the supreme court through a writ petition under Article 32 of the constitution, seeking recognition of gig workers as 'unorganised workers' under the Unorganised Worker's Social Welfare Security Act, 2008²¹ as they are not recognised in any of the legislations and are in a precarious situation. This recognition would entitle them to social security benefits. The petition argues that the denial of such benefits violates their fundamental rights under Articles 14 (right to equality), 21 (right to livelihood and decent working conditions), and 23 (protection against forced labour).

This ongoing case contains the evolving legal landscape concerning the rights and social security of gig workers in India. The Supreme Court's forthcoming decision is anticipated to have significant implications for the classification and welfare of gig workers nationwide.

B. Ms. X v. ANI Technologies Private Limited 2019²²

In this case, through a petition in the Karnataka High Court by a female passenger against Ola (ANI Technologies Pvt. Ltd.) after facing sexual harassment by an Ola driver. The Internal Complaints

²⁰*The Indian Federation of App Based Transport Workers (IFAT) v Union of India* WP (C) 1068/2021.

²¹The Unorganised Workers Social Security Act, 2008 (33 of 2008).

²²*Ms. X v Internal Complaints Committee, ANI Technologies Private Limited* WP No 8127 of 2019.

Committee (“ICC”) of Ola refused to investigate the complaint, arguing that the driver was not an “employee” but an independent contractor.

The court stated that the definition of “employee” under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter “POSH Act”)²³ is broad and inclusive, covering individuals engaged in work under various forms of contracts. The court reasoned that while Ola drivers may be labelled as independent contractors, the nature of Ola’s control over their work, such as mandating compliance with platform policies, monitoring driver ratings, and the ability to deactivate drivers, indicated a significant degree of employer-like authority. This level of operational control, blurred the distinction between independent contractors and employees, thereby justifying the application of the POSH Act.²⁴ The court rejected Ola’s claim of driver swapping as a reason to escape liability by mentioning that POSH Act includes the persons employed “with or without the knowledge of the principal employer”.²⁵

The court acknowledged the ambiguity regarding the classification of gig workers, noting that traditional labour laws were not designed to resolve the gig economy’s nuances. However, it emphasized that in situations involving passenger safety and workplace harassment, a purposive interpretation of the law was necessary to protect vulnerable individuals. By focusing on the functional relationship between Ola and the driver, rather than the formal contract terms, the court aimed to prevent companies from evading statutory obligations through technical classifications.

²³The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013).

²⁴*ibid.*

²⁵*Ms. X v Internal Complaints Committee, ANI Technologies Private Limited* 2024 WP No 8127 of 2019.

The ruling reflects a shift towards expanding protection for gig workers but leaves room for ambiguity. While the court's decision applies POSH Act protections, it does not conclusively classify all gig workers as employees across different contexts.²⁶

C. Direction and Control Test

Generally, the Supreme Court employs three types of tests to check whether the employer has employed the services of an employee or an independent contractor - Control Test, Integration Test and Multi-factor test.²⁷ Moreover, this question is necessary as companies tend to disguise employees as independent contractor. The first precedence of control test can be seen in the case of *Dharangadhara Chemicals case*,²⁸ the court dealt with determining the status of workman under the ID Act,²⁹ and had to decide the status of employee. The test given by court depends on the degree of control and supervision exercised by the employer over the work performed. The essential test to determine the relationship is the existence of the right to control and supervise the manner in which the work is performed. The test which is uniformly applied to determine the relationship of master and servant is the existence of a right of control in respect of the manner in which the work is to be done. The test of control is universal applicable though nature and extent varies.³⁰

The *PNB v. Ghulam Dastagir case*,³¹ involved a driver hired by bank and paid from its allowance. Court followed its precedence in

²⁶POSH (n 23).

²⁷MP Ram Mohan and Sai Muralidhar K, to Determine Employer-Employee Relationships in India: Looking towards the Future? (2024) 8 Indian Law Review 354.

²⁸*Dharangadhara Chemical Works Ltd v State of Saurashtra* AIR 1957 SC 264.

²⁹The Industrial Disputes Act, 1947 (14 of 1947).

³⁰SC Srivastava, 'Status of Digital Platform Workers Approaches of Apex', (2024) LIX No 9 Economic & Political Weekly 42.

³¹*Punjab National Bank v Ghulam Dastagir* (1978) 2 SCC 358.

Dharangadhara Chemical case,³² and held that since the bank had not much supervision/control over driver. Hence, the driver was held not to be an employee of the bank.

Now with evolving times, in modern stage courts found it difficult to apply solely control test to ascertain employer-employee relationship. Hence an integration approach could be seen in the below case.

In *Silver Jubilee Tailoring House case*,³³ control test proved difficult, as this case involved a worker in a tailoring job. The worker now had skills unlike earlier in the *Dharangadhara Chemicals Case*.³⁴ This made it difficult to judge the employee relationship just be control over the work. Hence SC looked at whether the employer had the right to reject the work of employee, and it was found to be so in this case.

The integration test applied above looks at the degree of intervention in the work done by the employees and the level of commitment with employer's organization. The higher level of integration would result in the worker to be considered as an employee. A combination of the control and integration tests helps establish professional workers as employees, notwithstanding a lack of control by employers over the manner in which the work is performed.³⁵

The case of *Hussainbhai case*,³⁶ has seen the application of integration test along with control test. The court held that the workers were an integral part of the employer's business. Also, the court stated the test of "economic reality."

³²MP Ram Mohan (n 27).

³³*Silver Jubilee Tailoring House and Ors v. Chief Inspector of Shops and Establishments* (1974) 3 SCC 498.

³⁴MP Ram Mohan (n 27).

³⁵*ibid.*

³⁶*Hussainbhai v. Alath Factory Thezhilali Union* (1978) 4 SCC 257.

In the case of *The Officer In-charge, Sub-Regional Provident Fund Office and Ors. vs. Godavari Garments Limited*,³⁷ the court had to decide whether the women workers engaged in remote stitching work came under definition of Section 2(f) of the Employees Provident Funds and Miscellaneous Provisions Act 1952 (hereinafter “the EPF Act”).³⁸ The court followed the precedent of the *Silver Jubilee Tailoring House case* and held that where employer has a right to reject the end product if it did not conform to the instruction of the employer and direct the worker to redo it, the element of control and supervision is present.

In *Ram Singh v Union Territory, Chandigarh*, the Supreme Court held that though “control” is one of the important tests in determining employer–employee relationship but it is not the sole test. The Court held that whether a particular relationship between employers and employees is genuine, or not, through the mode of a contractor, is a question of fact to be determined on the basis of (i) the features of the relationship, (ii) the written terms of the employment, if any, and (iii) the actual nature of employment, and these questions could be raised and proved only before an industrial adjudicator.³⁹

One of the recent cases for determining the difference between contract of service and contract for service is *Sushilaben Indravadan Gandhi case*,⁴⁰ the court had to decide whether the petitioner came under definition of employee for the purpose of insurance by employer. Court stated that all the applicable tests taken on the totality of the facts in a given case would in a complex hybrid situation, decide whether the

³⁷*The Officer In-charge, Sub-Regional Provident Fund Office v Godavari Garments Limited* (2019) 8 SCC 149.

³⁸The Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952).

³⁹*Srivastava* (n 30).

⁴⁰*Sushilaben Indravadan Gandhi v The New India Assurance Company Limited* (2021) 7 SCC 151.

contract to be viewed as a ‘contract of service’ or a ‘contract for service’. Though in this case, it was decided to be a contract for service from the contract.

The status of gig workers in India remains unclear and inconsistent. Courts sometimes recognize them as employees for specific protections, like in the Karnataka High Court’s application of the POSH Act⁴¹ to Ola drivers. However, in most cases, gig workers are classified as independent contractors, which means they do not receive benefits or security under traditional labour laws. The “direction and control test,” often used to determine employee status, plays a key role in this debate. If platforms like Ola or Uber exercise significant control over how, when, and where drivers work, such as monitoring rides, setting fares, and deactivating drivers, they may meet the criteria of an employer. However, gig workers’ flexibility to choose their working hours and operate across multiple platforms often weakens the argument for employee status. Ongoing cases like *Indian Federation of App-Based Transport Workers v. Union of India*⁴² show how gig workers are fighting for recognition and social security, arguing that the lack of protection violates their basic rights. Courts have tried to expand protections where possible, but without clear laws, gig workers remain vulnerable. The mixed application of control and integration tests adds to the uncertainty, making it difficult to establish a uniform standard. This inconsistency highlights the urgent need for new legal frameworks that reflect the unique nature of gig work, ensuring fair treatment and security without overburdening platforms..

IV. COMPARATIVE ANALYSIS

A. United Kingdom

⁴¹The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013).

⁴²The Indian Federation of App Based Transport Workers (n 20).

The gig economy in the United Kingdom (“UK”) has experienced massive growth, with approximately 1 in 6 adults engaging in gig work at least once a week, contributing around £20 billion to the UK economy.⁴³ In 2016, Uber drivers filed a suit against Uber, claiming that they were workers under UK employment law, rather than independent contractors. They sought entitlements such as the minimum wage and paid leaves etc. 2021, the UK Supreme Court unanimously upheld earlier tribunal decisions, affirming that Uber drivers qualify as workers. The tribunal and Supreme Court’s reasoning emphasized several factors:

Control by Uber – Uber set the fares, enforced strict contractual terms, tracked driver performance through customer ratings, and limited direct communication between drivers and passengers.

Limited Independence – Drivers had little opportunity to boost their earnings through personal initiative or entrepreneurial efforts, reinforcing their dependence on Uber.

The Court concluded that drivers are considered working from the moment they switch on the Uber app, within their authorized territory, and are ready to accept trips. Following the ruling, Uber announced that its UK drivers would receive entitlements such as the minimum wage, holiday pay, and pension contributions. But the court didn’t rule that all of the gig workers are workers and will receive benefits from their employers.⁴⁴

⁴³RootDigital, ‘Gig Economy Statistics UK | 2024 Industry Report’ (14 May 2021) <<https://standout-cv.com/stats/gig-economy-statistics-uk>> accessed 4 January 2025.

⁴⁴LLP HM, ‘Uber and Continuing Consequences for the Gig Economy’ (Harper Macleod LLP) <<https://www.harpermacleod.co.uk/insights/uber-and-continuing-consequences-for-the-gig-economy/>> accessed 4 January 2025.

However, in *Deliveroo Case*,⁴⁵ the UK Supreme Court held that Deliveroo riders are independent contractors, not workers, primarily because they can delegate tasks to substitutes and are not obligated to accept work.⁴⁶ In contrast to the uber case where they cannot delegate and has higher degree of control.

The *Uber BV v. Aslam*⁴⁷ case has become an important example for deciding if gig workers are workers. It has made companies rethink how they treat workers to follow the law. However, disagreements persist, and the legal status of gig workers remains a topic of ongoing debate, with varying outcomes reflecting the diverse nature of gig work.

B. United States

However, In the United States of America (“U.S.”), the classification of workers as either independent contractors or employees plays a crucial role in determining their access to key labour rights, such as minimum wage, overtime pay, health insurance, and unemployment benefits. Under U.S. federal law, including the Fair Labour Standards Act (hereinafter “FLSA”), many labour protections apply only to employees, excluding independent contractors from such safeguards. Historically, courts have applied the common law control test and the economic realities test to assess worker classification. These tests evaluate factors like the degree of control the employer exerts over the worker, the permanence of the working relationship, and the worker’s ability to influence their earnings.⁴⁸ However, this test contains many

⁴⁵*Independent Workers Union of Great Britain v Central Arbitration Committee* [2023] UKSC 43.

⁴⁶‘Gig Economy: UK Supreme Court Adds to Developing Case Law with Deliveroo Collective Bargaining Ruling’ <<https://www.ibanet.org/Gig-economy-UK-Supreme-Court-developing-case-law-with-Deliveroo>> accessed 4 January 2025.

⁴⁷*Uber BV v Aslam* [2021] UKSC 5.

⁴⁸Francis J. Mootz III, ‘The Legal Backdrop: A Maze of Confusion’ (2023) 54 U Pac L Rev 1.

loopholes which companies like Grubhub has used to avoid classifying their workers as employees and instead label them as independent contractors.

In 2018, the California Supreme Court's decision in *Dynamex Operations West, Inc. v. Superior Court*⁴⁹ marked a significant shift by introducing the *ABC test* for determining employee status under California wage orders. This test presumes workers are employees unless the hiring entity can prove:

1. The worker is free from the company's control.
2. The worker performs tasks outside the company's regular business.
3. The worker operates an independently established trade or business.

This stringent test posed challenges for platform companies, leading to significant legal and legislative responses. So as per this test gig workers in genera like uber can be considered as employees.

a) State-Level Responses and Proposition 22

California's Assembly Bill 5 ("AB 5"), enacted in 2019, codified the ABC test across various labour protections, but its broad scope prompted backlash. App-based platforms lobbied for an exemption, resulting in *Proposition 22* (2020). This ballot initiative allowed gig companies to classify drivers as independent contractors while offering limited benefits, such as a minimum earnings guarantee and health

⁴⁹*Dynamex Operations West, Inc. v Superior Court of Los Angeles County* 416 P.3d 1.

insurance stipends.⁵⁰ This proposition was also challenged in court but ultimately met the court asset and upheld constitutional.⁵¹

C. Brazil

Brazil has a system of Social Security under which most employees are registered in the Regimes Próprios de Previdência Social (“RPPS”) and Instituto Nacional do Serviço Social (“INSS”) tax, which guides the pension and social security benefits by taxing the amount.⁵²

Moreover, individual gig workers can contribute under Microentrepreneur Individual (“MEI”) scheme at a contribution rate of 5% of the minimum wage which provides access to basic benefits like maternity leave and sickness allowance.

Due to these challenges, Brazil came up with Simplified Social Security Plan (“PSPS”), under which self-employed workers can contribute 11% of remuneration (prior rate was 20%) to get age-based retirement benefits under General Scheme.⁵³

The gig economy in Brazil, particularly in the transport sector, has witnessed significant growth. By the third quarter of 2022, there were

⁵⁰Francis J. Mootz III, ‘The Legal Backdrop: A Maze of Confusion’ (2023) 54 U Pac L Rev 1.

⁵¹Uber, ‘Proposition 22 Upheld: A Victory for Drivers and Democracy’ (Uber Newsroom, 25 July 2024) <<https://www.uber.com/newsroom/prop-22-upheld/>> accessed 4 January 2025.

⁵²Felipe dos Santos Martins and others, ‘An Overview of The Social Protection of Workers In The Gig Economy of the Transport Sector In Brazil’ (2023) 74 Revista do Serviço Público (RSP), Brasília 802 <<http://repositorio.enap.gov.br/handle/1/7828>> accessed 2 January 2025.

⁵³Brazilian Good Practices in Social Security (2013 edn, International Labour Organisation) <https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@americas/@ro-lima/@ilo-brasilvia/documents/publication/wcms_561251.pdf> accessed 2 January 2025.

approximately 1.7 million workers in the transport sector, however only 23% of them are covered under social security.

The *Superior Court of Brazil* (“STF”) has held that gig workers are not employees but independent contractors because a formal employer-employee relationship cannot be established due to factors such as subordination, exclusivity, and fixed working hours, which are necessary to establish such a relationship.⁵⁴

V. CRITICAL ANALYSIS

A. Criticisms

Although different legislations have recognized the gig workers and provides some safeguards to protect their interest and provide them some stability in the form of social security. It still lacks comprehensive legal framework that recognize their distinct work patterns and vulnerabilities. The proposed legislations are somewhat similar to international labour models which pose challenges, as the informal and fragmented nature of India’s gig economy differs significantly from western labour markets. Policies that work in structured environments often fail to address India’s diverse and unregulated gig workforce.

In Karnataka, the case of *Ms. X v. ANI Technologies Private Limited* (2019)⁵⁵ highlighted the inconsistency in how gig workers are classified under different laws. When an Ola driver was accused of sexual harassment, the Karnataka High Court ruled that he could be tried under the POSH Act, as the Act’s broad definition of “employee” included gig workers. The court emphasized that platforms like Ola exert significant control over drivers, justifying their classification as employees for the purposes of workplace harassment protections.

⁵⁴*Srivastava* (n 30).

⁵⁵*Ms X* (n 22).

However, this recognition does not extend to other areas of labour law. When it comes to providing social security, insurance, or other employee benefits, gig workers are typically classified as independent contractors, excluding them from such protections. This creates a legal paradox i.e., gig workers are considered employees when held accountable for misconduct, yet denied the same status when seeking rights and benefits. This ambiguity underscores the pressing need for a cohesive legal framework that addresses the complexities of gig work in India and the proposed legislation lacks these nuances.

Despite the proposed legislation aimed at securing rights for gig workers, the lack of implementation continues to pose significant challenges. The Social Security Code, 2020, though enacted, remains without rules to implement it, delaying its enforcement. The absence of accompanying rules has further stalled its operationalization. Similarly, Rajasthan's Platform-Based Gig Workers Act, while published in the gazette, awaits the formulation of rules necessary for its execution, leaving gig workers without the anticipated protections. In Karnataka, the situation is even less clear, with relevant bills still in the proposal stage and no concrete roadmap for implementation. There is also uncertainty about how state-level laws, once enforced, will align with national legislation if the Social Security Code is eventually operationalized. This gap between policy and practice raises concerns about lobbying or administrative inertia, leaving gig workers in a state of limbo without access to essential social security benefits.

B. Economic Analysis

Gig platforms like Zomato, Swiggy are very competitive and thus has low profit margins. So, even if many users are using these platforms, the platforms itself face losses. Some reasons for growing losses can

be attributed to customer acquisition and heavy discounts.⁵⁶ Despite the widespread popularity, many of these platforms operate at a loss. Swiggy reported a loss of Rs. 2,350 crores in FY 24.⁵⁷

Moreover, the proposed legislations will add more costs, additional regulatory burden to extend social security to gig workers. Benefits such as health insurance, welfare funds, maternity benefit, at costs on platforms. This cycle adds to the financial burden of the platforms. And in a market with high competition and low profits, does not look sustainable. Moreover, the Code mandates the platforms to contribute 1-2% of their annual turnover to social security fund.⁵⁸ For a company like Zomato with a revenue of Rs 12,114 crore, this would mean a contribution of 121-242 crore.⁵⁹

As seen above, these platforms operate on Capital Intensive business model, which raises questions on its sustainability. This is proven as these platforms have been diversifying their business to mitigate losses, like Ola ventured in EV segment, and Zomato's acquisition of Blinkit. India is the fifth largest gig economy in the world and bound to be the third by 2030. It stands at 7 million workers in 2020-21, and projected to grow to 23.5 million by 2030, making up nearly 4.1% of the total workforce.⁶⁰ Moreover, Gig economy is going to lead economic

⁵⁶Arghya Ray and others, 'Do People Use Food Delivery Apps (FDA)? A Uses and Gratification Theory' (2019) 51 Journal of Retailing and Consumer Services 221.

⁵⁷'Swiggy Narrows Gap with Zomato on Revenue, Food Delivery Business Grew 36% to Rs 11,247 Crore in FY24' (*Moneycontrol*, 4 September 2024) <<https://www.moneycontrol.com/news/business/startup/swiggy-narrows-gap-with-zomato-on-revenue-food-delivery-business-grew-36-to-rs-11247-crore-in-fy24-12814599.html>> accessed 5 January 2025.

⁵⁸The Code on Social Security, 2020 (36 of 2020) s 114(4).

⁵⁹'Zomato Logs Fourth Straight Quarter of Profit at Rs 175 Crore' (*The Economic Times*, 13 May 2024) <<https://economictimes.indiatimes.com/tech/startups/zomato-logs-fourth-straight-quarter-of-profit-at-rs-175-crore/articleshow/110092800.cms>> accessed 2 January 2025.

⁶⁰'Expansion of the Gig and Platform Economy in India' (*International Labour Organization*, 4 April 2024) <https://www.ilo.org/sites/default/files/2024-04/ILO%20Platform%20workers%20and%20EBMOs%20India%20Report_3%20A pril%20%28LIGHT%20PDF%29.pdf> accessed 2 January 2025.

growth and reduce unemployment.⁶¹ Though there are also concerns about increasing income gap due to gig work.⁶²

VI. SOLUTION

There is a dichotomy between the reliance on gig platforms in western countries and India. In the West, gig work is often a secondary source of income, allowing individuals to supplement their primary earnings. Most gig workers engage in platform-based jobs for flexibility or additional financial support rather than as their sole means of livelihood. However, in India, gig work frequently serves as the primary source of income for a large segment of workers, making them heavily dependent on platforms like Ola, Uber, and Swiggy for their survival. As these platforms continue to expand and generate more jobs, the livelihoods of many Indians are directly tied to their functioning and stability.

There are multiple ways to redress the challenges associated with gig work. India as a developing country can learn from developed countries' models like the UK, USA, or take the path of developing countries like Brazil.

The UK model utilises two categories for gig workers - worker and independent contractor. So, we can see a new category of workers apart from employees and independent contractors.

⁶¹'India's gig economy may add 90 million jobs, contribute 1.25% to GDP' (Business Standard, 28 November 2024) <https://www.business-standard.com/economy/news/india-s-gig-economy-could-add-90-mn-jobs-enabled-by-large-multinationals-124112800721_1.html> accessed 4 January 2025.

⁶²'The Insecure World of the Gig Economy and Improving Workers' Rights by Riz Hussain' <<https://www.amnesty.org.uk/blogs/human-rights-are-answer/insecure-world-gig-economy-and-improving-workers-rights-riz-hussain>> accessed 5 January 2025.

The USA does not have any national level categorisation but California sees gig workers as independent contractors. Brazil has a strong social security system, however gig workers come under the ambit of independent contractors. However, gig workers can avail social security benefits by paying 5% of remuneration towards contribution.

The better way for India would be to limit burden on the aggregator platforms, towards contribution of welfare funds. Instead, the government could make the welfare fund as part of Corporate Social Responsibility (“CSR”),⁶³ as an alternative to the turnover based contribution as mandated in the Social Security Code. This would help alleviate burden on companies and reduce their cost and would focus on its profitability.

Moreover, only having aggregator platforms contribute to the fund would not be sustainable, hence the workers and government should also be a contributor to the fund. By using Brazil’s approach, India could introduce a scheme under which gig workers can contribute a percentage of their income to the fund, in exchange of the social security benefits. Also, the government could fill in the deficiency.

Now, the question remains whether gig workers should come under employees or independent contractors. The issue with this approach is that if the gig workers are categorized as employees, then they lose their flexibility and has to work exclusively with one platform. However, gig workers, generally, utilise multiple platforms and flexible working hours to suit their needs. For example, a food delivery agent who works for Swiggy would also be registered with Zomato, Uber Eats, etc. Similarly, an Ola driver would also use Uber, Rapido, and other platforms to make ends meet. Losing this advantage is tremendously disadvantageous for gig workers. Hence, India could

⁶³The Companies Act, 2013 (18 of 2013) s 135.

create a separate category for platform workers called “workers” or “platform workers” and provide the social security specific to that.

Apart from a different category and welfare fund. Platforms should be mandated to provide for a basic pay. In other words, it is the minimum incentive platforms should provide workers who have worked for a certain period on the platform.

The legislation should include specific provisions to support vulnerable groups, like women and disabled workers, who depend on gig platforms for their livelihood. For disabled workers, the laws should ensure accessibility and accommodations, such as user-friendly interfaces and flexible work options, to make platform work more inclusive. Additionally, there should be clear provisions for maternity leave to support women workers during crucial times.

The legislation should have adequate redressal mechanisms that should be fair and ensure that gig workers have a voice in the process, particularly through representation in committees that address issues like arbitrarily deboarding from platforms and change in commission rate and other grievances. Additionally, gig worker unions should be officially recognized to empower workers, allowing them to collectively advocate for their rights and better working conditions. This would help create a more balanced system for resolving disputes and improving the overall gig economy.

To effectively implement the proposed solutions, India should enact a dedicated “Platform Worker Welfare Act” that legally classifies gig workers as “platform workers” with unique protections. The legislation should be inclusive taking view of all the above-mentioned suggestions.

A regulatory body can be created to oversee compliance, penalize violations, and handle disputes. Additionally, gig worker unions should be allowed to negotiate collective agreements. A phased implementation with pilot programs and digital interfaces for contributions and claims can ensure smooth enforcement.

VII. CONCLUSION

While the role of the gig economy in the development of the country is clear by now, a downward trend can be seen in the standard of living of gig workers. Although the government through a series of legislations has tried to recognize gig workers with central legislation and various States have proposed similar bills in the State assembly. But there seems to be an apathy regarding the implementation as no efforts can be seen for framing rules for their implementation of the proposed bills, because of which uncertainty exists. The ambiguity can also be seen in court's interpretation of gig worker's rights and duties as in some cases the court have considered them employees and held them liable while in the other have not even recognized them, leaving them vulnerable. This should be seen in context that day by day more people are becoming gig workers to earn their living. Through a global perspective it is seen that various countries have tried to recognize gig workers and labelled them as independent contractors, like the US (although it is not the same for every state) and Brazil (with some govt. scheme to protect gig worker's interest) while the UK has adopted some test to classify them as workers or independent contractor. India at present severely lacks in this regard keeping in view how dire situation most of these workers are. The proposed bills seem an inadequate and haphazard attempt to tackle the situation without considering the voices of gig workers.

Ultimately, the proposed bills need to be comprehensive to develop a balanced approach, incorporating legal safeguards, social security, and

fair labour practices, which will help secure a brighter and more just future for all gig workers in India, enabling them to thrive in a rapidly evolving labour market.