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DYNAMIC WORKFORCE, DYNAMIC RIGHTS: UNDERSTANDING THE GIG ECONOMY'S IMPACT ON LABOUR JURISPRUDENCE IN INDIA

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Abstract

The 'Gig Economy' involving a temporary contractual job or short-term contract of work is transforming Labour Relations in India from the traditional hire and fire policy to that of employees working on their own terms. In India, Gig workers do not fit into the definition of "employee" or "worker" and, therefore, remain out of India's labour law coverage. The real challenge in regulating them is owed to the nature of the work that they perform.

The Indian Government with an intention to accommodate the interests of the growing Gig economy in which millions of workers are involved has enacted the Code on Social Security, 2020, in which the terms "Gig workers", "Platform workers" and "Gig economy" have been defined. The provisions for Gig and Platform workers fall under the chapter on unorganized workers, in the Code indicating that they are not a part of the formal workforce and are not eligible for the social security benefits which are funded by employers. The Labour Welfare organizations across the country are demanding that the social security schemes relating to life and disability cover, health and maternity benefits and old age protection must be extended to Gig Workers. Any attempt to regulate the Gig Economy will affect the flexibility of the labour forces and escalate the compliance cost has been the concern of the business operators. It is in this background, the authors have analyzed the evolution of the Gig Economy in India and its impacts on the Labour Jurisprudence to suggest measures for balancing the conflicting interests between the demand for social security benefits to Gig workers and the obligation of compliance cost for the business operators.

Keywords: Gig Economy, Code on Social Security 2020, Unorganised Workforce, Labour Jurisprudence.

Introduction

The phrase "Gig Economy" is used to describe the growing number of people who are choosing to work as independent contractors for a variety of companies rather than maintaining traditional work relations and responsibilities. Due to technological progress, individuals now have more flexibility in terms of where and when they work without necessarily sacrificing their financial stability. An increasing number of Internet marketplaces/ aggregators are helping to facilitate this shift in the workplace by linking businesses in need of freelancers with those who can provide them. The advent of total project autonomy has improved the working lives of many individuals by giving them more freedom in their work schedules than is usually available[3]. It also offers a platform to share their previous work and collect recommendations from satisfied customers, and freelancers by which they can promote their skills and find new clients via online talent marketplaces. Freelancers build their own profiles, which are then used by clients to find workers with certain

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abilities. There was a 64% increase in freelancer users on People per Hour, one of the most significant freelancer marketplaces in the United Kingdom, between 2012 and 2015[4].

The dramatic transformation in the labour market has had both beneficial and bad effects on the way work is structured, how individuals obtain employment, and how unions and management engage with their workers, given the importance of technology improvements to contemporary economies and society. After the Neolithic Revolution, which altered agricultural practices, and the Industrial Revolution, which brought about mass production and gave rise to the modern metropolis, the current digital revolution is widely predicted to have the greatest impact on the labour market. Each new technological development necessitates a reappraisal of the conventional roles and obligations of employees and "labour," as well as the laws governing the market's institutional framework. In contrast to those who are either not expected to work (such as children, the elderly, etc.) or have decided not to, the "labour force" is the part of a country's or region's population that is actively seeking employment. The growth of online labour marketplaces, known as the "Gig economy," has helped fuel the increase of non-traditional work opportunities. Technology-based "labour Platforms" facilitate the pairing of workers with clients for the completion of discrete tasks in any location. Concerns about the loss of worker safeguards in the online economy are exacerbated by the expanding number of people who depend on the internet for financial assistance.

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Labour Market Trends in India: A Study

India's primary industry, agriculture, has always been a strong job market. The bulk of the workforce historically worked in agriculture or closely related occupations. The agricultural sector of the economy witnessed its percentage of total employment plummet from 68.5% in 1983 to roughly 46.1% in 2015-167, in part due to the liberalization of trade in the early 1990s. However, whereas the transition from agriculture to industry has been a hallmark of the economic processes of other East and Southeast Asian countries, it has not yet reached that level in India (and South Asia in general).

Informal Workforce

Over the last several years, there has been a dramatic increase in the number of Indians who are making a living outside of the country's formal economy. The

4. Antonio Casilli and Julian Posada, *The Platformization of labourand society, 26, 35 in Society and the Internet: How networks of information and communication are changing our lives* (Mark Graham and William H. Dutton, 2nd ed., 2016).
5. Emily Clark Brown, *Continuity and change in the Soviet labour market*, 23 (2) Int'l & Compar. Lab. L. & Indus. Rels. 171, 190 (1970.)
6. Christine Craig, et al., *Labour market structure, industrial organisation*, and low pay. 54 (1st ed., 1982)
7. Mark Graham and Mohammad Amir Anwar, *Two models for a fairer sharing economy*, 25, 31 in Cambridge handbook of the law of the sharing economy. (Nestor M. Davidson, Michèle Finck, and John J. Infranca 2nd ed. 2017).

informal sector in India encompasses all non-corporately held enterprises, including cooperatives, trusts, and non-profits, as well as numerous businesses directly related to agriculture. Seventy-five percent of all employment in rural areas comes from the informal sector, whereas sixty-nine percent of all jobs in urban areas comes from the informal economy[8]. The situation in India's manufacturing sector is complicated by size-based regulations. The general belief that work in the informal sector is low-skilled primarily or unskilled is largely due to the low levels of formal education and training and the poor productivity that exist in this sector. However, its dominance in the job market is projected to remain for the foreseeable future. We hope that the formal and informal sectors of India's economy today are not in conflict with one another but rather complement one another. With the right policies in place to reposition skills, offer better access to capital, and make markets more accessible, the industry may thrive while the debate on labor reforms and the reasons for defining in formalization are addressed[9]. A well-designed, job-independent social security system would significantly simplify the situation.

Digitization and the Labour Market

Increased use of Artificial Intelligence (AI) in the business world has been beneficial across many industries, even the more traditional ones. Employment prospects in knowledge-intensive sectors such as healthcare, education, the legal sector, and financial advising services have profited considerably from technology developments in recent decades. It is a prevalent misunderstanding that technical advances exclusively benefit the highly educated and the professionally employed. Technological progress has made it easier for those with less education to obtain work, and informal workers may be able to take use of digital Platforms to increase their efficiency and production. The meteoric rise of digitally driven businesses in India is indicative of the direct impact digitization is having on the country's informal labor marketplaces. The questions, of whether, workers participate in official taxation, get social security or insurance, are paid at least the l minimum wage, etc., are distinguishing features (as defined above) of the formal labor market against the informal labor market[10]. The informal sector of India's economy not only employs a substantial fraction of the country's present workers but also absorbs many of the country's yearly entrants to the labor market.

Due to the nature of digital labor outsourcing, many companies and the platforms that support such collaborations avoid the traditional recruiting process and have no need that their employees to be located in the same geographic area. Instead of hiring agencies, businesses are turning to online auction houses to fill unfilled positions. Jobs may take as short as a few minutes (like click work or photo tagging) or as long as a few months (for example, extensive writing tasks or Web design). According to Economist Guy Standing's (2016) forecasts, by 2025, Platforms would mediate one-third of all labor transactions. Some of these Platforms have the potential for massive scale and breadth because of the globalization of computer infrastructure[11]. The widespread adoption of digital data, digital processes, and machines into the labor process has resulted from recent advances in automation and communication technologies and is now embedded in geographically dispersed networks of production, where tasks are rapidly transferred in complex assemblages from one human to another, and from one machine to another.

Gig Economy in India

In an attempt to attract and retain female workers, several Indian IT firms are touting the "Gig economy's" advantages as a more versatile and adaptable substitute for traditional employment. In today's market, freelancers often take on many contracts or short-term work to supplement their income. Successfully expanding a taxonomy of Gig economy business models requires distinguishing between crowd labor and work on demand through applications. Through the usage of internet marketplaces, crowd workers provide their services to a wide variety of customers. Since crowdsourcing occurs

8. Mark Graham and Jamie Woodcock, *Towards a fairer Platform economy: Introducing the Fair work Foundation*, 29 Am. J. Compar. L., 242, 253 (2018).
9. Mark Graham, et al., *Digital labour and development: Impacts of global digital labour Platforms and the Gig economy on worker livelihoods*, 23 (2) Am. J. Juris, 135,162. (2017).
10. Mark Graham, et al, *The risks and rewards of online Gig work at the global margins*, 62 (2nd ed. 2023).
11. David Harvey, *Globalization and the 'spatial fix*, 2 Am. U. Bus. L. Rev, 23–30 (2001),

online, it is immaterial where either your employees or your customers are located. Alternatively, in the case of employees working through "on-demand" applications, their work is supported by a platform but is still rooted in a certain location. Many Gig economy jobs, including delivery driving, transportation, cleaning, and home repairs, need regular face-to-face contact between service providers and customers. Worker concentration, workers' capacity to build intra-platform alliances, and the degree to which employees may form alliances with consumers are all significantly impacted by the organizational structure. Crowd economy workers and those who are hired via location-based platforms must adapt their practices to account for these differences[12]. New and exciting economic and creative opportunities have emerged as a result of the shift away from conventional methods of finding work. Freelancing and other forms of part-time work are on the increase because they provide young people, especially millennial, with a real opportunity to achieve the elusive "work-life balance." In this way, businesses may lessen the risks associated with political and regulatory unpredictability in a variety of economies. Companies may quickly expand or reduce their staff as needed to suit their shifting needs. However, the future of social security and other worker benefits is a major concern.

Participants in the "Gig economy" are not employees but rather contract laborers. With this rule in place, businesses are exempt from providing standard safety net benefits like pensions, health insurance, and paid vacation[13]. All Gig economy workers should be paid fairly for their efforts. Our own view is that this is an overly optimistic outlook. Flexibility for employees, although often praised, may lead to increased precarity and inequality and set the stage for societal upheaval.

Problems Faced by Gig Workers

Workers' rights to organize into unions and engage in collective bargaining have given them more voice in matters of the workplace since their inception. While unions provide many benefits for workers, unionization rates have been declining worldwide and are especially low among non-standard workers. Gig workers are generally prohibited from forming unions or bargaining collectively for salary or benefits because of their position as contractors rather than employees. When workers often switch "Gigs" in different industries, sometimes without any intention of remaining in the Gig economy for the long haul, it makes it difficult for them to form communities and discover common interests. Finding employees, keeping in contact with them, and including them in collective organizing activities may become more difficult as a result of these obstacles. Therefore, workers and the labor movement have had to assess the most effective strategies for organizing in light of the rising complexity and technological mediation of the modern workplace[14]. While just a small fraction of today's workforce actually uses these tools, their adoption seems certain. A Platform's potential long-term influence on the labor market much outweighs its immediate significance. Nonetheless, many are worried that emerging industries may make older ones irrelevant. To prevent the use of digital Platforms from undermining secure employment and fair working conditions, a climate that is supportive of worker organization and collective bargaining is important in light of the expected rise in this sector. The struggles of Gig and Platform employees to establish their own autonomous agency inside the industry might provide light on the methods they choose to reach their goals.

Legislative restrictions on platforms and freelance employees make organizing a union difficult, and the internet nature of employment marketplaces further makes matters more fragmented. It is not unusual for workers to spend extended periods of time away from one another and to compete with one another in a pleasant manner. Due to the short-term or project-based nature of the work at these locations, there is sometimes a high turnover rate. Collective bargaining and worker organization have historically benefited greatly from labor unions. Historically, negotiating collec-

12. Richard Heeks, *Digital economy and digital labour terminology: Making sense of the 'Gig economy', 'online labour', 'crowd work', 'microwork', 'Platform labour'*, Centre for Development Informatics, Global Development Institute, University of Manchester, Working Paper Series, 70, University of Manchester, (2017)

13. Sanna Ojanperä and Mark Graham, *Mapping the availability of online labour in 2019, Oxford Internet Institute, available* at https://geonet.oii.ox.ac.uk/blog/mapping-the-availability-of-online-labour-in-2019/, last seen on 22/01/2025.

14. Michael Reich, David M. Gordon, and Richard C. Edwards, *A theory of labour market segmentation,* 63(2) Behav. Sci. & L 359, 365 (1973).

tively has been the most effective strategy for ensuring long-term, legally enforceable benefits for employees[15]. Unions have been a constant factor in evolution of Labour rights, with employees as its members taking part in political and economic direct action, influencing their representatives, and organizing their neighborhoods. The rising prevalence of Gig and Platform work poses new problems for the labor movement in terms of organizing and structuring workers. In an effort to increase their membership and thus their bargaining power, unions have occasionally reached out to people working in the Gig economy and on Platform employment. Union revitalization campaigns are concentrating on the communities of Gig and Platform workers because of unions' proven effectiveness in organizing and representing non-traditional workers[16]. The political climate in which unions are operating is crucial to their success in the Gig economy, and the strategies unions employ are diverse and often overlap with those of other organizing typologies[17].

There are primarily three movements that are union-led organizing of Gig and Platform workers. The first is a legal strategy to deal with worker misclassification claims. The second is the creation of associations and alliances that provide services to Gig workers and advocate on their behalf. The third is a push for legal and regulatory reform at the municipal and state levels to give Gig workers more organizing and bargaining rights. New membership structures and organizing tools have been developed by unions as part of an "organizing pivot" to better reach Gig and Platform workers[18].

Need for Regulation

This Gigantic marketplace might make it easier than ever for buyers and sellers to connect. However, it could also facilitate a ruthless race to the bottom, as self-employed 'freelancers' compete in a larger, more competitive labor market to support themselves. The growth of the Gig economy, typified by online Platforms and isolated independent workers, poses fundamental challenges to traditional models for regulating work and setting minimum standards. It is not clear that existing regulations apply to Gig workers, let alone that they can be effectively enforced in the digital economy. In fact, in some cases, evading traditional regulations) appears to have been a key rationale for establishing digital businesses in the first place[19].

Code on Social Security 2020 – As Assessment

In an attempt to consolidate, clarify, and rationalize the various social security legislation, the Code on Social Security, 2020 (hence termed Code) was drafted. Social security programs for Gig and Platform employees are considered in the code, which is notable since it introduces the notion following features of labor law to Gig employees:

- Life and Disability cover
- Health and Maternity benefits
- Old Age Protection; and
- Any other benefits as may be determined by the Government

As things are in India's labor law system, Gig workers are better seen as freelancers. Workers who "perform labor or participate in a work arrangement and profit from such activities outside of the usual employer-employee relationship" are defined as "Gig" workers under the law. The contributions of freelancers to the Indian economy cannot be overstated. Platform work is defined as "a kind of employment in which corporations or people utilize an online platform to contact other organizations or individuals to solve particular challenges or give specialized services in return for money," as stated in the law. Dependent on their job function, platform workers may be classified as either aggregator drivers or on-demand delivery drivers. Despite not being employees, Gig and Platform workers are legally obligated to be covered by social security systems. It is

15. Beverly J. Silver, *Forces of labor: Workers' movements and globalization since 1870* (6th ed. 2003).
16. Richard R. Carlson, *Variations on a Theme of Employment: LabourLaw Regulation of Alternative Worker Relations,* 37 Tex. L. Rev.. 661, 663 (1996)
17. Nick Srnicek, *Platform capitalism.* (1st ed., 2016)
18. Miriam A. Cherry, *Beyond Misclassification: The Digital Transformation of Work,* 37 Compar. Lab. L. & Pol'y J 577, 584–85 (2016).
19. Miriam A. Cherry, *Working for (Virtually) Minimum Wage: Applying the Fair LabourStandards Act in Cyberspace*, 60 Alb. L. Rev 1077, 1077–78 (2009).

suggested that Law ought to provide safeguards for Gig workers equivalent to those of traditional employees, whereas the current Law merely allows for the potential that the government may provide social security benefits to Gig workers. As is evident, the Gig and Platform workers are not eligible for traditional employee social security benefits like the employees' provident fund, employees' state insurance, or gratuity since the appropriate legislation are included in the chapter on unorganized workers[20].

It may be noted that Businesses in the "on-demand" or "sharing" economy, such as ride-hailing, logistics, delivery, and cleaning, need the word "aggregator" to be updated to accurately represent the real nature of the link between digital Platforms and persons who are currently referred to as "sellers" in the Code. Marketplace websites, in contrast to the traditional yellow pages, are typically seen as neutral third parties that encourage trade between buyers and sellers[21]. Despite claims that they would "revolutionize" the workplace, many businesses in the "on-demand" or "sharing" economy continue to use the same management styles as their forebears.

To define "Gig workers," experts just cannot come to terms with one another. "Gig employment" has to be defined in the Code, along with how it varies from the typical employer-employee relationship in both formal and informal economies. Gig workers are a developing category, and it seems likely that the authors wanted to acknowledge this fact; nonetheless, formal acknowledgment of this trend is still lacking. The ambiguity of the term makes it possible that it refers to (a) temporary workers, (b) remote workers, (c) self-employed people, and (d) non-union workers. The reason being, a "normal employer-employee relationship" might be interpreted in several ways. If Gig workers, or those seeking employment via digital intermediaries, are considered independent contractors, they may fail several criteria developed by the courts over time, such as the "control and supervision" and "integration" tests. Some groups of unorganized sector employees do not have access to social security since aggregators are prohibited from participating in the system.

The need for temporary specialists in a wide range of businesses has led to rapid growth in the Gig economy in India, which is still in its infancy but has grown rapidly in recent years. Since Gig workers are not considered employees under the law, businesses may be able to save money by not providing them with the same set of statutory employee benefits that are given to traditional employees[22]. The code, as written, does not provide a detailed set of rules for employer responsibilities, but rather a general outline. Assuming this legislation passes, the government will be entrusted with developing all-encompassing laws for Gig and Platform labor. There is also uncertainty about who would be accountable for compliance, including aggregators and other businesses that utilize Gig and Platform labor, and what it will mean for the industry's freedom and adaptability. The absence of insurance, medical benefits, and/or other statutory benefits comparable to those obtained by a worker in regular employment has long been seen as the most harmful component of Gig labor by individuals who engage in it. Indian workers are classified as either freelancers or independent contractors due to the absence of laws governing the Gig economy[23].

Suggestions

As has been shown, the adequacy of legal safeguards for Gig workers is context-dependent. Policymakers should make an effort to explain and, where possible, strengthen these protections, and implement them more consistently, for the benefit of all vulnerable employees (including Gig workers). Given the disruptive nature of digital technologies and Platform-based business models, however, it is vital to explore broadening the scope of instrumental state regulation to raise the degree of protection for Gig workers. In this regard, the

20. Carlos Frade & Isabelle Darmon, *New Modes of Business Organization and Precarious Employment: Towards the Recommodification of Labour?*, 15 J.L. & Soc. Pol'y 107 (2005).
21. Deepa Das Acevedo, *Regulating Employment Relationships in the Sharing Economy*, 20 J.L. Econ. & Pol'y 1, 2–3 (2016).
22. Deepa Das Acevedo, *Unbundling Freedom in the Sharing Economy*, 91 Calif. L. Rev. 793, 797 (2018).
23. Miriam A. Cherry & Antonio Aloisi, *Dependent Contractors" in the Gig Economy: A Comparative Approach*, 66 Am. U. L. Rev 635, 650 (2017).

following are some potential overarching strategies to consider.

Clarify or Expand the definitions of Employment

Some crowd workers and on-demand employees may not feel adequately protected notwithstanding recent case law that expands regulatory protections to new forms of paid labor. These protections may advance more rapidly and directly if the definition of "employment" were explicitly broadened. It may be essential to broaden the spectrum of activities that are deemed to be equivalent to employment in order to more appropriately encompass work that is managed, monitored, and facilitated by a digital intermediary. Without breaking any antitrust laws, these workers should have the same access to collective bargaining as employees. If certain kinds of mediation are seen as having "labor hire" functions, then regulations pertaining to the behavior of labor-hire businesses may be applicable, either instead of or in addition to the current regulations. Even greater success might be achieved with this approach by implementing the stricter regulation of labor hire organizations that has been recently advocated in India. One method to ensure that Gig workers get employee rights is to restrict employers' ability to misclassify workers as independent contractors.

Create Rights for Workers, not for Employees

If we want to adopt a bold position, we should guarantee the right to safety for all people when they are "at work," regardless of whether or not they are employed. This more comprehensive strategy to update regulatory frameworks looks to Australia's WHS (workplace health and safety) statute as a point of inspiration[24]. As was previously said, these standards are intended to offer basic health and safety precautions to all "workers," regardless of the specific nature of the working relationship. Additional labor requirements may be restructured in a similar fashion, rendering the question of whether or not a person is an employee in the normal sense largely moot. Scholarly consensus exists in favor of a "law of labor," or a legal framework for the regulation of "personal work contracts" in the broader sense. Certain safeguards (such as those against discrimination) are naturally adaptable to a broad range of situations, while others would need significant revision or redesign to cover every possible kind of employee. This is especially true for expensive necessities like pension plan payments and paid vacation time.

Redefining the concept of an Employer in wake of Digital Workplace

It has also been proposed that we focus less on workers and more on businesses. It is important to learn about every possible function an employer may play. There could be arguments that certain Platforms, like Uber, provide all of those functions. However, there are other circumstances in which they are shared across a larger group than just the producer and the consumer. The author contend that in such a case, the worker should be considered legally as if they were employed by many businesses, or even as if they were hired by no company at all. It's a really high-brow concept, that's for sure. Its execution, however, is likely to be difficult unless present restrictions are radically rethought. However, "dual employment" is still not widely accepted in India, especially in the context of the labor-hire market.

Data protection

Ultimately, the issue of data protection for employees and their right to privacy remains a significant concern in the context of the computational decision-making procedures employed by platform companies. Although rights over data have not yet been a prominent focus for contract workers' unions in India, workers are nonetheless aware of the necessity to safeguard their information and confidentiality from both platform companies and customers. In the lack of national data protection laws, platform businesses' unilateral and opaque decisions—often mediated by algorithms—about how to gather, keep, and distribute workers' personal information to third parties further solidify the power imbalance between platforms and workers. Platform firms' data rules lack transparency and accountability, thus some workers throughout the world have resorted to forming data trusts. These trusts are overseen by independent third parties who may request, access, and collect data regarding platform workers. To get the most out of India's growing platform economy, people who work in the job and platform economies need to talk

24. Keith Cunningham-Parmeter, *Gig-Dependence: Finding the Real Independent Contractors of Platform Work,* 39 N. Ill. U. L. Rev. 379, 400 (2019).

about these problems in public places where everyone can hear them.

Conclusion

The government should step in, but not stifle creativity; rather, it should make sure everyone in the workplace is secure. Mandatory payments to portable retirement savings and health insurance should be included in the contractual wage rise. Safeguards for the Gig economy are already being discussed in the European Union and the United States, and India may soon join the discourse. Due to the nature of Gig and Platform-based work (individual, highly dispersed across geographically expansive areas, workers entering and exiting, or moving across Platforms in search of tasks), we find that sectorial bargaining and extension mechanisms may be particularly well-suited for regulating the Gig economy (often lacking basic protections of labor law, classified as independent contractors). Collective bargaining in the Gig economy is typically held up as a best practice, with countries like Sweden and Austria held up as models because of their advanced legal and regulatory frameworks, strong social partners, and several industry-wide collective agreements. When it comes to Gig and Platform work, the only constant changes. Although today's market leaders and media darlings may not be there tomorrow, the innovations and shifts in thinking that they have ushered in for the Gig and Platform economies will shape the workplace of tomorrow[25]. People in the workforce are suffering the consequences of new workplace models that prioritize crowd work, rely on competition, and prioritize on-demand and other just-in-time services. The ILO Director-General emphasized the need of approaching these challenges with the understanding that the course of the labor market is not set in stone. Contemporary cultures' beliefs and decisions, as reflected in the policies they develop and adopt, will determine the future.

25. Noah D. Zatz, *Beyond Misclassification: Tackling the Independent Contractor Problem Without Redefining Employment*, 26 A.B.A. J. Lab. & Emp. L. 279, 280–81 (2011).