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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

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Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GIG AND PLATFORM WORKERS

AUTHORED BY - MELWIN MOSES

Abstract

The gig economy has developed as a crucial element of contemporary labor markets, creating flexible employment on digital platforms. Gig and platform workers like those employed in Swiggy, Zomato, Uber, and Ola work beyond conventional employer-employee relationships and hence tend to miss out on important labour protections. Though this model has advantages like work-life balance and multiple income streams, it also makes workers vulnerable to job insecurity, absence of social security, and exploitation. The Indian Government has classified gig workers as platform and non-platform workers, with legislative efforts like the Code on Social Security and the Karnataka Platform Based Gig Workers (Social Security and Welfare) Bill, 2024, attempting to provide limited protection. However, implementation, awareness, and enforcement gaps have been a big challenge. In this paper, the intricacies of gig and platform work in India are discussed, existing regulations are critically analysed, and important issues that workers face are brought to light, finally focusing on the greater legislative support and efficacious enforcement to ensure equitable working conditions.

Key words – Gig and platform workers, social security, labour, aggregators, technology

Introduction

Short-term, flexible jobs that involve interacting with clients and/or consumers are what define the concept of gig economy. These jobs are frequently mediated by digital platforms. Gig workers include delivery services like Swiggy or Zomato; consultancies and ride-sharing businesses like Rapido, Uber, and Ola. These workers differ from other labourers. They are more dependent on doing their tasks in order to get paid than they are on having a fixed pay and stable employment. The Indian Government has separated workers in the gig economy into two categories: the platform workers and the non-platform workers. A platform worker is an individual that works for companies that uses online platforms, such as Amazon and Swiggy delivery personnel. Non-platform workers are those who do not work on these platforms, construction workers and temporary staff who do not use technology are two out of the many other examples. Workers can choose when and how much they want to work, which improves

work-life balance and people can work multiple gigs at once, which can lead to a range of experiences and revenue sources. These are a few indications that there is no principal-agent or employer-employee relationship between the digital platforms and the workers and are hence not protected under the labour laws. Additionally, the rise of online platforms that offer a variety of services boosts economic growth by fostering innovation and increasing job prospects. The gig economy is expected to develop in the future.

The Karnataka High Court, in its judgment dated September 30, 2024, in *Ms. X v. Internal Complaints Committee, ANI Technologies Private Limited and Others*,¹ held that the association between ANI Technologies Private Limited (“OLA”) and its driver subscribers is an employer-employee relationship for the purposes of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”). In doing so, the court concluded that such driver subscribers cannot be deemed independent contractors. The judgment keenly analyses OLA’s contracts of subscription with its driver subscribers and customers, pointing out that OLA is not in a position to fully control the drivers’ work and at the same time classify them as independent contractors to escape statutory requirements. The judgment also analyses the intention and purpose of the POSH Act, noting the Act’s wider definitions of employer, employee, and workplace according to the aim of the Act.

OLA has appealed the ruling before the Division Bench of the High Court, which has issued an interim order staying its enforcement, noting that the issues raised warrant further consideration. Although the outcome of the appeal is still pending, the High Court’s judgment, with the elaborate rationale, goes a long way in defining the debate regarding the legal status of gig workers in the contemporary labour economy and the responsibility of companies hiring such workers on a contractual basis. The petitioner had hired an OLA cab in Bengaluru and was sexually harassed by the driver. Notwithstanding such a persistent request, the driver did not stop, and she was able to alight from the cab only close to her work place. In its investigation, OLA confirmed that the driver had been an impersonator because of a common practice of “driver swapping” on its platform. When the petitioner approached OLA’s Internal Complaints Committee (ICC) under the POSH Act, OLA declined to investigate, claiming that drivers were independent contractors and not employees. Hurt, the petitioner had moved a writ petition in the Karnataka High Court under Article 226 of the Constitution.

¹ Order dated September 30, 2024 in WP No. 8127 of 2019.

Findings of the Court

- 1. OLA is Subject to Writ Jurisdiction** - The court held that OLA, as a private organization, was carrying out a public function and owed public obligations under the POSH Act and Karnataka Aggregator Rules, 2016. The obligations made it subject to writ jurisdiction under Article 226, overruling OLA's argument that it was involved in a mere commercial activity.
- 2. Drivers Qualify as Employees Under the POSH Act** - Alleging to be an intermediary, OLA did not have, in fact, complete control over the drivers—who were fixed up on fares, routes, and even had limited phone use when giving rides. The court reasoned that OLA's subscription contract classifying the drivers as independent contractors was for form's sake and did not mirror the nature of the association. According to Section 2(f) of the POSH Act, the term "employee" was held in its liberal meaning to extend to OLA's driver subscribers.
- 3. OLA's Liability Despite Driver Swapping** - The court held that under the POSH Act, an employer is liable for employees, even if the employer did not have direct knowledge of the person involved. As OLA owned and operated the platform, it was held liable for the actions of the impersonator driver. The court ordered OLA's ICC to inquire into the complaint and granted the petitioner INR 5 lakh as compensation and INR 50,000 as legal expenses.
- 4. Regulatory Violations and Further Action** - The Karnataka Road Transport Authority was instructed to investigate OLA's violation of the Aggregator Rules regarding passenger safety and driver verification.

Gig and Platform Workers

There are serious objections to the idea that these workers are free to choose when they want to work and they are not subject to any sort of influence of the company. There are three myths listed out.² The first myth is that the platform workers and the aggregators would be "partners" with "no boss" in order to increase platform work. But it was later found to be a lie. How many hours the workers have to work on the weekends and other activities that are assigned by the algorithms are decided by a network team of managers/supervisors that are locally deployed in order to enforce the algorithm. Zomato has announced that it will introduce a 10-minute food

² A case for regulating gig-based work <https://www.thehindu.com/business/Economy/karnataka-government-legislation-for-gig-workers/article68434150.ece>

delivery test project to start in Gurugram. People criticised the idea, claiming that it will put the lives of its delivery partners at a great risk as they will rush to fulfil the goal.³

In contrast to conventional employment relationships, in which human resources or managers control workers, gig workers on such platforms are controlled by algorithms that coordinate service demand with supply. These algorithms decide on work availability based on ratings and establish service prices based on factors such as demand, supply, and performance metrics. Platforms also increasingly use algorithms to monitor, manage, and sanction workers, maintaining efficiency and service quality. Algorithmic control can be defined by four major features: constant monitoring of workers' activity by means of data; constant performance assessment based on gathered data; automatic decision-making with little or no human intervention; and worker interactions taking place mainly with a system instead of with human managers.

The second myth is that because workers have flexibility and are thus exempted from the protections under labour laws assuming that traditional employees do not have flexibility and are bound by the orders of the employers. However, studies and research have demonstrated that this is not the case since these platforms have consistently misused the term flexibility even though they do not fall under the employer-employee relationship. The third misconception is that these people work "part time" and take on platform-based gigs to supplement their income.⁴ As per a study of the Indian platform economy conducted by PAIGHAM and the University of Pennsylvania, "*Around 42.1% respondents reported that they take only 1- 3 offs in a month, which proves the earlier result that majority are not able to take even 1 day off every week. Bangalore again has the maximum proportion of such drivers (close to 90%) who are able to take only 1-3 days off in the entire month.*"⁵ This therefore clearly indicates that there is no flexibility for these gig workers and since they are not employees, neither are they entitled to seek protection under the labour laws.⁶

The Code on Social Security, (the sole source of legislation that mentions 'gig workers' in its passing) while ensuring "*social security*" and a few other benefits has, otherwise been negative

³ <https://www.barandbench.com/columns/need-for-legislative-action-to-protect-indias-gig-workers>

⁴ Supra at 3.

⁵ <https://tgpwu.org/wp-content/uploads/2024/03/Report-Final-Print-1.pdf>

⁶ https://www.niti.gov.in/sites/default/files/2023-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf

because it disassociates workers from the minimum labour protections of wages since it mentions about “wages” in the definition of “employees” under Section 2(26)⁷ thereby mentioning this term only in the context of employer and employees and does not identify gig and platform workers as employees; and no job security even though the Indian Government supported and made a progressive statement on the rights of the platform workers at the G20. There is no correct legislative support pertaining to gig and platform workers and are considered to be exploited by the digital platforms, as stated in the Circular No. W-11015/15/2024-RW (GPW) published by the Ministry of Labour & Employment dated 16th September, 2024, under Annexure-I providing a list of definitions, defines crucial words such as aggregator, platform work and platform workers.

*“Aggregator” means a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider.*⁸

*“Platform work” means a work arrangement outside of a traditional employer-employee 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.*⁹

*“Platform worker” means a person engaged in or undertaking platform work.*¹⁰

Subsequently, in the recent Karnataka Platform Based Gig Workers (Social Security and Welfare) Bill, 2024,¹¹ there are provisions requiring equitable contracts, financial security and the freedom of the platform workers to decline labour without facing consequences. The Karnataka law creates the required space for a variety of initiatives that can help employees deal with life events like old age, death, health shocks, etc. These workers, who are not regarded as employees but do not have the freedom and flexibility of independent contractors, are better off due to the aforementioned provisions. The Bill states that it is “A bill to protect the rights of platform-based gig workers to place obligations on aggregators in relation to social security, occupational health and safety, transparency in automated monitoring and decision-making systems...”

The Ministry of Labour & Employment, launched a portal called ‘e-Shram’ on 26th August,

⁷ https://labour.gov.in/sites/default/files/ss_code_as_introduced_in_lok_sabha.pdf

⁸ Gig and Platform workers, Circular No. W-11015/15/2024-RW (GPW)

⁹ Id.

¹⁰ Supra at 1.

¹¹ <https://ksuwssb.karnataka.gov.in/storage/pdf-files/draftnotification.pdf>

2021, that enables the registration of unorganised/migrant (platform) workers by providing them with a Universal Account Number (UAN).¹² This would provide these platform workers with access to key social security entitlements. Once registered, platform workers will be assigned a Universal Account Number (UAN), which will allow them to avail themselves of core social security benefits along with all the other entitlements to which they are legally entitled. It is not another database because it is a “One-Stop-Solution” for the employees, giving them an identity and an easier process to check whether they are eligible or not and also a method to get jobs in different social sector schemes conducted by the Central Government or State Governments. However, if the aggregator defaults, it can significantly impact the gig worker. In many cases, gig workers rely on these aggregators for their income and if the aggregator faces financial difficulties or goes out of the business, the gig workers may not receive their earning or benefits. This situation can lead to loss of income, unpaid wages and a lack of support that the aggregator might have provided such as access to job opportunities or resources. Therefore, the risk of aggregator defaults can leave gig workers vulnerable and without safety.

Loopholes and Challenges

The main flaw in the existing legal framework is its imprecise categorization of contract work, creating ambiguity regarding digital platforms’ obligations to their workers. Such ambiguity continues to perpetuate gender disparities, with women being relegated to lower-earning parts of the freelance economy. The lack of specific legislation for the contract economy also means that workers are not aware of their rights and the process for resolving complaints. The overlapping definitions and the organization of the labour code contribute to its complexity, especially in deciding which particular schemes cover various categories of workers. Though Chapter IX of the Code on Social Security (2020) is specifically focused on unorganized, gig, and platform workers, provisions relating to gig and platform workers are specifically found in Sections 112, 113, and 114.¹³

The Code on Social Security does not also account for fluctuations in income. For example, although provident fund schemes provide a long-term benefit, they do not consider how workers will pay for the contribution from their already unstable incomes. There are also some

¹² Supra at 6.

¹³ <https://www.barandbench.com/law-firms/view-point/regulatory-framework-and-the-protection-of-basic-rights-of-gig-workers>

gig workers who do not like social security provisions that insist they contribute from their wages. Even though the Code disallows employers to deduct money from employees' salaries, the burden on businesses to pay benefits can deter hiring of gig workers. The same has happened when enhanced maternity leave pay reduced female workforce as firms attempted to keep additional expenses at bay. In 2020, a labour code draft suggested recognizing gig workers as a separate category independent of the standard employer-employee relationship, offering them access to accident, health, and retirement benefits paid by contributions from the State, Central government, and platforms through a welfare fund. Yet, such regulations have yet to be extended nationwide. Safety and sexual harassment issues again underscore legislative gaps. Though the POSH Act defines "workplace" fully, how it applies to virtual and transient workplaces is uncertain.¹⁴ The Rajasthan Platform-Based Gig Workers Act, 2023, marks a pioneering effort at the state level to address these gaps, but a unified nationwide framework ensuring consistent protection for gig workers across all states is still lacking.

A few of the challenges with regards to the Bill are as follows:¹⁵

1. Making sure the provisions of the Bill are properly implemented and enforced is one of the primary challenges.
2. It is possible that a large number of gig and platform workers are unaware of the new rights and advantages of the legislation. It is essential to make sure that all employees receive this information and that it is available to them in a manner and language they can comprehend.
3. The presence of over 7.7 million gig workers in India (as is reported by the NITI Aayog)¹⁶ highlights how difficult it is to put in place a registration procedure that works. Due to the huge volume of workers, there are substantial administrative challenges/hurdles that could cause delay in the actual distribution of the benefits. This huge procedure may prevent gig workers from receiving the prompt assistance they require, which could eventually have an impact on their earnings.
4. There are many different industries and employment kinds in the gig economy, so it is challenging to develop a strategy that meets the needs of all. It might be hard to make protections and benefits to fit the different demands of various gig worker groups.

¹⁴ <https://articles.manupatra.com/article-details/India-s-Gig-Economy-A-Legal-Minefield>

¹⁵ Id.

¹⁶

https://www.niti.gov.in/sites/default/files/2023-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf

5. Since new laws may result in higher operating fees or costs, certain aggregators may oppose their implementation. The overall progress of the scheme may be hampered by this resistance.

Conclusion and the Way Ahead

India is also among the leading countries in the world for gig workers, standing at position 5 in the world. More than 15 million trained workers are working in freelance jobs in India, accounting for almost 40% of all the freelancers globally. By the year 2024, the estimated worth of the gig economy in India has been estimated to be almost \$455 billion by experts. But, although the Indian gig economy is booming, the workers employed in the same are subject to nothing but the worst possible work environments with nearly no legal protection and benefits.¹⁷

It is clear that although there have been recent legislative attempts in India to deal with some of the challenges that gig workers face, there are still significant gaps in their fair treatment and protection. The gig economy, which is defined by its use of temporary, flexible, and precarious forms of work, poses specific challenges that conventional labour laws have not been able to deal with effectively. The enactment of the four new labour codes in 2019 and 2020 was an improvement in the direction of harmonizing and modernizing India's labour legislation. In particular, the Code on Social Security, 2020, identifies gig workers and platform workers, providing them with certain social security benefits. Nevertheless, as noted earlier, several gaps remain.

The first is specific legislation that includes a standalone exhaustive law tailored to the requirements and challenges of gig workers. The law is of the highest importance in order to bring certainty regarding the rights of gig workers, the obligations of platform businesses, and improved and exclusive mechanisms for settling disputes. Secondly, enhanced and improved social security coverage is needed. A system of schemes that considers the economic struggles of such employees needs to be there. Existing social security schemes expect workers to contribute approximately 2-5% of their yearly earnings to their social security fund. It is of immeasurable significance that governments bring forward subsidies and other incentives that

¹⁷ Rajouri, S. (2024) *Longer working hours & low earnings: How India's gig workforce fares*, Business Standard. Available at: https://www.business-standard.com/industry/news/longer-working-hours-lowearnings-how-india-s-gig-workforce-fares-124031100985_1.html

are needed to make the schemes economically viable for gig workers.

In acknowledging and responding to the rights and well-being of this growing workforce, the latest circular and proposed Bill regarding gig and platform workers in Karnataka is an important step. The government seeks to enhance the terms of work of the gig workers and social security by instituting a framework for registration, benefits and security/protections. But effective enforcement and the ability to manage the complexity of this diverse industry will be required to make these measures effective. As much as it is a laudable intention to provide benefits, it is important to expedite the onboarding process to ensure that the benefits are distributed to the targeted sector in a cost-effective and effective way. All things being equal, this endeavour can promote a more equitable and motivating work environment for gig workers; but substantial outcomes will necessitate ongoing attention to the practical needs and concerns of these workers.

