

Pressure Power Parity Insufficiency of Protection for the Digital Labour and Workers of the Gig Economy and the Dire Requirement of the Changes in the New Labour Code

M. Muthu Visweswaran

Student, School of Law, SASTRA Deemed University, Thanjavur, India

Abstract

The labour jurisprudence through a wide-ranging literature has approached the topic from different angles and categorized the term worker as either an independent contractor or as an employee. This definition of worker does very little to nothing in the lives of the workers of new forms of labour. There has been in the rise an emergence of the new forms of labour which is an umbrella term that also includes the gig worker and platform labour under the term. This shift in the workforce has enabled them to have a source of income and flexibility and has caused a huge increase in the gig workers at more than 17% CAGR [Compound Annual Growth Rate]¹ has made the lawmakers difficult to classify them under the current law. The new amendment brought out in the parliament has proposed to codify the labour laws. Law which is supposed to govern the gig worker has not clearly defined them in the definition. The new code which is supposed to clear the confusion has brought more mist in the terms of definition of who is a “gig worker” and “platform worker” which allows it to open interpretation, which makes the code still archaic and incomplete. Even the new bill fails to provide clarity regarding the workers of the new forms. This paper tries to analyse the current situation of the gig worker more exactly the platform workers and what would be the implication of the new labour code in the lives of the gig workers. This paper also proposes a separate bill that shall solely deal with that of the workers of the newer forms of business which shall be included in the new labour code.

Keywords: Gig Economy, Social Security Code, Platform Labour

Introduction

The concept of labour has been in existence for a long time and the post-industrial revolution has brought multiple newer and more dynamic concepts of labour and the definition of labour has been difficult to accommodate the new forms of labour under the current labour laws. The main intent of the labour laws is to equitable increase of wealth which leads to development and also equally promotes peace, democratic

¹ Decoding “Gig Economy”: Emergent Industry Shift Towards A Blended Work Model | Nasscom. (n.d.). <https://www.nasscom.in/knowledge-center/publications/decoding-gig-economy-emergent-industry-shift-towards-blended-work>

justice and industrial relations. the new words such as gig economy, gig worker, and Just-in-time workforce have been a catchword in the post-Covid world and have been talks in the media for over a decade. An employer pays a worker who has been working through a non-traditional form of employment based on the service provided on the internet or a platform as are gig worker. To categorize the workers of this new economy they are classified into two major categories in regards to their nature of work. The legislation and the new labour code's inability to adapt to the changing economy create uncertainty for both parties. The failure to classify new forms of employees as workers will not only have legal implications but will also pose multiple challenges in implementing public policy.

This paper seeks to highlight who is a gig worker and its types how the gig worker has been interpreted in the various judicial precedents and how the definition provision for the inclusion of gig workers by the legislature has gone in vain because of the lack of the definitive legislature nor ecosystem to push the boundaries. There is a dire need for the legislative addition to provide for a regulative framework through which the gig workers are covered not only in the labour code but also for the social security and benefit schemes that are promised by the legislature.

Who are these gig workers? How are these workers categorized?

The gig workers or the just-in-time workforce² are the workers who complete a series of tasks provided by the employment provider and are rewarded sometimes based on the quality of the performance of the task or generally the completion of the service assigned to the workers. The workers in the gig economy are segregated into two types of crowd work which is the ability to connect clients and workers on a global scale. With the rise of technology and the internet, the traditional barriers of distance and location have been broken down, allowing for a vast pool of talent and job opportunities to be accessed with just a few clicks. This has greatly benefited both organizations and individuals, as it provides a wider range of options and opportunities for both parties. From data entry and virtual assistance to graphic design and coding, the possibilities are endless. This allows for individuals to showcase their unique skills On the other hand, Work on demand via application involves a more direct relationship between the gig worker and the employment provider while maintaining and upholding the basic standards in hiring and managing the workforce. This could include services such as ride-sharing, food delivery, or even freelance consulting. In this type of gig work, the worker is responsible for finding and completing their tasks, often through a mobile app or online platform. The key characteristic that differentiates between an employee and a gig worker the flexibility the job holds. one can easily set the hours which the person is going to work which cannot be provided to a traditional employee.

A clear estimation of the gig workers in the economy is difficult, especially in countries like India other than internationally accepted hardship such as companies refusing to provide data concerning the workers, workers working in different companies at the same time due to the flexibility provided in the gig etc. Problems in India include poor definition and classification of the gig workers and jural complication which arises due to the country constating mainly workers in the unorganized forms of the gig economy. section 2 (35) of the proposed Social Security Code 2020 defines a gig worker as “a person who performs

² [The Gig Economy and Labour Regulation: An International and Comparative Approach 4 Law Journal of Social and Labor Relations 2018 \(heinonline.org\)](https://www.heinonline.org/OLJ/Volume44/Issue44-1/Article44-1-10.html)

work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship”³. This definition is not clear as to who is gig worker. As to the rapid technological development and ubiquitous new forms in the economy, policymakers to have classify the gig workers.

The gig workers, unlike developed countries where the gig labour is much more organised countries like India and other developing countries consist primarily of unorganised gig workers who comprise up to 70% of the gig workers population as shown in a survey⁴. The shift shown in the survey shows an extraordinary growth in organised gig workers. The major share is the platform worker and the term platform worker has also been defined under the code as “a person engaged in or undertaking platform work”⁵ and “Platform work” means “a work arrangement outside of a traditional employer-employee relationship in which organizations or individuals use an online platform to access other organizations 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.”⁶. A platform worker is also brought under the ambit of a gig worker and This definition holds no good if there is an overlap between multiple definitions. This makes them hard to classify in the case of them working under a logistic-based aggregator he is a platform worker as stated in the new code, he is also a gig worker and an unorganized worker due to the nature of the contract.

The advancement of technology has played a key role in the development of the labour markets. As the new technology develops the labour markets have exponentially increased and have expanded geographically and in terms of opportunities. The work need not be done only by a person living in the same city one can now seamlessly connect from big cities like New York or London to rural parts of India or China. This seamless connection has not only bridged the gap between different regions but has also opened up a world of possibilities for individuals to work in diverse environments and cultures. This rapid transformation of the labour market would not have been possible if it wasn't for the multiple facet growth which has been an aid and complementing to each other. The platforms help the job provider to post about the requirement and the jobseekers to connect to the job provider or the payment gateways which helps in smoother transactions both nationally and internationally. As the marketplace becomes competitive the is a need for upskilling which is also provided as a service which are current requirement in the markets.

Digitalization in the labour markets

As stated above the rise in tech has improved the markets and has brought a digital revolution whereby there is an emergence of digital labour platforms where the services provided are done based on location and web-based platforms. Location-based digital labour is done based on the platform being the mediator between the job provider and the job seeker via the specified location provided by the seeker such as taxi services, food delivery services or domestic care services. On the other hand, the web-based platform is

³ Section 2(35) of the Social Security Code,2020

⁴ NITI Aayog. (2022). India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work. June, 2022

⁵ Section 2 (60) of the Social Security Code,2020

⁶ Section 2 (61) of the Social Security Code,2020

done through the online website or application which facilitates connecting the job seeker to showcase their skill and helps in finding them new opportunities and the job provider to outsource the work to skilled freelance who can recruit through the platform for the select services. Modern tech has helped people provide some services which can be done as a service digitally and remotely, which has helped companies to reduce or cut down costs significantly.

Location-based platforms

The importance of location-based platforms which use GPS, several servers through network access and other resources to understand the location of the worker and service provider to pair through these analytics enhances the experience of both the worker and to platform customer. Location-based services which are being done through the traditional form like cab hailing or cleaning services or delivery etc through the platforms give a hassle-free experience of hiring a worker to the platform's customer. As the economy grows the involvement of location-based services will become a more significant player in shaping the future.

Web-based platforms

The current uptrend for the web-based platform is due to not only in the domestic markets companies wish to outsource the services which earlier required an employee to be present in the company. In the past, these services required the physical presence of an employee in the company, which was often costly and time-consuming. Now these services can be bought from these platforms where the talent pool is much wider and from various regions in the world. Beyond the scope of the domestic market India and other developing nations can benefit from the international markets and the services that were difficult to trade have become much easier to provide as a service. The web-based platforms have recent developments regarding the nature of the work becoming more individualised in reaction to the old and traditional models. The offshoring of work is mainly dependent on the skill of the worker and not on the conventional standards such as the worker's educational qualifications.

This shift towards individualized work on web-based platforms has been a recent development that has caused significant changes in work. In the past, traditional models heavily relied on a standardized approach, where workers were expected to fit into a specific mould and adhere to strict guidelines. However, with the rise of technology and the increasing use of web-based platforms, the focus has shifted towards the unique skills and abilities of each worker. This has created a more personalized approach to work, where individuals can showcase their strengths and contribute in a way that best suits their abilities.

Implication of New Labour Code

The Indian Parliament has said to make the code which subsumes nine legislations to form the Social Security Code 2020. This code has multiple additions which also include the definition of who is a gig worker. As described in the code Section 2(35)⁷ defines Gig worker is “a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.” This definition falls short of truly capturing the essence of a gig worker. The provision which states that the workers are outside the traditional employer and employee relations can be

⁷ Section 2(35) of the Social Security Code,2020

interpreted as them being outside the scope of an employee can also be easily disregarded as to the ILO's fundamental protection given to the workers and the definition easily moves away from the purview of the employee. This has led to fears that the definition may exclude gig workers from receiving essential benefits and protections. The section provides for the uncertain meaning of the definition of the gig worker. A wave of aggregators had termed these gig workers the "partners" whereby they become independent contractors and there is no obligation for the companies to provide protection and securities as traditional employees. To evade their responsibility of providing protections and securities that are typically afforded to traditional employees. This has allowed them to take advantage of a loophole in the system, leaving gig workers vulnerable and without the same level of security as their counterparts in traditional employment arrangements.

The current definition of an independent contractor does not accurately capture the role of gig workers in the modern economy. These individuals are not merely contractors, but rather integral cogs in the wheel of the gig economy. Without them, the entire business model of online marketplaces and smartphone applications would crumble, as they are the ones who build and maintain connections with customers. Yet, they are not given the same level of recognition and protection as traditional employees, despite being essential to the survival of these companies. This establishes a key relation as an employee-employer relationship between the Online marketplace application aggregators and the just-in-time workforce.

As Easterbrook.J. puts it "paradigm of an independent contractor" is one who sells "only expertise."⁸ This new model allows individuals to sell their expertise and services to multiple platforms, creating a more flexible and dynamic workforce. This not only benefits the workers, who have more control over their schedules and income, but also the companies, who can tap into a vast pool of talent without the commitment of traditional employment contracts. However, this model also raises important questions about worker rights and benefits, as well as the potential for exploitation in the gig economy. Companies and policymakers must address these issues and find a balance that benefits both parties involved in this evolving employee-employer relationship.

In the case of US Secretary of Labor vs. Lauritzen⁹, the issue revolved around the classification of migrant workers as employees or independent contractors. These workers were hired to harvest pickles on the defendant's land, with all necessary equipment provided. While the workers had the freedom to choose when to harvest, the compensation they received was solely based on the defendant's judgement of the pickles' colour, size, and freshness. Despite being declared as independent contractors by the farm's employer, the 7th Circuit ruled that these migrant farm hands should be considered as employees. This decision was based on the fact that the workers were not truly independent, as their relationship with the defendant was still one of employer and employee. The mere fact that payment was made on a piece-rate basis did not change the nature of this relationship. Ultimately, the court recognized the vulnerability of these migrant workers and sought to protect their rights as employees rather than allowing them to be exploited as independent contractors.

⁸ Secretary of Labor v. Lauritzen, 835 F.2d 1529 (7th Cir. 1987)

⁹ Secretary of Labor v. Lauritzen, 835 F.2d 1529 (7th Cir. 1987)

In *Uber BV and others v Aslam and others*,¹⁰ the contract that is imposed on the other party will not decide the status and the relationship of the company to the person. The purpose of deeming these people as workers is to protect the individuals from being exploited by their dependence on another person concerning the work done. The degree of control as decided by the court was based upon several factors such as Uber's power to dictate contractual terms, set the fares, monitor the performance of the workers and other factors and ultimately stated that the company had tight control over the drivers. The ride-sharing aggregators pride themselves on being more than just a transportation company. They see themselves as a cutting-edge technological platform, leveraging the power of AI and data analytics to connect passengers with drivers seamlessly and efficiently. However, this distinction is not just a matter of semantics. By positioning themselves as a platform rather than a traditional transportation company, they can avoid certain regulatory and legal implications. But, the drivers on the platform are the reason for its success. Without their tireless efforts and commitment to providing top-notch transportation services, the platform would simply cease to exist. The ride-sharing aggregators state themselves as a technological platform and not as a transportation company, transportation network or on-demand car service but it not only depends upon the drivers providing the transportation services it exercises significant control over any revenue generated." The drivers in the platform provide an indispensable service and the firm would no longer survive without them."¹¹

This practice of stating themselves as only a technological company and intermediary provider of whatever services they provide to the customers while on the same hand having tight control over the functioning of the so-called "partner" has shown more employer-employee relation than that of the independent contractor. However, this facade of being solely focused on technology and intimidatingly providing services to customers is merely a front for the true nature of these companies. In reality, they hold a tight grip on every aspect of their so-called "partners," treating them more like employees rather than independent contractors. This power dynamic not only limits the autonomy of these partners but also creates a sense of dependence on the company, this one-sided relationship often results in unfair compensation and a lack of job security for the partners, who are essentially at the mercy of the company's decisions. It is high time for the definition of a gig worker to be reevaluated and updated to reflect the rapidly evolving nature of the gig economy. Otherwise, these workers will continue to be exploited and undervalued, while companies reap the benefits of their hard work and dedication. It is the responsibility of lawmakers to close this loophole and ensure that gig workers are given the same rights and protections as any other worker in the modern economy.

According to several reports, youth unemployment has been stagnant with around 20% of youth being unemployed. The lack of skill to be employed is not the only issue its also the lack of jobs. To counter this the government brought up (UEGs) the Urban Employment Guarantee Scheme for the benefits for providing poor in the urban areas. These reports which were collected stated that this has helped the poorer population by providing a minimum wage for a stipulated period. The roles of the gig workers in the urban areas have become more prominent and have been interwoven with the lifestyle of the urban population. Gig workers have become more important in providing vital services. In light of this, the UEG needs to

¹⁰ [2021] UKSC 5

¹¹ *O'Connor v. Uber Technologies, Inc.*, 82 F. Supp. 3d 1133 (N.D. Cal. 2015)

consider the opinions of gig workers as stakeholders in the development and implementation of their plans. These workers play a crucial role in providing vital services, and their input can greatly contribute to the success of the UEG scheme. The fundamental problem is that these services or the gigs provided by these service providers are not even categorized as work and it's categorized as task, gig or service and other but not work. The people are not termed as workers to circumvent the current laws to show that these set of people are different to that of the traditional worker as to escape from the liability of protection which should be guaranteed by the employer.¹²

Suggestion spaces for Policy-making

As stated above failure to classify who a gig worker is under the legal frameworks and the problems that caused to the workers in the gig economy and the platform economy can only be removed through a separate legislation that could provide for the gig workers and the workers in the new forms of employment. No law can be made that plans for every scenario and expects every possible scenario for the rulemaking but the idea should be that its applicability is not too general nor it should be too bottlenecked to address only selective situations, without hindering the flexibility and innovation that these industries thrive on. For this legislation to be effective, it is crucial that platform-based employment providers and aggregators also play a role in resolving the challenges faced by gig workers. This could include collaborating with the government in formulating policies that benefit both the workers and the platforms.

The classification of gig workers has been a contentious issue, with attempts to fit them into existing categories as independent contractors, employees or the new category for these gig workers. There have been several legal battles raised by the gig workers that have been successful mainly in the First World nations securing employment protection and securities and also increasing the platform's accountability. Minimum wages provided by the employer have mostly been the platform based not on the government regulation's classification of the gig workers as "partners" pushing into the independent contractor sphere by the aggregator makes them not responsible or any liability in the aggregator lap. Worker protection in these nonstandard labourers has been a tug of war with the international recognition of labour rights. It's very important to segregate the difference between the people who are self-employed and the traditional employees and further casualization of the workers by running down the managerial power between the employer and the contractual powers exerted on some self-employed workers¹³. Along similar lines, Domestic workers and workers with disabilities are the most affected by the lack of legal protection due to the precarious conditions the platforms put these workers in. The first step taken by the government to provide for social security is not enough. The expansion of the policy should also include equal remuneration, fair wages and anti-discriminative practices. The asset-light model followed by the platforms although provides for high employment should think about the health of the workers and

¹² De Stefano, Valerio. (2018). The gig economy and labour regulation: an international and comparative approach. *Law Journal of Social and Labor Relations*, 4(2), 68-79.

¹³ De Stefano, Valerio and Aloisi, Antonio, Fundamental Labour Rights, Platform Work and Human-Rights Protection of Non-Standard Workers (February 18, 2018). Forthcoming, *Labour, Business and Human Rights Law*, Edited by Janice R. Bellace and Beryl ter Haar, Edward Elgar Publishing Ltd., Bocconi Legal Studies Research Paper No. 3125866, Available at SSRN: <https://ssrn.com/abstract=3125866>

sustainable employment. The financial includes the individual by leveraging the data of the platform for additional credit regulation that the unsecured loans for the first-time borrower and to help with access the assets which are required to run the business. To illustrate a person who is driving a leased taxi under a platform that connects the drivers and the customers can leverage his ratings and other stats provided by the aggregator to boost his credibility for providing the loan. A survey conducted by the ILO World Employment and Social Outlook has revealed that About 83% of the workers engaged in the platform-based taxi business have safety concerns related to the occupation such as theft, road safety, and stress assault. The 10-minute delivery platforms pressurize the workers as the workers can monitored very closely which gives more pressure to act. This could lead to more traffic violation and puts other people's lives in danger. It is also stated that over 80% of the platforms reported to have not taken any measure regarding workplace risk. Only 40% of the online web-based platform is said to have health insurance. Discrimination based on the profession-based discriminative prices was highly seen. There have been multiple instances of workplace discrimination, as well as discrimination between peers. Registering platforms with the government is crucial in establishing a robust regulatory framework. By doing so, we can ensure greater accountability, transparency, and a level playing field for all stakeholders involved.

Conclusion

In an ever-evolving economy like India, which has enshrined in its Constitution the ideology of a welfare state, it is crucial to address the concerns of the individuals who are unable to secure the welfare of the state. While the government has taken steps to provide social security measures, it is imperative to also consider the implementation of minimum wage laws and recognize workers as employees to safeguard their rights. This is a step towards emulating the successful models adopted by other countries.

Hence, the paper proposes that the parliament should introduce separate legislation that not only focuses on social security but also takes into account the concept of minimum wages and defines the role of a worker as an employee. This will not only provide clarity and protection to the workers but also ensure that they are treated fairly and receive the necessary benefits and rights.

Furthermore, the government needs to establish regulatory frameworks that strike a balance between being too restrictive and too open for interpretation. A delicate balance must be maintained to avoid hindering the business model, while also preventing any loopholes that could be exploited. This will not only promote a healthy business environment but also protect the interests of both the employees and the employers.