

An Analysis of Gig Workers and the Challenges Surrounding Their Employment

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ABSTRACT

The workforce in India comprises about 450 million informal workers, amounting to 92.4% of India's workforce. In terms of employment, the unorganised sector employs about 83% of the workforce. Interestingly, a new sector of informal workforce has emerged in the last decade famously called the "gig workers" or "platform-based" workers. The term "unorganised worker" has been defined under the Unorganized Workers' Social Security Act, 2008, as a home based worker, self-employed worker or a wage worker. This definition, perhaps does not include gig workers but they fall under the second clause of the definition where the term has not been defined in any of the labour codes. They are addressed as platform workers, as they are employed by corporations via digital applications creating a platform-dependent employment system. Rajasthan was the first state in India to draft a bill, for the protection of gig workers and provide them with adequate regulatory mechanism to prevent exploitation of their freelance. This paper analyses various aspects of gig economy, taking into account the increasing need of platform workers. It also proposes certain measures to address the needs of these workers and suggests a well devised mechanism for smooth relations between worker and the aggregator. Much of the gig economy boomed during the COVID-19 pandemic, where it came in handy for delivery of food, essentials, and transportation services, which was hugely affected during the pandemic. The scope of the research is limited to discussing various issues faced by platform workers (workers employed by aggregators like Swiggy, Ola, Uber etc.) and suggesting certain solutions for the same.

Keywords: Gig workers, digital platform, Rajasthan- Protection of Platform Workers Bill, 2023, social security, redressal mechanism.

THE EVOLVING GIG ECONOMY IN INDIA:

They are found everywhere. On highways, narrow streets, crowded stalls, lonely roads, everywhere. From retail outlets to customers or providing cab services they are tied to their vehicle seats 24/7. They make every effort to complete the task successfully as their wage depends on their performance ratings. Gig economy, as it is generally termed, is one of the significant by-products of the smart phone revolution which has led to a new form of labour force in the Indian market. They come in many forms. Delivery partners, cab drivers, freelancers, beauticians, technicians etc. It mainly attracts the youth of the nation as it comes with flexible working hours and minimal control by a superior. It also poses itself to be a means of quick finance with zero investment which attracts many lower, and middle class households. The lack of formal and permanent employment opportunities in the Indian job market has led to many young graduates fetching their wage through the gig economy.

The problems they face every day are multi-fold and they earn very meagre after corporate business deductions. Much of the problem arises out of the fact that such gig work does not come under any legal definition provided by our labour codes. They do not fall under informal nor under the category of independent contractors. Their jobs mostly deal with third party agents or vendors which results in no concrete "employer-employee" relationships. Such undefined category of workers are devoid of any social security benefits that a normal wage earner is eligible for.

We turn to **Dr. Valerio De Stefano** to gain a better grasp of the platform economy, sometimes referred to as the gig economy:

“The gig-economy is usually understood to include chiefly two forms of work: ‘crowd-work’ and ‘work on-demand via apps’ ... The first term is usually referred to [sic] working activities that imply completing a series of tasks through online platforms ... ‘Work on-demand via apps’, instead, is a form of work in which the execution of traditional working activities such as transport, cleaning and running errands, but also forms of clerical work, is channelled through apps managed by firms that also intervene in setting minimum quality standards of service and in the selection and management of the workforce.”¹

Though, organisationally the gig economy is limited, the digital technology has given it a wider space in the web-world. There are many stories, ranging from exciting to horrifying, about the nature of work in the gig economy and the various experiences faced by the gig workers.²

THE DEPENDENCY OF LABOUR FORCE ON GIG ECONOMY:

The scale of unorganised workers in India, is rapidly rising in the recent time due to the unavailability of formal works in the job market. There has been a substantial increase in the share of informal workers in the labour force, especially after the pandemic. The network of unorganised workers in India is vast and complex, comprising of small-scale business and self-employed individuals for a fairly long period of time before the gig economy boomed in the country. With the advent of Gig economy in the rest of the world, India too had a similar shift in labour force.

In a recent study conducted by NITI Aayog³, in 2020-2021, 77 lakh (7.7 Million) workers were engaged in the gig economy and the gig workforce is expected to expand to 2.35 Crore (23.5 Million) workers by the year 2029-30. Overall the demand for gig workers has been increased by 10X whereas the participation of gig workers has increased by 3X in the year 2022 in comparison to the year 2021. According to the Taskmo report, the participation of youth in the gig economy has increased 8 fold between 2019 to 2022.

¹ Valerio De Stefano, The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowdsourcing and Labour Protection in the ‘Gig-Economy’. Conditions of Work and Employment Series No. 71 (Geneva: International Labour Office, 2016), 1.

² For example, Chartered Institute of Personnel and Development, To Gig; Steven Hill, ‘Good Riddance, Gig Economy: Uber, Ayn Rand and the Awesome Collapse of Silicon Valley’s Dream of Destroying Your Job’. Salon, 28 March 2016, www.salon.com/2016/03/27/good_riddance_gig_economy_uber_ayn_rand_and_the_awesome_collapse_of_silicon_valleys_dream_of_destroying_your_job/; A.J. Wood et al., ‘Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy’. Work, Employment and Society 33, no. 1 (2018): 56–75

³ Source: https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf

The demand for gig workers, continue to grow with the highest demand being recorded for the sales and Marketing roles, which was revealed in the first edition of Taskmo Gig Index⁴. It also reported that the number of gig workers registered on the platform in May 2022 was 60,000 resulting in a 15.38% growth in the workforce joining the gig economy, compared to the month of April. Additionally, the Index also shows a 50% growth in active gig workers on the platform in the last 5 months.⁴

It also showed that around 10,000 tasks are allocated to the gig workers which are completed on a daily basis amounting to 3,00,000 allocated tasks in the past five months. It has also revealed that, the top recruiters of gig workers have strengthened their roots across Tier-2 and Tier-3 cities such as Pondicherry, Mirzapur, Patna, Jabalpur and Kanpur.⁵ In contrast, metro cities continue to maintain the growth momentum for gig workers. Taskmo in itself witnessed a huge surge in demand for gig workers across Quick Commerce, HeathTech, Fintech and E-Commerce sectors. While demand in Tier 2 cities like Indore (59%), Bhopal (22.4%), and Pune (20%) was nearly on par with that of metro areas cities like Hyderabad (45%), Mumbai (45.45%), Delhi (32%), Bangalore (25%), and Chennai (23.4%), experienced the highest growth.⁶

Job profiles including Business Development Executives (500%), Field Sales Executives (374%), Digital Promoters (200%), Brand Promoters (75%), and Micro Influencers (50%) have witnessed a tremendous increase in demand for the gig segment. The fact that Millennials and Gen Z (19 to 25 years old) make up 48% of the gig labour today shows that young people in India are quickly embracing gig and freelancing work with an appetite for flexible hours.⁷ While gig workers in the age range of 41–60 only account for 20% of the total pie, the age group of 26–40 holds a 32% share of the gig economy. Furthermore, notwithstanding the fact that women make up only 28% of this category, gig serves as a flexible means of employment for working women in India.⁸

A research report on the state of gig labour in the nation has been produced by CIEL HR Services, the top provider of holistic talent solutions in India. The study's comprehensive review reveals that a sizeable portion of gig workers (50%) stated a desire to pursue full-time employment. Although gig work has become more popular as an alternative type of employment, it seems that many gig workers see it as a transitional or transient stage in their careers with the hope of eventually getting a more permanent full-time role.⁹

According to the research, two main incentives stand out among the different elements influencing individuals' decision to pursue Gig Work: (a) Opportunity to work on a variety of projects (a) The

⁴ Source: <https://www.businesstoday.in/industry/top-story/story/india-inc-increasingly-need-gig-workers-looks-at-tier-23-cities-report-337779-2022-06-15>

⁵ Source: <https://www.businesstoday.in/industry/top-story/story/india-inc-increasingly-need-gig-workers-looks-at-tier-23-cities-report-337779-2022-06-15>

⁶ Source: <https://timesofindia.indiatimes.com/city/hyderabad/gig-economy-booms-telangana-plans-permanent-push-for-temporary-sector/articleshow/97996845.cms>

⁷ Source: <https://www.itvoice.in/gig-jobs-on-the-rise-in-2023-the-5-most-in-demand-roles-in-india>

⁸ Ghosh, Anweshaa and Ramachandran, Risha and Zaidi, Mubashira, Women Workers in the Gig Economy in India: An Exploratory Study (May 1, 2021). Available at SSRN: <https://ssrn.com/abstract=3944205> or <http://dx.doi.org/10.2139/ssrn.3944205>

⁹ Source: <https://www.cielhr.com/wp-content/uploads/2023/10/Employment-Trends-in-the-Gig-Sector-in-India-2.pdf>

independence that comes with being their own boss. Individuals with gig jobs have the ability to take charge of their professional lives, make independent decisions, and determine their own work schedules. The study also found that both male (41%) and female (40%) respondents were enthusiastic about working on various initiatives. This shows that gig workers, regardless of gender, value the option to participate in a variety of work activities.¹⁰

One of the most well-known food delivery applications in India, Swiggy had an estimated 50 million users as of 2021.¹¹ The business is well-established in important cities including Bangalore, Delhi, Mumbai, and Kolkata, and it collaborates with more than 200,000 eateries nationwide.¹² Ola, which was founded in 2011, through its network of more than 1 million driver partners it hosts in 110+ cities, provides smart transportation alternatives to over 125 million people in India. Through its platform, Ola provides up to a billion rides annually in total.¹³

Ola's quick development and growth are the result of its driver-partner-focused approach to ride-sharing, which involves investing in its partners to provide them with the tools, training, and incentives they need to provide best-in-class transportation services. Ola is praised for working with authorities and communities to find creative solutions to local transport problems.¹⁴

The above statistics shows the dependence of both the workers and the general public on each other. It brings light to the fact that, gig economy in India is witnessing a growth in an unprecedented way which means that, risks of such employment is also on the rise.

THE CURRENT CHALLENGES SURROUNDING GIG EMPLOYMENT:

Though most of the issues associated with gig workers are similar to that of the labourers employed in informal jobs, some issues present themselves as unique and true to the nature of the work performed by the gig workers. Some of the main challenges are discussed here :

- 1. Limited Career Advancement Opportunities :** It is one of the serious issues that one has to look into. There is always a limit set upon the development that platform based workers can expect in their field of work. When a young person takes up platform based work as his principle means of income, he loses his prime years to platform based workers, which stagnates advancement opportunities at a particular level. Such an employment, is a liability to the country as the worker's skill may become obsolete and he wouldn't be able to contribute to the country's economic production.
- 2. Expense Burdens :** When a worker takes up certain jobs like driving, food delivery, where one has to depend on resources beyond his skills, the cost of maintaining the resources lies upon the worker, which adds up to the cost and reduce overall earnings.

¹⁰ Source : <https://www.cielhr.com/wp-content/uploads/2023/10/Employment-Trends-in-the-Gig-Sector-in-India-2.pdf>

¹¹ Source : <https://economictimes.indiatimes.com/news/new-updates/swiggy-releases-annual-list-of-what-indians-ordered-most-bengaluru-man-orders-groceries-worth-rs-16-lakh/articleshow/96317741.cms>

¹² Source: <https://blog.swiggy.com/2022/12/15/how-india-swiggys-2022/>

¹³ Source: <https://www.olacabs.com/about.html>

¹⁴ Source: <https://www.olacabs.com/media/in/press/ola-mobility-institute-launches-ease-of-moving-index-help-cities-improve-transportation>

3. **Unpredictable work hours** : The fashion of being available throughout day and night became popular in during the COVID times. Main reason for emergence of such a fashion is the availability of platform based workers 24/7. Such unpredictable work hours can affect a worker mentally and most importantly, physically too.
4. **Income Volatility** : Platform workers, similar to informal workers, face income volatility. One day, they might earn big, the next day it would be simply be a hand to mouth existence. This leaves one with no motivation to do a job, especially when the worker is not afforded any support from his aggregators Platform based workers often lack a steady or a predictable income. The nature of their work are freelance and they often work at their own intervals with varying work opportunities. Such dynamic work schedule and payment schedule renders it impossible for a worker to budget and plan for the future.
5. **Lack of Bargaining power** : Since all the workers are independent contractors, they do not have any collective voice for bargaining or negotiating power to take it up with their employers. Setting rates or terms with clients, is a one-sided contract where the worker has no say.
6. **Inconsistent Access to resources** : The resources that they workers have, are hugely varied and differs from one another. Moreover, they do not having any office space, equipment or any administrative support that traditional workers had.
7. **Health Hazards** : Certain type of platform works, like, drivers or delivery services face are exposed to dangerous working conditions which come with health hazards. Workers travel long distance in motorbikes with no safety measures, often defying traffic rules, in order to increase their performance based incentives. Such long travel, day and night can also lead to health complications in the long term.
8. **Burnout and overwork** : Platform workers, do not have the ability to regulate the timings of their employment. They are forced to work flexible hours, seeking new gigs and manage various aspects of business. The working time is in the hands of the customers than the aggregators of the worker himself which is a pathetic situation. This leads to burnout and may cause psychological problems for a worker.
9. **Extreme levels of flexibility to the employers** : Gig economy provides huge flexibility to employers—numerical, functional and financial.¹⁵ Such flexibility gives extreme autonomy to the employers that the job security, the functional aspects of a task, the numerical labour required for a job is all at the mercy of the employer.

THE RAJASTHAN PLATFORM BASED GIG WORKERS (REGISTRATION AND WELFARE) ACT, 2023:

Rajasthan has pioneered itself in recognising “platform workers” by drafting “ The Rajasthan Platform Based Gig Workers (Registration and Welfare) Bill, 2023¹⁶—the first legislation of its kind. The Bill applies to “aggregators”, who go by the definition of digital intermediaries connecting the sellers and the buyers giving rise to a platform-based work environment. Industries that take up such type of platform-based services include ride sharing, logistics, healthcare, food and security delivery, travel and hospitality, e-commerce (B2B,B2C), content and media services.

¹⁵ PEETZ, DAVID. “Flexibility, the ‘Gig Economy’ and the Employment Relationship.” *The Realities and Futures of Work*, ANU Press, 2019, pp. 141–78. *JSTOR*, <http://www.jstor.org/stable/j.ctvq4c16w.11>. Accessed 26 Nov. 2023.

¹⁶ https://prsindia.org/files/bills_acts/bills_states/rajasthan/2023/Bill30of2023Rajasthan.pdf

The Act envisages social security benefits and welfare schemes for the platform-based workers by constituting a Welfare Board—comprising of State officials, five members each from gig workers and aggregators, and two more people ("one from Civil Society and another who evinces interest in any other field"). Women should make up at least one-third of the nominated members. Their tenure is for 3 years. The Board is required to “set up a welfare fund, register platform-based gig workers, aggregators, and primary employers... facilitate guarantee of social security to platform-based gig workers, and to provide for matters connected therewith or incidental thereto.” Their role is to "govern the norms of implementation and monitoring of the Act," and they will provide the Rajasthan government with an annual report that will be presented to the State Legislature.¹⁷

The Board should also maintain a database made available on its web portal. The aggregators should provide the board with details of all platform-based workers onboard or registered with them. They shall be automatically registered with the board as well. It is the duty of the Board to maintain the details of all the workers and the different employers that they work under, irrespective of the time of engagement with app-based platforms. After registration, a unique ID is registered to every gig worker which shall be valid in perpetuity.

The Board, according to the act, receives its funds from cess levied known as “ The Platform Based Gig Workers Welfare Cess”, as notified by the State Government which should not exceed 2% but should not be less than 1% of the value of each transaction related to platform based gig worker. It has also been made clear via an explanation that the cess levied should be on the value of the transaction before any tax is deducted on it. Other sources of funds include, contribution made by individual platform-based gig workers, any amount that may be received as grant-in-aid from the State Government, any such amount that may be received by means of gifts, grants, donations, benefactions, bequests or transfer and shall also include any other amount that may be received from other sources.¹⁸

The Act further lays down rights of the workers and the duties of the aggregator or the primary employer. It has been made as a bound duty of the aggregators to deposit the welfare cess, by the fifth day of each calendar month, along with monthly returns. Grievance Redressal Mechanism for the workers has also been laid down in the act. An aggrieved worker may file a petition in person or through the web portal to an officer appointed by the state. The appointed officer may direct the aggregators in paying compensation for the grievance caused. Provision for appeal has also been made. It should also be noted that the Act substantial monetary fines extending up to INR 50,00,000 for contravening the provisions of the Act by the aggregators and up to INR 2,00,000 for violations by principal employers.

It is indeed a significant Act in protecting the rights of gig workers. As much as it is commendable, one cannot but ignore the various ambiguities in the Act. The very basis of the depends on the definition of gig worker. This definition of the gig worker does not include those workers who are employed only on demand by the customers, and those ae engaged by digital platforms, and those who work simultaneously under different aggregators. It might also include every worker who is engaged outside the traditional

¹⁷ Source: <https://www.thehindu.com/opinion/editorial/promising-bill-the-hindu-editorial-on-the-rajasthan-platform-based-gig-workers-registration-and-welfare-bill-2023/article66781297.ece>

¹⁸ Source: <https://www.thehindu.com/news/national/explained-rajsthans-draft-bill-for-gig-workers/article67060044.ece>

“employer-employee” relationship, like a domestic worker. Furthermore, the provisions of grievance redressal mechanism are vague and does not say anything about cases filed in labour courts or that whether a person can seek redressal in labour courts. Moreover, gig workers are also required to contribute to the cess which is highly straining on a worker when after all deductions, he is left with little money to do carry on his basic requirements.

One of the principal rights of any worker is the right of collective bargaining. The Act, does not mention whether or not the worker has such a right.¹⁹ It also mentions that the Board can devise welfare schemes but it is rather unclear whether the schemes are in addition to or in replacement to the welfare schemes of the State and Centre.²⁰

INTERNATIONAL STANDPOINTS ON GIG WORKERS:

When an attempt is made to draft a legislation in protection for a group of people in a society, it is important to define the target groups in a clear-cut manner. Gig work or worker has no universal definition. The United States Bureau of Labour Statistics’ Contingent Worker Supplement defines gig work as online platform work and electronically mediated work where people use a mobile app or website to connect with customers to:

1. Source gigs or employment
2. Receive compensation from the website or app
3. Have the autonomy to decide when they want to have temporary projects

The California Supreme Court has laid down an ABC test where Prong A includes certain class of labour force as workers and prong B and C excludes. We focus particularly on Prong A. It examines the question of flexibility and control exercised by the employer over the employee. A worker who is subject, either as a matter of actual practice or contractual right, to the type and degree of control exercised by the employer which is typically exercised over employee is considered to be an employee. Depending on the nature of the work, a business need not control the precise manner or details of the work in order to be found to have possessed the necessary control over operations that an employer ordinarily possesses over its employees.²¹

The California Supreme Court in the case of *Dynamex* provided the following examples of Prong A to be applied :

The court opined that the degree of control and direction exercised over an employee by the employer is same even when the employee in working the factory between nine to five or when he is working from home. The employer in a case failed to establish that work-at-home employees were free from the company’s control.²² But on the other hand, the employer of a construction company was sufficiently able to prove that the worker, who specialised in historic construction was relatively free of the company’s

¹⁹ Source: <https://thewire.in/labour/gig-workers-first-major-victory-in-india-rajasthan-leads-the-way>

²⁰ Source: <https://theleaflet.in/rajasthans-gig-worker-bill-bound-for-failure-without-corrections-and-clarifications/>

²¹ <https://www.labor.ca.gov/employmentstatus/abctest/>

²² *Fleece on Earth v. Dep’t of Empl. & Training (Vt. 2007) 181 Vt. 458, 923 A.2d 594.*

control over him as he was able to fix his own schedule, without any supervision, and had also declined an offer of employment from the company.²³

It can be observed that when an employer has engaged a worker for performance of a specialised work, who possessing some specialised skill, he will not fall under the definition of a regular worker, whereas, when an employer has engaged a worker to do the regular, operational work that any other worker can also sufficiently perform, such a worker is still classified as worker under the normal definition.

In 2021, the European Parliament took an initiative to grant rights and benefits to gig workers engaged in the platform economy.²⁴ The very same year, the European Commission proposed five criteria to determine whether the platform is an “employer”. These include whether

1. the platform determines the pay
2. requires workers to follow rules regarding appearance, conduct toward clients or performance of the work
3. uses electronic means to supervise, assess job performance
4. restricts work times or the freedom to turn the app off and
5. requires exclusivity or non-competition.²⁵

In a landmark judgment, the UK Supreme Court classified Uber drivers as ‘workers’ under the UK Employment Rights Act 1996,²⁶ thus making them to be eligible to various benefits like paid holidays and minimum wages. The Court observed that since drivers are not permitted to charge more than the fare delineated by the app, Uber regulates the contact between the driver and the user, making it an intermediary, and also observed that the intermediaries exercised significant control over the worker as well.

The Dutch High Court also handed down a similar ruling, stating that the legal relationship between Uber and the drivers meets all the characteristics of an employment contract, which establishes an employer-employee relationships making them entitled to workers’ rights under local labour laws.²⁷

Germany has a legislation that provides for equal pay and equal treatment of gig workers--Temporary Employment Act. Further, Singapore has also proposed legislative changes to extend work injury insurance and pension coverage to such workers.

According to several reliable online dictionaries (Oxford Learner’s Dictionary 2021, Merriam-Webster 2021) gig employment is defined by the nature of the work and the relationship between the employer and the employee. Gig work is defined as a way of doing business or undertaking an employment based on people having “temporary, flexible work arrangement” that often involve connecting to users through a digital platform. This is against the nature of traditional working economy where workers are full-time

²³ *Great N. Constr., Inc. v. Dept. of Labor (Vt. 2016)* 204 Vt. 1, 161 A.3d 1207

²⁴ Source: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6605

²⁵ Source : <https://www.fortuneindia.com/long-reads/us-europe-lessons-for-gigeconomy-law/110665>

²⁶ *Uber BV v Aslam* [2021] UKSC 5, [75].

²⁷ Gesley, J. (2021) *Netherlands: Amsterdam District Court Classifies Uber Drivers as Employees*. [Web Page] Retrieved from the Library of Congress, <https://www.loc.gov/item/global-legal-monitor/2021-09-29/netherlands-amsterdam-district-court-classifies-uber-drivers-as-employees/>.

employees who rarely change positions are defined within the strict, typical employer-employee relationships.²⁸

THE NEED FOR SOCIAL SECURITY BENEFITS:

Gig workers as discussed above face similar working conditions akin to that of the traditional employees. The Code of Wages, 2020, should also leave room to accommodate gig workers under the umbrella of “workman” for the purpose of securing social security benefits. It is important for a worker to be provided with paid leave, health cover insurance, payment of bonus, compensating for additional expenses incurred by the operational tools to the work. Section 25 of Tamil Nadu Shops and Establishment Act provides for²⁹ a minimum of 12 days of paid leave per year to workers employed in shops or other establishments including IT and service companies. The same provision can be taken as a precedent and can be applied to gig workers by insisting the aggregators to provide a minimum of 12 days of paid leave per year for the workers who employed by them. Maximum number of paid leave can be fixed by the appropriate government.

Additionally, provisions should also be made to provide one whole day as a holiday per week as it is essential for a worker to take a day off when he is engaged in continuous physical work. A recent study on paid medical leave has argued that implementing paid leave including medical leave would likely have important short- and long-term benefits for population health, without creating major problems for employers³⁰. Another study on cost benefit analysis for providing paid leave has also revealed that paid leave is expected to cost employers little to nothing. A company’s bottom line may be further enhanced through paid leave’s association with increased productivity and morale, greater job satisfaction, and lower job turnover.³¹

Section 32(1)(ii) of the Occupational, Safety, Health, and Working Conditions (OSH&WC) Code of 2020,³² provides for paid leave for the worker, when he or she has worked for a minimum period of 20 working days. The same provisions should also be extended and the aggregators should allow the worker to avail the leave, if he had worked with that aggregator for a period of 20 years.

Furthermore, most of the gig workers are engaged in undertaking to deliver goods or services consumers like Swiggy, Zomato or Ola, Uber services. Such services involves a continuous necessity of being on wheels. It is only predictable that a worker encounters accidents in the course of his employment. The aggregators should be insisted on providing a health insurance or health cover to those workers who are injured in the course of his employment with that specific aggregator. When the very operational activity of the employment is delivering or undertaking to delivery goods or services, it is only sensible for the employer to provide health covers for such injuries. While doing so, it is important to not deduct the premium towards such insurance from the workers themselves but rather the aggregators should undertake and insure the workers at large on their muster-roll.

²⁸ <https://hrcak.srce.hr/file/425734>

²⁹ Source: https://prsindia.org/files/bills_acts/acts_states/tamil-nadu/1947/1947TN36.pdf

³⁰ (The Impacts of Paid Family and Medical Leave on Worker Health, Family Well-Being, and Employer Outcomes, 2022)

³¹ Davison HK, Blackburn AS. The Case for Offering Paid Leave: Benefits to the Employer, Employee, and Society. *Compens Benefits Rev.* 2023 Jan;55(1):3–18. doi: 10.1177/08863687221131728. PMID: PMC9535467.

³² Source: https://dgfasli.gov.in/sites/default/files/2018-12/OSH_Gazette.pdf

Another way of ensuring this and to tackling the issue of flexible nature of work, is to include gig workers under the Employee State Insurance Act, and the insurance cover can be provided by the appropriate government. To further ease the process, a board or portal can be set up by the government where a worker, who identifies himself as belonging to a gig work, can enrol himself and claim insurance in case of any injuries sustained during the course of employment. The portal should also enable him to constantly update his source of employment as gig employment is flexible. Adequate measures has to be prescribed by the appropriate government in regulating the insurance cap and cover. Regular rules and regulations governing the process shall also be applied accordingly. Women workers are denied benefits and protection under the Maternity Benefit Act,1961³³ as well.

Compensating for additional expenses incurred by the gig workers, is an essential and primary pre-requisite for ensuring a smooth employer-employee relationships. The work taken up by the gig workers are often on-road activities that leads to wear and tear of their vehicles, which includes fuel expenses as well. It is important that the aggregators compensate for this as most of the income that they earn is spent on this and there is nothing left to save. Life is no bed of roses for India's increasing number of gig workers. A new study called GigPlus by LEAD at KREA University and fintech start-up KarmaLife has found that an average gig-worker makes around ₹18,000 a month with ₹5,000 as an average monthly deficit.³⁴

The survey was conducted between December 2021 and February 2022 shows that close to 74 per cent of the gig workers are not able to save. This is due to the fact that most of their income is spent on everyday essentials and to maintain the operational tools required for their work. They are stuck in a cycle which has led them to live a hand to mouth existence. It is important that the aggregators provide a certain amount of allowance on a percentile basis to the gig workers for compensating the actual wear and tear of the tools. This can help the gig worker to save for any future contingencies, giving him some form of security or help him to set up a contingent fund.

Workers in platform mediated work are also deprived of gratuity benefits under the Payment of Gratuity Act, 1972.³⁵ Gratuity is also a pressing concern. Currently. Under the Code on Social Security Bill,2019,³⁶ gratuity is provided for workers who have completed 5 years of continuous service but independent contractors are not afforded such a protection and consequentially, platform workers are also deprived of the same.

EXPLOITATION OF GIG WORKERS-UNFAIR DEACTIVATION

Gig workers who are employed in app-based services, are alleging unfair practices by the aggregators who arbitrarily block their IDs for minute errors, without explaining the same. The action is absolutely automatic which leaves them with no earnings as the automated program, evicts them from the pay-roll immediately. It has also been observed that, removing the block is a tedious process. Unions representing

³³ Source: https://labour.gov.in/sites/default/files/the_maternity_benefit_act_1961_0.pdf

³⁴Source <https://ifmrlead.org/gig-pulse-financial-matters-motives-insights-into-the-various-lives-of-gig-workers/>
https://ifmrlead.org/wp-content/uploads/2023/08/GigPulse_Learning_Note_August_2023.pdf

³⁵ Source: <https://clc.gov.in/clc/sites/default/files/PaymentofGratuityAct.pdf>

³⁶ Source: https://labour.gov.in/sites/default/files/ss_code_gazette.pdf

4 lakhs and odd such workers report that everyday there are at least three to four such cases of unfair deactivation. Some of the workers are left clueless as to why their ID is blocked.³⁷

Most often the reasons stated by the aggregators is the creation of Fake IDs by the workers, which is a reason so absurd. Aggregators are often huge multi-national companies having high level software detection mechanisms. In no time can they find out whether an ID is fake or not. The aggregators haven't also laid down any proper redressal mechanism against such arbitrary blocking of IDs. The new form of flexible job, comes with its cons. Such unfair deactivation is worse compared any forms of termination as it happens remote and automatic. Neither the employer nor the employee would have anticipated the termination as it is the software program that does the deactivation. When the program does not find a particular ID to match the given parameters, it deactivates.

The main concern in this arbitrary blocking is that the process is baffling and sometimes discriminatory. Often workers do not understand that they have been deactivated, so they still continue to take up activities under the guise of a supposed glitch. There are no proper support systems to clarify this to the workers. Besides, the surveillance mechanism deployed worrying. The workers are asked to upload photos of their completion of the work. As independent contractors, there are also issues of privacy. They have little control over sharing of their personal data for numerous purposes.

There should a ban on such arbitrary dismissal of or deactivation of workers as it often leads to an erred deactivation. In case of deactivation, the worker should be given show cause notice and be dismissed after taking the due course. It is important that the worker is given an opportunity to be heard.

There are no effective grievance redressal mechanisms available to gig workers. In a situation where there is high prevalence of arbitrary dismissal and unfair deactivation or termination of employment ID, disputes are also profound. It is important to set-up a grievance redressal mechanism, either at the level of the aggregator or at the level of a board comprised exclusively for dispute resolution between the worker and the aggregators. It may also be done by way of expanding the scope of “workman” under the Industrial Disputes Act³⁸ to include gig workers such that grievance redressal can take place by following the provisions laid down under the Act. Nevertheless, the need for effective redressal mechanism should not be overlooked.

Moreover, the Code on Social Security,2020, does not make any provisions for the right of collective bargaining for the gig worker. For a class of workers facing multitude of problems, and given the fact that gig employment is an emerging labour force, it is important to for the gig workers to have the right of collective bargaining, which are emblematic of the informal workforce.³⁹

³⁷ Kauntia, N. (27 December 2020). How Swiggy threatened to “suspend” protesting Delhi workers after second pay cut in seven months. The Caravan. Retrieved from <https://caravanmagazine.in/news/swiggy-pay-cut-delhiworker-delivery-protests-aigwu>[21 March 2021].

³⁸Source: Section 2(k) of the Act defines the term “workmen” https://liddashboard.legislative.gov.in/sites/default/files/A1947-14_0.pdf

³⁹ Source: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_624286.pdf

THE NEED FOR MINIMUM WAGES:

As it is a known fact that India does not have one national minimum wage for its unorganised or unskilled workers, the strive to set a minimum wage, should also include fixing a minimum wage for its gig workers as well. Gig employment has emerged as a significant mode of employment that most of India's youth are engaged in. It is high time, the appropriate government, take upon it, the task of fixing a minimum wage, considering various parameters like the number of employment that an average gig worker undertakes, his living conditions, and of course the exponentially rising cost of living.

While considering the minimum wage for gig workers, another issue, peculiar to gig workers, must also be anticipated in the hindsight. The current payment structure for the gig workers is— a gig worker receives wages per every delivery or service rendered after deducting certain portion as commission by the aggregators. The supposedly to be fixed minimum wage, should also take into account the deduction of such commission. Thus, the disposable income available at the hands of the worker, should be rendered as the minimum wage. Careful measures have to be taken, such that, the minimum wage is also poached upon by the aggregators.

Currently, the commission charged by aggregators like Ola and Uber, is 20% which is a sizeable portion, taken up by the aggregators.⁴⁰ There should be a change to this structure. The percentile of commission charged should be proportional to the charge received by the worker per ride or per service rendered. For example, slabs can be set up, where if the charge received by the worker is below X amount, the commission deducted should be Y percentile, and if the charge received crosses X limit, the commission deducted may be proportionately increased. Differential commission is a viable alternative than charging huge commissions uniformly.

While fixing such commission rates, it is also to be noted that, such commissions will invariably lead to increase in charges of the customers.

PERFORMANCE BASED WAGES:

In the modern-capitalistic world, performance based wages has its own advantages. But often aggregators decide the entire salary of the gig worker, based on the ratings given by the customer. It is important to understand that the reviews given by the customers are very subjective and deciding a worker's pay on that is taxing the worker. On the other hand, performance-based wages have proven to be useful in motivating workers to increase productivity, but that should in no way affect the basic pay a worker should receive.

Though the technology has expanded rigorously and the corporates are flourishing, the workers are left at the mercy of customers. The benefits derived from such platforms, for the general public, are beyond access to such workers themselves and they are often rigged by the programming system. This is often referred to as "piece-rate incentive systems" where the worker gets paid upon achieving a target, after deducting certain portion as commissions.

⁴⁰<https://tech.hindustantimes.com/tech/news/india-to-allow-uber-and-rivals-to-charge-20-commission-71606472741604.html#:~:text=India%20will%20allow%20app%2Dbased,to%20cap%20fees%20at%2010%25.>

Platforms impose certain stringent “log-in” hours for the workers, fulfilment of which makes them eligible for certain incentives. For instance, Swiggy imposes a minimum 10-hour shift for its full-time workers and a 5 hour shifts for its part-time workers. Zomato, imposes conditions like “peak lunch hour or peak dinner hour” as mandatory log-in hours, failing which they are debarred from the being eligible for the incentives. Workers seem to miss receiving such incentives as the app gets automatically logged off when they are off to per-urban areas, with no data coverage or inside elevators, basements where network issues are present or sometimes even due to program glitches.⁴¹

An anonymous gig worker who is the bread-winner of his family claimed “ *They give us only Rs.5 per kilometre (approx.). If I make a delivery riding 5 kms, I earn less than Rs.30 for that order. They say I am allowed to log in and log off whenever I want. But if I work for 3 hours and I am given 5 deliveries in that time, I will take home maybe 100 Rupees [after spending Rs.50 on fuel]. What all can I buy earning Rs. 100 a day? This is my only job. I have to work at least 12 hours to take home around Rs.500 -600 [after allowing Rs.150-Rs.200 on fuel]*”.

Conditions imposing minimum orders or deliveries to be made in a day, is concerning as the worker is allotted work by an automated program, over which the worker has no control. The program may glitch and not allot to a particular worker at all or it may keep allotting work repeatedly to the same worker both of which is detrimental to the workers as their wage is dependent on such factors.

LONG-TERM HEALTH IMPACTS OF GIG WORKERS:

Platform work comes with many short-term as well as long-term health impacts. Delivery workers are pressurised into delivering the order within a particular time frame, which results in rash and negligent driving resulting in motor accidents on road. In case of Ola and Uber, cab service providers, the drivers are often found to be sleep deprived, which leads to road accidents along with the passenger inside. They are required to clock-in approximately 17 hours every day to be eligible for the incentives provided by the aggregators. The concept of higher the ride or delivery, higher the incentive, but it has gotten out of hand. Workers are made to work to their blood and bones, and receive an incentive so little that they are able to lead only a hand-to-mouth existence. There are enough scientific data that says, accidents are rampant due to lack of sleep. There are specific guidelines that drivers are not supposed to drive for 15-16 hours. Fatigue, defective eye-sight during night, physical health and driving ability are some of the major factors contributing to accidents.⁴²

A study has shown that a certain amount of rest time is needed by the driver after driving for continuous hours. A 15 minute rest allowed a driver to recover from a two hour driving task. Practical implications

⁴¹ Swiggy and Zomato had provisions for a ‘minimum business guarantee’ (MBG) in certain cities and certain locations within cities. However, MBG is either arbitrarily cancelled by platforms or undergoes constant changes. In locations/cities where it continues to exist, there are a slew of conditions attached to earning such MBG. Also, MBG amounts completely ignore the costs of work, which when subtracted from these amounts, work up to less than state minimum wage standards for semi-skilled workers.

⁴² Source : <https://www.chevinfleet.com/en-au/learning-zone/the-effects-of-driving-on-health/>

like driver's concentration on road, reactions, and operating disability and perceptions are all affected after two hours of continuous driving.⁴³

A study was conducted to find out the relationship between low back pain (LBP) among taxi drivers and its association with prolonged driving and other occupational factors. It was found that long driving time and several physical and psychosocial factors are associated with increased prevalence of LBP among taxi drivers.⁴⁴ It was further proved in a study conducted in Australia that, health behaviours like smoking, alcohol, excessive sitting, obesity, psychological distress, health interfering with social activities are some of the commonly observed long-term impacts on continuous driving⁴⁵.

THE WAY FORWARD:

Gig workers should no longer be addressed as “partners” as such a terminology is used as a clever strategy to escape from the labour regulations that the aggregators are bound by. The central government passed the Social Security code, 2020 with an aim to bring at least 250 million unorganised workers, including gig-workers under the ambit of many social security benefits within the next five years. The discussion around it has seemed to have taken a pause amidst COVID-19. Through this, the government included old-age pensions, health insurance, disability aids, and other benefits to all groups including gig, platform and migrant workers. Gig worker is presently defined as someone working “outside the traditional employer-employee relationship”, while a platform worker is someone who provides services through an online medium. Platform or aggregators are defined as digital interfaces for establishing connections between service providers and the users under the Information Technology Act.⁴⁶

According to the Code, aggregators are to contribute between 1-2% of their annual turnover to employee's social security accounts, which will be capped at 5% of the total amount payable to workers.⁴⁷ There are, however, many overlaps in the definition of unorganized workers, platform workers, and gig workers. For instance, if an employer does not provide appointment letters or regulate work schedules, a driver employed by one app-based taxi aggregator may also work for its rival, making them fall under the category of gig workers. But since he works via an internet platform, he would also be considered a platform worker. Because he works for himself, this driver may also be categorized as an unorganized worker or can also be categorized as self-employed.⁴⁸

⁴³ Wang, Lianzhen & Pei, Yulong. (2014). The impact of continuous driving time and rest time on commercial drivers' driving performance and recovery. *Journal of Safety Research*. 50. 10.1016/j.jsr.2014.01.003.

⁴⁴ Chen JC, Chang WR, Chang W, Christiani D. Occupational factors associated with low back pain in urban taxi drivers. *Occup Med (Lond)*. 2005 Oct;55(7):535-40. doi: 10.1093/occmed/kqi125. Epub 2005 Sep 1. PMID: 16141293.

⁴⁵ Ding D, Gebel K, Phongsavan P, Bauman AE, Merom D. Driving: a road to unhealthy lifestyles and poor health outcomes. *PLoS One*. 2014 Jun 9;9(6):e94602. doi: 10.1371/journal.pone.0094602. PMID: 24911017; PMCID: PMC4049576.

⁴⁶ Barik, S. (08 December 2020). App-Based Gig Workers Seek Clarity On How Social Security Schemes Will Be Funded. *Medianama*. Retrieved from <https://www.medianama.com/2020/12/223-ifat-recommendations-draftsocial-security-rules/> [22 March 2021].

⁴⁷ Aryan, A. (02 February 2021). ESIC, other social security safety nets to cover gig economy workers. *Indian Express*. Retrieved from <https://indianexpress.com/article/india/budget-2021-esic-other-social-security-safety-nets-to-cover-gig-economy-workers-7170725/> [22 March 2021].

⁴⁸ Sarkar, K. (29 December 2020). For Unorganised Workers, New Social Security Code Creates Needless Confusion. *The Wire*. Retrieved from <https://thewire.in/labour/social-security-code-unorganised-workers> [23 March 2021].

In 2021, a Zomato delivery partner was subjected to violence when he was requesting for compensation upon delivering the goods. To avoid liability, Zomato chose to terminate the worker without investigating the alleged misconduct. The Indian position on gig workers stands in the landmark case of *Hussainbhai*⁴⁹ which states that in order to fall within the definition of worker under Section 2(s) of the Industrial Disputes Act, there should be a definite existence of employer-employee relationship. But, this proves to be a rather cumbersome job. Furthermore, they should also satisfy the condition of “continuous service” provided under Chapter 5A of the ID Act, that discusses the compensation upon retrenchment of a worker.⁵⁰ They continue to be governed by commercial laws, but due to the special nature of their employer-employee relationship, commercial laws prove to be of little help.

The Rajasthan Model can be looked upon as one of the ways to solve certain issues faced by the worker, but not all. Solutions need to be executed in two levels, firstly by the employer or the aggregator and secondly by setting up a board, exclusively for gig workers. The employer can provide for benefits like insurance, Mediclaim policies, maternity leave, payment of minimum wages, providing fair working conditions and the board can be set up to firstly, monitor whether the aggregators are complying with the labour regulations, and the board can take upon itself the task of grievance redressal mechanism, payment of bonus, payment of gratuity and other such benefits that are not industry specific.

CONCLUSION:

In conclusion, the situation of gig workers in India is indeed complex, given the varied forms of employer-employee relations, offering both challenges and opportunities. While gig work remains as one of the best flexible work options available, it has significant vulnerabilities as well. It is indeed imperative to create a regulatory framework that takes into account the financial position of the aggregators, as well as the gig workers while keeping ensuring that nobody is left to peril. With a multi-stake holder approach and a little bit of a Marxian approach, we should be able to provide a comprehensive reforms and India can strive towards creating a fairly inclusive labour regulations that respects the rights and dignity of every worker. As Senator Maria E Duarzo opines, “there is nothing innovative about underpaying someone for their labour and basing an entire business model on misclassifying worker”, careful thought should be put into defining the regulatory framework, which may include referring to ILO regulations and as we all drawing inspirations from international precedents. An often sought after recommendation is to create a new legal arrangement that caters exclusively to the specific needs of the gig worker, instead of trying to fit them into the traditional classifications. Several theorists recommend a potential “dependent contractor” category that acts as a middle ground when employer-employee relationships are concerned.⁵¹

However, edging problems like minimum wages, unfair deactivation requires immediate policy interventions or guidelines as they are some of the pressing concerns, violations of which are not seriously looked into due to lack of legal regulations. Therefore, this paper calls for a serious policy decision on

⁴⁹Hussainbhai, Calicut v. Alath Factory Thozhilali 1978 AIR 1410, 1978 SCR (3)1073

⁵⁰ Balaji M, ‘India’s Gig Economy In The Pandemic’ (*Medium*, 2021) <https://medium.com/the-opinion/indias-gig-economy-in-the-pandemic-895d93235ca3>

⁵¹ Protecting Workers’ Rights In The Gig Economy: AI And Digital Labour Platforms’ (*Global.lehigh.edu*, 2021) https://global.lehigh.edu/sites/global.lehigh.edu/files/2_ILO_UN_Ex_Machina_Final_Draft.pdf

some of the issues while we wait for the legislators to provide us an amended version or a new piece of legislation hopefully, an all-inclusive one.

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