

GIG WORKERS: BESTOWING INDIA'S ECONOMY

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ABSTRACT

India is one of the biggest democratic countries, which houses a generous amount of population and therefore requires the consistent generation of a huge chunk of employment opportunities to cater to the needs of the people. India's economy is 5th largest in the world after the U.S.A., China, Japan, and Germany. There is a situation where world economies are facing recession; India has still tackled this recession very well and has emerged as one of the fastest-growing economies in the world. The government had set up to reach a target of a \$5 trillion economy, but who are the major contributors who ensure that India's economy keeps on track with consistent progress? Gig Workers are the significant contributors whose growth has made India's economy grow much faster than anticipated. However, their contribution has not been recognized as much as it should be, due to which there have been a lot of instances where we witnessed how specific disruptions made in their working through strikes or other kinds of movements affect India's economy adversely. Thus, we will see in this article the role and importance of Gig Workers in the Indian Economy and how we could protect their interests.

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Introduction

Today in India, there are a lot of people who are working to their total capacity to meet their financial, social and other kinds of requirements. We know there are different types of workers in India, mainly categorized into Regular Salaried, Casual Wage and Self-Employed workers. Regular salaried employees have a formal contract with their employer and thus get covered under all kinds of social security measures guaranteed under different Labour laws, including the Maternity Benefit Act of 1961¹, Payment of Gratuity Act of 1972² etc.

If we talk about self-employed workers, then they mainly comprise people who run their respective businesses and thus get themselves adequately protected because they are the ones who take all the significant decisions regarding their work. In the case of Casual Wage Workers, they are the ones who work for a very short time, i.e., till the objective of their job is completed and therefore still get some protection under the Labour laws, mainly the Employees State Insurance Act 1948³, Minimum Wages Act 1948⁴ etc.

Apart from all these three categories of employees, we have a fourth category of workers recently recognized in India but still need to receive much traction regarding the various security and benefits associated with their work. These workers are known as Gig Workers.

Gig Workers can be referred to as those workers who work outside the usual employee-employer contractual relationship and includes independent contractors, platform workers, freelancers etc. The Gig Workers work part-time at their convenience. These workers can be described as a power booster factor for the Indian Economy because of their contribution.⁵

All central platform workers-based applications, such as Swiggy, Zomato, Uber, Porter, Ola, Urban Company etc., have successfully built their platform wholly depending upon the Gig Workers. These new start-ups are coming because they can make their platform without hiring actual employees and providing various safeguards specified under the Labour Laws of India.

¹ The Maternity Benefit Act, 1961.

² The Payment of Gratuity Act, 1972.

³ The Employees State Insurance Act, 1948.

⁴ The Minimum Wages Act, 1948.

⁵ EVALUATING – THE SOCIAL SECURITY CODE, LEGAL ADVICE GURU (<https://legaladviceguru.com/social-security-code-code-of-social-security/>).

Yes, Gig Workers are recently recognized in India, and still, they don't have any social security safeguards or benefits concerning their employment.

The true irony is that these workers are required to follow the instructions of their employer, like wearing uniforms, maintaining specific attitudes and following the procedures. Still, they are not treated as regular employees. It has been seen that if any gig worker suffers from any disease, accident etc., they would not be given any type of support by the company for which they are working, which goes against the fundamental human rights of an individual. The requirement of social security benefits for these workers should be on priority, considering the Central Government formulated The Code of Social Security in 2020⁶. Still, it has not been implemented or enforced to date and is just enacted.

History

In Early India, there were no legislation that would have governed the relations between the employee and employer or Labour. In the British era, it was seen that the demand for Indian goods was in huge demand due to their novelty and excellent quality, which cost the British Government huge losses.

To overcome this, the Britishers first imposed many restrictions on the manufacturing of the goods made indigenously by the local artisans by setting heavy duties and taxes, ultimately making indigenously made goods expensive, opening room and market for cheap British manufactured goods. Back in the 18th Century, the Industrial Revolution came into the picture, creating tremendous employment opportunities for the people. Still, at the same time, in some industries, many people lost their jobs due to the mechanization of the process. Since there was a boom in the manufacturing industries, the workers employed there were exploited to a large extent, including non-payment of wages, making them work overtime, using children in hazardous factories, no safety equipment being provided etc.

All these factors made employees' lives miserable, and there it calls for legislation to protect their interests. Then various laws such as the Factories Act 1948⁷, Minimum Wages Act 1948⁸,

⁶ The Code of Social Security, 2020.

⁷ The Factories Act, 1948.

⁸ The Minimum Wages Act, 1948.

Payment of Wages Act 1936⁹ etc. After bringing in these laws, efforts were made to have a harmonious relationship between employee and employer were successful to an extent.

Similarly, in the case of Gig Workers, their interests are not being protected even after contributing so much to the Indian Economy, and thus, their employers are exploiting them. It is also extinguishing the incentive for any worker to work more efficiently and productively.

Therefore, their status or position is now similar to those of the industrial workers during the Industrial Revolution, where they were subjected to highly unfavourable conditions affecting their employment and personal well-being. So, it is high time that the legislators should bring in more concrete laws so that the interests of a segment of employees who contribute to the Indian Economy are protected and avoid unnecessary strikes and protests undermining the economy's growth.

Role of Gig Workers

The gig economy needs certain people for its continuous run, and these people are called Gig Workers. These people are employed for a very short time or as per the demand and supply of the market. These workers enjoy flexibility concerning their working time. They can also have part-time employment, and along with that time, it addresses one of the significant issues we have with female employees, i.e., their night shift. In this way, they can work from home at their convenience.

The benefits of this type of work are that it allows a person to work as per their wish and have the privilege of having decision-making power and earning some extra income with their regular job or consider this their primary work. Now everything that has certain benefits also has some disadvantages, such as the gig workers don't enjoy or can avail of any social security such as Health Insurance, PPF etc., from their employer; along with that, they don't get the opportunity of their career growth because they can't step up their organizational hierarchy, and one of the major drawbacks for this kind of workers is that they can be easily replaced as they don't need any specific skill which ultimately affects the job stability of these workers.

The contribution of the gig workers has been immense in stepping closer to the target of a \$5 trillion economy. There are various instances where we can see the exact importance of the gig workers; during Covid, when all the logistics systems were poorly affected, it was due to the

⁹ The Payment of Wages Act, 1936.

working of gig workers in organizations/set-ups such as Swiggy, Amazon, and Zomato, Big Basket, 1mg, Pharmeasy etc. where the workers were still working to deliver the essential goods to the public despite of the fact that they were risking their lives to earn some money to run their livelihood.

While many organizations such as big basket and 1mg gave some relief to them by helping them out with safety gear such as masks, sanitizer etc., to protect themselves from the virus, on the other hand, many set-ups such as Swiggy and Zomato reduced the earning amount per delivery of the rider from Rs 35 to Rs 10 in some cases, which negatively affected the workers. Those were the people who were taking risks to do their job. Still, instead of supporting them in any manner, the companies/organizations reduced the incentive of these workers, which ultimately affected their fundamental human rights. Even after all this, no support was given by the government in this case because, at that time, they did not recognize the efforts of these workers and their contribution to the economy. During covid, they realized their role and formulated The Code of Social Security,2020¹⁰ to frame some policies and guidelines for these workers, but it has yet to be brought into force.

We need to understand that because of these workers, our life has become more accessible so that we can get our groceries and other personal goods at our doorstep without inconvenience. Now can you imagine the complications in your life, where if the OLA drivers or Swiggy delivery workers go on strike, the price would be increased for these services provided by the other platforms because it depends upon the supply and demand game? With that, the contribution to the economy would also be affected, and ultimately, it would be a big blow to the entire working ecosystem. Therefore, it is imperative to consider and respect the interests of these workers and implement as soon as possible the laws and regulations which give some benefits to these workers, such as Insurance etc.

Significant set-ups, such as OLA, Uber, Swiggy, Zomato, Big Basket, etc., are based on gig workers. If these workers' interest is not protected, it would be detrimental for these types of companies and would affect their functioning, bringing in tension for other permanent employees also working in these companies; because of these developments, specific processes such as layoffs, termination of the employees would take place, as the company would lower its financial burden to tackle that issue.

¹⁰ The Code of Social Security,2020.

However, still, they can tackle to a certain extent; after that, they would touch a stage where they would have to go for Insolvency proceedings to take off again. Still, that path would be challenging and affect the financial and operational creditors of those companies, including many large banking/financial institutions. If these institutions suffer losses, the ordinary public will suffer. So, you see, there is an ultimate and comprehensive connection between all these workers and their system.

So, if the Gig workers system collapses, it would affect the entire Labour and financial ecosystem, which we don't want. Thus, it is essential to step up and consider the efforts of these workers in a comprehensive manner.

The primary benefit of this kind of work is that female employees can manage their household work and work as per their flexibility, ensuring their financial freedom and stability. Still, with that, the major problem is basic literacy and knowledge of digital gadgets, which is very crucial for the working of the gig workers, so this is a possible roadblock in more involvement of the female workers, which can be addressed by organizing various workshops and seminars where they can be taught as in how they can further proceed and benefits to them.

Thus, this type of employment has professionalized the piece-work type of job, which was highly prevalent in the economy's informal sector.

Legislations

If we see there is no exclusive or comprehensive legal provision that applies to the Gig Workers, even though we have provisions such as the Contract Labour (Regulation and Abolition) Act of 1970¹¹, then also Gig Workers do not come under the purview of the contract labours and therefore cannot avail any social security measures under this Labour law. Since no law was governing these workers, these workers were exposed to different kinds of harassment and unfair practices which their employers practiced.

It was not sooner than the period of Coronavirus that people started to become aware of the role of gig workers and what kind of hardships they had to endure. To address these issues, the Government of India recognized these workers and their contribution and included them in the Code of Social Security, 2020¹², which we will see further in detail.

¹¹ The Contract Labour (Regulation and Abolition) Act, 1970.

¹² The Code of Social Security, 2020.

Many companies whose complete set-up was based on these workers, such as Big Basket, Flipkart and Urban Company, announced in 2021 that they would ensure that each of the workers under their platform would earn local minimum wage hourly after considering the operational costs. Although many appreciate this move, it is still just like a piece of grain in the entire bowl.

The Government of India has taken a step further and launched a portal named e-SHRAM to create an index or database which would nationwide to estimate the number of employees that work in the non-organized sector to provide workers such as a platform, gig, migrant etc., with several social security measures, which would facilitate to make their lives better and more comprehensive.

The National Commission of Labour has put forward to combine and consolidate the National Labour Laws. Concerning this, the Ministry of Labour and Employment introduced The Code of Social Security, 2020. The benefit of bringing this code is that it would recognize all the workers, whether they work in organized, unorganized or any other sector and also includes platform workers. However, the key thing to note is that this code still needs to be implemented because many states in India are still processing it to finalize these rules for implementation.

The Code of Social Security 2020 has included nine types of Labour laws such as The Employees State Insurance Act 1948¹³, The Employees Compensation Act 1923¹⁴, The Employees Provident Fund and Miscellaneous Provisions Act 1952¹⁵, The Maternity Benefit Act 1961¹⁶, The Cine Workers Welfare Fund Act 1981¹⁷, The Unorganized Workers Social Security Act 2008¹⁸, The Building and Other Construction Workers Cess Act 1996¹⁹, The Employees Exchange (Compulsory Notification of Vacancies) Act 1959²⁰ and The Payment of Gratuity Act 1972.²¹

Now the proposed Code of Social Security 2020²² provides various benefits such as maternity benefits, medical and life insurance, old age protection, and creche facilities for female workers

¹³ The Employees State Insurance Act, 1948.

¹⁴ The Employees Compensation Act, 1923.

¹⁵ The Employees Provident Fund and Miscellaneous Provisions Act, 1952.

¹⁶ The Maternity Benefit Act, 1961.

¹⁷ The Cine Workers Welfare Fund Act, 1981.

¹⁸ The Unorganized Workers Social Security Act, 2008.

¹⁹ The Building and Other Construction Workers Cess Act, 1996.

²⁰ The Employees Exchange (Compulsory Notification of Vacancies) Act, 1959.

²¹ The Payment of Gratuity Act, 1972.

²² The Code of Social Security, 2020.

and apart from these, there would be the creation of a fund called Social Security Funds, and in that the funds would be accumulated from the contribution of several aggregators. The data has been digitalised to be compiled efficiently and then shared with the required authorities or establishments to facilitate gig workers' lives. With that, many fixed-contract workers benefit from the gratuity, which is an excellent move, as it would create more financial security for these workers.²³

Still, the code that is lacking or losing steam on so many fronts; the first one is that the size of the particular establishment would be an essential factor in providing certain benefits such as pension and medical insurance if this leaves out any employees. They would be covered under discretionary schemes of the government. Not just this, even the income level also influences the coverage under these schemes.

Apart from these, the implementation of the present Code of Social Security,2020²⁴ would increase the cost of the companies by approximately 15-20 %, which would, in most cases, be forwarded to the employees and would hurt the margins of these companies who are still not even close to profit making and apart from this, they are facing high attrition rates, so overall to counter these things companies might start to hire them as an employee because anyways they have to give these social security benefits, but if that happens the major positive factor of these jobs that was flexibility with related to their work and their own decision making would come to an end, ultimately hampering the gig workers economy.

Now there comes the problem of overlapping the various concepts, which would make these schemes more confusing and cumbersome. For example, Suppose Ramesh works as a driver in one cab-based aggregator. In that case, there is also a possibility that he might work for its competitor, which would make him covered under the definition of the gig worker. Still, since he works through an online platform, he would also be considered a platform worker. He could be regarded as a part of the unorganized worker because he is self-employed. This creates a lot of confusion as there is an overlapping of the definitions taking place.

Thus, it is imperative that the framing of definitions under this code be proper. Now in this, one major problem that arises is that hardly there are any prosecution measures for the

²³ THE CODE ON SOCIAL SECURITY 2020, ADDRESSING THE KEY CHANGES AND THEIR IMPACT, SHEENA OGRA, ANIRUDH AGARWAL, (<https://www.ahlawatassociates.com/blog/code-on-social-security/>)

²⁴ The Code of Social Security,2020.

employer, and there needs to be a stringent check regarding the implementation, which is currently required as the utmost priority.

Along with this, the low literacy levels and digital exposure, it is tough to expect that all these workers would be able to register on the portal. Thus, it requires the need for a massive amount of awareness.

So overall, there is a need to have provisions for managing the gig workers. Still, at the same time, half-baked provisions with such a considerable amount of ambiguity would be useless and further create contention between these workers and employers. Thus, it is crucial to have comprehensive and more refined legislation governing these kinds of workers.

Recommendations

There is a need to have some amendments, and as per my knowledge and expertise, I would like to propose some of them:

1. There should be a definite change in the limitation period; as of now, there is no limitation for initiating the proceedings concerning any dispute with the employer regarding any dues or EPF etc., but the code has proposed five years as the limitation period. This should be struck down, or it should be at least increased to 15 years.
2. Instead of mandating the workers to register compulsorily on the portal to avail of the benefits, the government should procure their data directly from the companies or organizations they are working for. Apart from those who are not a part of these organizations, their information should be taken by the camps in each district.
3. The critical role here would be to create and spread awareness as much as possible. Thus, it is essential to include various leaders of these unorganized workers to spread awareness to a large extent.
4. There should be one authority who would overlook the implementation of this code. Otherwise, it would make it too cumbersome to implement it as there would be continuous struggles between the state and centre regarding various points, and this would hamper the benefits that were supposed to be passed to these kinds of workers.
5. Instead of keeping a minimum number of employees or income level as the deciding factor for the inclusion of the workers under the benefits of these schemes, it should be open wide to all these kinds of workers.

6. The next important thing that needs to be addressed is that the word 'may' is used everywhere in the code, which makes it obligatory for the government to roll out a scheme; it's not mandatory for them, which makes no sense. Therefore, the word 'may' should be omitted.
7. It is seen that aggregators are not showing sufficient interest in implementing this code, which is a significant factor because, without proper implementation, it won't be possible to make any provision successful for these workers. So, to counter the same, aggregators should be roped in to hear their concerns and make provisions amicably.
8. They could make an addition that because of the implementation of these schemes, there is a noticeable increase in the company's spending; thus, to counter it, a reduction in the CSR contribution would make it compensated.
9. Inclusion of the Anganwadi and Accredited Social Health Activists (ASHA) Workers under this code is vital.
10. Clarity should come regarding the dealing of the proceeds paid to the workers based on priority if the company goes into insolvency proceedings.

Conclusion

We saw how a new type of employment had been generated over the years, which is known as Gig Workers, which includes freelancers, platform workers, etc. To date, it has not been given much recognition and importance, but after Covid, it is gaining some amount of traction concerning this; many companies whose primary source of work is based upon the gig workers have come up with some incentives or basic guarantee that still gives some recognition to the efforts of these workers and the government has brought out the Code of Social Security, 2020, which recognizes gig workers but all the benefits that they have mentioned in the code has not been of mandatory. It is subject to the discretion of the Central Government. This discretionary power of the government undermines the purpose for which they were brought within the act's purview. So, it is to be noted that on an immediate basis, multiple reforms should be made in the code to include the interests of the workers comprehensively after having thoughtful discussions with the companies, this is because the implementation of the code would be through these companies only and if they were not convinced enough, there would be a sheer lack in the performance of the same. Thus, it would serve a vague purpose and be a wasted attempt at such discussions and deliberations. Though there are some manifestations on behalf

of the government and the companies that employ these workers, there is a need to create as much awareness as possible so that these schemes are preserved and preserved.

Along with that, there is some responsibility on the part of the gig workers as well, that they should make efforts to put some pressure on the government and companies by highlighting the need for social security benefits for them through some street plays or approaching various NGO's, who in turn would chase these authorities. This would make sure that their issue gets sufficient attention at regular intervals, and apart from that, they need to put some extra effort into learning new skills for free on various platforms available online so that they would be able to understand the schemes very well and thus could not be misled by these authorities. So overall, the gig workers issue has come into the picture, but it's just the beginning; there is a crucial need to take adequate measures for these workers to support them so that the benefit can reach them. In this way, we would be strengthening one part of the Labour which has been contributing to a great extent towards the Indian Economy.