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NEED FOR FORMALISATION OF GIG WORKERS: TOWARDS A PARADIGM SHIFT IN WORKING MODEL

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Aditya Pratap Singh**

Abstract

In recent years, what is known as "gig economy", a term applicable to digitally intermediated labour services, characterized by unique or sporadic tasks (gigs), has expanded enormously owing to technological advancement. India currently houses the world's third-largest start-up ecosystem and due to pandemic-induced massive technological advancement and work-from-home business model, the future is likely to be dominated by the gig- workers.

This rapid expansion of the gig-economy would necessarily demand to measure these non-traditional employment formats. These jobs belong to a "Grey area" in which they share characteristics of dependent and independent employment at the same time i.e. they are hybrid. Identifying the category of these workers correctly is vital, as this type of employment has had a series of repercussions on different aspects of the labour market. The paper tends to propose solutions to the problems that arise due to misclassification with the help of a comparative analysis made concerning the status of gig workers employment in different nations. Lastly, The Social Security Code, 2020 is analysed to study the ambiguities the code has concerning gig workers and solutions for the same have also been proposed.

***Keywords**: Gig Economy, Gig Workers, Employment Relationship, Social Security.*

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I. Introduction

Technological advancement has aided the world into entering the fourth industrial revolution where computer systems equipped with AI and Machine Learning are swiftly changing the nature of the work with new ways of organizing and carrying out productive activities.[1] During the health crisis caused by COVID-19, remote- work has made it possible to continue carrying out productive work in various areas, saving hundreds of thousands of jobs that would otherwise have been destroyed. On the other hand, advances such as robotics and artificial intelligence are replacing routine human work and all those activities that can be systematized through algorithms and codifiable rules, while complementing work based on non-routine skills, creativity and social skills, among others. Technological change has led to the proliferation of new work formats that are not traditional and allow a better fit with the heterogeneous priorities of the workers.

Many have called them gig jobs, as they are based on the completion of individual tasks. These tasks are performed with the aid of digital platforms that mediate between the worker and the consumer and are characterized by a high degree of autonomy and flexibility that is highly valued by those who carry them out. However, detractors have also emerged who view these new work formats with suspicion, as they fear that they are being used to evade labour regulations and that they promote precariousness.

With the rapid expansion of the gig economy, the need to measure these non-traditional employment formats has become important, as it has an impact on the analysis of the labour market. These new gig jobs, however, belong to a "grey area" in which they share characteristics of dependent and independent employment, which complicates their classification in one or the other traditional occupational category.[2]

II. Defining Gig Economy

The expression "gig economy" is borrowed from the music world, where the term "gig" indicates a performance linked to a single engagement and therefore – unique and

1 Bernard Marr, What Everyone Must Know About Industry 4.0, Forbes https://www.forbes. com/sites/bernardmarr/2016/06/20/what-everyone-must-know-about-industry-4-0/?sh=66faa9fa795f. (last visited Jun. 16. 2016)

2 Seth D. Harris and Alan B. Krueger, A Proposal for Modernizing Labor Laws for 21st Century Work: The "Independent Worker", Brookings http://www.brookings.edu/research/papers/2015/12/09- modernizing-labor-laws-for-the-independent-worker-krueger-harris. (Last visited Dec. 8, 2015)

occasional.[3] Labour in the gig economy, is purely occasional in nature, attributable to the single daily service or a few hours, minutes.[4] Cambridge Dictionary defines gig-economy as "a way of working that is based on people having temporary jobs or doing separate pieces of work, each paid separately, rather than working for an employer".[5] Gig economy is a free-market system where organizations contract with independent workers for a short-term project or service engagement.[6] Crowdworking, platform work, freelancing, on-demand work, sharing economy are some other names for this economy.[7] The gig economy is characterized by the execution of unique projects or tasks for which a worker is hired, often through a digital market, to work under commission. Apart from these definitions, The Social Security Code, 2020 defines workers in this economy. Section 2(35) defines a "gig-worker" as an individual performing or participating in any work that is outside traditional employment and earns from the same work.[8] Section 2(61) defines a "platform worker" as a person working outside the traditional employee-employer relationship and the person uses an online platform to access other organizations or individuals to solve specific problems or to provide specific services in exchange for remuneration.[9] Further, in section 2(86), "unorganized worker" is defined as a worker who is self-employed, home-based or a wage worker in an unorganised sector.[10]

Scholars have identified 2 major branches of gig-economy: Crowdwork and Work-On-Demand. The first branch corresponds to crowdwork, consisting of a job which is performed through digital platforms that puts an indefinite number of geographically dispersed organizations and people in contact.[11] Examples of these platforms are UpWork, Fiverr, Freelancer etc. The second branch corresponds to work-on-demand via mobile

3 Leslie Heck, Year in a Word: Gig Economy, Financial Times https://www.ft.com/content/b5a2b122-a41b-11e5-8218-6b8ff73aae15 (Last visited Dec. 15, 2015)

4 J. Healy, D. Nicholson, and A. Pekarek, Should We Take the Gig Economy Seriously?, 27 Issue 3 Labour & Industry: A Journal of the Social and Economic Relations of Work 232, 232-248 (2017).

5 Cambridge Dictionary, Gig Economy https://Dictionary.Cambridge.Org/Dictionary/English/Gig-Economy (Last visited Sep. 21, 2021).

6 TechTarget 2020, Gig Economy, https://whatis.techtarget.com/definition/gigeconomy (Last visited Sep. 20, 2021).

7 Brendan Churchill and Craig Lyn, "Gender in the gig economy: Men and Women Using Digital Platforms to Secure Work in Australia" 55 Journal of Sociology 741-761 (2019) http://dx.doi.org/10.1177/1440783319894060.

8 Code on Social Security 2020, § 2(35), No. 36, 2020 (India).

9 Code on Social Security 2020, § 2(61), No. 36, 2020 (India).

10 Code on Social Security 2020, § 2(86), No. 36, 2020 (India).

11 Cristiano Codagnone, Fabienne Abadie, and Federico Biagi. The Future Of Work in the 'Sharing Economy'. Market Efficiency and Equitable Opportunities or Unfair Precarisation?, Publications Office of the European Union (2016), https://publications.jrc.ec.europa.eu/repository/handle/JRC101280.

applications, where services are physically provided and the assignment of tasks within a geographic area is channeled through digital applications managed by companies.[12] Examples of these platforms are Uber, Ola, Zomato, UrbanClap etc.

Owing to technological advancements, demographic advantage, expansion of digitization and the fact that India houses the third-largest start-up ecosystem, the very definition of the term "labour" and the nature of services provided by them are evolving. As per Ernst & Young and FICCI's Report on "Future of Jobs in India: A 2022 Perspective", the Indian Economy is emerging as third-best market for online labour.[13] This report states the reasons for the rise of the gig economy in India are urbanization, a significant proportion of young population and a rise in the middle-income class of people.[14] Apart from these reasons, there are several other reasons for its growth such as low entry barriers,[15] response to employment problems created by economic shocks,[16] discrimination in traditional employments,[17] etc. It is the benefits of this working model that has led to its rise. Thus, it becomes necessary to discuss the same.

1. Effects on Labour Underutilization:

There are low entry barriers to working in the gig economy, allowing flexible work arrangements and making it easier for workers to participate in contingent employment when they need it or require it. The low barriers to entry have their origin in the fact that gig workers tend to have low costs to develop the activity and usually use tools that they already have, thus avoiding incurring the cost of starting a business from scratch.

Valendue and Vendramin (2016) point out that, due to their high degree of autonomy, this type of work allows the existence of more inclusive labor markets and facilitates access

12 Ibid.

13 Ernst & Young and Federation of Indian Chambers of Commerce and Industry, Future of jobs in India: A 2022 Perspective, https://ficci.in/spdocument/22951/FICCI-NASSCOM-EY-Report_Future-of-Jobs.pdf (last visited Sep. 22, 2021).

14 Id.

15 Gérard Valenduc and Patricia Vendramin, Digitalisation, Between Disruption and Evolution, 23(2) European Review of Labour and Research, 121 121–134 (2017).

16 Emilie Jackson, Availability of the Gig Economy and Long Run Labour Supply Effects for the Unemployed, National Bureau of Economic Research, (2020).

17 Hyperwallet "The Future of Gig Work is Female – A Study on the Behaviours and Career Aspirations of Women in the Gig Economy" https://www.hyperwallet.com/app/uploads/HW_The_Future_of_Gig_Work_is_Female.pdf?mkt_tok=eyJpIjoiTVRjMU9UQmlOakk1TW1WaSIsInQiOiJYaVQrNEtTTzUzNWliUzZOSTQ3R2wxTnlwY00xZG9MZmErTnVXUkJVdGhMRm9EUW9GWTFcL1huaXZPbnBmdGN1RnBaWjAwa2tjTW5PXC82NnR5Z0o1VFcrOFhWbEZMbVd3UGcramZvdTg0Y1Y0Q3orMjlcL1wvVUpJaFBROVhMeXRyU1QifQ%3D%3D (last visited Sep. 25, 2021).

to employment for people who, otherwise, could not perform a traditional job in a certain place for reasons of health, mobility or availability.[18] In addition to flexibility, it also facilitates the possibility of supplementing income for individuals whose main occupation is a traditional dependent job.[19] Thus, the existence of these gig jobs makes it possible to avoid a labor underutilization that would otherwise be greater, either due to unemployment or inactivity.

2. Countercyclical behavior of gig employment

An economic shock generates unemployment in the labor market. In economic recessions, companies are lay off workers and the resulting unemployed face difficulties finding new jobs in a depressed labor-market.[20] Formerly, in a typical economic recession, workers increased their local job search efforts or migrated to places less affected by the crisis in search of new opportunities. However, with the advent of digital platforms, workers have new alternatives.

Studies indicate that work through digital platforms is positively correlated with the unemployment rate in the face of adverse economic shocks.[21] In other words, the existence of digital platforms with low entry barriers and a high degree of flexibility has become a buffer against adverse economic shocks. This was the case in the past with informal or self-employed employment which, like gig employment, often behaves in a contrary way.

3. Effects on discrimination and labour gaps

Another potential benefit is that gig economy employees could contribute to reducing inequalities in access to work. Since the algorithmic management of the platforms in assigning tasks, discrimination that takes place in traditional employment due to human.[22] These inequalities are also reduced or eliminated by not being subject to distorting regulations present in traditional dependent employment legislation, for example, those that legally make hiring women more expensive, causing gender gaps. Of course, not

18 Gerard, supra note 15, at 4.

19 Jonathan V. Hall and alan B. Krueger, An Analysis of the Labor Market for Uber's Driver-Partners in the United States, 71(3) Industrial and Labour Relations Review, 705–732 (2018).

20 Carmen M. Reinhart and Kenneth S. Rogoff, This Time is Different: A Panoramic View Of Eight Centuries of Financial Crises, National Bureau of Economic Research (2008) https://scholar.harvard.edu/files/this_time_is_different_short.pdf.

21 Emilie Jackson, Availability of the Gig Economy and Long Run Labor Supply Effects for the Unemployed, Industrial Relations Section Princeton University, (Apr. 26, 2021, 1:20-2:35 PM) https://irs.princeton.edu/events/2021/emilie-jackson.

22 Hyperwallet, supra note 17, at 4.

all biases are eliminated, since clients can still act under their diligence, affecting the job opportunities of those who provide the services.

III. Classification dilemma: problems, international status and solutions

1. Problems with Current Classification

The nature of this work creates a narrative of flexibility and independence among the workers.[23] The presumed advantages of flexibility provided by the gig works shall not be estimated immediately. In spite of numerous benefits, there are numerous legal risks in this model that are faced by the workers. While it is certainly true that most jobs in the sharing economy involve flexible working hours, we must not forget the competition between employees because of which they feel compelled to work as many hours as possible to achieve higher wages, thereby actually giving up the advantage of the flexibility provided.

The most prominent issue is that of legal classification for this category. Today there is a heated debate around how similar new gig jobs are to traditional dependent employment. This arises mainly because these jobs belong to a "grey area" where they share characteristics with dependent employment and employment. independent at the same time. That is, they are hybrid. Platforms like Uber, Ola, Swiggy, etc. considers these workers as contractual and part-time workers thereby classifying them as "Independent Worker". The root of the problem stems from the fact that the legal relationship of gig workers is governed under the category of "independent worker", which lacks measures to protect these workers as a result of which the status of these workers falls under the vulnerable category.

As per the qualification mark used in the Indian Judicial practices, the elements referring to the employment relationship can be understood with the help of the ruling given in the *Dharangadhara Chemical Works versus State of Saurashtra Case*[24] wherein the Supreme Court held that the primary test that determines the relationship between an employee and the employer is the test of supervision.[25] A similar test was proposed in *D. Hussainbhai, Calicut versus The Alath Factory*.[26] In the context of Uber and Ola Drivers, the activity of their work task appear to be continuous and repeated. There is an obligation on the drivers

23 Leticia M. Saucedo, The Legacy of the Immigrant Workplace: Lessons for the 21st Century Economy, 40 T. Jefferson L. Rev. 1, 10 (2017).

24 Dharangadhara Chemical Works v. State of Saurashtra, AIR 1957 SC 264.

25 Ibid.

26 D. Hussainbhai, Calicut v. The Alath Factory, (1978) 4 SCC 257.

to work in person. Furthermore, Uber has the option to select drivers through a rating system, giving the company essentially control over drivers. The fact that there is a direct link between the person using the application and the person providing the service and that the instructions specifying the tasks do not come from the employer but through the passenger does not necessarily change the nature of the dependent work, the relationship can easily be considered as an employment relationship.

However, several considerations suggest that this is a form of self-employment. The company has no employment obligations. If the driver is available, they don't need to accept the ride request and if they don't respond within a certain time limit, the request is passed to another driver without any sanction. Uber does not specify a work schedule; the driver is free to decide when he wants to work. Uber rewards drivers weekly for tasks performed.

Apart from issues related to classification dilemmas, the recent pandemic and its socio-economic ramifications have provided contextual clarity on the loopholes in the current framework relating to the social security available to gig workers. Lack of benefits such as health insurance cover, unemployment allowance, minimum wage and paid leaves to the workers resulted in most of them being rendered without any financial support during the period when work was not available.

The lack of an adequate system of collective bargaining meant that the workers had no forum through which they could have put forward their grievances and collectively negotiated with the platform companies. This exposes another issue of collective bargaining on this platform is another problem. The first obstacle arises from geographic dispersion which affects the ability to establish a community and identify their shared interest.[27] The second obstacle is the variability in dependence on income the workers generate from the platform- for some this payment is his sole-earning while for others, it might be part-time income. The latter category is less likely to participate in solidarity with other workers.[28] The third obstacle is the algorithmic management and the ranking system. This system reinforces disciplining in the workforce. Platforms can easily block workers, leaving them without their source of income. The fear of getting punished or getting lower ratings make

27 Hannah Johnston and Christopher Land-Kazlauskas, Organizing On-Demand Representation, Voice, and Collective Bargaining in the Gig Economy CONDITIONS OF WORK AND EMPLOYMENT SERIES No. 94, International Labour Organization (2018) https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_624286.pdf.

28 Niels van Doorn, On the Conditions Of Possibility For Worker Organizing in Platform-based Gig Economies, Notes From Below, https://notesfrombelow.org/ article/conditions-possibilityworker-organizing -platform. (last visited Jun. 8, 2019)

the workers reluctant to exercise their collective rights.[29]

Overall, it is safe to state that there exist lacunas in the current legislation concerning this working model and reconciling the interests of the stakeholders i.e., the State, the Company and the workers is of paramount importance. The role of the State shall be to ensure the safeguards for the gig workers and exercise control over the company's behaviour towards these workers. It is also essential for the companies to be able to accommodate themselves with the changing needs and expectations. For workers, the guarantees for their protection must be laid down so that they cannot be exploited.

Thus, current legislation can no longer cater to the interests of the stakeholders in this economy. Existing legislation cannot cope with this working model as it requires more flexibility than traditional employment. To devise solutions for the problem of classification, an analysis of the steps taken by different nations has been made. With the help of this analysis, solutions have been proposed.

IV. International Approach in Responding to Gig-Economy

Despite uniformity in resistance shown by the leadership of various service platforms in the gig industry, the need for a dedicated regulatory mechanism has been observed in multiple jurisdictions. Judicial pronouncements have been pathbreaking in terms of initiating reforms for safeguarding the rights of the labours engaged in the gig economy.

1. Spanish Approach

The Government of Spain has enacted a law extending the rights availed by a salaried employee to the workers engaged in the gig economy.[30] The essence of this enactment can be traced back to the Spanish Supreme Court's ruling in the Golvo Case[31] which involved an individual lawsuit on behalf of a deliveryman who contended that he shall be accorded the status of an employee. The Hon'ble Court made certain important observations in this case. Firstly, it held that the food delivery rider was expressly operating for the brand-name of the company and got his orders solely based on the Golvo food delivery application which is essential to contract of employment. In this regard, reliance was placed upon the

29 Valerio De Stefano, The Rise of the Justin-Time Workforce: On-Demand Work, Crowdwork, and Labor Protection in the Gig-Economy, 37(3) Comp. Lab. L. & Pol'y J., 471-504 (2016).

30 Royal Legislative Decree 2/2015, Ministry of Employment and Social Security "BOE" no. 225, October 24 2015.

31 Judgement N. (805/2020) STS 2924/2020 - ECLI:ES:TS:2020:2924.

ruling of the Elite Taxi Professional Association[32] wherein similar findings were observed concerning the status of employment of uber drivers. Secondly, the Court emphasized that the digital application of the company serves as an actual mode of production in this business model and absence of this, the rider cannot possibly procure, locate and deliver the food order. Thirdly, it stated that digital ratings work to establish a system of surveillance and control over the rider as allocation of all future delivery orders is dependent upon the ratings that a rider gets thereby meaning that the company holds discretionary powers over the riders and its interests are of paramount importance. On these bases, the court held that a delivery rider qualifies as an employee of the food delivery platform and therefore he is liable to receive all the benefits that an employee is guaranteed.

Subsequently, the Spanish Govt. formulated legislation known as "Rider's Law" derived from a tripartite agreement between the Government, Trade Unions (such as CC.OO and UGT) and Employer's Organization (such as CEOE and CEPYME) reached on 10 March 2021.[33] It reflects a social agreement that recognizes the rights of gig workers emerging out of an employee-employer contract and mandates that the works' council ('Comité de empresa') must be informed of the "parameters, rules and instructions" that determine the work of the algorithm and the gig workers for getting benefits including holidays and unemployment benefits.[34]

2. American Approach

In the backdrop of the judgment delivered by the Supreme Court of California in *Dynamex Operations West Case,*[35] California's state legislature enacted a law which is known as the AB5 law for preventing the misclassification of gig workers as independent contractors.[36] The legislation states that every individual providing labor or services in exchange of certain monetary consideration shall be classified as an employee thereby making him eligible for social security benefits such as workers compensation, disability insurance etc unless they explicitly meet the qualifications set forth under the category of independent contractor in the Act.[37] This enactment means that the concept of 'employee' has been

32 Asociación Profesional Élite Taxi v. Uber Systems Spain SL, Case C-434/15, (Dec. 20, 2017).

33 Natasha Lomas, Spain Agrees On Labor Reform That Will Recognize Delivery Platform Riders As Employees, Techcrunch, (Mar. 11, 2021) https://techcrunch.com/2021/03/11/spain-agrees-on-labor-reform-that-will-recognize-delivery-platform-riders-as-employees/.

34 Rider Law 2021, art 64.4 d.

35 Dynamex Operations v. Superior Court, (2018) 4 Cal. 5th 903.

36 Assembly Bill No. 5, Chapter 296 (Added Section 2750.3 to the Labor Code, amended Sections 606.5 and 621 of the Unemployment Insurance Code, relating to employment.)

37 Labor Code of California, s. 2, § 2750.

redefined and its scope has been widened to include the gig workers and now they can further avail unemployment allowance, minimum wages, paid leave, sick leave and paid family leave.[38]

3. French Approach

In 2016, the French government enacted a law providing self-employed gig workers with rights like work insurance coverage, professional training, right to be provided with a validation of their working experience upon request, right to establish and join a trade union and take collective action to defend their interests. Furthermore, in 2019 the delivery workers were granted certain additional rights through the Mobility Orientation Law they were provided with the right to disconnect from the service app without penalty.

4. Dutch Approach

The Netherlands has observed a significant rise in the growth of the gig industry and its participation in the national economy, however, this rise has coincided with a drastic increase in bogus self-employment directly impacting the workers engaged in this industry, who are generally hired as self-employed persons and are in a weak position to bargain for decent compensation for their work. In its attempt to formalize this sector, the Dutch Government announced its plan to introduce a minimum wage rate of €16 per hour for self-employed persons 2021.[39]

V. Proposed Solutions

After outlining the problems, the question rightly arises as to how this unidentifiable legal relationship could fit into the current labour law system. The authors have proposed solution alternatives that are discussed below: -

1. Collective Bargaining Agreement: Self Employed Plus Status

This system facilitates the development of workers who operate in conditions of dependence on their principles comparable to those of employees while in theory, it restricts their classification as self-employed. The platform company signs a contract with a particular union of workers for collective bargaining which entitles the workers to avail certain

38 Assembly Bill No. 5 Chapter 296, Page 2 & 3.

39 Information Note Protection of labour rights of “gig workers” in selected places, Research Office Legislative Council Secretariat, IN10/19-20.

benefits such as minimum pay, holiday pay, pension contributions and health care plans.[40] It focuses upon granting social security benefits without touching upon the issue of whether the workers engaged in the gig industry should be treated as independent contractors or employees.[41] Companies are increasingly finding this approach reliable and significant collective bargaining agreements have been signed in recent times such as the Uber – GMB Union (UK) agreement providing social security to around 70,000 Uber Drivers.[42] This is also in consonance with the declaration of the Council of Europe's Committee of Social Rights which emphasizes the right of self-employed workers to collectively bargain.[43]

2. Creating a new criterion of classification

An effective method to counter the legal uncertainty surrounding the classification of gig workers could be the introduction of a third category separate from that of employees and independent contractors.[44] Such a classification will aim to grant those rights to gig workers which are not accessible in the capacity of an independent contractor. An example of the implementation of such an approach could be found in certain European Nations such as the United Kingdom where a separate "worker category" was introduced to incorporate gig workers within the structure of social security benefits in consonance with the ruling given in the landmark case of Uber BV v. Aslam.[45]

3. 'Functional Conceptualisation' of Employee

This alternative approach means drifting away from the traditional inelastic definition of the employee-employer relationship.[46] A "functional" conceptualization of the employer, instead, is one "in which the contractual identification of the employer is replaced by an emphasis on the exercise of each function—be it by a single entity or in situations where

40 Danish Confederation of Trade Unions 'Collective agreement Between Hilfr ApS. CBR.no.: 37297267 and 3F Private Service, Hotel and Restaurant'(2018) <http://static.ow.ly/docs/Hilfr%20collective%20agreement%202018_83Wv.pdf> (Last visited October 3, 2021).

41 Jakob Widner, *Gig Economy Un-Gigged: Collective Bargaining Agreement For Bike Couriers,* Lexology (Dec. 18,, 2019) < https://www.lexology.com/Commentary/employment-immigration/austria/graf-isola-rechtsanwlte-gmbh/gig-economy-un-gigged-collective-bargaining-agreement-for-bike-couriers

42 GMB Union, '*Uber And GMB Strike Historic Union Deal For 70,000 UK Drivers*' (May 26, 2021) <https://www.gmb.org.uk/news/uber-and-gmb-strike-historic-union-deal-70000-uk-drivers (Last visited Oct. 4, 2021).

43 European Social Charter (Revised), 03.V.1996, Article 6, ETS 163.

44 Jeremias Prassl, Martin Risak, *The Legal Protection of Crowdworkers: Four Avenues for Workers' Rights in the Virtual Realm*, In PAMEILA MEIL AND VASSIL KIROV, *POLICY IMPLICATIONS OF VIRTUAL WORK*, 273–295 (Palgrave Macmillan 2017).

45 Uber BV v. Aslam, [2021] UKSC 5.

46 Jeremias, *supra* note 44, at 11.

different functions may be exercised from more than one locus of control".[47] (As per this concept , the latter can be a single entity or combination of entities (for example, a combination of the person availing the service, the platform, and the gig workers). What matters is who plays a decisive role in the exercise of a particular employing function, and who can then be regulated as such according to prevailing employment law. Hence, a functional approach could be a way to deal with the complexities arising from trilateral work relationships inherent to gig work mediated by platforms.

VI. Gig Economy and Social Security: Indian Perspective

The Indian legislature has shown a proactive approach in including the gig workers and platforms workers within the ambit of the Code on Social Security, 2020. CHAPTER IX of the Code specifically deals with the unorganized workers, gig workers and platform workers. Section 112 provides a provision for setting up a facilitation center for improved decimation of information regarding the social security schemes for gig workers.[48] Section 114 lays down the criteria for schemes which include life disability cover, accident insurance, old age protection, health or maternity benefits and other benefits that the Central Government may determine to be fit.[49]

However, even after the inclusion of gig-workers in the code, there exist several ambiguities that act as a barrier in availing social security benefits.

1. Ambiguities in the Code on Social Security which make implementation impractical

The Code contains certain ambiguities that complexify its implementation. The First Schedule of the Code prescribes a threshold regarding the size of the establishment which continues to be mandatory in the case of pension and medical schemes with a minimum number of employees prescribed as not less than 20 and 10 respectively. This can potentially lead to the exclusion of gig workers and the people in the informal sector from gaining the benefit of pension or medical allowances who are employed in smaller establishments. The Code has also prescribed a rigid mechanism of registration, which states that the gig worker has to be mandatorily registered with the platform company where he is working for availing the social security benefits.[50] However, there is no clarity about the workers

47 *Ibid.*

48 The Code on Social Security 2020, § 112, No. 36, 2020 (India).

49 The Code on Social Security 2020, § 114, No. 36, 2020 (India).

50 The Code on Social Security 2020, § 113, No. 36, 2020 (India).

who work for multiple gig platforms. This leaves workers who work for several platforms to avoid economic uncertainty in a dilemma about their position in code.

Furthermore, there exists an overlapping usage of certain terms in the Code, specifically under Sections 2(35), 2(61) & 2(85) regarding the definitions of gig workers, platform workers and unorganized sector workers. Because of such overlap, employers may use the legal loopholes and ambiguity in definitions to shrug off their social security entitlements due to the lack of clarity concerning the nature of their employment. Apart from this, Section 103 of the Code, states that the employer is allowed to determine the cess amount himself without having to consult any authority for confirmation of the same.[51] The section specifically uses the term 'Self-assessment' which allows the employer to get away with any kind of manipulation in the determination of the cess amount payable by him, thereby leaving the employee's rights subject to the discretion or even the arbitrariness of the employers.

The Code states that to receive the social security benefits, every unorganized worker, gig worker and platform worker must be registered through an application including the Aadhar number.[52] This mandatory requirement to avail social security benefits does not align with the SC verdict wherein it was held that an Aadhaar Card is not mandatory for accruing rights-based benefits of any kind.[53] In addition to this, the Code postulates two different sets of social security instruments, one of which is to be provided by the Central Govt. and the other is to be provided by the State Govt. under Section 109(1) and 109(2).[54] This could result in clumsy implementation and can consequentially hamper the benefits to be accrued by the unorganized sector and may give rise to a conflict of powers of the state and the Centre. Furthermore, the funding mechanism is also prone to confusion as the code fails to mention any exact proportion of allocation of funds by the State or Central Government.

2. Proposed Solutions for Structural Reforms in the Code & Interim Relief Measures

To tackle the problems in providing adequate social security benefits to gig workers, a two-fold approach has been recommended. First approach is to deal with the problem of delay in implementation of the Code on Social Security and second is to reform and eliminate the loopholes from the Code.

51 The Code on Social Security 2020, § 103, No. 36, 2020 (India).

52 Code, *supra* note 50, at 12.

53 Justice Puttaswamy (Retd.) and Anr. V. Union of India and Ors., AIR 2017 SC 4161.

54 Code on Social Security 2020, § 109, No. 36, 2020 (India).

a) Measure for granting interim relief to the gig workers

For granting interim relief to gig workers in the short-term minimum health insurance, fixed working hours, grievance redressal, a minimum payment of fares, and recognition as a frontline worker shall be ensured. In addition to this, a minimum cash transfer can be fixed till the Code on Social Security comes into action and benefits under the PM Garib Kalyan Ann Yojana should be extended to app-based workers irrespective of whether they hold ration cards.[55]

b) Structural Reforms in the Code on Social Security

To provide clarity regarding the definition of "gig workers", "platform workers" and "unorganized sector", the gig workers should be directly treated as unorganized workers and the specific schemes formulated for them such as health insurance, disability allowance, housing allowance should use this term to avoid confusion. This shall also be included within Chapter I of the Unorganised Workers' Social Security Act, 2008.

Further, directions should be issued regarding the registration of Gig Workers on the E-SHRAM platform, therein there shall be a feature for the 'Aggregators' to directly pay the cess from their turnover for operating the schemes made for the Gig Workers.[56] Apart from this, the compulsory requirement of attaching "Aadhar card" for registration of unorganized workers should be amended and it could be replaced with "or any other identification proof".[57] Furthermore, there shall be an expansion of the definition of unorganized workers under Section 2(86) to include gig workers and platforms workers as it would help in avoiding duplication and would be beneficial in ensuring access to the various social security benefits to every unorganized worker covered under the Code. In addition to this, an amendment should be made to the definition of "Establishment" under Section 2(29) of the Code for including "exchange of services" as per Section 2(29)(a), to cover establishments with less than 10 employees. This will prove highly effective in increasing the coverage of the Code on Social Security Code. To increase the financial accountability and transparency regarding the 'self-assessment' done by employer, Section 103 can be amended to include an audit mechanism to be conducted by auditors who specialize in matters of the relevant industries by specifying the procedure in the said provision.[58]

55 The Pradhan Mantri Garib Kalyan Yojana, *Package Is A Comprehensive Relief Package Of Rs 1.70 Lakh Crore Yojana For The Poor To Help Them Fight The Battle Against Corona Virus* https://www.india.gov.in/spotlight/pradhan-mantri-garib-kalyan-package-pmgkp (last visited Oct. 4, 2021)

56 Ministry of Labour & Employment Government of India, https://eshram.gov.in/home (last visited Sep. 27, 2021).

57 Code, *supra* note 50, at 12.

58 Code, *supra* note 51, at 12.

There shall be an attempt to incorporate a mechanism for the portability of the funds among the States so that the due funds reach the beneficiaries irrespective of the State in which they were collected. Furthermore, in this regard, there can also be an amendment to Sections 109(2) & 109(3) to make the States solely responsible for providing social security benefits to the unorganized sector workers for clarity in terms of accountability. The provision can also allow for the States to share a certain portion of the total cost of providing such security benefits with the Central government.

VII. Concluding Remarks

The gig economy is a rapidly growing phenomenon in India as well as other major industrialized countries. The rise of this economy has contributed to complex projections due to the "blurring of boundaries" between dependent and independent workers. The traditional paradigms of dependent and independent workers are gradually ceasing to be the norm. Current framework that provides for binary classification of workers i. needs to be revised to accommodate the needs and rights of gig workers.

In the first part, the paper has analyzed the reasons for the growth of the economy and its impact on labour market. Flexibility of working hours combined with other reasons like low entry barriers, response to employment problems created by economic shocks, lack of discrimination as seen in traditional employments attracted the workers towards this economy.

In the second part, problems faced by these workers face due to misclassification has been analyzed. The binary classification system leaves these workers in a "grey area" as they share characteristics of both- an employee or an independent worker. To recommend solutions, a study has been made concerning the status of these workers on the international front. International evidence has highlighted a rather heterogeneous picture, but with one point was common to all – Absence of regulation to accommodate needs of these workers.

Finally, in the last part, Social Security Code of 2020 has been analyzed. Structural ambiguities in The Code have been pointed out. To deal with these ambiguities, recommendations have also been proposed.

If we observe the root causes of the industrial revolutions of the last centuries in parallel with the events of today, we can conclude that social and institutional changes play a significant role in the need to change legal regulations. Just as problem-solving innovations did not emerge overnight in the 19th century, the same cannot be achieved in a short period for the gig workers. The legal problems with this economy need to be patiently and thoughtfully evaluated and framed.