

# 'There's an app for that' - The recognition of gig workers in India

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Freelancing or engagement of independent contractors on a project-to-project basis has been a common phenomenon, albeit constituting a small portion of the labour pool in India. However, the second half of the previous decade saw a massive increase in the engagement of such independent contractors through technology platforms. Such platforms connect customers with service providers (i.e. independent contractors) ensuring minimal interaction with the aggregator who would act as the intermediary.

The rise of taxi aggregators (such as Uber, Ola), food delivery partners (such as Zomato and Swiggy) and workforce supplier platforms (such as Urbanclap) has disrupted the traditional notions of employment. This has led to creation of a new business model called 'gig economy' and a new class of labour interchangeably referred to as 'gig workers', 'freelancers', 'agile workforce', 'sharing economy' or 'independent workforce'. In the gig economy structure, gig workers are hired for piece work or 'gigs' for a short term, as opposed to permanent or fixed term employment. Therefore, businesses hire them for work which forms part of their ordinary business, but do not bear any costs related to statutory employment benefits.

Such unrelenting rise of the gig economy in recent years is attributable to the autonomy and flexibility available to workers, additional pay, access to opportunities and ease of use for customers. However, the same gig economy is criticised as a means for businesses to cut costs and subvert employment laws. This new class of labour is plagued with challenges concerning lack of stability for workers, downward wage pressure and lack of minimum safety nets that are traditionally afforded to full-time employees.

Extant labour laws in India only benefit permanent and fixed term employees, and do not confer any benefits to such gig workers. They are solely governed by the terms and conditions of their contract with the aggregators, which do not provide for any social security benefits and other benefits such as gratuity, severance compensation, etc.

# Code on social security 2019

The proposed Code on Social Security, 2019 (Code) which was introduced in the Lok Sabha on 11 December 2019, addresses this new class of labour. The Code amalgamates and refashions nine extant labour laws on social security in India and has for the first time recognized and defined gig workers, and platform workers. Gig workers are those persons who earn from activities 'outside of traditional employer-employee relationship' and platform workers are persons who are engaged for such activities through an online platform. Therefore, independent contractors engaged directly by businesses would be classified as gig workers, and persons engaged via a technology platform such as Uber drivers or Zomato food delivery agents would be classified as platform workers.

The Code seeks to confer certain social security benefits to gig and platform workers. As per the provisions of the Code, the Central Government may formulate and notify suitable social security schemes for gig and platform workers on matters relating to (a) life and disability cover; (b) health and maternity benefits; (c) old age protection; and (d) any other benefit as may be determined by the Central Government. Further, the Central Government may also constitute a Social Security Fund for provision of social security to inter-alia gig and platform workers.

However, the Code does not equate gig and platform workers with employees but classifies them as a type of unorganized workers. Therefore, gig and platform workers will not be guaranteed the same social security benefits as available to regular employees but will be governed by the schemes that may be framed by the Central Government in this regard. Further, the Code does not guarantee minimum wages for gig and platform workers, neither does it prescribe for holidays or sick pay. The Code also does not provide for any protection against arbitrary termination of employment by the employer.

## International jurisprudence

In the USA, the view with respect to whether gig workers should be treated as employees of their hiring entities is divided. The District Court in California, in the case of Douglas O'Connor v Uber Technologies Inc. [No. C-13-3826 EMC], held that the control exercised by Uber over its drivers (who are gig workers) is sufficient to categorize the drivers as its employees. Recently, California passed a bill (AB5) to amend the Labour Code and the Unemployment Insurance Code. As per AB5, a person providing services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates all of the following conditions i.e. (a) the worker is free from the control of the hirer in relation to the performance of work; (b) the worker performs the work that is outside the usual course of the hirer's business; and (c) the worker is customarily engaged in an independent business which partakes the same nature of work performed by the hirer. It appears that the intention of the legislature is to extend employee related benefits to gig workers if the above mentioned tests are satisfied. On the other hand, in Florida, the Department of Economic Opportunity by its order in March 2015 held that drivers engaged by Uber are not its employees as they are fairly independent in terms of their activities.

The European Union issued the Directive of the European Parliament and of the Council on Transparent and Predictable Working Conditions in the European Union (EU Directive) in respect of workers who undertake short-term employments, on-demand contracts or similar contracts. The EU Directive provides that gig workers should also be provided with certain minimum rights aimed at promoting security and predictability in 'employment relationships' while preserving labour market adaptability. At commencement of the 'employment', 'employers' would provide information to such employees related to essential aspects of employment including working hours and remuneration. Employers should not prohibit a worker from taking up employment with other employers outside the time spent working for them. It is further provided that while Member States can recognize on-demand and similar contracts in their jurisdiction, they shall take measures to ensure that workers engaged through such contracts are not subjected to abuse.

## Conclusion

With millennials placing a higher value on flexible work and meaningful work-life balance, it is clear that the gig economy is here to stay. The Code in its current form merely provides for a framework in respect of social security benefits for gig and platform workers and does not lay down the obligations or liabilities of the employer, if any. The schemes that the Central Government would publish in due course, after the Code has been brought into force, would determine whether the aggregators will continue to engage such gig workers as independent contractors or be forced to treat them as employees. If the schemes are devised such that the aggregators will have to take on the additional burden of providing social security benefits, the increased business cost incurred may in turn be passed on to gig workers, thereby reducing their take home income.

Only the future will tell if the Central Government is able to devise schemes to achieve the goal of fairness for gig workers and offer them adequate protections, while also letting businesses retain the flexibility of engaging independent contractors and allowing these services to remain competitive bearing in mind new age economic dynamics.

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