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**GIG WORKERS AND EMPLOYMENT LAWS:  
An Indian Perspective**

*Anand Pawar & Ankit Srivastava*

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## Contents

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Volume V	ISSN: 2582-1903	April 2022 - March 2023
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<i>Excerpts from the V. R. Krishna Iyer Annual Law Lecture Series</i>	<i>Page</i>
1. HINDU PHILOSOPHY AND MODERN JURISPRUDENCE <i>Justice V. Ramasubramanian</i>	1

### *Special Article*

2. THE UNIFORM CIVIL CODE DEBATE IN INDIA: Conceptual Predicaments, Historical Legitimacy, and Challenges to Pluralism <i>Chanchal Kumar Singh &amp; Mritunjay Kumar</i>	12
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### *Articles*

3. THE UNDERSTANDING OF ANIMAL RIGHTS: Advancing a New Approach <i>Sanchit Sharma</i>	63
4. GIG WORKERS AND EMPLOYMENT LAWS: An Indian Perspective <i>Anand Pawar &amp; Ankit Srivastava</i>	88
5. INSIDER TRADING: Contours of Liability and Judicial Approach <i>Girjesh Shukla &amp; Adity Dehal</i>	103
6. A TRYST WITH SUCCESSION RIGHTS: An Impact Assessment of the Hindu Succession Amendment Act 2005 on Women Landholders <i>Pranay Agarwal</i>	123
7. CENSORSHIP: A Moral Dilemma or an Immoral Siege on Freedom of Speech? <i>Dhawal Shankar Srivastava &amp; Zubair Ahmed Khan</i>	144
8. THE LEGAL IMPLICATIONS OF THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022: A Comprehensive Analysis of Constitutional, Criminal, and Forensic Dimensions <i>Shaifali Dixit &amp; Chandrika</i>	166

*Notes and Comments*

9. DISSENT IN THE AADHAAR JUDGEMENT: Exploring Dimensions of the future of Privacy Jurisprudence in India  
*Varin Sharma* 190
10. HARMONIZING DIVERSITY: Challenges in Unifying Marriage and Divorce Laws in India  
*Alok Kumar & Namita Vashishtha* 213
11. DIVIDING EQUALITY DESTROYING AFFIRMATIVE JUSTICE: Assessing Economically Weaker Sections (EWS) Reservation in India  
*Mohammad Hussian, Showkat Ahmad Wani & Dhriti Bole* 236
12. HUMAN RIGHTS PROTECTION AT STATE LEVEL: A Critique of the Functioning of SHRCs in India  
*Nehru & Hitesh Manglani* 253
13. *SUBHASH DESAI v. PRINCIPAL SECRETARY*: Interpreting the Issues of the Role of the Speaker Under the Tenth Schedule, and the Symbols Order  
*Abhinav Yadav* 272
14. LEGAL CHALLENGES POSED BY ARTIFICIAL INTELLIGENCE IN CONSUMER ONLINE DISPUTE RESOLUTION  
*Vibhuti Jaswal & Shiekhar Panwar* 289
15. DAM SAFETY ACT, 2021: A Critical Appraisal  
*Narayan Chandra Sarangi* 300

# GIG WORKERS AND EMPLOYMENT LAWS: An Indian Perspective

*Anand Pawar\* & Ankit Srivastava\*\**

[Abstract: *The driving force of the gig economy is technological advancements that have expanded the horizon of workers definition encapsulating concepts like Gig-Workers and Platform Workers. In India, this concept has witnessed a tremendous growth owing to factors like urbanization and increasing smartphone penetration. Unlike traditional workers, Gig-Workers who are often independent contractors tends to take temporary jobs offered by web-based platforms often presenting long term challenges like hazardous work conditions and limited benefits. This paper studies the regulatory frameworks of other major jurisdictions regarding gig workers and with those references, analyses its Indian counterpart. This is followed by a critical examination of the concurrent legal landscape, which assists in the identification of gaps, hence adding to the propositions put forth to enhance the protection of gig workers' rights.*

*With the help of a thorough comparative anatomisation of regulatory frameworks all over the globe and a detailed examination of the Indian approach, this paper delves deeper into the challenges faced by the gig economy, followed by suggestions as to how strategies could be formulated to effectively regulate it. In order to harness the potential of the Indian gig economy, we require stronger regulations and authorities which will, as an additional advantage, help mitigate risks as well. This paper aims to contribute to the ongoing global and national discourse on the regulation of the gig economy, laying out a more seamless journey for the fair and sustainable employment in this new age.]*

## I

### Introduction

In the past two decades, growing technological infrastructure and its mounting awareness have expanded the scope of employment manifolds. As a consequence of such global expansion of technological infrastructure, 'Gig-Workers' and 'Platform Workers' can be observed as emerging workforces in India and across the

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\* Registrar, Rajiv Gandhi National University of Law, Patiala. Email: [ap.rgnul@rgnul.ac.in](mailto:ap.rgnul@rgnul.ac.in)

\*\* Assistant Professor, Rajiv Gandhi National University of Law, Patiala. Email: [ankit\\_faculty@rgnul.ac.in](mailto:ankit_faculty@rgnul.ac.in).

globe. Rapid growth in the gig economy is driving a global economic revolution. Due to expanding urbanization, rising smartphone penetration and advancements in associated technologies, India is poised to be at the forefront of this technological transformation concerning Gig-Workers.<sup>1</sup>

“Gig-Economy” is a market system wherein individuals or companies hire independent contractors. Artists used the slang term "gig" to refer to jobs that had a set duration. The phrase "gig worker" describes a person who accepts a temporary job that must be finished in a specific amount of time under unusual working conditions. As another term frequently associated with gig-economy, "Platform Workers" generally refers to employees who work for companies that offer services to customers directly through web-based platforms. While the dependence on internet might be a relevant factor to differentiate gig-workers and platform workers, the nature of employment concerning these categories of workers remains the same. Therefore, both the categories of workers can be safely understood to call for the same reforms in employment laws.

There are many advantages associated with gig-economy that entice workers to take-up such contractual employment. However, the long-term repercussions associated with gig-economy are contrary to the apparent advantages. With perks like picking their schedules, holidays off, shift times, and employers, it's no surprise that temporary employees have become more common.<sup>2</sup> Employees here have the flexibility to pick their organization for as long as they like, rather than being forced into a job. From a freelancer's perspective, such flexibility might facilitate them to strike a better work-life balance, than is possible, in traditional industries.<sup>3</sup>

Their need for more independence and versatility in their private life is fulfilled with the help of gig platforms. Due to advent of the gig economy, precarious work is now a viable option. Food delivery, cab driving etc., are examples of such precarious work premised on temporary contracts. Freelancers and contractors are to take the place of regular workers as the new golden rule. According to the Boston Consulting Group, there might be up to 90 million gig workers in India within the next ten years, making the gig economy a bigger part of the unorganized sector over the coming decade.<sup>4</sup>

While working as a freelancer gives you some independence, it has a significant cost. The contractual relationship with minimal scope of negotiation is one of the

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<sup>1</sup> India NITI Aayog, *India's booming gig and platform economy perspectives and recommendations on the future of work*, NEW DELHI NITI AAYOG (2022).

<sup>2</sup> *Id.*

<sup>3</sup> Alex de Ruyter, Martyn Brown and John Burgess, *The Fourth Industrial Revolution*, 72(1), J. INT. AFF. 8 (2019).

<sup>4</sup> Boston Consulting Group, *Unlocking the Potential of the Gig Economy in India*, Michael and Susan Dell Foundation (2021).

gig economy's main concerns. The ambiguity surrounding gig workers' employment relationships frequently exposes them to risks like poor pay, excessive hours, unpaid sick days, a lack of security in the workplace and absence of conflict resolution procedures. Because of the issue, the legislature introduced a preliminary draft of the "Code on Social Security, 2019", which is now taking action (the "Code").<sup>5</sup> The code provides solitary protection for contract employees. The concept of "gig work" is introduced, and it suggests social security policies for these individuals. The Code on Social Security, 2019 inter alia includes a Social Security Fund for Gig-Workers. Further, benefits such as accident insurance, disability cover, old-age protection, health and maternity related schemes have been included in the Code for the purpose of ensuring security and financial stability of Gig-Workers.

According to Niti Aayog's research in 2022, around 77 lakh people were working in the gig economy in 2020–21. By 2029–30, it is anticipated that the gig economy would have attracted 2.35 crore employees. There are now 47% of gig workers in medium-skilled employment, 22% in high-skilled professions, and 31% in low-skilled jobs.<sup>6</sup>

Technological development and the rise of the gig workforce have altered the traditional conception of how employment is organized, creating substantial problems for the labour law system.<sup>7</sup> The line between an independent contractor and an employee is blurred as a result of the gig economy, which questions the fundamental idea of the employment contract.<sup>8</sup> This distinction is crucial because it specifies the labour laws that apply to gig workers and the responsibility of the employer towards gig employees in terms of pay, social security, working conditions, and the resolution of employer-employee disputes.<sup>9</sup> People are now saying that the gig economy is bringing about "the 4th industrial revolution" that accommodates flexibility of employment in the form of contractual workers, as opposed to conventional employment.

The present work sets the premise by explaining the concept of gig-workers, post which it explains the regulatory regime of some major jurisdictions concerning gig-workers. Further, India's legal framework vis-à-vis gig-workers has been explained, followed by recommendations to improve India's legal regime concerning gig-workers, thereby ensuring better protection of their rights.

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<sup>5</sup> Tayal H, *Regulating the Gig Economy in India: How Secure are Gig Workers?* 28 SUPREMO AMICUS (2022).

<sup>6</sup> *Id.*

<sup>7</sup> Mathur S, *Labour Law and the Gig Economy: Towards a Hybrid Model of Employment*, INDIA CORPLAW (Dec. 25, 2022) available at: <https://indiacorplaw.in/2022/12/labour-law-and-the-gig-economy-towards-a-hybrid-model-of-employment.html>, (last visited Jan. 15, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> Deepika M G and Madhusoodhan M, *Labour Laws for Gig Workers in the Context of Labour Law Reforms*, EPW (2022).

## II

### Workers in the Gig Economy: Employees or Independent Contractors?

The duration of the employment relationship, the employee's legal categorization, and the kind of work they do are only a few of the factors that go into classifying this workforce. Platforms that support gig work facilitate enough financial prospects, but draw criticism for aggravating the problems with job security, commercialization, and fragmentation of employment.<sup>10</sup> The triangular relationship between the producer (the worker), the consumer (the customer), and the digital company makes it difficult to regulate the gig economy.<sup>11</sup> The relationship between the producer and the aggregator is governed by some kind of agreement. A network of contracts is used in place of a long-term, solid employment connection in this new work model.<sup>12</sup> Unlike an employment agreement, the user agreements that Uber drivers and Airbnb hosts have with their respective companies are fairly straightforward and consist only of terms of service.<sup>13</sup>

Owing to the purpose and nature of gig employment, gig workers share characteristics with both independent contractors and employees.<sup>14</sup> They are similar to independent contractors as the terms of their work are regulated by a contract. However, in effect, the kind of work undertaken by gig-workers is no different than a regular employee. The conclusion is that many who work in the gig economy defy easy classification as either contractors or employees. Even while such a classification is technically feasible, it is not suggested for several normative factors.<sup>15</sup> Aggregators may incur extra expenditures, such as taxes, back wages, and fines if gig workers are rigorously classified as employees. Such extra expenditures may increase the probability of the employer's business model becoming unprofitable.<sup>16</sup> The result maybe a worse customer experience, fewer jobs overall, and a slowdown in their economic growth.<sup>17</sup> If gig workers were categorized as independent contractors, it is highly probable for them to continue to face

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<sup>10</sup> D.D. Acevedo, *Unbundling Freedom in the Sharing Economy*, 91(5) S.C.L. REV. (2018).

<sup>11</sup> S.K. Rahman, and K Thelen, *The Rise of Platform Business Model and the Transformation of Twenty-First Century Capitalism*, 47(2) POLITICS AND SOCIETY (2019).

<sup>12</sup> *Id.*

<sup>13</sup> Tom Slee, *What's Yours is Mine: Against the Sharing Economy*, THE GUARDIAN (Apr. 02 2016) available at: <https://www.theguardian.com/books/2016/apr/02/whats-yours-is-mine-against-the-sharing-economy-tom-slee-review> (last visited Jan. 15, 2023).

<sup>14</sup> *Supra* note 7.

<sup>15</sup> R.B. Collier, V.B. Dubal, and C Carter, *Labour Platforms and Gig Work: The Failure to Regulate*, IRLE WORKING PAPER. No 106, (2017).

<sup>16</sup> *Supra* note 9.

<sup>17</sup> *Id.*

exploitation and be denied basic employment rights like overtime pay and sick leave.<sup>18</sup>

A person who is considered an employee typically receives periodic fixed wages and hired labour for a longer period. Gig and platform workers, however, are frequently employed and compensated temporarily.<sup>19</sup> Generally observable examples of Gig-Workers are Ola and Uber drivers as well as Uber and food delivery aggregators like Zomato, Uber Eats, Domino's, and Swiggy. With around 200 million gig workers globally, this platform worker system has been successful for a very long time.<sup>20</sup>

Although platform control is the most important legal criterion for identifying an employee's management of labour relations in the gig economy, where prestige and control over working circumstances are paramount,<sup>21</sup> the likelihood that the workers will be categorized as employees increases with the level of control over workers exercised by the enterprises. In order to understand the increase in the degree of control over gig-workers by an enterprise post attainment of the status of employee by gig-workers, the example of cab-drivers is appropriate. The contractual nature of employment of cab-drivers ensures them relatively more independence in terms of hours of work, routes chosen to reach the destination, total duration of service etc. However, if such workers attain the status of employee, the enterprise will be able to exercise a greater degree of control in terms of the time taken to reach the destination, routes chosen etc.<sup>22</sup> When trying to figure out whether or not someone is an employee, independent contractors, or both, governments have established a wide range of criteria. In the US, various tests are employed, including the ABC test,<sup>23</sup> the Borello test,<sup>24</sup> and the common law (right to

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<sup>18</sup> *Id.*

<sup>19</sup> F. Zaccagnino, *Gig Economy Law in Different Countries around the World*, BUNNY STUDIO BLOG (September 2021) available at: <https://bunnystudio.com/blog/gig-economy-law/>, (last visited Jan. 15, 2023).

<sup>20</sup> P. Dubey, *Gig & Platform Workers: A Way Towards Formal Labour Recognition* ISLS NAGPUR MULTIDISCIPLINARY L. R. 57 (2022).

<sup>21</sup> *Id.*

<sup>22</sup> *Supra* note 15.

<sup>23</sup> *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal. 5th 903. (California). *The ABC test declares that a worker is an independent contractor rather than an employee, based on the following parameters:*

- (i) *The individual (worker) is not under the direction of the hirer in the performance of his or her work;*
- (ii) *The individual completes work that was not designated by the hiring company; and*
- (iii) *The individual is engaged in an independently established trade.*

<sup>24</sup> Unemployment Insurance Code 629-657 Excluded Services, *The ABC Test for Employees or Sub-Contractors - AB5 - The Uber Law*, available at: <https://theabctest.com/index.php/the-abc-test/borello-test> (last visited Jan. 15, 2023).



control) test<sup>25</sup>. To determine if the employer in India controls how the work is performed or how much the employee is connected to the company's business, control and integration tests are used. If the employer exercises control over the modes and means through which the contractor intends to work, it may be said that an employer-employee relationship exists between the employer and the workers engaged by the contractor.<sup>26</sup>

In this respect, the Uber case<sup>27</sup> has generated the greatest debate. Uber drivers took their case to court, but the California Supreme Court ruled against them, saying that drivers had extensive autonomy over their work schedules, cars, locations, and even the freedom to drive for competitors.<sup>28</sup> As a result, they are not entitled to employee rights because they are independent contractors. On the other hand, Uber drivers must be recognised as employees, according to a recent decision by the Supreme Court of the United Kingdom (UK). Contrary to the California decision, this judgment emphasizes that platform owners accept responsibility for workers' safety and well-being because of the power they hold over them.<sup>29</sup> While the California Supreme Court placed more weight on independence of workers assured due to contractual nature of employment, the Supreme Court of United Kingdom considered the effect of such contractual employment, and equated the same with conventional employment.

There is a lot of pressure on lawmakers to classify independent contractors as employees as a result of the pandemic's terrible treatment of gig workers.<sup>30</sup> A public interest lawsuit in India asks the Supreme Court to grant gig workers job status.<sup>31</sup> Which of the two categories a gig worker belongs to has traditionally been the subject of this discussion, along with the distinction between independent contractors and employees.<sup>32</sup>

The subject of whether or not someone is an employee, independent contractors, or both has been brought before courts all around the world. The criteria used to decide

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*Borello "emphasizes statutory purpose as the touchstone for deciding whether a particular category of workers should be considered employees rather than independent contractors for purposes of social welfare legislation."*

<sup>25</sup> K. Thordarson, *Worker Classification in the Gig Economy* 17 HASTINGS BUSINESS LAW JOURNAL 137 (2017).

<sup>26</sup> *Supra* note at 9. See *Ram Singh and Ors. v. Union Territory, Chandigarh* 2004(1) BLJR 490.

<sup>27</sup> *Adolph v. Uber Technologies, Inc.*, Cal. Ct. App. Case No. G059860. (California).

<sup>28</sup> *Id.*

<sup>29</sup> *Supra* note 19.

<sup>30</sup> M. Balaji, *India's Gig Economy in the Pandemic*, MEDIUM, available at: <https://medium.com/the-%C3%B3pinion/indias-gig-economy-in-the-pandemic-895d93235ca3%3E%20%E2%86%91> (last visited Jan. 15, 2023).

<sup>31</sup> *Supra* note at 7.

<sup>32</sup> *Id.*

whether a person is an employee or an independent contractor vary between jurisdictions, including India, and often focus on things like the level of control the employer has over the worker and the parties' intentions.<sup>33</sup> These assessments, which are still being developed around the world, can evaluate things like the way people are hired and fired, who owns the equipment, who holds the contract title, and who sets the norms and standards.<sup>34</sup> These elements are significant in the factual matrix of gig work, which is discussed below. Scholars agree, however, that because employer control interpretations are inherently subjective, such assessments frequently produce conflicting outcomes.<sup>35</sup> Thus, it is not strange to see that various courts including the U.K. and U.S. Courts have come to very diverse decisions about the same matter.<sup>36</sup> In certain countries, courts have categorized gig workers as employees. However, in countries like Australia and Brazil, the legal system has classified gig workers as independent contractors.<sup>37</sup>

So, it is speculated that gig workers don't fit neatly into either the independent contractor or employee categories. Even if such a categorization is technically feasible, it should be avoided for several ethical considerations.<sup>38</sup> Aggregators' business models might be undermined if they are forced to bear the whole financial burden of reclassifying gig workers as employees, including paying back salaries and penalties. In turn, this might worsen the customer experience, provide fewer jobs overall, and stunt their economic development. Gig workers would continue to be exploited and denied fundamental job rights like overtime pay and medical leave if they were classified as independent contractors.<sup>39</sup>

### III

#### Position of Gig-Workers in other Jurisdictions

As a pioneer of regulatory mechanisms for gig-workers, California became the first U.S. state to consider gig-workers in a separate light *vis-à-vis* other workers in 2019.<sup>40</sup>

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<sup>33</sup> *Sushilaben Indravadan Gandhi v. The New India Assurance Company*, A.I.R. 2020 S.C. 1977 (India).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Supra* note 30, 31, 32.

<sup>37</sup> *Supra* note at 7.

<sup>38</sup> *Id.*

<sup>39</sup> G. Jeong, *Comparative Employment and Labor Law Study: Diverse Approaches towards Providing Protections for Gig Workers in Various Jurisdictions*, SSRN (December 6, 2021).

<sup>40</sup> P. Mohanty *et al.*, *Us, Europe Lessons for Gig Economy Law*, Fortune India: Business News, Strategy, Finance and Corporate Insight (2022), available at: <https://www.fortuneindia.com/long-reads/us-europe-lessons-for-gigeconomy-law/110665> (last visited Dec. 26, 2022).

In the case, *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, the United States Supreme Court in California elaborated on several important issues,<sup>41</sup> which involved individuals who work in the gig economy. Providing countrywide courier delivery services, Dynamex Operations West, Inc. ("Dynamex"), a company based in the USA, employed multiple delivery professionals, or drivers, but classified them as independent contractors rather than employees. The Industrial Welfare Commission's pay orders, which specified the minimum wage, adequate working conditions, and set working hours for employees, no longer had to be followed as a result of this move.

They were considered workers before 2004 at Dynamex. In contrast, in 2004, it entered into a new kind of contract with these employees, requiring them to arrange for their automobiles and pay for their petrol, tolls, and transportation. The optimal time to work for Dynamex was entirely up to the drivers. Dynamex and the clients would negotiate the fees to be paid to these drivers. These drivers were not paid according to any established criteria. Some received a fixed price, while others received payment as a proportion of the delivery fee. Charles Lee, who had signed the independent contractor agreement, was one such driver. After leaving Dynamex for three months, he filed a petition on behalf of himself and other people in a similar circumstance, accusing Dynamex of violating both the pay order of the International Welfare Commission and the labour laws of the USA.<sup>42</sup>

After years of appeals, the California Supreme Court sided with the petitioners and threw out all pre-existing criteria for classifying workers as employees or independent contractors. The "ABC Test" is a new legal standard created by the court that makes it the employer's responsibility to prove that its workers are not employees entitled to social insurance payments. The court determined that this may be proven only if all three requirements of the ABC Test, which are listed below, are met:<sup>43</sup>

- A. The employer has no authority under the contract or in practice to manage or guide the employee in how he executes his job.;
- B. The employee does work for the hiring entity that is outside of the normal course of business or is not often considered an employee of the employing entity given the type of work he does for the hiring entity; and
- C. The employee regularly engages in a trade, profession, or business of the same character as the work done for the hiring organization that has been independently established.

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<sup>41</sup> *Supra* note 23. *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal. 5<sup>th</sup> 903 (California).

<sup>42</sup> *Supra* note at 23.

<sup>43</sup> *Id.*

One million gig workers who were previously categorized as independent contractors have benefited from the change, but businesses like Uber, Lyft, Instacart, and others who have made millions using gig work-based (cheap labour) business models have strongly objected to it, citing reasons including lack of stability and absence of job-security.<sup>44</sup> They engaged in a year-long pitched battle, mobilizing rideshare drivers to vote "yes" on a referendum in 2020 to exempt them from classifying gig workers as employees. They spent \$200 million on the referendum's campaign alone. However, a California court invalidated the referendum a year later in 2021 because it attempted to restrain the state's legislative authority by requiring a seven-eighths legislative majority (87.5%) for amendments to pass.<sup>45</sup>

To regulate the transparency of working conditions and recognize minimum rights for on-demand, voucher-based, and platform jobs, the European Union ("EU") recently published the Directive of the European Parliament and of the Council on transparent and predictable working conditions ("Directive") for workers (in EU member states) who engage in short-term employment, on-demand contracts, or comparable contracts.<sup>46</sup> The Directive, which acknowledges a set of basic rights under these on-demand contracts and zero-hour contracts, does not apply to those who are self-employed.<sup>47</sup> This is because contractors often take charge of their schedules and other aspects of their jobs. According to the Directive, on-demand workers and those with "zero-hour" contracts are particularly vulnerable since they do not have guaranteed hours of employment. As a result, they should be subject to the requirements of the Directive regardless of the amount of hours they put in. According to the Directive, the nature of the employment link should not be determined by the parties' definitions of their relationship but rather by the circumstances of each individual instance as they relate to the nature of the work being performed.<sup>48</sup> This clarification was made to address the issue of "bogus self-employment," which occurs when a person is deemed self-employed despite meeting all requirements for an employment connection to enable the hiring body to ignore its legal and financial duties.<sup>49</sup>

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<sup>44</sup> T. Marks, *The California Supreme Court Deals a Blow to Independent Contractors*, FORBES (Jul. 25, 2018), available at: <https://www.forbes.com/sites/tonymarks/2018/05/29/the-california-supreme-court-deals-a-blow-to-independent-contractors/?sh=21b2f770a18> (last visited Dec. 12, 2022).

<sup>45</sup> *Id.*

<sup>46</sup> Council of the European Union Permanent Representatives Committee (Part 1) EuropaC, (2019) available at: <https://data.consilium.europa.eu/doc/document/ST-6188-2019-ADD-1/en/pdf> (last visited Dec. 12, 2022).

<sup>47</sup> *EU Law Fixes Minimum Rights for 'Gig Economy' Workers*, BBC NEWS (Apr. 16, 2019), available at: <https://www.bbc.com/news/world-europe-47947220>. (last visited Dec. 26, 2022).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

The need for statutory protection arises, as stated in a recent judgment by the United Kingdom Supreme Court against Uber since an employer is often in a position to dictate such contract conditions and the individual doing the job has little or no capacity to alter them.<sup>50</sup> Uber drivers are considered "workers" under the UK Employment Rights Act of 1996, giving them access to benefits including paid time off and minimum wage. The Dutch High Court took a similar approach, which determined that Uber's contractual relationship with these drivers, met the requirements for an employment contract.<sup>51</sup> Similar decisions have been made throughout Europe with Spain and Italy emerging as new frontiers for gig worker rights.<sup>52</sup> The European Commission and the French government are actively collecting input to develop regulations that will further safeguard platform employees.<sup>53</sup> The "multi-factor test" in *Hollis v. Vabu*<sup>54</sup> is followed by Australian law to establish whether a worker is an employee or an independent contractor based on the "level of control" exercised by the employer.<sup>55</sup>

The gig economy platform model in France is predicated on the idea that gig economy participants are independent contractors. Legally speaking, the distinction between self-employment and formal employment is crucial. This is especially true given the nation's rigorous employment restrictions.<sup>56</sup> This includes limitations on working hours, the obligation of employers to pay social security taxes, the potential right to benefits following termination, and termination protection. Case law has highlighted the importance of a person's relationship with the service provider in determining their position as an employee.<sup>57</sup> Critical determinants include things like their level of control, the equipment offered, and how they are integrated into the business. A law granting rights to those who provide services via digital platforms was passed in 2017.<sup>58</sup> This covers the obligation of the business to pay for accidents at work, as well as requirements to pay for professional development and

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<sup>50</sup> *Uber BV v. Aslam* (2021).

<sup>51</sup> *Id.*

<sup>52</sup> H. Tayal, *Regulating The Gig Economy In India: How Secure Are Gig Workers?* 28 SUPREMO AMICUS (2022).

<sup>53</sup> K. Haritima, *The Gig Is Up: International Jurisprudence and the Looming Supreme Court Decision for Indian Gig Workers*, THE LEAFLET (May 6, 2024).

<sup>54</sup> *Hollis v. Vabupty Ltd.*, 2001 HCA 44.

<sup>55</sup> Bénédicte Apouey et al., *Gig Workers during the COVID-19 Crisis in France: Financial Precarity and Mental Well-Being*, J URBAN HEALTH (Sep. 22, 2020) available at:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7508236/> (last visited Feb. 13, 2023).

<sup>56</sup> *Id.*

<sup>57</sup> E Chambas, T Perroud, *France: Legal Response to Covid-19* in THE OXFORD COMPENDIUM OF NATIONAL LEGAL RESPONSES TO COVID-19 (Jeff King and Octávio LM Ferraz et al., eds. 2021).

<sup>58</sup> Leonardo Sampaio, *The "El Khomri Law" on Francois Hollande 's Employment and Competitive Politics*, RESEARCH GATE (Dec. 2022), available at: [The El Khomri Law on François Hollande's Employment and Competitiveness Politics](#).

the right to strike and form a union. While the Supreme Court determined in 2018 that a rider is an employee of a service provider and that they have the authority to impose fines on gig workers that could result in termination, France still regards gig economy workers as being self-employed. A new law would permit platforms to establish a social policy to specify people's rights and obligations as suggested in 2019. The Constitutional Court, however, declared it to be unconstitutional. They concluded that the only entity with the authority to determine whether a person is an employee, is the court.<sup>59</sup>

The protection of gig workers is being discussed in two ways, although there are no specific laws or bills that address it, in Germany: (1) classifying gig workers as employee-like persons and applying the appropriate protections, and (2) classifying gig workers as homeworkers and applying the pertinent protections under the Statute on Homeworkers.<sup>60</sup> In the interim, the German Federal Labor Court overturned the regional labour court's ruling and determined that a gig worker who used the online platform service Roamler to evaluate the presentation of items in retail outlets can be categorised as an employee as of December 1st, 2020.<sup>61</sup> The court acknowledged that although the gig workers were not contractually required to follow the platform's directions, they still performed their duties like that of employees, being subject to directives and reliant on the platform owner. The Court held that the platform's organisational structure, in particular the incentive system, was created in such a way that gig workers were constantly required to accept and complete specific orders.<sup>62</sup>

The afore-described jurisdictions, i.e. America, U.K., E.U. France and Germany explain the global uncertainty revolving around gig-workers, and the internationally observable ambiguity surrounding the regulatory mechanism concerning gig-economy, thereby calling for exclusive regulation of gig-economy by distinctly identifying the issues of gig-workers.

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<sup>59</sup> P.R. Kremp, *Employment and Employee Benefits in Germany: Overview*, THOMSON REUTERS (2021) available at: [https://uk.practicallaw.thomsonreuters.com/3-503-3433?contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/3-503-3433?contextData=(sc.Default)) (last visited Dec. 2022).

<sup>60</sup> *Id.*

<sup>61</sup> *Supra* note 40.

<sup>62</sup> *Id.*

## IV

### Existing Regulatory Framework in India

For the first time, gig workers are covered by India's labour laws, which have just been enacted, along with specific measures for their welfare. It is not only in developing countries that problems associated with this kind of work have not been given the attention they need.<sup>63</sup>

Workers who engage in any work arrangement that is outside the usual form of employment are referred to as "gig workers" under Section 2(35) of the Social Security Code.<sup>64</sup> This term may also include "platform employees," who are defined by Section 2(61) of the Social Security Code<sup>65</sup> as those who agree to perform platform work for any person or organisation that uses online resources to connect with other organisations to solve an issue in exchange for money.<sup>66</sup> An "unorganised worker" is defined by section 2(86) as a self-employed, home-based, or wage worker in the unorganised sector. Instead of broadening the definition of employee under the Act, it has split these groups of employees by defining the three words separately.<sup>67</sup> Although the definition is vague as to what exactly a gig worker is, it makes it apparent that they are distinct from normal employees and other groups of non-employee workers.<sup>68</sup>

The gig economy workers have not been attempted to be classified as employees under the new labour laws. In Chapter 1, Section 2(26) of the Code on Social Security, the term "employee" is defined as "any person employed on wages by an establishment, directly or through a contractor to conduct any skilled, semi-skilled, unskilled or any other labour, whether the terms of employment be explicit or implied."<sup>69</sup> Full-time workers in India are protected by many pieces of legislation, including the Minimum Wages Act of 1948, the National Minimum Wage Act of 1948, the Industrial Disputes Act of 1947, and the Shops and Establishments Acts of various Indian states. Supporting employment status may lead to decreased

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<sup>63</sup> *Supra* note at 9.

<sup>64</sup> The Code on Social Security, 2020, S. 2(35)

<sup>65</sup> The Code on Social Security, 2020, S. 2(60).

<sup>66</sup> *Supra* note at 20.

<sup>67</sup> *Supra* note at 9.

<sup>68</sup> India Law Offices LLP, *Laws in India for a gig or temporary workers* (2021) available at: <https://www.indialawoffices.com/legal-articles/india-laws-and-gig-workers> (last visited Dec. 2022).

<sup>69</sup> I. Dhasmana, *Will Inclusion in Labour Code Work or Do Gig Workers Need a Special Law?* BUSINESS STANDARD NEWS (Jul. 21, 2022) available at: [https://www.business-standard.com/article/economy-policy/will-inclusion-in-labour-code-work-or-do-gig-workers-need-a-special-law-122072100114\\_1.html](https://www.business-standard.com/article/economy-policy/will-inclusion-in-labour-code-work-or-do-gig-workers-need-a-special-law-122072100114_1.html) (last visited Dec. 2022).

company incentives, job losses, and a stifling of platform economy innovation.<sup>70</sup> Evidenced by the economic crises of the 1970s, 1980s, and 2008, neoliberal doctrines that favoured private property rights, entrepreneurial freedom, and free markets contributed to the emergence of precarious labour by reducing job protections during economic downturns.<sup>71</sup> According to the Code, platforms like Uber, Zomato, Swiggy, and Ola are additionally expected to pay a portion of their yearly profits (between 2% and 10%) to offer social security to their platform employees. The aforementioned contribution must be made by self-evaluation and submission of a document outlining the number of gig workers associated with it at the beginning of each fiscal year by June 30 of each year.<sup>72</sup> The National Social Protection Board, which will regulate the welfare of gig economy employees, has five members from aggregator organisations and five representatives from gig workers, showing that the government appears to realise the need for gig worker security. According to the Code, the Union government must also establish a Social Security Fund for workers in the gig economy.<sup>73</sup> However, there are major challenges associated with the Social Security Code, including the overlap of multiple authorities and lack of an integrated structure.

The three other codes apart from the social security code 2020 have no mention of gig workers, it was incorporated in the social security code with an aim of universalization of social security. Employees who are employed by an industrial unit are the only ones who must abide by the Industrial Relations Code (2020). The exclusion of gig workers, who might not have a consistent location of employment, applies. As a result, gig workers are exempt from rules controlling the freedom to organise unions, collective bargaining, and fair hiring and firing.<sup>74</sup> Gig workers are not covered by the Occupational Health, Safety, and Working Conditions Code (2020). This is concerning, especially because many gig workers put their lives in danger by continuing to work while the epidemic is active. The Wage Code (2019) does not apply to gig workers, so they are not even eligible for minimum wages.<sup>75</sup> While the government has included gig-workers in Social Security Code, such inclusion is absent from other Labor Codes, and the reason of such non-inclusion of gig-workers in other Labor Codes has not been provided by the government.

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<sup>70</sup> *Id.*

<sup>71</sup> D.J. Woodcock, *Technology, Labor, and the Gig Economy*, JAMIE WOODCOCK (May 17, 2021) available at: <https://www.jamiewoodcock.net/blog/technology-labor-and-the-gig-economy/> (last visited on Jan. 15, 2023).

<sup>72</sup> *Id.*

<sup>73</sup> *Supra note* at 69.

<sup>74</sup> R. Rambhatia, *The Gig Economy in India- Employment Laws*, THE LEADERS GLOBE MEDIA (Nov. 4, 2022) available at: <https://www.theleadersglobe.com/article/the-gig-economy-in-india-employment-laws/> (last visited Dec. 12, 2022).

<sup>75</sup> *Id.*



The Code on Social Security lists the social security programmes for the gig, platform, and unorganised workers. These programmes are allocated by the federal and state governments. According to the code, “the central government must create and periodically notify unorganised workers of acceptable welfare programmes including life and disability insurance, health and maternity benefits, education, old age protection, and other benefits as may be determined by the central” government.<sup>76</sup>

Although the scope of programmes for gig workers is extremely broad, problems concerning implementation of legal rights of gig-workers ensured under multiple programs and schemes under the Social Security Code could arise due to unclear categorization, issues with the identification and registration of those employees, and the inability to promptly and consistently receive payments from aggregators. According to Section 113(2) of the law, all independent contractors, gig, and platform workers must apply for registration using their Aadhaar numbers. Gathering information on gig, platform, and unorganized employees will help to formalize this group of workers and include a registration provision.<sup>77</sup>

While it is observed that India is advancing towards recognition of gig-workers, issues concerning, unclear categorization, lack of fixed remuneration, irregular income, lack of job-security etc. remain unaddressed, especially amidst the uncertainty surrounding nationwide implementation of Labor Codes, thereby calling for reforms exclusively catering to gig-economy. Further, the non-standard character of gig work cannot be used as an argument to absolve companies from regulations from the most fundamental obligations emanating from labour law about their employees. Because they have little negotiating leverage with their employers over working conditions, disadvantaged people are the ones who are protected by labour legislation. The creation of a hybrid category for gig workers is the authors' suggested remedy for this problem. It contends that because of the peculiar characteristics of gig employment, a gig worker cannot and should not be strictly classified as either an employee or an independent contractor. The authors suggest (without trying to propose a precise framework) that the advantages and protections accorded by labour law, collective bargaining, access to dispute resolution, and shared responsibility need a legislative investigation into the introduction of a third category for gig workers.

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<sup>76</sup> T. Jose, *Code on Social Security 2020 Defines Gig Workers, Says Rameswar Teli*, ENTREPRENEUR (Jul. 27, 2022), available at: <https://www.entrepreneur.com/en-in/news-and-trends/code-on-social-security-2020-defines-gig-workers-says/432219> (last visited Jan. 15, 2023).

<sup>77</sup> *Supra* note at 9.

## V

### Conclusion and Suggestions

India has a growing population and a persistent unemployment issue since a sizable portion of the population continues to work in unskilled labour. This highlights the susceptibility of employees who use online platforms. Therefore, to protect these workers' rights, we need to classify the kind of jobs they perform on these online platforms as well as the regulations that can control them. It is time for us to advance because many tasks are now completed using technology, and customer behaviour plays a bigger part in identifying these workers and protecting their rights. One of the most susceptible groups in the workforce is the gig economy. Due to the unusual nature of gig employment and legislative uncertainty, businesses have been able to continuously use their employees dishonestly without fear of legal repercussions.

New legal structures, specific to the needs of the "shared economy," may be developed as an alternative to the traditional methods of classifying workers as either employees or independent contractors. Multiple theorists propose a third kind of worker status they call "dependent contractors," who "occupy a midway ground between the conventional employees and independent contractors." The inclusion of dispute resolution clauses in employment agreements, which would provide employees equal negotiating power in circumstances of arbitrary termination of employment, is another immediate legislative adjustment that could offer an extra layer of protection.

While the Social Security reform is a step in the right direction, it is not enough to safeguard the rights of the vast majority of gig workers. Stronger revisions and national adjustments to fill the loopholes in Indian law are necessary to safeguard gig workers. Concept of "employer" has to be expanded to account for those who are financially responsible for the social security of their employees. Under the legislative framework, certain restrictions can be placed on service aggregators, thereby ensuring rights against arbitrary terms of service and irregular remuneration. To ensure certainty to workers employers can be forbidden from unilaterally suspending and firing employees from their services without warning." Contracts for gig employment must have a clause for resolving disputes through the ADR mechanism, and a commission should be established to keep an eye on issues with gig workers, thereby ensuring holistic protection of gig-workers' rights in a viable manner.