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REDEFINING EMPLOYMENT INJURY: "THE NEED FOR A BROADER INTERPRETATION OF THE TERM IN THE ERA OF REMOTE WORK AND GIG ECONOMY"

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Abstract

In today's fast-changing work environment, the boundaries of employment have significantly expanded beyond traditional office spaces and fixed hours. Remote work, flexible schedules, and the emergence of gig and platform-based jobs are redefining how, where, and when people work. However, the law and particularly the Social Security Code and The Employment Injury Act have not kept pace with this shift. A law that was originally designed to protect workers from injuries in clearly defined physical workplaces now struggles to address the risks faced by a growing number of workers operating in non-traditional settings.¹ The core issue lies in the narrow interpretation of the term "employment injury" and the judicial understanding of what qualifies as being "in the course of employment." While some courts have attempted to interpret these terms more broadly, the overall legal framework remains insufficiently equipped to safeguard the rights of remote workers, freelancers, and those working through digital platforms. This disconnect has left a significant portion of the workforce without the protection and compensation they rightfully deserve in the event of injury.² Thus, the following questions arise in this context; Does the current definition of "employment injury" under the Employee Compensation Act, 1923 cover injuries sustained during remote work or flexible working hours? How has the judiciary interpreted "in the course of employment" in the context of non-traditional workspaces? What legal reforms are needed to include gig and platform workers within the scope of employment injury benefits?³ What is the global scenario in context of recognition of such rights?

Keywords: Employee, injury, compensation, evolving, , non-traditional, judicial interpretation etc.

¹Employees Compensation, https://blog.ipleaders.in/employees-compensation-act-1923-amazing-facts-to-know-about-it/?utm_source=chatgpt.com, Last Visited on 22nd March 2025.

²Gig Workers, Bhatta and Joshi Associates, https://bhattandjoshiassociates.com/legal-status-of-gig-workers-under-indian-labour-laws-a-comprehensive-analysis/?utm_source=chatgpt.com, Last Visited on 22nd March 2025.

Research Methodology

The research methodology that has been applied for this research paper is doctrinal research. Descriptive research shall also be incorporated. A population, circumstance, or phenomena is intended to be correctly and methodically described through descriptive study. Works from scholarly journals, statutes, extracts from articles and references from various websites shall be included as a part of the doctrinal research.

Introduction

What is employment injury?

Section 2(28) of the Social Security Code defines an employment injury as a personal injury resulting from an accident or occupational sickness that occurred during the employee's employment.⁴

Elements:

- Personal Injury: The employee must suffer physical or psychological harm as a result of the injury.
- Arose Out of and in the Course of Employment: The injury must have a direct connection to the worker's job responsibilities and the working conditions.
- Accident or Occupational illness: An injury may result from an accident, which is a sudden and unanticipated incident, or from an illness that arises as a result of the nature of the activity.
- Insurable Employment: The Workers' State Insurance Act of 1948 must apply to the employment.⁵

The code stipulates specific sanctions for failure to comply with the obligations of employer to compensate for any employment injury. According to the code, if any of the provisions listed are broken, the employer will be subject to a penalty that cannot be less than two lakh rupees and cannot be greater than three lakh rupees. If the violation persists, the penalty will not be greater than two thousand rupees for each day of violation. Furthermore, the code stipulates

⁴ Employment Injury, IP and Legal Findings, <https://www.ipandlegalfilings.com/employment-injury-statutory-obligation-of-employer/#:~:text=The%20word%20employment%20injury%20is,of%20his%20employment%5B4%5D>, Last Visited on 23rd March 2025.

⁵Employment Injury, Case Mine, [https://www.casemine.com/commentary/in/employment-injury-defined:-comprehensive-analysis-of-regional-director,-e.s.i-corporation-v.-francis-de-costa/view#:~:text=Employment%20Injury:%20Defined%20under%20Section%202\(8\)%20of,must%20be%20directly%20caused%20by%20employment%2Drelated%20activities](https://www.casemine.com/commentary/in/employment-injury-defined:-comprehensive-analysis-of-regional-director,-e.s.i-corporation-v.-francis-de-costa/view#:~:text=Employment%20Injury:%20Defined%20under%20Section%202(8)%20of,must%20be%20directly%20caused%20by%20employment%2Drelated%20activities), Last Visited on 23rd March 2025.

that if any of the provisions pertaining to the duties regarding hazardous processes are contradicted, the person who violates them faces up to two years in prison and a fine of up to five lakh rupees. If the violation persists, they will also be liable for twenty-five thousand rupees for each day the violation continues, and if they continue for more than a year, they will be subject to three years in prison and a fine of up to twenty lakhs.⁶

Categories of Employment Injury

- **Permanent Partial Disablement:** This is when an injury that does not totally incapacitate an employee resulting in a permanent loss of earning potential. Losing an eye or a finger are two examples. According to a medical evaluation, the percentage of lost earning capacity determines the amount of compensation for permanent partial disablement.
- **Temporary Partial Disablement:** A temporary reduction in earning capacity brought on by an injury that renders a worker partially disabled for a predetermined amount of time is known as temporary partial disability. The employee might be able to do some tasks during this period, but not all of them. A proportion of the employee's earnings during the period of temporary partial disablement is used to compute compensation.
- **Total Disablement:** The term "total disablement" describes a worker's total loss of earning potential as a result of an illness or disability brought on by an event that occurred while and as part of their employment. The worker is entitled to compensation, typically in the form of a lump sum payment, for the complete loss of earning potential.⁷
- **Occupational Disease:** Occupational illnesses can be further divided into the following categories:
 1. **Reportable occupational diseases:** These are Occupational diseases that find mention in the national lists of a country and are liable for compensation and subject to measures, within the legal or administrative framework of the country.
 2. **Recognized occupational disease:** A recognized case of an occupational disease is a case accepted as such by a competent national authority in an administrative proceeding.

⁶ Supra Note 4.

⁷ Partial and Total Disablement, Lawbhoomi, <https://lawbhoomi.com/partial-and-total-disablement-under-workmens-compensation-act-1923/#:~:text=Partial%20Disablement%3A%20Partial%20disablement%20refers,performing%20his%20or%20her%20work.>

3. Work-related diseases: All illnesses that are the result of working conditions. Distinction between occupational diseases and work-related diseases are made by evaluating their attributable fractions. It is suggested that the attributable fraction of occupational diseases is more than 50% and less than 50% for work-related diseases.⁸

Judicial Interpretations; Employment Injury and Course of Employment

Some important cases that clarify what is meant by "arising out of and in the course of employment." Among these, noteworthy are:

- In *South Maitland Railways Pty. Ltd. v. James*, it was decided that an employee's employment normally starts the moment they show up for work.
- *R. v. Commissioner of National Insurance, ex p Michael* emphasized the ambiguity and constrictive meaning of "arising out of and in the course of employment."
- *B.E.S.T. General Manager Undertaking v. Mrs. Agnes*: Highlighted situations in which an employee uses company-sponsored transportation while performing their job.
- In *Sadgunaben Amrutlal v. ESI Corporation*, the limitations of the principle of notional extension in assessing occupational harm were examined.
- In *Bhagubai v. Central Railway*, incidents involving accidents that resulted in occupational injuries in settings under the control of the employer (railway quarters) were examined.⁹

Cases regarding grant of compensation in furtherance of injury are discussed below:

- The Supreme Court ruled in the case of *Lakshmi Amma vs. Management of Neyveli Lignite Corporation Ltd.* that a person who had been partially disabled was entitled to compensation, even if they were still able to conduct some work.
- In a similar disposition, the Bombay High Court ruled in the case of "*Maharashtra State Road Transport Corporation vs. Balwant Regular Motor Service*" that a person who had been completely disabled was entitled to compensation, even if they were able to work in a different capacity.¹⁰

⁸Occupational Diseases, Ip leaders, <https://blog.ipleaders.in/need-know-occupational-diseases/>, Last Visited on 24th March 2025.

⁹ Supra Note 5.

¹⁰ Supra Note 7.

Global Scenario

ILO Report (Most Recent Data- 2015)

In many nations, employment injury benefit plans are the oldest type of social security, offering monetary and in-kind compensation for accidents and occupational illnesses. One of the main issues facing contemporary workplaces was addressed by the establishment of these programs. Employers must provide fair, equitable, and effective compensation for their employees as well as access to necessary health care (including medical and allied care services and goods, including rehabilitation) in cases of occupational disease or injury. This is a corollary of their duty to ensure working conditions that secure their employees' occupational safety and health. This duty also includes compensating workers' surviving family members for lost wages resulting from an accident in the event of death. According to ILO estimates, work-related illnesses or accidents claim the lives of around 2.3 million people year worldwide. 6,300 workers worldwide lose their lives to work-related illnesses and injuries every day, with low-income nations accounting for the majority of these deaths. 34 developing nations lacked an insurance program for workers' injuries in 2015. Only 34% of workers worldwide were required to have social insurance due to workplace injury regulations. If voluntary social insurance coverage and employer liability provisions are included, 39 per cent of the labour force was covered by law. In practice, actual access to employment injury protection is even lower, largely owing to incomplete enforcement of legislation in many countries. ¹¹

Understanding a Gig and Platform Worker Economy

Gig Worker Economy

A gig economy is a labor market where freelance or contract work, rather than permanent employment, is more common. Under this arrangement, businesses hire freelancers and independent contractors for short-term tasks made possible by online marketplaces that connect buyers and sellers. This strategy eliminates the requirement for a set timetable and permits flexible work arrangements. Businesses that use their platforms to link service providers and customers directly, such as Uber, DoorDash, and Airbnb, are prime examples of this strategy.

¹²

The gig economy offers several advantages, including flexibility for workers to choose

¹¹ Supra Note 7.

¹² Gig Economy, Corporate Finance, <https://corporatefinanceinstitute.com/resources/economics/gig-economy/>, Last Visited on 26th March 2025.

assignments that fit their schedules and the opportunity for businesses to reduce costs associated with full-time employment, such as benefits and office space. However, it also presents disadvantages. Workers may face economic insecurity due to the lack of job stability and benefits like health insurance and paid leave. Additionally, the competitive nature of gig work can lead to lower wages and overwork, potentially impacting quality of life.¹³

Essentials of a gig economy are:

- Temporary or project-based work: Instead of long-term or permanent positions, gig jobs are typically focused on one-time or short-term projects.
- The role of online platforms as mediators: A sizable portion of these positions are set up via online marketplaces that connect service suppliers and clients.
- Status of Self-Employed: People in the gig economy typically work as independent contractors rather than as official employees, which has an impact on their eligibility for benefits and protections associated to their jobs,
- Control over the schedule and autonomy: The independence that gig labor provides—the ability to choose projects that suit their interests and control their own time—is one of its main attractions.¹⁴

Platform Worker Economy

A platform worker is an employee of a company that offers particular services to people or organizations directly through an internet platform. Delivery agents from Swiggy or Zomato, drivers for Ola or Uber, etc., are examples of platform workers. A platform worker is "a person engaged in or undertaking platform work," according to the Social Security Code. "A form of employment in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or to provide specific services in exchange for payment" is how the Code defines platform work in Section 2(55). Additionally, this work does not follow the conventional employee-employer relationship.

Increased market openness through user ratings and information sharing are two benefits of the platform economy that boost competition and frequently result in lower prices for customers.

¹³ Supra Note 12.

¹⁴ Shaping the Future, Gig Economy, Park Edu, [https://www.park.edu/blog/the-gig-economy-shaping-the-future-of-work-and-business/#:~:text=A%20labor%\\$20market%20characterized%20by,gig%20economy%20pros%20and%20cons,](https://www.park.edu/blog/the-gig-economy-shaping-the-future-of-work-and-business/#:~:text=A%20labor%$20market%20characterized%20by,gig%20economy%20pros%20and%20cons,) Last Visited on 26th March 2025.

By supporting the creation of fresh services and business models, it promotes innovation and boosts the economy. Platforms encourage resource sharing and more effective use, which improves the environment. has drawbacks, including the possibility that platforms would control markets, resulting in unfair competition and a decline in provider innovation. Platforms gather enormous volumes of user data, raising concerns about data security and privacy. Furthermore, workers may experience job insecurity and a lack of traditional employment benefits due to the nature of platform labor. For the platform economy to grow sustainably, these benefits and drawbacks must be balanced.¹⁵

Essentials of a platform worker economy are:

- **Market Access and Network Effects:** Platforms give users access to new markets and clientele, and as more users sign up, the platform's value rises, resulting in network effects.
- **Analytics and Data:** Platforms produce useful data that may be utilized to create new goods and services, improve operations, and comprehend consumer behavior.
- **Flexibility and Choice:** While employees acquire flexibility and control over their schedules, consumers enjoy increased variety, convenience, and choice in goods and services.
- **Innovation and New Services:** Platforms can help create and provide previously unattainable new and innovative services.¹⁶

Data Analysis

According to the NITI Aayog Policy Brief (2022), there were approximately 77 lakh gig workers in India in 2020–21; by 2029–2030, this figure is predicted to increase to 2.35 crore. Currently, the bulk of these people hold medium-skilled positions, with low- and high-skilled positions following. However, patterns indicate that both low- and high-skilled sectors are growing while medium-skilled parts are gradually declining.¹⁷ In 2020–21, there were over 7.7 million gig workers in India, making up around 1.5% of the workforce overall and 2.6% of the non-agricultural workforce, according to the NITI Aayog report "India's Booming Gig and

¹⁵ Arguments Map, Platform Economy, <https://www.argumentenfabriek.nl/wp-content/uploads/2021/11/argument-map-platform-economy.pdf>, Last Visited on 27th March 2025.

¹⁶ Advantages of the Platform Economy, Snabble, <https://snabble.io/en/latest/5-advantages-of-the-platform-economy>, Last Visited on 28th March 2025.

¹⁷ Policy, Niti Aayog, https://www.niti.gov.in/sites/default/files/202306/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf, Last Visited on 28th March 2025.

Platform Economy". By 2029–2030, this figure is expected to increase dramatically to 23.5 million gig workers, or an estimated 4.1% of the workforce. The gig economy's skill makeup is now dominated by medium-skilled occupations, which account for roughly 47% of all gig labor. Low-skilled jobs come in second at 31% and high-skilled jobs at 22%. With around 2.7 million gig workers, the retail trade and sales industry employs the greatest number of gig workers, followed by the transportation sector with roughly 1.3 million people.¹⁸

This data illustrates how platform-based work is changing and evolving in the Indian labor market. The gig economy in India is expanding quickly; it is anticipated that by 2029–2030, there will be 23.5 million gig workers, or 4.1% of the workforce, up from 7.7 million in 2020–2021. The labor market is changing from traditional job models to more flexible, task-based engagements made possible by digital platforms, and this expansion reflects this change. Currently, medium-skilled jobs dominate the gig economy, comprising about 47% of the workforce, followed by low-skilled (31%) and high-skilled (22%) jobs. However, recent trends suggest a decline in medium-skilled roles and growth in both high- and low-skilled sectors, indicating a polarization in gig work opportunities. Additionally, the sectoral distribution indicates that gig workers are concentrated in the transportation and retail trade sectors, which employ about 1.3 million and 2.7 million workers, respectively. Although this emphasizes how crucial certain sectors are to the gig economy, it also raises questions about economic vulnerability because of an excessive reliance on a small number of sectors. To ensure sustainable growth, there is a need to diversify gig work into other areas such as healthcare, education, and digital services, alongside implementing policies for skill development and social protection to address the evolving dynamics of gig employment.¹⁹

Testing the Waters; Provisions for Injury in Remote Work

According to the Employee Compensation Act, 1923 (previously the Workmen's Compensation Act), an "employment injury" is any personal harm that an employee sustains accidentally while on the job. However, flexible scheduling, remote employment, and unconventional work arrangements are not specifically covered by the Act. The statutory framework is nevertheless linked to conventional employer-employee models and physical

¹⁸ Supra Note 17.

¹⁹ Digital Economy, Economic Times, <https://economictimes.indiatimes.com/tech/technology/digital-economy-drives-job-growth-across-sectors-gig-workforce-to-reach-23-5-crore-by-2030-economic-survey/articleshow/117792382.cms>, Last Visited on 28th March 2025.

workplaces, even though the phrase "arising out of and in the course of employment" is construed broadly by judges. For instance, an employee hurt at a factory or while driving a corporate car would be covered, but there is uncertainty about injuries received while working from home or doing freelance work for online platforms.

Suggestions

In the era of gig workers and platform workers there is a dire need to bring certain amendments and reforms in the system.

- **Platform Insurance Requirements:** Make it essential for platforms to provide workers with insurance coverage for mishaps or injuries sustained while on the job.
- mandate that platforms make contributions to a shared social security fund in accordance with the Social Security Code.
- A centralized legal framework that precisely specifies the employment relationship in digital workspaces is desperately needed. This framework is the Unified National Framework for Digital Employment. Gig and platform workers should be specifically acknowledged in this framework as members of the formal workforce eligible for injury benefits, especially during hours of active labor.
- **Mandatory Health and Safety Audits for Remote Work:** Employers should be mandated to conduct periodic virtual audits or assessments to ensure that remote work environments meet basic health and safety standards. In the event that someone is hurt while working from home, this will help prove culpability.
- **Judicial Guidelines or Presumptions:** In cases where there is app-based tracking or digital proof of employment, courts may develop presumptions that injuries sustained during active work hours, even when they occur outside of actual workplaces, are covered.
- **Create a Welfare Board for Gig Workers:** Establish gig worker welfare boards at the state level that have the authority to decide cases and provide compensation for workplace injuries, much like the Building and Other Construction Workers' Boards.²⁰

²⁰Occupational Disease, Britannica, <https://www.britannica.com/science/occupational-disease>, Last Visited on 29th March 2025.

Conclusion

In India, the nature of work is changing fundamentally, gradually moving away from traditional, regimented workspaces and toward a more flexible, digital, and decentralized structure. However, our legal definition of "employment injury" is still based on antiquated ideas about traditional work schedules, physical workplaces, and employer-employee interactions. As seen through judicial interpretations and international standards, there is a growing need to expand the scope of the term "in the course of employment" to include remote work and platform-based tasks, especially in the context of the gig economy. Given that millions of Indians work as gig and platform workers, the current legal system not only denies damage compensation to a sizable section of the workforce, but it also perpetuates socioeconomic insecurity.²¹

The fundamental ideals of social fairness and equality that labor laws seek to preserve are undermined by the legislative lethargy in acknowledging these new types of labor. Although certain court rulings have gradually expanded protection, their application is still restricted. By requiring social security coverage, implementing inclusive definitions, and making sure that flexible work schedules don't become an excuse for not receiving fair compensation, legal reforms must take into account the evolving nature of the workplace. It is no longer optional to implement policies like required platform insurance, presumed judicial standards, and the creation of special welfare bodies for gig workers. India must take decisive action to redefine employment injury in a way that is equitable, progressive, and inclusive of all those who contribute to its economy if it is to genuinely protect the dignity and well-being of all workers.²²

²¹ Compensating Gig Workers, Live Law, <https://www.livelaw.in/columns/compensating-gig-workers-for-injuries-are-indias-labour-laws-catching-up-204569>, Last Visited on 29th March 2025.

²² Supra Note 19.