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GIG ECONOMY WORKERS RIGHTS AND CHALLENGES – AN EFFECTIVE ANALYSIS

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ABSTRACT:

This research paper is on the analysis of gig workers rights and challenges faced by them in India. It also focuses on the law of England, California on this gig worker. It focuses on how far this gig economy has been developed in India and what are the advantages and challenges of gig economy. This paper also gives a rough chart on how far there is a growth of gig economy over the last decade. It explains the laws that are prevalent for the gig workers in India.

KEYWORDS: Gig economy, Workers, India, England, Challenges, Advantages.

INTRODUCTION:

Gig workers are self employed workers who work for online platforms such as Ola, Swiggy, Zomato, Lyft, Uber, etc. A gig economy is a free and global market where companies and contractors set short-term and on-demand professional relationships that are both flexible and skill-based. In other words, digital platforms allow freelancers or people with a fulltime job wanting to make extra money to show their skillset. At the same time, businesses can choose specialized staff from all over the world. This allows them to afford expensive skills for a short period or to have low recruitment and selection costs as there's a large pool of candidates to choose from.¹ They do not have same employment rights as how traditional workers have. They are paid as per their work completion. Once their task is completed they are paid for it. Gig workers do work as they like. They can have their own flexible choices of work, time period of work. They earn extra money apart from their normal work. Though gig workers have flexibility in work yet they face challenges. In this article we will discuss in detail the rights

¹ <https://youmatter.world/en/definition/gig-economy-definition-examples>
future/#:~:text=A%20gig%20economy%20is%20a,both%20flexible%20and%20skill%2Dbased

and challenges faced by the gig workers. According to the Social Security Regulations (India), 2020, “Gig is a worker who works outside the traditional employer-employee relationship or participates in a labour contract and earns income from such activities.

GROWTH DRIVERS OF THE GIG ECONOMY IN INDIA:

Rise of the Internet Technology:

The widespread acquisition of smartphones and the availability of high-speed internet has made it easier for workers and businesses to connect through online platforms, facilitating the growth of the gig economy.

Rising levels of education and skills:

As more people in India attain higher levels of education and develop specialized skills, they are increasingly seeking out opportunities to apply their knowledge and expertise through gig work.

Urbanization and rising consumer demand:

Rapid urbanization in India is making middle class to continue grow, has created a large demand for gig workers in various sectors such as transportation, delivery, home services, and e-commerce.

Entrepreneurship:

The gig economy has also given rise to a new breed of entrepreneurs who use digital platforms to start their own businesses and offer their services to customers around the world.

Supportive government policies:

The Indian government has been supportive of the gig economy and has taken several initiatives to promote it, such as the Digital India program, Start-up India, and Skill India.

Economic Liberalisation:

The Indian government's economic liberalisation policies have led to rise in competition and a more open market, which has encouraged the growth of the gig economy.

Increasing Demand for Flexible Work:

The gig economy is particularly mesmerizing for Indian workers who are looking for flexible

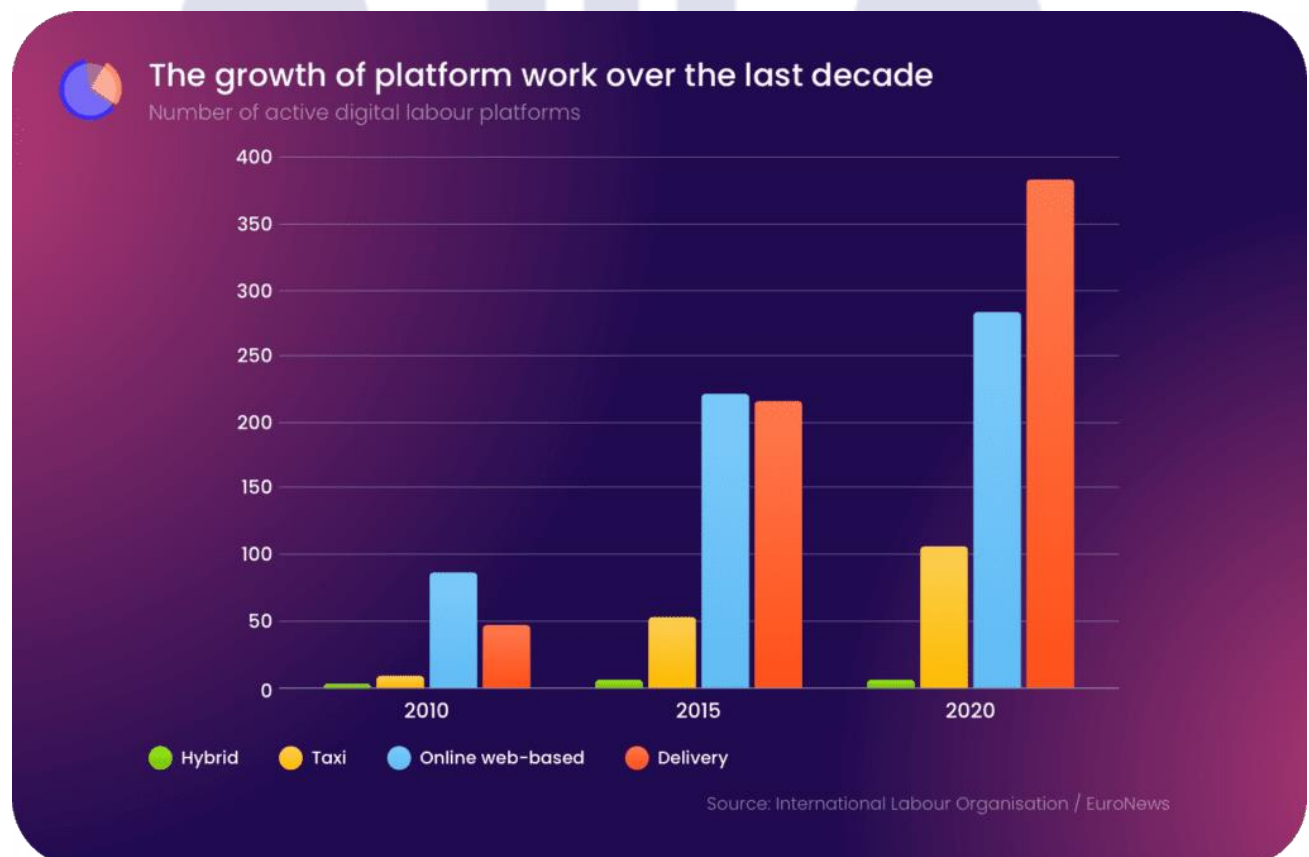
work arrangements that allow them to balance both their personal and professional lives.

Demographic Factors:

The gig economy is also managed by the large and growing number of young, educated and aspiring Indians who are seeking to improve their livelihoods with side income generation.²

ADVANTAGES OF GIG ECONOMY FOR WORKERS AND BUSINESSES:

- ✓ Cost Effectiveness
- ✓ Support for Short – term projects
- ✓ Positive correlation to output production.
- ✓ Ability for the business to scale up fast
- ✓ Diverse pool of talent
- ✓ Wide range of job
- ✓ Independence
- ✓ Flexibility of work³



² <https://www.drishtiiias.com/daily-updates/daily-news-analysis/gig-workers-rights>

³ <https://navi.com/blog/gig-economy/>

CHALLENGES FOR THE WORKERS:

- ✓ The lack of job security, proper contracts, medical coverage and workplace benefits
- ✓ The lack of transparency and predictability in working conditions
- ✓ The increasing isolation of gig work
- ✓ Income instability
- ✓ Retirement planning
- ✓ Setting boundaries at work
- ✓ Lack of Formalization
- ✓ Limited opportunities for up skilling and career advancement.
- ✓ Unequal bargaining power

LAWS FOR THE GIG WORKERS:

In India, the labour laws are primarily designed to protect traditional employees, leaving gig workers. Gig workers are often divided as independent contractors, which exempts them from various labour laws such as the Employees' Provident Fund Act, the Employees' State Insurance Act, and the Industrial Disputes Act. This lacuna in legal protection makes it difficult for gig workers to seek recourse in case of unfair treatment, discrimination, or exploitation.

Minimum Wages and Fair Remuneration:

Many gig workers earn wages below the minimum wage declared by the government, which is a violation of labour laws. There is a need for transparent and fair wage-setting systems that consider factors such as distance, time spent, and effort required for each gig task. Together with it gig workers should have access to information about the payment structure and calculation methods used by platforms, and any changes to payment algorithms should be open and communicated in advance.

Social Security and Benefits:

Gig workers should have access to social security benefits, including health insurance, disability and maternity benefits. The existing social security schemes should be enabled so as to cover gig workers, considering their fluctuating incomes and irregular working hours. Platforms must contribute to social security funds on behalf of gig workers, and workers should have the flexibility to choose and change between different schemes based on their needs. Furthermore, gig workers should be provided with paid leave, including sick leave, annual

leave, and maternity/paternity leave, to ensure their well-being and work-life balance.

Occupational Safety and Health:

Gig workers, particularly those involved in ride-hailing and food delivery, face occupational hazards such as accidents, injuries, and health risks. Platforms should make sure that gig workers are provided with adequate safety measures, training, equipment, and insurance coverage. Platforms should also establish systems for gig workers to report for safety concerns and incidents, and take prompt action to address them. Occupational health and safety rules should be enforced, and gig workers should have access to medical care and compensation in case of work-related injuries or illnesses.

Grievance Redressal and Dispute Resolution:

Gig workers should have access to fair and productive grievance redressal and dispute resolution systems. Platforms must establish clear pathways for workers to raise concerns, report grievances, and seek resolution. Platforms should appoint unbiased and independent dispute resolution committees to handle disputes between gig workers and platforms. Workers should also have access to judicial remedies and should be protected against retaliation or discrimination for exercising their rights.

Collective Bargaining and Representation:

Gig workers should have the right to organize, form trade unions, and take part in collective bargaining to negotiate better working conditions and benefits with the platforms. The current labour laws in India do not expressly recognize gig workers' right to union and there are challenges in organizing gig workers due to their scattered and short – term nature of work. Yet, there is a need to recognize and protect the collective bargaining rights of gig workers, as it can give them with a stronger voice and bargaining power in negotiations with platforms. Platforms should also involve in meaningful dialogue and consultation with gig workers and their representatives to address their concerns and improve their working conditions.⁴

In recent years, there have been ample of legal developments aimed at addressing the challenges faced by gig workers in India. In 2020, the Ministry of Labour and Employment issued a draft code on social security, which proposed extending social security benefits to gig

⁴ <https://taxguru.in/corporate-law/protecting-gig-workers-exploitation-social-security-labour-laws.html>

workers, including access to

- Health insurance
- Disability benefits
- Maternity benefits.
- Old age protection

However, the implementation of these proposals is yet to be finalized, and the legal status of gig workers remains uncertain.⁵

CASES RELATING TO GIG WORKERS:

POSITION IN UNITED KINGDOM:

Uber BV v. Aslam⁶

The UK Supreme Court upheld that Uber drivers are “workers” within the meaning of the statutory definition under labour laws (which incorporates anyone employed under a contract of employment and also extends to some individuals who are self-employed) and ordered that Uber must pay its drivers the national living wage, paid annual leave and other benefits provided to employees, from the time that drivers log into the Uber app, and are ready and able to work.

In this regard, the PIL argues that Uber drivers around the world work in similar conditions, and thus, this principle should apply in the Indian context as well.

POSITION IN CALIFORNIA:

Dynamex Operations W. v. Superior Court and Charles Lee, Real Party in Interest⁷

A class of drivers for a delivery company called Dynamex contented that they were mis-sorted as independent contractors and thus were unlawfully deprived of employment protection under California’s wage orders. The California Supreme Court held that the drivers are employees and the burden is on the hiring body to establish that a worker is an independent contractor not subject to wage order protections.

Subsequently, in 2019, the State of California passed the California Assembly Bill 5 which entitles some gig workers to be organized as employees with labour protections, such as minimum wage laws, sick leave, and unemployment and workers’ compensation benefits.⁸

⁵ https://blog.ipleaders.in/analysis-of-labour-laws-with-respect-to-gig-workers/?amp=1#Legal_development_of_Gig_economy_in_India

⁶ [2021] UKSC 5

⁷ 4 Cal.5th 903 (Cal. 2018)

⁸ <https://www.hg.org/legal-articles/the-case-for-social-security-benefits-to-gig-workers-in-india-60631>

POSITION IN INDIA:**Balwant Rai Saluja v. Air India Ltd.⁹:**

In this case, the Supreme Court held that several factors have a bearing on the question of employee status, such as (a) who is the nominating authority; (b) who is the paymaster; (c) who can discharge; (d) how long alternative service exists; (e) the extent of power and supervision; (f) the nature of the job e.g. whether it is professional or skilled work; (g) nature of establishment; (h) the right to reject. The court also held that the extent of control required for an employee was 'effective and absolute control'. Although the exact applicability of these factors upon gig workers would need judicial scrutiny, the shift to the 'effective control' standard could mean that gig workers would not be classified as employees in India.

All India Gig Workers Union v. Uber India Systems Pvt. Ltd. case¹⁰:

Where the union filed a complaint against Uber for the flaw to provide drivers with minimum wage, social security, and other benefits. The case is still pending, and the result could have significant implications for the entire gig economy sector in India.

Indian Federation of App-based Transport Workers v. Government of NCT of Delhi & Ors¹¹:

The Delhi High Court ordered the government to provide social security benefits to gig workers. The court observed that gig workers were entitled to social security benefits such as health and disability insurance, and instructed the government for the establishment of a social security scheme for gig workers.

In another case, the Indian labour ministry instructed food delivery company Swiggy to provide social security benefits to its delivery executives, as they were considered to be employees rather than independent contractors. This judgment marked a significant change in the Indian legal system, as it identified the rights of gig workers and their eligibility for social security benefits.¹²

⁹ (2014) 9 SCC 407

¹⁰ <https://indiankanoon.org/doc/4749705/>

¹¹ <https://www.scobserver.in/cases/gig-workers-access-to-social-security-the-indian-federation-of-app-based-transport-workers-ifat-v-union-of-india/>

¹² <https://lawbhoomi.com/the-gig-economy-and-employment-law-how-gig-work-challenges-traditional-labor-laws/>

CONCLUSION:

The situation of gig workers in India is complex, with challenges and opportunities. While gig work provides flexibility and income-generation opportunities for many, gig workers face significant vulnerabilities and lack adequate legal protections. The recent legal developments and court rulings have recognized the need to provide protection to gig workers, but there is a need for further reforms to address the unique challenges posed by the gig economy.

Thus under the code on Social Security, some welfare measures for gig workers have been incorporated such as minimum wages, maternity benefits, etc. However, the other three codes are quiet on the policies towards gig workers. Gig workers do not have protection related to occupational health & safety under the current labour law rule, which needs to be addressed. The law with respect to gig workers is currently in an embryonic stage. At this stage, employers need to protect their interests first by remaining attentive of the evolution of law. Secondly, great attention should be endowed for drafting the contract for the gig workers, and terms indicating employer-employee relationship, such as 'control', 'supervision' 'and 'non-compete' should be avoided. Thirdly, a vigorous sexual harassment policy should be implemented with respect to gig workers to ensure conformity with the Sexual Harassment Act.