

"ENSURING SOCIAL PROTECTION FOR GIG WORKERS: GUIDELINES AND RECOMMENDATIONS ACROSS JURISDICTIONS IN DIGITAL AGE"

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Abstract

The digital era impact drastic change in the labour market which led to the evolution of gig economy. Emergence of gig labour market introduced a flexible nature of working environment which provides both opportunities and challenges. The gig economy has altered the traditional labour markets. The significant issues in the booming gig economy are ensuring social protections to gig workers pose a unique challenge, because they usually deprived of the conventional employment related benefits. This research paper explores the comprehensive analysis of guidelines and recommendations set forth by India, the United States, the European Union to ensure social security to gig workers. This study also explores the contributions of international Labour Organisations towards securing social security to gig workers. This research paper explores the effective mechanisms which enhance social security and identified the gaps in the present social security protections. The findings of this research study emphasis the significance of collaborations between workers organisations, platforms, and Government for setting up a robust framework for social security measures to this third revolution labour market. The study contributes for future policy development for worker who are engaged in gig labour in the present digital era.

Key Words: social security, gig workers, gig economy, third revolution labour market

Introduction

The digital platforms have become a significant part for the emergence of third revolution labour market in the digital era. Due to digitalisation the gig economy has emerged as an influential force in the labour market. Millions of workers across the globe in this present era prefer to work in this nature of work because of proliferation of flexibility, short term nature of working environment. Gig works provides more autonomy to the workers than the traditional employment. However, this new paradigm of working nature poses challenges to access social security to workers who engaged in it. This research paper, titled "Ensuring Social Protection for Gig Workers: Guidelines and Recommendations Across Jurisdictions in the digital age," provides a comprehensive analysis of the social security mechanism for gig workers under various jurisdictions. The gig worker unlike traditional employees lacks traditional social security, such as unemployment benefit, monetary compensation for employment injury. health insurance, retirement benefits etc. The absence of security to meet uncertain contingencies make them vulnerable to financial insecurity and health related risk. The gig economy is being booming, addressing the above concerns becomes important for labour organisations and policy makers to protect the rights and the well being of the workers engaged in the gig economy. This research work seeks to identify and highlight best practices, guidelines and recommendations for enhancing social security measures for gig workers. This analysis contribute to policy development and ensure all workers are in a position to avail fair and equal treatment.

Objectives of the research Study

- To explore social protection measures prevailed for workers engaged in gig economy.
- To Analyse the legal frame work of administering Gig economy in India.

- To identify the robust laws, regulations and recommendations prevailing in various jurisdictions.
- To provide recommendations for policy makers for enacting best regulatory frame works for social protections.

Hypothesis of the study

“Ensuring Social Protection for Gig Workers enhance sustainable growth in the digitalized labour market”

Gig Economy

The gig economy describes a system where flexible work arrangements prevail, and digital platforms facilitate the exchange of labor and resources by connecting buyers and sellers. The gig economy in India is characterized by a system where temporary, flexible, and freelance work arrangements dominate. Individuals, known as gig workers, engage in short-term projects or tasks on a contractual basis instead of holding traditional employee roles within a company. These workers typically connect with employers or clients through digital platforms or online marketplaces.

Employing remote workers allows companies to eliminate costs related to maintaining physical offices. Additionally, they save on employee benefits, retirement plans, and paid sick leave, as independent contractors are not entitled to these perks. This employment model pose no liability upon platforms and there by it tends to be cost effective for employers. This arrangement of work allows companies to engage directly with freelancers, removing the necessity for intermediaries in the hiring process. Flexible Work Schedules attract individuals seeking additional income. The adaptability of gig work can enhance employee motivation, resulting in higher productivity. But there exist some disadvantages associate with this nature of work. Freelancers might not exhibit the same level of commitment as full-time employees. Gig economy companies often do not offer incentives to foster loyalty, which can affect motivation and future work opportunities.

From a worker's perspective, gig work offers the freedom to choose their own locations, such as writing from a home office or driving for Uber. They enjoy the flexibility to set their own working hours and decide how to complete tasks, even if deadlines are involved. This setup allows individuals to earn extra income, making it an appealing option for those looking to increase their earnings. However, gig economy companies typically do not provide benefits, as independent contractors are not considered full-time employees. Workers often have to cover their own expenses, such as fuel costs for delivery services like Swiggy. Additionally, the independent nature of gig work can lead to feelings of isolation, which may negatively impact both productivity and mental well-being.

Key factors driving Gig Economy

The growth of the gig economy is influenced by work preference, diverse compensation model, Startup culture, increased demand for contractual workers. Younger generations, particularly millennials, prioritize careers that align with their passions and interests, rather than traditional career paths. The gig economy employs various compensation models such as fixed-fee, time-based, output-based, and quality-driven arrangements. Fixed-fee and time-based models are particularly prevalent. The growth of India's start-up ecosystem has led to increased gig employment. Start-ups hire freelance contractors for non-core activities to reduce fixed costs. Multinational corporations are adopting flexible hiring practices, especially for specialized projects, to lower operational costs, especially post-pandemic. This has significantly boosted the gig culture in India.

The gig sector's permanence is evident as it offers flexible work opportunities and earning potential through various online platforms. Driven by the demand for location-independent work, shifting career aspirations, and diverse compensation models, these elements have collectively spurred the gig economy's growth and prominence in India. However, challenges persist, such as the absence of proper benefits and the potential for worker exploitation. India needs to implement appropriate legislation to protect the interests of both organizations and workers.

NITI Aayog's report on Gig Economy

NITI Aayog's report, "India's Booming Gig and Platform Economy," underscores the significant growth of the gig sector in India and its potential to generate jobs. The report highlights the importance of implementing social security measures for gig workers, including income support, paid sick leave, insurance, and pension plans. It also advocates for fiscal incentives for companies that have a substantial proportion of women and people with disabilities in their workforce. Furthermore, the report recommends skill development programs and financial inclusion initiatives to support gig workers. Based on NITI Aayog's report, the Indian government has initiated several measures to support the gig economy:

- **Fiscal Incentives:** Companies that hire a significant number of women and people with disabilities receive tax breaks and startup grants to boost their participation in the gig economy.
- **Social Security Measures:** Efforts are underway to provide social security benefits such as income support, paid sick leave, insurance, and pension plans to gig workers associated with platform companies like Swiggy, Zomato, Ola, and Uber.
- **Skill Development Programs:** Programs are being implemented to enhance the skills of gig workers, thereby improving their employability and productivity.
- **Financial Inclusion Initiatives:** Initiatives are being introduced to promote financial inclusion for gig workers, ensuring they have access to financial services and support.

These initiatives aim to foster a more inclusive and supportive environment for gig workers in India.

Legal Frame work for Gig Economy in India

In India, several laws and regulations have been implemented to cater to the needs of gig workers:

Labour Codes

The four labour codes, which cover social security, industrial relations, wages, and occupational safety and health, aim to create a uniform definition of wages and extend benefits to gig and platform workers. Industrial Relations Code, 2020 includes provisions for defining and recognizing gig and platform workers within the industrial relations framework. The code outlines mechanisms for addressing disputes and grievances of gig and platform workers. Occupational Safety, Health, and Working Conditions Code, 2020 aims to ensure safe and healthy working conditions for gig and platform workers. It focuses on provisions related to rest, hygiene, and safety for all workers, including those in the gig economy. Code on Wages, 2019 includes gig and platform workers in the broader definition of workers, ensuring they are entitled to minimum wages and fair compensation. It mandates clear and timely payment of wages to all workers, including those engaged in gig work. The labour codes represent a significant step towards providing comprehensive social security and fair working conditions for gig and platform workers in India.

Code on Social Security, 2020: The Code on Social Security, 2020, is comprehensive legislation aimed at consolidating and revising laws related to social security in India. This code extends social security benefits to gig workers, including life and disability cover, health and maternity benefits, and old age protection. It also provides a clear definition of gig workers as those engaged in flexible, platform-based work. The code seeks to extend social security benefits to all employees and workers, whether in organized, unorganized, or other sectors. It amalgamates nine central labour enactments related to social security, including the Employees' Compensation Act, Employees' State Insurance Act, Employees' Provident Funds Act, Maternity Benefit Act, and others.

The Code on Social Security 2020 extends social security benefits, including life and disability cover, health and maternity benefits, and old age protection, to gig and platform workers. It mandates registration of gig and platform workers to ensure they receive social security benefits. The code directs social security fund will be created to provide benefits to workers, funded by central and state governments, as well as through CSR funding. The code mandates digital intermediaries employing gig workers must allocate 1-2% of their annual turnover for the social security fund. The code directs the government to notify schemes for unorganized sector workers, gig workers, and platform workers.

The code ensures social security benefit access to healthcare and income security in cases of old age, maternity, work-related injuries, and other contingencies. Gig and platform workers are entitled to social security benefits, including life and disability cover, health and maternity benefits, and old age protection. The Code on Social Security, 2020, marks a significant step towards modernizing and expanding India's social security system, aiming to provide comprehensive protection to all workers.

State Initiatives: States such as Karnataka, Rajasthan, and Jharkhand have made gig workers' social security a priority, though more efforts are needed to address issues like health insurance, minimum wages, and stress-free working conditions.

Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024: This bill seeks to regulate the relationship between aggregators and platform-based gig workers. It mandates the registration of gig workers and aggregators, establishes a welfare board, and provides social security benefits, including health insurance and accident coverage, introduced grievance redressal mechanism for resolving disputes.

Loopholes in the Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024

The Bill has received mixed reactions from industry stakeholders. Organizations like NASSCOM and the Internet and Mobile Association of India (IAMAI) have voiced concerns about the Bill's approach to regulating the gig economy. They argue that gig work is fundamentally different from traditional employment, lacking key elements like accountability, commitment, and control. They also worry that the Bill's detailed regulations, such as transparency in algorithmic monitoring and contract terms, could inhibit innovation and competitiveness. Additionally, concerns have been raised about the transparency in the creation and management of the proposed welfare fund. Industry associations have requested a longer public consultation period, suggesting that the initial 10-day period was insufficient for a thorough review and feedback. This underscores the need for more extensive stakeholder engagement in the legislative process.

The bill's definitions of "gig worker" and "aggregator" lack clarity, leading to potential misinterpretations and loopholes. While the bill mandates the creation of a welfare board, its practical implementation and effectiveness remain uncertain. Concerns exist about the efficiency of the proposed two-level grievance redressal mechanism and the actual protection it offers to gig workers. The bill requires timely payments but does not specify penalties for non-compliance, which could result in delays and exploitation. Although the bill aims to provide greater autonomy to gig workers, there are concerns about its enforcement and whether it will truly protect workers from overwork. Despite mandating safe working conditions, the bill lacks specific guidelines or standards, making enforcement difficult. The penalties for violations are relatively low, potentially insufficient to deter non-compliance by aggregators. These gaps highlight the need for more detailed provisions and stronger enforcement mechanisms to ensure the bill effectively protects gig workers in Karnataka.

Rajasthan Platform-Based Gig Workers (Registration and Welfare) Bill, 2023: As the first state to pass legislation for gig workers, Rajasthan's bill requires the registration of gig workers and aggregators providing each worker with a unique ID, establishes a welfare board to oversee the implementation of social security measures, and grants access to social security schemes. It also includes provisions for grievance redressal and transparency in automated systems. The bill introduces a welfare fund funded by a fee charged to aggregators. This bill is a significant step towards safeguarding the rights and welfare of gig workers in Rajasthan.

Criticisms of the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Bill, 2023

The bill imposes excessive regulations on gig work, which inherently differs from traditional employment in terms of accountability, commitment, and control. There are concerns that such as transparency in algorithmic monitoring and contract terms, could hinder innovation and competitiveness in the gig economy. Concerns have been raised about the lack of transparency in the creation and management of the proposed welfare fund, potentially leading to mismanagement or misuse of funds. Industry associations have criticized the brief public consultation period, arguing that the initial 10-day window was insufficient for thorough review and feedback, highlighting the need for more extensive stakeholder engagement. These criticisms underscore the need for a balanced approach that protects gig workers while fostering an environment conducive to innovation and growth in the gig economy.

Jharkhand Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024: This bill focuses on providing social security and welfare benefits to platform-based gig workers. It introduces measures such as a welfare board, unique worker IDs, and a welfare cess funded by aggregators. The bill emphasizes transparency in automated processes and dispute resolution mechanisms. This bill is a significant step toward protecting the rights and welfare of gig workers in Jharkhand.

Criticisms of the Jharkhand Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024

The bill exerts accountability, commitment and control over this new labour market which fetch the crusts of the third revolution labour market considerably weak. Detailed regulations, such as transparency in algorithmic monitoring and contract terms, could hinder innovation and competitiveness in the gig economy. There are concerns about the lack of transparency in the creation and management of the proposed welfare fund, potentially leading to mismanagement or misuse of funds. Industry associations have criticized the brief public consultation period, arguing that the initial 15-day window was insufficient for thorough review and feedback. The bill proposes a parallel structure for social security laws for platform gig workers, duplicating the central law, Code on Social Security, 2020. The fee structure could be altered through executive notifications without amending the primary law, raising concerns about stability and predictability. The bill imposes burdensome obligations on aggregators, such as minimum notice periods for termination and algorithmic disclosures, which could impact their operations. These criticisms highlight the need for a balanced approach that protects gig workers while fostering an environment conducive to innovation and growth in the gig economy.

Uncertainties in current Law

The primary flaw in the current legal structure is its inadequate definition and classification of contract work, leading to a lack of clarity about the responsibilities of digital platforms towards their workers. This ambiguity perpetuates gender inequalities, as women often end up in lower-paying sectors of the freelance economy and remain underutilized. Moreover, the absence of specific legislation for the contract economy means that workers are unaware of their rights and the procedures for resolving complaints.

The overlap in definitions and the structure of the Code on Social Security 2020 creates complexity, especially in determining which schemes apply to which categories of workers. Although Chapter IX of the Code focuses on unorganized workers, gig workers, and platform workers, only Sections 112, 113, and 114 address gig and platform workers specifically.

Additionally, the code does not address income fluctuation issues. For instance, provident fund provisions are beneficial in the long run, but how can workers contribute to them with already dwindling incomes? Some gig workers do not want social security if they have to pay for it themselves. While the code penalizes any deductions by employers from workers' income, the costs expected from gig worker employers for the benefits mentioned in the Code, 2020, might impact the hiring of gig workers. Employers might then avoid recording the employment of gig workers to dodge these costs.

In 2020, a draft labor code sought to define the status of gig workers outside the traditional employer-employee framework, suggesting entitlement to accident, health, and retirement benefits funded by contributions from the state, central government, and platforms into a welfare fund. However, these rules have not been established at the national level.

Safety and sexual harassment concerns highlight deficiencies in current legislation. The POSH Act provides a comprehensive definition of the workplace, but its relevance to the transient and digital environments used by gig workers is still unclear. The Rajasthan Platform Based Gig Workers Act, 2023, sets a precedent for comprehensive gig worker protection at the state level. However, a consistent nationwide framework ensuring protection for gig labourers across all states is still missing.

Relevant Case Laws

The legal landscape for gig workers in India is evolving, with significant litigation setting precedents:

- **IFAT PIL:** Gig workers, represented by IFAT, filed a PIL before the Supreme Court, arguing for the "Right to Social Security" for all workers, including those in the gig economy. The petition asserts that gig workers for platforms like Zomato, Swiggy, Ola, and Uber should be considered "unorganized workers" entitled to social security benefits. It highlights exploitation due to long hours, inadequate earnings, and lack of social security, calling for specific schemes for health insurance, maternity benefits, pensions, and other assistance. Gig workers have challenged the notion that their relationship with platform owners is a partnership, asserting it as an employer-employee relationship.
- **All India Gig Workers Union v. Uber India Systems Pvt. Ltd.:** In this case, gig workers challenged Uber's practices, particularly its refusal to provide minimum wages and social security benefits. This case highlights the ongoing struggle for fair compensation and benefits in the gig sector, aiming to redefine the employer-employee relationship within digital platforms.

International Guidelines and Recommendations

International Labour Organization (ILO)

The International Labour Organization (ILO) has been at the forefront of advocating for social protection for gig workers. Key ILO guidelines and recommendations includes ensuring that gig workers are correctly classified to receive appropriate social protection, recommending the inclusion of gig workers in contributory social protection schemes, covering health insurance, retirement benefits, and unemployment benefits, highlighting the need for portable benefits that gig workers can carry across different jobs and platforms, encouraging tripartite consultations between governments, employers, and gig platforms to design comprehensive social protection schemes, suggesting the adaptation of national policies and legal frameworks to include gig workers, raising awareness and providing information to gig workers about their social protection rights and benefits.

Regional and National Approaches

European Union

The European Union has been exploring ways to extend social protection to gig workers. European pillar of social rights initiative includes provisions to protect gig workers' rights and ensure fair working conditions. The EU is considering the implementation of portable benefits that gig workers can carry across different jobs and platforms. The EU encourages social dialogue between governments, employers, and gig platforms to create comprehensive social protection frameworks.

United States

In the United States, the legal status of gig workers varies by state. California's AB5 law uses the "ABC test" to determine whether a worker is an employee or an independent contractor, with the aim of extending employee benefits to gig workers. The California's Assembly Bill 5 (AB5), enacted in September 2019, uses the "ABC test" to determine worker classification as either employees or independent contractors. This test originated from the California Supreme Court's decision in the *Dynamex Operations West, Inc. v. Superior Court* case in 2018. Here's a simplified breakdown of the ABC test:

A. Control: The worker must be free from the hiring entity's control and direction in performing the work, both according to the contract and in practice.

B. Business: The work performed must be outside the usual course of the hiring entity's business.

C. Independent Trade: The worker must be engaged in an independently established trade, occupation, or business similar to the work performed.

To be considered an independent contractor, all three conditions must be met. If any condition is not satisfied, the worker is classified as an employee, thereby entitled to the benefits and protections under California labor laws.

Portable Benefits Initiatives: Various states are exploring the concept of portable benefits for gig workers to ensure continuous coverage. **Portable Benefits Initiatives** aim to ensure that benefits are tied to workers rather than specific jobs. This allows workers to retain their benefits when they change jobs, work multiple jobs, or take employment breaks. The goal is to create a more flexible and secure safety net for workers, particularly those in gig work or other non-traditional employment arrangements.

Key aspects of portable benefits include:

Health Insurance: Ensuring continuous access to health coverage, regardless of job changes.

Retirement Savings: Allowing seamless transfer of retirement funds between employers.

Paid Leave: Providing access to paid time off that isn't dependent on a single employer.

Unemployment Insurance: Offering benefits that are portable across various jobs.

These initiatives aim to promote economic security and stability for workers in a rapidly changing labor market.

Federal Regulations:

- The **Federal Trade Commission (FTC)** has issued a policy statement to protect gig workers from unfair, deceptive, and anticompetitive practices.
- The **Department of Labor (DOL)** has revised rules to determine the classification of workers as employees or independent contractors under the Fair Labor Standards Act (FLSA). This rule aims to address employee misclassification, which can deny gig workers benefits and protections.

Fair Labor Standards Act (FLSA)

Under the Fair Labor Standards Act (FLSA), the classification of a worker as either an employee or an independent contractor is determined by the **economic realities test**. This test evaluates whether a worker is economically dependent on the employer or operates independently. Key factors considered include:

- **Opportunity for Profit or Loss:** Can the worker profit or incur a loss based on their managerial skills?
- **Investments by the Worker and Employer:** Does the worker make significant investments not reimbursed by the employer?
- **Permanence of the Work Relationship:** Is the work relationship ongoing or project-based?
- **Degree of Control:** How much control does the employer have over the worker's tasks and methods?
- **Integral Part of the Employer's Business:** Is the work a core part of the employer's business?
- **Skill and Initiative:** Does the worker use specialized skills and exercise independent judgment?

No single factor is decisive; the overall circumstances are assessed to determine the worker's status. This ensures that workers who are economically dependent on an employer are classified as employees and receive FLSA protections, such as minimum wage and overtime pay.

Challenges and Future Directions

Despite these efforts, gig workers still face significant challenges, such as job insecurity, lack of social protection, and fluctuating income. To address these issues, there is a growing recognition of the need for more comprehensive regulations and innovative approaches. Future directions include:

1. **Universal Social Protection:** Developing universal social protection systems that cover all workers, regardless of their employment status.
2. **Strengthening Enforcement:** Ensuring that existing regulations are effectively enforced to protect gig workers' rights.
3. **Promoting Social Dialogue:** Encouraging collaboration between governments, employers, gig platforms, and workers' organizations to create robust social protection frameworks.
4. **Enhancing Data Collection:** Improving data collection and sharing to monitor gig workers' participation in social protection schemes and address coverage gaps.

Conclusion

As the gig economy continues to expand, it's crucial to ensure that gig workers have adequate and sustainable social protection. By adopting international guidelines and learning from best practices in various jurisdictions, policymakers can develop comprehensive social security systems that safeguard gig workers' rights and promote their well-being. This comparative study underscores the importance of collaboration and innovation in addressing the unique challenges of the gig economy, ensuring a fair and inclusive labor market for everyone.

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