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The Relationship Between Aggregators and Platform Workers Under Indian Labor Laws

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Abstract

In the backdrop of the modern Internet era, the article aims to analyze the possible relationship between the 'On Demand Aggregator Businesses' and the Platform Workers associated with the said businesses as existing in India. The article then moves on to assess the legal position with respect to an employee or a worker under the Indian Employment and labor legislations considering certain demands raised by the Platform Workers. It then moves on to assess the position of Platform Workers in the Labor Codes. It further discusses foreign perspectives on gig relationships and then suggests possible recommendations to deal with the gig relationships.

Keywords: Gig workers, aggregators, labor laws, social security, aggregators, technology platform

INTRODUCTION

For the people living in the pre internet era in India, the only concept of a taxi was a yellow and black Cab/ taxi. 'Taxi' means a car with a driver whose job is to take you somewhere in exchange for money. Anyone could hire a taxi if they were willing to pay the fare. These taxi drivers were typically 'self-employed' or 'Independent Contractors'. The concept of 'workman', 'employee' or 'worker' under the Indian Employment laws was defined in the context of traditional employments that were existing in the factories, offices, shops or establishments at the time of enactment of the said acts. Most of these acts were enacted in early or middle twentieth Century. At that time the complexities of modern times or that there would be services provided to customers through Individuals that would be facilitated by technologically controlled platforms could not have been conceived. Currently nearly 90% of the taxi business in India is being run by these platforms such as Uber and Ola [1]. Similarly for several other services like delivery of food, goods, medicines, clothes etc. and for providing cleaning and personal services etc. the most preferred mode is now through these technologically controlled platforms. The innovation of the modern-day Information Technology and the "start-up" culture in India has helped form more complex business structures which have resulted in arrangements /relationships which require a fresh assessment from the legal perspective. For the purposes of this article, the focus is on the on-demand aggregator businesses which claim to connect "customers" directly with individuals performing a specific task through means of an internet software called a "technology platform" [2]. They are referred to as "on demand" as the provision of work to the individuals performing the specific tasks is based on the demand for such work. They are referred to as "aggregator" as they claim that their primary task is that of collection of information regarding the "demand" or an individual willing to do a certain task and connect them to the "supply" or the end customer. Such businesses may be referred herein as "*On Demand Businesses*" or "*Aggregators*" and such individuals connected with the same may be referred herein as "*Platform Workers*". They may conduct their business by choosing to contract with individuals

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performing tasks on complex worded agreements drafted cautiously so as to avoid being construed as an employer under the labor laws [3]. Consequently, their contracts reveal a completely new kind of relationship. Whether such Platform workers can be called as “self-employed,” “independent Contractors,” “employed,” “partly employed” or if they form a “distinct and separate class” are the issues that have arisen and need consideration.

Currently the services provided by Platform Workers in India aren’t synonymous with “associates” or “consultants” whose services may be hired by businesses for providing highly specialized/skilled services as opposed to the currently used services where the Platform Workers working through Aggregators perform work which is more manual and skilled in nature. In addition, such individuals performing manual or skilled nature of duties do so with some degree of flexibility as well as some degree of control exercised over them through the Aggregators [4].

The relationship between the Aggregators and Platform Workers (hereinafter “*Gig Relationship*”) is a complex one inasmuch as there are factors pointing towards Aggregator’s control over the Platform Workers as well as factors pointing towards independence and the consequent self-employment of the Gig Workers [5]. Some or all of the following features of the relationship may exist between the Gig Relationships depending on the nature of the Aggregator:

1. Try to organize Platform Workers in sectors like taxis, household help, personal care, delivery service, and so on;
2. Provide the service of the Platform Worker under their own brand names;
3. May use words like “partner,” “subscriber,” “Service Provider” [6] to describe the Platform Workers.
4. May make the individuals sign standard contracts [7];
5. Aggregators may define criteria or standards of work for the Platform Workers [8];
6. Normally, it is provided in their contracts that their role is only limited to provision of information of a prospective customer/client to the Platform Worker and for providing such information, they may deduct a certain amount of commission or fee from the individual’s earnings [9];
7. Individual Platform Workers may use their own tools or apparatus for the purposes of their work [10];
8. Individual Platform Worker’s earnings through the technology platform may depend upon the quantity of work done as well as the quality of work as assessed by the customer through the ratings provided by customers on the technology platform;
9. Aggregator retains control over the rate or price which is to be charged by the individual worker from the end customer;
10. Aggregator retains control over the percentage and amount of commission payable to them by the individual service providers;
11. Individual Platform Worker may have flexibility in terms of choosing their working hours [11];
12. Individual Platform Worker may not have the right to reject the work once it is assigned to them
13. Aggregator may have policies in place to govern the Platform Worker, for example, safety standards policy, a background verification policy, and so on [12];
14. Both parties can terminate the Contract by giving prescribed notice [13].

There are a large number of Acts and Enactments regulating or governing the workers in the organized sector. Some of the important legislations in the context of the major demands raised by the Gig Workers [14] are the Industrial Disputes Act,1947, Trade Unions Act,1923, the Minimum Wages Act,1936.

DO THE EMPLOYMENT TESTS PRESCRIBED UNDER THE CURRENT LABOR LAWS COVER GIG RELATIONSHIPS?

In India, there are a cluster of employment laws governing the relationship between an employer and employee. There are certain legislations which may cover a broad class of employments as specified therein in the acts and rules, whereas certain would regulate a very specific or niche category of employments such as journalists [15], beedi workers [16], building and construction workers, and so forth [17]. Every labor legislation has its own specific way of defining an employer and employee to which the concerned act is made applicable. Consequently, every legislation provides its own test/s to decide eligibility or coverage of a person employed with an organization under the relevant act and the said tests are more clearly elucidated in the judicial pronouncements. For the purposes of this article, the labor legislations, which are relevant from the perspective of the major demands of the Gig/Platform workers [18] are being considered. Broadly, the main demands of the Platform/Gig workers are to be considered as employees and claims to various social security, health insurance, safety, maternity benefits, and terminal benefits [19]. Hence, the Acts which are being considered are Industrial Disputes Act, 1947 ("*ID Act*"), The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("*EPF Act*"), the Payment of Wages Act, 1936 ("*PW Act*"), the Minimum Wages Act, 1948 ("*MW Act*"), the Employees' State Insurance Act, 1948 ("*ESI Act*"), the Employee's Compensation Act, 1923 (hereinafter "*ECA*"), the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (Hereinafter "*SHWW Act*").

The scope of each Act from the perspective of a Gig Worker shall be examined hereinbelow.

The ID Act

The object of the ID Act is to provide a mechanism for settlement and/or adjudication of industrial disputes [20]. "Workman" is defined at Section 2(s) of the ID Act. As per the said definition, "workman" means *any person employed in any industry* to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward, whether the terms of employment be express or implied, and in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of [21]. However, the definition specifically excludes any such person who is employed mainly in a managerial or administrative capacity [22].

Therefore, the test for whether a person is a workman depends on whether an employer employee relationship exists between the workmen and the employer. The case of *Dharangadhara Chemical Works Ltd vs State of Saurashtra* [23] as decided by a four judge Bench of the Supreme Court seems to be an important precedent in this regard. In the said case, the Appellant Company held a license for manufacture of salt on a certain land. However, the salt was manufactured by certain workers called agrarias. Work only took place in the months of October to June. Agrarias were initially provided with a sum of Rs. 400 each to meet initial expenses; however, after the manufacture of salt, the agrarias were paid by the Appellant at a fixed rate. At the end of the season, the accounts were settled wherein the Agrarias would pay any balance due from them to the Appellant after adjusting the initial cost provided by the Appellant Company. The Question in dispute was whether the Agrarias were workmen under Section 2(s) of the ID Act.

It was held that the initial test of an employer-employee relationship was the presence of a right to direct the work to be done as well as control the manner in which it is to be performed. This was the supervision and control test.

The concept of "workman" and an "independent contractor" was distinguished. Therefore, the agarias, who were professional laborer's and personally worked with the members of their families in manufacturing the salt, were "workmen" under the ID Act, the fact that they were free to engage others to assist them and paid for them, could not affect their status as workmen.

Another precedent in this regard is the case of *Ram Singh and Others vs Union Territory, Chandigarh & Ors* [24] wherein a two-judges Bench of the Supreme Court was considering a dispute regarding the regularization of contract labor by a principal employer.

It was held that all the relevant facts and circumstances including terms of contract, whether the person had integrated into the work of the management and multiple pragmatic approach considering all factors instead of just relying on test of control needed to be followed.

In the case of *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu & Ors.* [25], the Supreme Court, in the facts and circumstances of the case, reverted back to its old test of control and further widened it. In the said case, a two-judge bench of the Supreme Court was deciding as to whether farmers engaged by the Society through various contractors were the employees of the Society. It was held in the said judgment that the control test is required to ascertain whether the matter is with respect to contract of service or contract for service. It should not be a sham to avoid liability under the Statute. It was observed that the society was formed to protect the growers from exploitation. Furthermore, the workers were engaged on ad-hoc or job to job basis by the producer or the merchants hence it may not lead to the inference of employer and employee relationship since the employee has a right to work or refuse when an offer is made by the producer.

The relevant portion is extracted below [26]:

> *"The totality of the circumstances as opined by the Tribunal and affirmed by the High Court would clearly go to show that although certain activities are carried out in the market yards wherefor requisite infrastructures are provided, the Society in general does not have the necessity of employing any workman either for the purpose of loading, unloading or grading. In a situation of this nature and particularly having regard to the fact that the respondent is a cooperative society, which only renders services to its own members and despite the fact that in relation thereto it receives commission at the rate of one per cent both from the farmers as also the traders; it does not involve in any trading activity. Although rendition of such service may amount to carrying out an industrial activity within the meaning of the provisions of the Industrial Disputes Act, 1947 but we are in this case not concerned with the said question. What we are concerned with is as to whether the concerned workmen have been able to prove that they are workmen of the Society. They have not."*

The case of *Dharangadhara* has enunciated the test of 'control and supervision'. The factual matrix was totally different from the current engagement of Platform Workers through the Aggregators. The important question would be whether the Aggregators can be construed to be the employer of the Platform Workers under the ID Act. Any claim of a workman can lie only against the employer. Furthermore, the issue would be whether the Platform Worker can fall under the purview of the definition of Workman under the ID Act. The Aggregators could aver that they are merely intermediaries or facilitators who connect the person needing services to the Platform Worker who is providing the service. They are merely utilizing the technology platform to make these two parties connect, for which they charge a commission. They could aver that they are merely the technology platform and only such employees who are engaged in running or maintaining the said platform should be considered as it employees. It could be averred that none of the tests laid down by the Courts to determine the relationship of an employer and an employee are satisfied. On the contrary, it could be averred by the Platform workers that their work is regulated and to certain extent controlled by the Aggregators. Further their earnings are dependent on the customers provided by the Aggregators. Though it appears that considering the various factors, which point towards the independence of the Platform Workers, the lack of proper control as envisaged in an employment, the expertise of the Aggregator not at all being in the work being performed by the Platform Workers, such Platform Workers may not ordinarily fall under the traditional definition of "workman" under the ID Act vis-à-vis the Aggregators. However, in certain cases, the award passed by the Industrial Tribunal/Labor Court could depend upon the specific facts and circumstances, pleadings, issues, evidence, and the exact relationship between the parties.

PW Act

The PW Act provides for the provision to regulate the payment of wages to certain employees [27]. The said act is very straightforward in its approach whereby the establishments to which the said act applies is clearly listed in the statute itself or can be notified by the Appropriate Government in a Gazette notification. The IT Industry has been covered by Notification in the gazette in Karnataka [28].

The first question that arises is as to whether the Aggregator can be construed to be an "employer" and the Platform Worker, its "employee." The question of payment of "wages" would only arise if both these are answered in the affirmative. Second issue is whether any facilitation fee charged from the Platform Worker can be construed to be "wages" under the said Act.

The problem with the implementation of the said act to Gig Relationships would arise in as much as the said Act puts the responsibility on the "employer" to define the wage period [29], time of payment of wage [30], mode of payment [31], any relevant deductions [32] to be made and a responsibility of maintenance of registers of employment [33]. Due to the flexible nature of the work, the Platform Workers work for a non-fixed period of time and the payment is only guaranteed in case of performance of the work and the deductions depend upon the quality of the work. It is apparent that the said Act was enacted when the Gig relationships could not even have been visualized. Due to the provisions of the said Act and straightforward test for applicability, the rights created therein do not provide any value to Gig Relationships.

MW Act

This Act is to ensure that minimum wages are paid in certain scheduled employments [34]. The term employee is very technically defined at Section 2(i) of the MW Act; however, in case of dispute of the status of employment relationship, the Labor Court has the authority to decide the nature of the concerned relationship for determining applicability of the said Act to the concerned person [35].

The act is also relatively straightforward and currently does not include Gig/Platform Workers. All Scheduled Establishments are liable to pay the minimum wages to their employees and the Platform workers have not been construed to be employees of the Aggregators.

ESI Act

This Act provides for benefits pertaining to sickness, maternity, and employment injury [36]. The current wage ceiling for an employee to be covered under the said Act is 21,000 rupees [37]. Vide Notification under Section 1(5) of the Act, coverage is extended to "shops" [38]. In a catena of judgments, the Supreme Court has expressed that a shop could mean a place of business [39] or place where systematic commercial or economic activity is carried out [40]. Therefore, by virtue of having a wide meaning, the Aggregators engaged in buying and selling of services could fall within the purview of the said Act by virtue of performing a commercial activity.

The definition of "employee" under the ESI Act is very wide. Any person who is employed for wages in or *in connection with the work* of a factory/establishment is included in the definition [41]. In the matter of *M/s P.M. Patel & Sons and others v Union of India and Others* [42] certain workers were given the work of rolling beedis at their homes. The raw material such as tobacco, beedi leaves, and thread was provided by the manufacturers. These workers were held to be employees under the ESI Act. The courts took into account that the work of rolling beedis does not require a high order of skill and so does not require supervision by manufacturer at all times. One of the factors was that the manufacturers had the right to reject the product.

Platform Workers are not engaged in the work of the aggregator of running/maintaining the Technology Platform and are only performing their independent work/skill to fulfil the work of a customer. A Platform Worker had not been covered as an "employee" of the Aggregator under the ESI Act. However, as discussed below, it has been envisaged to provide the Platform and Gig Workers benefits under the Code on Social Security, 2020.

EPF Act

The EPF Act provides for the institution of provident funds, pension fund, and deposit-linked insurance fund for employees in factories/establishments [43]. By virtue of Section 1(1)(b) of the EPF Act, the Central Provident Commissioner may apply the provisions of the act to any establishment (employing twenty or more employees) by way of Notification in an Official Gazette [44]. The Employees' Provident Fund Scheme, 1952, (EPF Scheme) was extended to industries and establishments dealing with computers [45]. Therefore, Aggregators having twenty or more employees, if construed as dealing in computer software may be covered under the EPF Act.

As per Section 2(f), "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or *in connection with the work of an establishment* and who gets his wages directly or indirectly from the employer. In the case of *The Regional Provident Fund Commissioner Vs. T.S. Hari Haran* [46], it was held that the word "employment" must be construed as employment *in the regular course of business* of the establishment, such employment obviously would not include employment of a few persons for a short period on account of some passing necessity or emergency. However, it was further clarified by the Hon'ble Supreme Court that the question of employment must be determined in each case on its own peculiar facts.

In the matter of *Karachi Bakery v. Regional Provident Fund Commissioner* [47], the PF authorities raised a PF demand on the appellant covering the employees of Devandas Bakery and Ram Bakery stating that they should be treated as employees of the appellant-firm inasmuch as the said contracts are in connection with the business of the said firm and fell within Section 2(f) of the Act.

It was held that the agreements between the appellant and the two other firms reveal that they are agreements for supply of bakery products. There is no clause permitting supervision or control of the work. There is no clause in the deed nor any evidence that the two firms do not accept work from anybody else. There is no clause even that the appellants will pay the labor charges of the employees' of the two firms. No right of rejection is incorporated vis-a-vis employees of the two firms. The Provident Funds Commissioner while agreeing that Devandas Bakery and Ram Bakery are independent units manufacturing finished products for Karachi Bakery under the agreements, dated January 1, 1976, thought that because there was a contract which was in connection with the appellants-work, the employees of the said contractors should have to be treated as the employees of the appellant. The distinction between a contractor who merely employs labor for and on behalf of an employer and a contractor who employs his own labor to manufacturer and deliver a finished product, to another establishment has been totally over-looked by the Commissioner.

On the factual matrix, these firms were considered to be separate and distinct units. Hence, the employees of an independent contractor were not considered to be employees under the EPF Act.

The Platform Workers are not engaged in the work of the aggregator, which is running and maintaining a Technology Platform. They are only performing their independent work/skill to fulfil the work of a customer and have been connected by the Aggregator. It needs to be seen as to whether they can be construed to be engaged in connection with the work of the Aggregator. However, as discussed in the subsequent paragraphs, it has now been envisaged to provide them the security benefits under the Code on Social Security, 2020.

ECA

This Act provides for compensation in the cases of injury, death, and so on, by accident [48]. The payment of such compensation by employer becomes necessary where the employees are subjected to work that in its nature is risky and or hazardous. Under section 2(e), "employer" is widely defined and also includes an employee whose services "are temporarily lent" [49]. However, the said Act is a little too straightjacketed in its approach whereby it specifically provides at Schedule II [50], the employments which may be covered under the Act. It appears that currently there are no provisions, which cover the Platform Workers under this Act. This will have to be addressed by the legislature depending upon how the Platform Workers are classified.

SHWW Act

This Act provides for protection of Women at Workplace against sexual harassment. It also provides measures for the prevention of sexual harassment and for redressing the complaints of sexual harassment [51]. The act is applicable to "aggrieved woman" as defined under the Act [52]. It includes woman who is "employed or not" with an organization, but who alleges sexual harassment [53]. Therefore, the said definition is wide enough to protect every woman within or outside a workplace. The problem with bringing the Gig Relationship under the said Act firstly arises due to the specific and technical definition of "employer" under the Act [54]. For private companies, Section 2(g)(ii) states that employer is any person responsible for the "management, control, and supervision" of the workplace. As stated in the preceding paragraphs, the moot question is as to whether the Aggregators can be considered to be the "employers" of the Platform Workers for the purposes of the SHWW Act.

The other challenge with respect to inclusion of Gig Relationships under the Act arises with the definition of "workplace" [55]. Workplace has been given a wide interpretation and also could include the transport that may be provided by the employer [56]. Since, it is not clear as to whether the Aggregators are the employers, the issue whether the transportation by Platform Workers can be considered to be a "workplace" also remains unclear. However, certain legislation may be required to be brought in to provide/protect the safety of the customers who are connected to the Platform workers by the Aggregators.

In view of the inadequacy of social security and labor welfare, some Platform Workers demand for ESI and PF contributions by Aggregators for a secure future [57]. There are certain newspapers reports wherein it is claimed that certain drivers associated with these businesses had suffered/passed away due to accidents [58]. In such cases of accidents while on duty for the technology platform, certain amendments/legislation may be required to be brought in.

Therefore, on the basis of the above discussion, it is evident that the current laws and their interpretations are inadequate and not up to date to deal with the new Gig and Platform relationships that have emerged in India for the past few years. The uncertainty would help no one since Aggregators would keep on spending its resources on litigation and the Platform workers would keep working in an insecure environment with no defined or fixed work and pay conditions. Hence innovative thinking, a proper analysis of all the problems and issues arising in these new relationships and a solution-oriented approach is required.

WHETHER THE PROPOSED/IMPLEMENTED REFORMS SETTLE THE AIR AND TRY TO DEFINE THE RELATIONSHIP OF THE AGGREGATORS?

The road transport authorities in India have been more proactive in regulating the transport-oriented Aggregators. In relation to road transport aggregators specifically, the attempt of the Government has been to define the term "aggregator" itself for creation of rights rather than trying to cover them in the already available legislations governing motor transport. In an early draft of the "Road Transport and Safety Bill, 2015" and already notified "Karnataka On-demand Transportation Technology Aggregators Rules, 2016" [59] and the Motor Vehicle Aggregator Guidelines 2020 [60], "aggregator" is defined as only a technology platform/marketplace/intermediary to connect a passenger with a driver [61]. The rules themselves and the said definition implies that the concerns with the aggregation companies cannot be regulated under any of the existing /traditional legislations for Motor Vehicles and may require amendments in the Acts or the Rules. It appears to be an indication that the issue of classification of Gig Relationship under the Indian laws could be solved by defining a Gig Worker as a separate class. In these Rules, the focus was more on safety and taxi licensing and did not address the issue of the status of and the Platform/Gig Workers.

The 2nd Report of the National Commission on Labor was of the view that labor laws may be consolidated into five different legislations [62]. Furthermore, that the definition of “worker” should be uniform and that social security benefits must be available to a wider section [63]. in the report of the working group on “labor laws & other regulations” for the 12th five-year plan (2012-2017) [64] released by the Ministry of Employment and Labor, the Unanimous recommendation of the labor unions, employers, and the Government was that the labor laws may be simplified and consolidated.

The most ambitious step of provision of social security to all workforce as envisaged in the 2nd Labor Commission Report [65] was finally put into action in the form of The Code on Social Security 2020 [66]. Under Section 2(35), “gig worker” means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship [67]. Section 2(55) of the Code defines platform work as “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 [68].” The Code envisages that certain social security schemes for the benefit of the Gig and Platform Workers may be defined and enforced by the Government [69]. By using the term “gig worker” or Platform Worker, the Government has envisaged “Platform Worker” or “gig worker” as a separate class of workers which cannot be classified as either “employee” or “self-employed.” Therefore, in the Indian context, the path chosen by the legislators seems to be to define Platform Workers or “gig worker” as a separate class in itself.

It is argued that the major reason for the rise of the modern Gig Worker is due to the Information Technology boom and the creation of the various platforms, which provided an opportunity for an individual contributor or self -employed to be connected to customers. In 2020, it was reported by Niti Aayog that there were around 7.7 million such Platform Workers working through these technology platforms/aggregators [70]. If the intention of the legislature was to confine the scope of Platform Workers only to such individuals who wore engaged through these technology platforms/aggregators then they could have done so. However, it seems that the intention under the Code on Social Security, 2020 is to cover a large segment of work arrangements outside of traditional employer–employee relationship. The definition of “Platform Worker” seems to be quite precise; however, the definition of “Gig Worker” seems to be very wide and is capable of opening floodgates of work arrangements, which are outside the traditional employer-employee relationship.

In the Code of Social Security, 2020, it is provided that social security benefits would be granted to “gig” and “platform workers” through formulation of schemes [71]. This could be implemented through E.P.F.O. and E.S.I.C. It also provides for the framing of the appropriate and suitable social security schemes with respect to matters pertaining to life and disability cover, health, maternity benefits, accidents, old age protection, and so on [72]. There would be a Social Security Fund and one of the channels of funding is a contribution of 1% to 2% of the annual turnover of an aggregator subject to 5% of the amount paid by the Aggregator to the said workers [73]. Furthermore, a toll free call center/helpline or facilitation center may be set up to provide information with respect to the social security schemes that may be available including the procedure and process for availing the benefits under the said schemes [74].

BORROWING INTERNATIONAL PERSPECTIVES ON EMPLOYMENT RELATIONSHIPS IN THE GIG ECONOMY

Ben Z Steinberger suggested a five-factor employment test wherein courts should consider a number of factors [75].

This test is a mix of the “control test,” “totality of circumstances test,” and an “economic reality” test. However, construing a Platform Workers/Gig Worker as an employee could lead to a misclassification of the employment status of the Platform Workers/Gig Workers. A more recommended alternative could be the solution espoused by Adria´n Todolı´-Signes [76]. Todolı´-Signes suggests that even if the employment relationship can be interpreted to fit the new type of workers, this does not mean that the protection needed by both the new and the old types is the same [77]. Rules protecting working conditions do not fully match the new business model, one of the main characteristics of which is working time flexibility. Workers are allowed to choose when and for how long they wish to work, a concept distant from traditional regulations on working hours, schedules, compulsory rest periods, and holidays. Fixed salaries and minimum wages seem difficult to fit into a business model where a worker can also choose how long he or she is going to work [78]. A worker who works offline for an online platform is subject to risks different to those of a traditional employee [79]. As per Todolı´-Signes, such workers, therefore, need a tailormade regulation. In his article, he proposes the creation of a special employment relationship and a separate class legislation for the Gig workers [80]. This seems to be also the position taken by the legislators in India while drafting the aggregator rules and the Labor Codes.

DEVELOPMENTS UNDER THE INDIAN JUDICIARY ON GIG WORKERS

Apart from the challenge to the exclusion of Platform Workers from employment status—which was made by Ola and Uber drivers before the Delhi High Court in 2015 [81]—the IFAT in its petition has sought social security coverage for Platform Workers as "unorganized workers" under the Unorganized Workers' Social Security Act, 2008 ("UNWSS Act, 2008") and the recognition of social security as a fundamental right [82]. Though this Act did not make explicit reference to gig work, the Federation has bolstered their argument with reference to the recognition of social security schemes for "gig workers" [83] and "" [84] (who are defined as being outside the "traditional employer–employee relationship") in the Code on Social Security, 2020 which is yet to be implemented [85], and under which the UNWSS Act, 2008 is subsumed.

THE WAY FORWARD

In broad economic terms [86], the Indian economy after liberalization has progressed towards a free market economy; however, economically, regulation becomes necessary when there is a lack of "fair play" and "equity" in a free market economy. In view of the surge of the Gig and Platform relationships, it is imperative that all the issues and concerns arising out of the said relationships be considered and addressed. Keeping up with the spirit of the free market economy, the responsibility of redressal of the concerns and issues by the Aggregators and the Government need to be discussed and a solution arrived at. A balanced approach would be recommended where while considering the various interests of the Platform and Gig Workers it should also be considered that an unduly harsh burden is not imposed on the Aggregators, which could jeopardize this relationship itself. The social security concerns of Workers/Gig Workers have partly been taken care of under the Code on Social Security, 2020.

If the Platform Workers and Gig Workers are treated as a distinct and separate Class then certain provisions pertaining to the safety of the Customers, especially women and children, certain minimum payments subject to completing certain specified work for a stipulated number of customers, accident insurance, and so forth. could be brought in. In this regard, the Aggregators themselves could formulate certain welfare schemes, which protect and safeguard the interests of the Platform Workers and address their concerns. For instance, they could themselves formulate schemes, which provide for a minimum fee to the Platform Workers on completing a number of trips/tasks in a day. A policy could be framed where in the case of any incidents of harassment or criminal offences the Aggregators would cooperate and assist in the police investigations. The Aggregators could provide certain insurances, which have not been provided under the legislations to provide comfort and security to the Platform Workers.

As the grievance pertaining to social security has been partly addressed by the Code on Social Security, 2020, the necessary schemes under the Code on Social Security, 2020 could be framed. As regards the issues of safety of the Customers and the Platform Workers, especially women and children, certain minimum payments subject to completing certain specified work for a stipulated number of customers, certain amendments in the Acts such SHWW Act or the ECA could be carried out.

It may be said that the form and manner of provision of rights should not matter in as much as the bigger objective of inclusion, safety, and enforcement of fair play in the economy can be achieved.

CONCLUSION

In view of the above, it could be concluded that the current labor laws, in as much as they use the traditional employer–employee relationships do not provide much assistance or direction to the law on Gig Relationships. The necessary schemes with respect to the various social security benefits mentioned in Section 114 envisaged under the Code on Social Security, 2020 could be framed by the Central Government. The approach to treat the Platform/Gig Workers as a totally separate class seems to be the correct approach.

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