

## The Rise of Gig Economy: Examining the Legal Challenges Ahead

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### Abstract

The gig economy in India has been proliferating over the last few years, driven by technological advancements, changing work culture, and the increasing demand for flexible work arrangements. The gig economy's expansion in India has also been aided by companies' growing acceptance of it as a more affordable alternative to regular employment. In contrast to the traditional job market, the gig economy emphasizes temporary or freelance work. India's gig economy has seen significant growth in recent years, and the potential for further expansion is significant. This paper aims to provide an overview of the gig economy in India, including its size, growth, and challenges. We will analyze how gig workers are classified under Indian law, the implications of this classification, and compare it with the classification of gig workers in other jurisdictions. Finally, this paper will provide recommendations for legal reforms to protect gig workers' rights in India and discuss relevant case studies involving legal disputes with gig workers.

**Key words:** Gig workers, Gig economy, Legal challenges

## Introduction

The term "gig economy" refers to a labour market where temporary employment, freelance work, and short-term contracts are the norm. Over the past ten years, the gig economy in India has grown significantly, propelled by developments, including the advent of online platforms, rising desire for flexible work arrangements, and rising internet access. In India, the gig economy is anticipated to develop at a CAGR of over 17% from 2017 to 2021, reaching a market size of \$455 billion by 2023, according to the report by Ernst & Young. Additionally, the shift toward the gig economy has increased as regular occupations have become harder to find due to the COVID-19 pandemic. While some believe that gig workers prefer the flexibility and range of income that these gigs offer, others counter that gig workers value the employment advantages often associated with traditional positions, such as health insurance and paid time off. In fact, according to a Payoneer poll, 71% of Indian freelancers reported higher earnings in 2019 compared to the year before, demonstrating the potential for gig work to offer monetary stability. The development of the gig economy in India is primarily due to technological improvements. Thanks to the digital revolution, people may now more easily access goods and services through online platforms. The internet has made it feasible for people to look for jobs, work from home, and connect with clients worldwide.

Additionally, due to the prevalence of mobile technology, gig workers can now manage their earnings and workload through simple-to-use apps. The gig economy's expansion in India has also been aided by companies' growing acceptance of it as a more affordable alternative to regular employment. Employers can now use independent contractors instead of regular employees, saving money on benefits, payroll taxes, insurance, etc. The gig economy has resulted in the loss of traditional jobs and has produced an exploitative and unstable workplace culture. However, the expansion of the gig economy has had an impact on chances for traditional employment. However, while it is true that traditional job opportunities have been affected by the growth of the gig economy, it has also generated significant employment opportunities, particularly for youth and people looking for part-time work. Furthermore, there is a growing emphasis on ensuring that gig economy workers are provided basic labor protections, such as minimum wage, social security, and grievance redressal mechanisms.

This paper aims to provide an overview of the gig economy in India, including its size, growth, and challenges. we will analyze how gig workers are classified under Indian law, the implications of this classification, and compare it with the classification of gig workers in other jurisdictions. Finally, this paper will provide recommendations for legal reforms to protect gig

workers' rights in India and discuss relevant case studies involving legal disputes with gig workers.

## The Nature of the Gig Economy

The term "gig economy" describes a market where people provide their services or goods on a contract or freelancing basis. India is becoming increasingly popular for this form of economy due to several variables, including the rapid development of technology, the high cost of living, and the need for flexibility. New technological platforms like Fiverr, Upwork, and Task Rabbit have contributed to India's gig economy's growth. These platforms make it simple for people to locate work and for clients to discover freelancers. The flexibility it offers workers is one of the gig economy's most important advantages. The type of job they wish to undertake and their working hours and environment are up to the freelancer. This enables individuals to balance their personal and professional lives, which can be crucial for many Indians who must juggle numerous obligations.

In India, the gig economy is expanding quickly and provides a different type of employment than regular jobs. The gig economy has also contributed to creating new jobs and possibilities in several sectors. It has made new job opportunities not previously available in the traditional employment sectors, like online content creation, web development, and digital marketing. Additionally, the gig economy has been crucial in helping people find work who may still need to have a formal degree or work history. The gig economy is growing in popularity among young people in India looking for alternative employment options because of its freedom.

India's gig economy has much potential to expand employment and spur economic growth. It has the potential to contribute to India's economic growth significantly and offers a wealth of opportunities for both businesses and individuals with the correct rules in place. However, it is crucial to address the issues it raises and offer a framework for worker regulation protection.

The gig economy has its challenges, however. The absence of a legal framework for the gig economy in India is a significant concern. As a result, there is no standardization of employment agreements, compensation, or perks, which opens the door to exploitation. Additionally, there is no provision for social security benefits like retirement and health insurance, which makes workers vulnerable. The gig economy does present some difficulties, however. It is quite worrying that there needs to be a legal structure for the gig economy in India. Exploitation may occur due to unstandardized work contracts, pay, and benefits.

Workers are exposed since there is no provision for social security benefits like health insurance and retirement benefits.

### The Potential of India's Gig Sector

India has one of the largest and fastest-growing gig economies in the world. According to a report by the Boston Consulting Group, India's gig economy is expected to double to \$455 billion by 2024. With more than 450 million workers, India has the second-largest labour force in the world, according to the survey by International Labour Organisation (ILO). With over 15 million gig workers, the gig economy in India is estimated to be valued at over \$1.5 billion. Between 2020 and 2025, India's gig economy is predicted to expand at a CAGR of 17%, propelled by rising smartphone adoption, internet use, and a desire for flexible work schedules. In India, 15 million gig workers are operating in sectors like software, shared services, and professional services, according to a Boston Consulting Group analysis. India is the world's fifth-largest flexi-staffing market, behind the US, China, Brazil, and Japan, according to 2019 research by the India Staffing Federation. According to BCG estimates, gig economy firms create 56% of all new jobs in India, including white- and blue-collar positions. The gig economy is typical in India's blue-collar industries. However, white-collar positions like project-specific consultants, sales associates, web designers, content writers, and software engineers are also becoming more in demand. Up to 90 million employments in India's non-agricultural industries might be supported by the gig economy, potentially increasing GDP by 1.25% in the "long term." The gig economy will be a crucial component in closing the income and unemployment gap as India works to achieve its objective of having a USD 5 trillion economy by 2025. These conclusions are based on extensive primary interviews, field research, and expert inputs. It also identified eight distinct segments of gig workers, each with different job drivers and priorities that must be catered to for platforms and businesses to take full advantage of the gig economy's potential.

The gig economy in India is predominantly driven by young professionals aged between 20 and 35 years who are familiar with the advancements in technology and possess technical expertise. According to a report by Ola and BCG, 85% of Gig workers are aged 35 or younger. Males dominate the gig economy in India, but the margin between male and female earnings is marginally decreasing. According to the same report, female participation in the gig economy increased from 20% in 2017 to 33% in 2019. As the landscape of gig workers in India changes, so does the kind of jobs offered in this industry. Industries such as agricultural workers and

drivers were the primary workers in the gig economy early. However, now computers, science and engineering, and legal services contribute to the gig economy.

The popularity of gig economy platforms in India can be seen through the emergence of several platforms that offer on-demand services, such as Uber, Ola, Zomato, Swiggy, and Urban Company. According to a report by KPMG, by 2025, India's gig economy is expected to reach a market size of \$455 billion. This growth is mainly attributed to the increased use of mobile phones and internet, which has created new platforms for gig workers to connect with clients. Some might argue that the gig economy is unsustainable and lacks job security. However, according to the same report by KPMG, gig platforms have created around 20 million jobs in India, and it has become a significant source of employment for many people who were previously unemployed or underemployed.

The number of people eager to work in the gig economy has significantly increased due to the growth of gig economy platforms in India. As this trend continues, more gig platforms are expected to emerge, making it easier for gig workers to find work and clients to find the services they need. The gig economy in India is shifting toward work that is more focused on deliveries, home services, and tutoring. According to the Economic Times, "There has been around 46% growth in the number of gig workers in India in the past five years." This shift in the type of work available has altered the demographics of gig workers, making it so that gig jobs are no longer exclusive to urban cities. As a result, gig jobs have become an attractive option for low-skilled workers in rural areas.

### Emerging Trends in the Gig Economy in India

The gig economy in India is witnessing several emerging trends, including the rise of online platforms that connect gig workers with clients, the increasing demand for skilled gig workers, and the growing popularity of gig work among women.

#### **a) Rise of Online Platforms**

Online platforms like Uber, Ola, Swiggy, Zomato, and Urban Company have transformed how gig workers in India find work. These platforms have created a new market for gig work, where workers can find work quickly, and clients can hire gig workers on demand. These platforms have also enabled gig workers to earn more money by working for multiple clients simultaneously.

#### **b) Demand for Skilled Gig Workers**

The demand for skilled gig workers in India is rising, with clients looking for workers with specific skills and expertise. Skilled gig workers like software developers, graphic designers, and content writers are in high demand and command higher rates than unskilled gig workers.

### c) **The popularity of Gig Work among Women**

Gig work has become increasingly popular among women in India, allowing them to work from home and balance work and family life. Women are also taking up gig work to supplement their household income and finding work in sectors like e-commerce, content writing, and data entry.

## Classification of Gig Workers Under Indian Law

Gig workers find work through digital platforms and are considered independent contractors rather than employees. The classification of gig workers under Indian law has significant implications for both gig workers and platforms. As per law, gig workers classified as independent contractors are not covered by traditional employment laws. The legal definition of "employee" in India is restricted to persons engaged in a "master-servant" relationship. As a result, gig workers who do not have a direct employment relationship with a platform are generally considered independent contractors. The classification of gig workers like independent contractors has implications for both gig workers and platforms. Gig workers classified as independent contractors may not be entitled to the same protections and benefits as traditional employees, such as minimum wage, overtime pay, and social security benefits. This can make it challenging for gig workers to make a living wage and leave them vulnerable to exploitation. Classifying gig workers as independent contractors can provide significant cost savings for platforms. Independent contractors are not sanctioned with the same benefits and protections as traditional employees, such as healthcare, paid time off, and retirement benefits. This can result in lower labour costs for platforms, making it easier for them to operate and remain competitive.

The classification of gig workers varies significantly across jurisdictions. In the United States, gig workers are generally classified as independent contractors. However, in some jurisdictions, such as California, there have been efforts to reclassify gig workers as employees. The legal status of gig workers in India is a significant concern as they are not entitled to fundamental labour rights and entitlements.

## Legal Framework Governing Gig Economy in India

In recent years, the rise of the gig economy and its impact on the traditional workforce has been a hotly debated topic. In India, the employment of gig workers is a relatively new event, and the legal status of gig workers is still ambiguous. The gig economy comprises individuals who work as independent contractors, freelancers, part-time workers, and other non-permanent workers who are paid for their services on a per-task, project, or assignment basis. In India, no specific legislation governs the rights and obligations of gig workers. Therefore, the legal classification of gig workers is left to the interpretation of existing labour laws. This challenges gig workers, who often face poor working conditions, lack of job security, and low wages due to the ambiguity regarding their legal status.

Under Indian labour laws, employees are entitled to various benefits such as minimum wage, social security benefits, and protections against unfair termination. However, these benefits do not apply to independent contractors. Therefore, a legal misclassification of gig workers can lead to inadequate compensation, lack of job security, and the absence of benefits that full-time employees are entitled to.

In India, the legal definition of "employee" is restricted to persons engaged in a "master-servant" relationship. As a result, gig workers who are classified as independent contractors are not covered by traditional employment laws. Gig workers are generally considered self-employed individuals and must pay taxes on their earnings. The tax treatment of gig workers may vary depending on the nature of their work and their contractual relationship with the platform they work for. For example, gig workers who provide services through digital platforms may be subject to a withholding tax on their earnings. On the other hand, gig workers who provide services directly to clients may be required to file their tax returns and pay taxes on their earnings. Gig platforms are also subject to taxation in India.

India's regulatory framework for its gig economy has been evolving since 2016, when the Ministry of Labour and Employment laid down guidelines for online gig workers. In 2018, India's Ministry of Finance legalized gig work as formal employment, giving it legal recognition. However, this type of work still needs more precise regulation, especially since it is often unorganized and changing rapidly. For example, there is currently no comprehensive social safety net system for gig workers in India. In a landmark ruling in 2019, the Supreme Court of India upheld the classification of gig workers as employees. The court held that Food Delivery Company, Swiggy, should recognize its delivery personnel as employees, granting them various benefits such as minimum wage, social security, and compensation in case of

injuries. The decision was based on the fact that Swiggy had a significant degree of control over its delivery personnel- for instance, they were required to adhere to company policies and standards, among other aspects of the relationship. This highlights the need for gig economy companies in India to re-examine their classification of workers and determine whether they should be classified as independent contractors or employees. Recent developments in Indian law have recognized the need to provide some protection to gig workers. For example, in 2020, the Indian government passed the Code on Social Security, which extends social security benefits to gig workers and other unorganized sector workers. The Code creates a social security fund for unorganized workers, covering gig workers. Additionally, the Industrial Disputes Act of 1947, which governs the settlement of disagreements between employers and employees, has been expanded to cover gig workers.

Despite labor laws and regulations in India, gig workers often face difficulties asserting their rights. One of the reasons behind this is the need for more clarity over their classification as independent contractors or employees. Due to this, gig workers need help accessing benefits and protections that employees are subjected to. For instance, it is still being determined whether gig workers have the right to maternity leave, which is guaranteed to employees under the Maternity Benefit Act 1961. Additionally, gig workers experience challenges enforcing their rights since their work is transactional and needs more continuity, unlike traditional employment. As explained by a labor rights activist, Deepak Bhadana, gig workers often lack the resources and knowledge to take up legal issues against their employers. Notably, while some argue that gig workers prefer the flexibility of working as independent contractors, many do not have a choice but to work independently due to a lack of job opportunities.

Moreover, their lack of bargaining power and inconsistent income make them susceptible to exploitation, highlighting the need for legal protection. Overall, the legal status of gig workers in India is subject to the interpretation and implementation of labour laws. Therefore, gig workers must receive adequate protection and not be excluded from the legal framework.

### Employment Benefits and Protections for Gig Workers

The gig economy in India has witnessed a significant surge in recent years, and gig workers have become an integral part of the workforce. However, gig workers often receive different employment benefits and protections than traditional employees. This section will analyze the benefits and protections currently available to gig workers under Indian law, identify potential



gaps in protection, and provide suggestions for improving employee benefits and protections for gig workers.

**a) Social Security Benefits**

In 2020, the Code on Social Security was passed, extending social security benefits to gig workers and other unorganized sector workers. Under the Code, gig workers are entitled to health, maternity, and life insurance benefits.

**b) Industrial Disputes Act**

The Industrial Conflicts Act governs the resolution of conflicts between employers and employees. The coverage of this legislation has recently been extended to include gig workers, giving them a legal framework to handle problems like non-payment of wages and termination without justification.

**c) Minimum Wages**

Employers are required to pay their employees a minimum salary under the Minimum Wages Act of 1948. However, gig workers classified as independent contractors may not be entitled to this protection.

However, there are potential gaps in protection for gig workers in India. One of the primary issues is the lack of a precise classification of gig workers under Indian law. This can create confusion regarding the benefits and protections available to gig workers. Moreover, while the Code on Social Security has extended social security benefits to gig workers, more than the coverage provided may be required to meet the unique needs of gig workers. Additionally, gig workers classified as independent contractors may need the right to engage in collective bargaining, making it challenging to negotiate better working conditions and wages.

### Challenges Faced by Gig Workers in India

The evolving nature of work and relationships governing it has rendered traditional legal definitions of 'employee' and 'employer' obsolete. However, gig workers, classified as independent contractors, are not granted the same legal protections traditionally afforded to employees in India's labour laws and regulations. A Centre for Sustainable Employment at Azim Premji University report highlights that most platform workers in India reported earning less than the minimum wage and receiving no social security benefits or paid leave. This grim reality emphasized the need for legal reforms to ensure that gig workers receive adequate legal protections and benefits. While some might argue that granting legal protections to gig workers would burden companies and reduce their operational capacity, research shows otherwise. The

International Labour Organization reports that "adequate protections improve working conditions, raise workers' earnings and boost productivity, leading to sustainable business outcomes." In light of this, it is in the best interest of companies and workers to establish legal protections for gig workers. As the classification of gig workers as either independent contractors or employees continues to be debated, an analysis of the impact of Indian labour laws on their rights is crucial to provide appropriate solutions for gig workers.

Gig workers do not have access to social security benefits such as healthcare, pensions, and maternity leave provided for in the Employees' State Insurance Act 1948, and the Maternity Benefit Act, 1961. Gig economy companies should be required to provide social security benefits to their workers, including eligible independent contractors. Such benefits should be extended to all individuals who work in the gig economy, regardless of their classification.

The lack of job security, unpredictable income, and absence of benefits such as health insurance and retirement plans are some significant challenges faced by gig economy workers in India. According to a study done by Azim Premji University, "77% of gig economy workers said they had no privileged employee benefits such as health insurance, Provident Fund, or pension, while 74% had no job security" (The Economic Times, 2021). The absence of social security measures amplifies the financial insecurity and vulnerability of gig economy workers, making them more susceptible to industry demand fluctuations.

Some might argue that gig economy workers in India value the flexibility and autonomy of their work more than traditional jobs' benefits. However, it is essential to recognize that this flexibility comes at a cost, as gig economy workers do not have any legal recourse against their employers if their payment is withheld. The high commissions charged by online marketplace platforms lead to low earning rates for gig workers (The Hindu Business Line, 2021).

Public policy experts, politicians, and the general public have all evinced concerns over the gig economy's implications for individual and societal well-being (Friedman, 2014; Smith, 2016; Warner, 2015). Because labour platforms are not officially employers of gig workers, they do not provide benefits such as paid time off or health and workers' compensation insurance (De Stefano, 2015). Workers can easily be deactivated from a platform without the risk of wrongful termination claims, and there is often little recourse for a worker who feels he or she has been mistreated by either a platform or a client. Moreover, in contrast to traditional independent contractors, gig workers often lack the power to negotiate their contracts or even, on many platforms, their compensation rates.

Gig workers in India face many legal challenges when accessing legal remedies to safeguard their rights in the labour market. Gig workers lack the statutory benefits and protections to which traditional employees are normally entitled, such as minimum wage, benefits, and collective bargaining rights, because they are independent contractors rather than employees. An astounding 93% of gig workers in India surveyed by the National Law University of Delhi reported no knowledge of their labour law rights. Additionally, only 1% of those surveyed sought advice from legal or governmental services when faced with challenges. These workers' ignorance, combined with geographical distance, financial cost, and legal complexity, hinders them from having a reasonable chance of pursuing their grievances using the legal system. The new, complex, and amorphous relationship between gig work platforms and workers is a significant challenge for the Indian legal system, giving rise to several legal uncertainties and issues. If gig worker rights are to be protected and balanced, a skillful legal framework must be established, striking a balance between innovation and social protection. Deeksha Manchanda suggests that a nuanced legal framework considering the workers' unique experiences and aspirations can provide adequate cushioning support and avoid stifling innovation in this emerging economy. As challenging as it may be, it is crucial to recognize and support the gig workers' rights to achieve decent and socially work.

The paragraph analyzes legal disputes involving India's gig workers, examining specific case studies that emphasize these workers' unique struggles when accessing legal remedies.

The legal framework in India for gig workers is shrouded with ambiguity and legal inconsistencies, which poses significant challenges for workers in pursuing their rights. The landmark case of Uber India Systems Pvt. Ltd. v. The Association of Radio Taxis illustrates the confusion in worker classification as Uber drivers fight for employee status. Despite the Ministry of Labor and Employment's guidelines that classify gig workers as employees, many companies still classify them as independent contractors to avoid legal obligations. This lack of clear legal frameworks for gig workers creates a disadvantageous scenario for them, especially regarding benefits and statutory minimum wages. While gig workers file legal complaints, pursuing legal remedies remains challenging and requires significant effort and resources.

Furthermore, many gig workers seek flexibility and autonomy in their work, which makes legal categorization even more complex. Legal reforms that create a clear legal framework are imperative to protect the rights of gig workers and address these issues. Unwavering policies

considering gig workers' rights and best interests are paramount in ensuring their rights are protected and safeguarded in a rapidly-changing work landscape. A clear-cut legal framework can resolve worker misclassification issues, benefits, and entitlements and create much-needed clarity in the legal framework for gig workers in India. Urgent reforms are necessary to create an equal, safe, and just work environment for these workers.

However, recent developments have recognized the need to provide some protection to gig workers. For example, the Code on Social Security, passed in 2020, extends social security benefits to gig workers and other unorganized sector workers. Additionally, the Industrial Disputes Act, which governs settling disputes between employers and employees, has been expanded to cover gig workers.

### Policy Implications and Recommendations

India's gig economy has enormous potential to provide employment opportunities and contribute to economic growth. The gig economy in India is diverse and encompasses a range of sectors, including ride-hailing, food delivery, e-commerce, and freelance work in writing, design, and programming. The gig economy has transformed how people work, and gig workers are increasingly becoming integral to the Indian workforce. However, despite the increasing popularity of gig work, the legal status of gig workers in India remains a significant concern, as these workers often face several challenges when it comes to protecting their rights in the gig economy. The legal classification of gig workers and the provision of social security benefits are two major concerns that must be addressed. There is a need for the Indian government to provide clarity in labour laws to ensure the protection of gig workers' rights and promote fair employment practices in the gig economy. However, legal and regulatory challenges also need to be addressed to ensure fair treatment and protection of gig workers' rights. The Indian government and gig economy platforms need to work together to develop a legal framework that balances the necessities of workers, businesses, and consumers. Gig economy companies must take charge and proactively promote fair and ethical employment practices. With legislation, gig work has the potential to be a transformative force that can provide a platform for better opportunities with appropriate compensation and benefits for the workforce in India.

The emergence of the gig economy has highlighted the need for legal reforms to protect gig workers' rights in India. One recommendation is introducing a new legal framework designed

explicitly for gig workers, which would ensure minimum wage protection, job security, and essential social security benefits. Sarita Singh, a labour and employment lawyer, contends that gig workers should be granted the same protections and privileges as other workers under applicable labour laws, including the right to be recognised as employees. Laws should also be changed to guarantee that gig workers have access to alternate dispute resolution systems, such as arbitration or mediation, in order to settle problems quickly and affordably. However, some contend that because gig workers are independent contractors, which implies more flexibility, they are not entitled to the same protections as regular employees.

Nevertheless, this argument disregards the fact that many gig workers work for a particular platform on a full-time basis and are thus reliant on the platform for their livelihood. Moreover, many gig workers may need more bargaining power to negotiate better terms with their employers. In conclusion, legal reforms are essential to ensure gig workers in India receive adequate protections under the law, including introducing a new legal framework for gig workers and establishing alternative dispute resolution mechanisms.

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