

Delayed Delivery: The Legal Ambiguity of the Gig Worker

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According to a recent World Bank estimate, the ‘gig economy’ accounts for up to 12% of the global labour market – much higher than previously estimated – holding promise for women and youth in developing countries. Demand for online gig work is growing rapidly, however, social protections for workers in this segment are still lacking.

If one were to position the gig economy-anchored app-based delivery workers across urban India, one cannot miss but notice a worker in brightly coloured red/orange shirts zooming past the traffic, with a heightened sense of urgency. While these shirts often bear the companies’ logos such as Zomato or Swiggy, the person wearing it almost becomes an afterthought.

Also read: All is Not Well With India’s Gig Economy.

“We are working on such little information, with no certainty of how far the next delivery will be. Often we don’t get cash payments, and we have to rely on companies to disburse the money into our accounts. They take their sweet time, but how are we supposed to sustain till then?” laments Sarvesh, a Zomato worker traveling within the national capital of Delhi.

While the workers are bestowed with titles like delivery partner, executives or captains, such efforts of inclusion are merely ornamental. Infrequent and delayed payments barely scratch the surface on the plight of the gig worker. Accounts of arbitrary banning of IDs, changes in the commission received and inexplicable and infrequent delivery orders

plague the industry that is expected to grow at 200% in the next five years even by some conservative estimates. Recent protests by gig workers – at Urban Company and Blinkit against unfair work practices – have sought to highlight such issues.

The definitional quagmire

According to the World Bank report, in low-income countries, most people work outside the purview of labour regulations and lack access to social insurance and benefits. And a considerable wage gap still exists with women earning just 68% of men's wages on one major online platform reviewed.

The invisibilisation of the gig workers' rights is highlighted in the workplace, where there is an obscure employee-employer relationship. As the status of a gig worker doesn't fall under the legal ambit of an employee but as an independent contractor, it grants companies and platforms to not incur any contributions to the worker's social security.



Representational image. Photo: PTI

The recognition of the gig worker in the legal framework acts as a hindrance in furthering their demands. This recognition is derived from classifications drawn from the erstwhile cases when the term gig work didn't exist.

Rulings from the Supreme Court also point to certain classification tests that help determine the status of the worker. Such rulings, however, have relied on rigid definitions of an employee, where the status of the gig worker is not recognised.

“The determination of an employee in contrast to an independent contract in the view of the law, depends on the tests of classification used, with the control test being the most used on this issue. However, if one were to apply a more progressive test, one would see that these workers do fall under the definition of an employee-employer relationship,” comments Sabreen Ahmed, a professor at OP Jindal University.

Trouble at work

The participation of women in this workforce (with numbers ranging below 30%) is also limited due to the vague categorisation of the worker. The report from the Indian Social Sciences Trust on *Women Workers in the Gig Economy* highlights women workers receive lower pay and less favourable contracts than their male counterparts.

Issues of harassment also tend to get swept under the rug, with women choosing to stay at home rather than be out on the roads late at night. Despite the welcoming policy adopted by Swiggy last year, the issue of harassment at the workplace in companies such as Urban Company and Uber have discouraged women from participating in the workforce.

Costs associated with the work also often get borne by the gig worker, who has to contend with low incomes and the burdens of taking on loans. Workers are responsible for costs associated with getting their own vehicles or modes of transport in the case of Uber or Zomato. Even maintenance and fuel costs are accrued to the driver. If the worker is unable to raise money for such investments in cars or bikes, they end up taking on a loan which adds to their financial woes.

Also read: [Urban Company Workers Protest Job Losses After Blocked IDs, ‘Unrealistic’ Rating Requirements](#)

In order to tackle such issues, workers have also got into financial arrangements that take care of the burden of investment but cut into their shares of income. Gowada, an Uber driver, was one such case. Without having the financial means to get hold of a car, he instead has opted for a person, who bought a slew of commercial vehicles, to work under them.

For a Rs 100 cab ride, after cutting the commission of both Uber and the contractor, Gowada ends up pocketing only Rs 30. Describing working, sometimes 16 hours a day, he contends with the situation he finds himself in. “While it is strenuous, the sahebji takes care of our needs,” describes Gowada, having stayed up for the last 24 hours.

The slow-moving needle

Gowada is among many who dream of owning their own cars. If this idea is not apparent, it is made so by plastering this message in apps like Uber as soon as one gets to know of their ride details. While putting this message across to the consumer, it almost appears to

pass the responsibility as well. In lacking any support from the employer, their interactions with other workers are limited to high traffic areas like malls or on social media such as WhatsApp.

These spaces have provided sites for airing grievances and organising movements, which have spilled over to real organised movements such as the All India Gig Workers Union. Such movements have raised demands of their local leaders to improve the conditions and recognition of the gig worker.

To that effect, the Rajasthan government recently passed the Platform-Based Gig Workers (Registration and Welfare) Act that grants workers social security benefits like accident and health insurance, pension and a revenue-based tax on the platforms and aggregators to be contributed to an employee welfare fund.

Similar laws are also being considered in states like Karnataka, which recently announced accidental insurance coverage of gig workers. Advancements are also being made closer to the national capital, where the Labour Department of Haryana recognised the status of Urban Company workers as employees and thus entitled to social protection.

While clarifications of the legal definition and protection of gig workers are yet to come into effect at the national level, such efforts from the state-level will only put the issues of the gig worker to be recognised soon, especially with general elections on the horizon.

This commentary is penned down from the documented findings of a recent Azaad Awaaz edition. Click [here](#) to access the edition on The Gig Economy... Azaad Awaaz, an initiative of the Centre for New Economics Studies, O.P. Jindal Global University, which works on issues of social exclusion, marginalisation, and discrimination experienced by vulnerable, precarious communities across India. To review its work and patrika (magazine), please see [here](#)

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