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CONTENTS

Articles

1. **Unraveling Backwardness: Analyzing The Dynamics of Development from Individual to Community Perspectives**

   Abhinav K Shukla and Dr. Anukriti Mishra *1*

2. **Towards Privacy-Centric Governance: Analyzing India's Data Protection Trajectory**

   Divya Singh and Dr. Harish Tiwari *30*

3. **Recognising 'Euthanasia' As A Human Right: National and International Concern**

   Dr. Jaswinder Kaur and Mr. Birendra Singh *46*

4. **Social Reintegration of Released Prisoners in India: An Analysis of The States of Kerala and Tamil Nadu**

   Harsh Mahaseth and Pratham Shah *63*

5. **Social Stock Exchange: Navigating Roles, Regulations, and Urgent Reforms**

   Satakshi Gupta and Priya Nahar. *77*

6. **Social Security for the Digital Age: Evaluating Provisions Contained in The Social Security Code of 2020 for the Protection of Gig Workers in India**

   Shailesh Kumar Pandey and Dr Balwinder Kaur *90*

7. **Dark Patterns that Plague Indian E-commerce**

Swathi S and Sadhana S *110*

8. **Media Trial: A Double-Edged Weapon to Be Used Within Legal Parameters**

Swechha Malik *128*

9. **Indian Education System and Inclusivity: Gaging through the Policies towards the Divyang Community**

Vijoy Kumar Sinha and Saheli Chakraborty *140*

Case Comment

10. **Anil Kumar v. State of Kerala**

Priya Sharma *156*

SOCIAL SECURITY FOR THE DIGITAL AGE: EVALUATING PROVISIONS CONTAINED IN THE SOCIAL SECURITY CODE OF 2020 FOR THE PROTECTION OF GIG WORKERS IN INDIA

- Shailesh Kumar Pandey[*] and Dr Balwinder Kaur[**]

ABSTRACT

"In a globalised and digitalized economy, the cost of labour and production is on the rise. Hence, to ensure greater profitability with minimum compliance of labour welfare provisions now employer-employee contracts are shifting into a hybrid model of 'platform-partnership or gig'. The gig economy involves the usage of technology to mobilise the workforce by making them sign a contract with marker aggregators or entities. In gig-work contracts, the terms and conditions are unilaterally dictated by the marker aggregators or platform only and are then agreed upon by gig workers which makes them vulnerable in terms of their rights and entitlements. The recent trends signify that the gig economy model is being adopted worldwide due to its cost-effectiveness and limited legal implications. The present study delves into determining the meaning, classification and legal safeguards for ensuring the social security of Indian gig workers under the Social Security Code 2020. Further, the research has critically analysed the challenges in the effective implementation of the 2020 Code and the shortcomings of legal provisions contained in the Social Security Code 2020. The paper takes into consideration social security-related issues that are currently being faced by gig workers in India and the impact of the Social Security Code 2020. Lastly, a comparative analysis of the legal position of gig workers in India, UK and the USA has been done to suggest various policy reforms for effective implementation of social security benefits to gig workers in India".

Keywords: ***Gig economy, social security, labour rights, platform-partnership, Social Security Code 2020***

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I. INTRODUCTION

With the advent of globalisation in the world economy, the relationship between employers and employees is dynamically transforming. The 21st century is the era of technological transformation and hybrid work cultures, and the service sector has witnessed a paradigm shift in the mode of hiring and engaging the workforce worldwide. Due to the rapid rise of e-commerce platforms, the demand for a low-skilled gig workforce, including cab drivers, bike taxi riders' delivery partners, etc., has increased. The enactment of strict labour welfare legislation inflicted a lot of financial burden on corporations, and it ultimately created the challenge of ensuring profitability in operations. The capitalist corporations in the Western world developed a hybrid employment model, known as a 'platform-partner contract', to ensure that those undertaking their assignments did not directly fall under the traditional definition of 'employee'. It was done to bypass welfare-oriented labour laws so that labour costs and expenses on labour welfare activities could be mitigated. In India, in the past few years, the growth of the gig economy has been on the rise. The cost-effective nature of the 'platform-partnership model' is the fundamental reason behind the exponential growth of the gig economy. As per an estimate, by the end of 2024, more than 75% of service sector employees will work as non-permanent demand-based gig workers.[1] Currently, 15 million Indians are employed as gig workers, but in the future, about 90 million individuals are likely to be employed as gig workers in India. There is a significant increase in demand for gig workers because, in the name of a 'partner-platform contract', the companies are allowed to evade all their liabilities and responsibilities inflicted by the labour laws of the land.[2] The gig economy transformed traditional employer-employee relations into 'platform-partner' partnership agreements. On one hand, the employer-employee relationship is fundamentally governed by labour law. On the contrary, platform-partnership agreements are governed by the civil laws incorporated under the Indian Contract Act 1872[3] and the Indian Partnership Act 1932[4]. The fundamental characteristics of gig workers include non-permanent engagement, partnerships for only benefit sharing, legal positions as independent contractors, etc.

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[1] *Suvarna, P. (2021, August 29). Gig workers forgo dignity, safety in quest for a living. Deccan Herald. https://www.deccanherald.com/india/gig-workers-forgo-dignity-safety-in-quest-for-a-living-1024703.html (accessed October 1, 2023)*

[2] *Ibid.*

[3] ***The Indian Contract Act, 1872*** *(Act No. IX of 1872).*

[4] ***Indian Partnership Act, 1932.***

II. RESEARCH QUESTIONS

For the study following research questions have been framed -

1. Whether the gig worker falls under the category of employee or independent contract in India, the UK and the USA?
2. What are the Social Security challenges that are being faced by the gig workers in India?
3. What are the legal safeguards available under the Social Security Code 2020 for ensuring the social security of Gig workers in India?
4. What are the key implementation challenges and criticisms of the Social Security Code 2020 regarding the Social Security of gig workers?

III. IS A GIG WORKER AN EMPLOYEE OR A PARTNER?

In India, gig workers often face denial of several social security benefits typically offered in traditional employer-employee relationships. The reason cited by market aggregators and platforms for not treating gig workers as employees is that such workers are not covered under the legislative definition of 'employee' due to the nature of their employment and engagement as they sign the contract, which is like 'contact of partnership'. The gig workers are incentivised through proportionate benefit sharing per assignment or order. Thereafter, it is important to understand whether the legal protection that is available to labourers or employees can be further extended to gig workers.

As per the Social Security Code of 2020, a gig worker is defined under section 2(35)[5]

"A person who participates in a form of work in exchange for consideration through his contribution to these activities beyond the ambit of a traditional master-servant or employer-employee relationship is known as a gig worker."

Recently, Rajasthan became the first state in India to enact dedicated legislation for safeguarding the interests of gig workers as stipulated by the Code of Social Security 2020, and the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023[6] gave a detailed definition of a gig worker.

(e) "gig worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of the traditional employer-employee relationship and

[5] *The Code on Social Security, 2020 s 2(35).*
[6] *The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023*

who works on the contract that results in a given rate of payment, based on terms and conditions laid down in such contract and includes all piece-rate work.[7]

Among all the New Labour Codes, only the Social Security Code 2020 addresses the rights and welfare of gig workers. The Code of Wages 2019[8] remain completely silent about the rights and entitlements of gig workers. Consequently, provisions such as minimum wage, retirement benefits, insurance, etc. do not apply to gig workers.

3.1. INTERNATIONAL LANDSCAPE OF GIG WORKER STATUS

3.1.1. Position of status of gig workers in the United Kingdom

The UK courts have developed several tests to distinguish between regular employees and independent contractors. Key factors include the degree of control exercised, the existence of mutual obligations, and the right to substitution.

A. Uber BV v Aslam case[9]

In the landmark case of giant market aggregator Uber, UK Apex Court determined whether Uber drivers, who work for the car taxi service platform Uber in the United Kingdom, are employees under UK labour laws. The Court indicated that while the payment is structured on a per assignment or per round trip basis, the degree of control, the nature of the work, and the arrangements for performing functions under the gig platform align with those of a regular employee. Consequently, despite the appearance of being a gig worker, an Uber driver is entitled to claim labour law benefits from the market aggregator, Uber. This landmark judgment profoundly impacted the foundations of gig market aggregators, as they feared a loss of protection from strict labour law compliance and a significant risk to business profitability.

B. Independent Workers Union of Great Britain v. Central Arbitration Committee & Anor. case[10]*,*

In the landmark case of the *Independent Workers Union of Great Britain*, riders working for a gig platform demanded the protection of collective bargaining afforded to trade unions under

[7] *The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 s-2(e)*
[8] *The Code of Wages, 2019.*
[9] Uber BV v Aslam [2021] UKSC (U.K.) 05.
[10] *Independent Workers Union of Great Britain v. Central Arbitration Committee & Anor. case [2023] UKSC (U.K.) 43.*

British law. However, this contention was unequivocally rejected by the lower courts and ultimately by the Supreme Court. The courts determined that gig workers do not qualify as regular employees due to the contractual flexibility and the option to provide a replacement for work assignments. This judgment dealt a severe blow to gig workers who sought equal treatment as regular employees in Great Britain.

3.1.2. The legal status of gig workers in the United States of America

In the landmark case of *Dynamex Operations West, Inc. v. Superior Court*[11], the California Supreme Court established a new standard for determining whether a worker is an employee or an independent contractor. This standard, known as the ABC test, has significantly impacted the gig economy. Consequently, various states in the United States have adopted similar tests to classify gig workers and determine their eligibility for employee benefits.

A. Proposition 22: A Battleground for Gig Worker Rights

To nullify the effect of the Dynamex case Proposition 22 was launched as a California ballot initiative that passed in November 2020, reclassifying app-based drivers for companies like Uber, Lyft, and DoorDash as independent contractors rather than employees.

B. Protect App-Based Drivers and Services Act of 2020[12]

The major gig platforms operating in California were dissatisfied with the *Dynamex* case's interpretation, which negatively impacted their profitability. To circumvent strict labor law compliance, they proposed a document named "Proposition 22" aimed at classifying gig workers as independent contractors. Additionally, they launched a ballot initiative to enact new legislation safeguarding the social security of gig workers. This legislation was successfully passed after voter approval.

C. Landmark Judicial pronouncements by courts of the USA

The landmark case of *Castellanos et al. v. State of California*[13] petitioners challenge the constitutionality of Proposition 22, a California ballot initiative that classifies app-based drivers

[11] *Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County, [2018] LA County, Ct. App. 2/7 B249546, Super Ct. No. BC332016.*
[12] *Protect App-Based Drivers and Services Act of 2020, Cal. Bus. & Prof. Code § 7448 (2020).*
[13] *Hector Castellanos et al. v. State of California and Katie Hagen, Case No. S279622, Supreme Court of the State of California (U.S.A.).*

as independent contractors. Plaintiffs argue that Proposition 22 infringes upon the state legislature's authority to establish labour protections and violates the state constitution's single-subject rule. Conversely, the defendants contend that Proposition 22 is a valid exercise of voter initiative and effectively balances the interests of gig workers and platforms. The case is currently before the California Supreme Court, which will determine the legality of Proposition 22 and its potential impact on labour rights in the gig economy.[14]

3.2. ANALYSIS OF GIG WORKER STATUS: EMPLOYEES OR INDEPENDENT CONTRACTORS?

Upon analysis of the legal position of gig workers' status as 'independent contractors' or 'employees' across jurisdictions like the USA and the UK, it can be fairly concluded that there is still significant ambiguity in the terminology appropriately encompassing gig workers. The hybrid nature of gig work positions them outside the scope of traditional employment, while the narrow definition of independent contractors is unsuitable for their classification. Consequently, there is a pressing need for an international convention, perhaps under the aegis of the International Labour Organization, to clarify the status of gig workers globally. Additionally, a model law establishing a social security regime for gig workers is essential to address the ongoing challenges of interpreting their employment status. After the enactment of the code on Social Security 2020, under provisions of the code, the gig workers were classified as a distinct category of workers and were designated as 'platform workers. In the year 2021, a petition was filed in the Hon'ble Supreme Court.[15] The prayer is for reconsidering the position of gig workers under the Social Security Code 2020 and to recognise gig workers as unorganised workers to safeguard their rights under the Unorganised Workers' Social Security Act, 2008[16]. **The primary objective of the PIL was to secure for gig workers the same legal protections and benefits afforded to unorganized workers.** By classifying gig workers as a distinct category under the Social Security Code, the legislation has fundamentally discriminated against them and denied them equal protection of the law. The hybrid nature of their employment has exacerbated this inequality, as existing labour laws inadequately address their rights and entitlements.

[14] Ibid.
[15] *Indian Federation of App-Based Transport Workers v. Union of India & Others*, Writ Petition (Civil) No. 1068 of 2021 (India).
[16] The Unorganised Workers' Social Security Act, 2008.

3.2.1. Aggregators and Social Security Code, 2020: A Compliance Analysis

The Social Security Code of 2020, failed to impose sufficient legal obligations on corporations and market aggregators. The 2020 union law lacks clarity regarding which entities must comply with state-mandated measures to protect the interests of gig workers. Social Security Code 2020 does not exclusively define the 'market aggregators' and 'e-commerce intermediaries' who effectively engage gig workers for their operational and logistic tasks as partners on per order commission basis.

A. Meaning of aggregators

The term aggregator has been defined in the Motor Vehicle Act 1988 after the insertion of clause (1 A)[17] that defines aggregator but in a very limited scope.

clause (IA) - "aggregator" -aggregator means a digital intermediary or marketplace for a passenger to connect with a driver for transportation.[18]

The most illustrative and exhaustive definition of aggregator has been given under the state-enacted regulation passed by the state of Rajasthan in the year 2023 and the definition reads as follows

2 (a) "aggregator" means a digital intermediary for a buyer of goods or user of a service to connect with the seller or the service provider, and includes any entity that coordinates with one or more aggregators for providing the services.[19]

B. Classification of market aggregators

A. *Ride-hailing aggregators e.g. Ola, Uber, Rapido, etc.*
B. *Food delivery aggregators and platforms include Zomato, Swiggy, Uber Eats, etc.*
C. *E-commerce and service delivery platforms like Amazon Flipkart Delhivery Urban Clap Etc.*

C. Legal liability of 'aggregator' under various national and state legislations

Registration and licensing: Section 93[20] of the Motor Vehicle Act 1988 prescribes that the market aggregators involved in the Transportation and conveyance business like Ola, Uber,

[17] *Inserted Vide the Motor Vehicles (Amendment) Act, 2019.*
[18] *The Motor Vehicle Act 1988. s-2(1A).*
[19] *The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 s-2(a)*
[20] *The Motor Vehicle Act 1988. s-93.*

Rapido, etc. need to register themselves as per the instructions and directions of the state government under the rules formed.

Policy for aggregators dealing in transport services**:** The Union Ministry of Highway and Road Transport has framed model guidelines for forming aggregators rules and registration processes by the state governments.[21] Based upon the directives of the Union Ministry of Highway and Road Transport the government of Kerala formulated The State Motor Vehicle Aggregator Policy 2024[22] notifying registration and licensing-related processes for market aggregators who are involved in the employment of the gig workforce.

13.5 - The Owner of a vehicle integrated with the Aggregator shall receive at least 80% of the fare applicable on each ride and the remaining charges for each ride shall be received by the Aggregator.

Above rule is a clear attempt of the government of Kerala to ensure that the gig workers are not exploited by the market aggregators and sufficient benefit shall be shared amongst the platform and partner.

IV. INDIA'S GIG ECONOMY: A SOCIAL SECURITY CRISIS?

With the increase in access to technology and the Internet, the scope of micro-workers in the gig economy of both skilled and unskilled nature has significantly increased in India. The COVID-19 pandemic significantly accelerated the growth of India's gig economy. However, this rapid expansion simultaneously underscored the precarious social and financial conditions faced by gig workers.[23] India is an emerging economy and has a large unskilled workforce available easily at a nominal pay. Hence, platform-based collaborative businesses are utilizing a cheap workforce for profit maximisation through labour exploitation and denial of rights. Although the platforms utilising gig workers for operations are continuously rising in India, the legal and procedural safeguards to protect their interests are inadequate and ineffective.[24]

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[21] *Motor Vehicle Aggregator Guidelines 2020*
[22] *GOVERNMENT OF KERALA (2024). STATE MOTOR VEHICLE AGGREGATOR POLICY G.O.(P)No.8/2024/.*
[23] *Bhattacharyya, U. & Jha, S., 2021. Understanding social security for gig workers: analyzing recent developments.* NLIU Law Review*, 11, pp.61-88.*
[24] *Ibid.*

The gig model is now adopted in developing countries like India, which have an abundant and cheap labour force. The gig workers in India have no job security and no labour rights, and their terms and conditions of employment are entirely decided by the aggregators.[25] More importantly, neither the minimum wages nor any sick leave or leave with pay are paid to them.[26] Lastly, the unilateral system of rating the services of gig workers and terminating them upon a bad rating is creating a sense of deterrence among gig workers to work without committing even a single human error.[27] The new form of individualization of work is inflicting workers with sudden terminations, limited rights, and low remunerations. A similar situation exists in Kazakhstan, a continuous struggle has been seen among gig workers to ensure and secure basic rights and dignity at work.[28] Further, factors like inadequate safeguards for protecting employment rights and Social Security of gig workers are discouraging youth from seeking employment in the gig economy.[29]

Key social security issues faced by the gig economy that are mentioned under the Code of Social Security 2020 are: -

1. Paid leave / sick leave,

2. Insurance for employees,

3. Accidental compensation,

4. Occupational risks,

5. Retirement benefits including provident fund etc.

6. Protection against arbitrary termination

7. Minimum wages for gig workers

In India's digital labour economy, on-demand workers, including gig workers, are being hired through digital means and are ultimately exposed to economic exclusion, subcontracting etc. and they possess minimal bargaining power. Workers in the gig economy are bound to work

[25] *Webster, J. (2016, September). Microworkers of the gig economy: Separate and precarious. In New Labor Forum (Vol. 25, No. 3, pp. 56-64). Sage CA: Los Angeles, CA: SAGE Publications.*
[26] *Ibid.*
[27] *Ibid.*
[28] *Insebayeva, S. and Beyssembayev, S. (2023) 'Digital Platform Employment in Kazakhstan: Can New Technologies Solve Old Problems in the Labor Market?', International Labor and Working-Class History, 103, pp. 62–80.*
[29] *Ibid.*

for long working hours, and their interests are not safeguarded.[30] Recent instances in India have raised grave concerns regarding the deplorable conditions of gig workers. The role of the International Labour Organization in safeguarding the interests of gig workers may be said to be minimal as ILO has not formulated any standard code of conduct for regulating digital technology-oriented labour hiring and digital global work.[31]

4.1. Fairwork India Ratings 2022: Are Indian Gig Workers Protected?

In a report titled 'Fair Work India Ratings 2022 it was revealed that the majority of the Indian digital platform-based companies are not providing 'minimum wages' as mandated by the Social Security Code.[32] Furthermore, the condition for gig workers in most of the digital platforms and aggregators is miserable as even the hourly minimum wage is not being paid. which is ultimately resulting in a reduction in the decent standard of living of gig workers in India.[33]

India's gig platforms Flipkart, Swiggy, Zomato Zepto, Ola, Pharmeasy, Uber, and Big Basket, Amazon Flex, etc., are quite reluctant to strictly adopt the minimum wage policy for gig workers. The reason is that if they adopt regulatory norms governing minimum wages, their margin of profit will reduce, and eventually they will have to shift the burden of increased delivery costs to customers, which will eventually result in a reduction in demand due to an increase in the cost of service.[34] For instance, if the minimum wage-related legal requirements are strictly followed, gig platforms have to either sacrifice their profit or charge extra to meet these legal requirements, and in both cases, the company will be at a loss.[35]

The outcome of the report on certain Social Security parameters are elaborated in detail below

A. Minimum wages policy

As per the Fair Work ratings report it has been revealed only a few major market aggregators like Big Basket, urban Company, Flipkart, etc have operationalized certain welfare policies to

[30] Corujo, B.S. (2017). The 'Gig' Economy and its Impact on Social Security. *European Journal of Social Security*, 19(4), pp.293–312.

[31] Calvão, F., & Thara, K. (2019). Working futures: The ILO, automation and digital work in India. In *The ILO@ 100* (pp. 223-247).
[32] THE FAIRWORK PROJECT (2022). *Fairwork India Ratings 2022*. pp.4–14.
[33] *Ibid.*
[34] *Ibid.*
[35] *Ibid.*

ensure that the requirement of the 'hourly minimum wage' for gig workers shall be fulfilled and the living condition of the workers can be improved. However, the report found that there is no statistical evidence of any aggregator implementing the above-mentioned policy in its letter and spirit.

B. Medical or sick leave with pay policy

As per the report, only three market aggregators have safeguards to ensure that workers get minimum pay during medical illness or other occupational hazards A helpline in this regard has also been implemented.

C. Protection against discrimination through Grievance redressal

In the gig economy, no formal trade unions are representative bodies exist and it has been disclosed in the report that e-commerce intermediaries and market aggregators do not recognize any collective body of workers to Channel the grievances of gig workers.

4.2. NITI Aayog Report on The Gig Economy and Social Security Code 2020.

Key statistical highlights: As estimated by Niti Aayog, the total Indian workforce employed in the gig economy currently is nearly 77 Lakhs, but it is reported to rise to 2.3 crore by 2029.[36] It is noteworthy that, due to factors like flexible working, greater autonomy etc. the participation of the younger population in platform-based economies has increased, and in the future, the hiring rate of gig workers is likely to rise.[37]

4.2.1. Key findings of NITI Aayog report

In the gig economy, employers evasively deny the obligation to follow the labour welfare legislation of the country. The report by NITI Aayog appreciated the rise of the gig economy and also stated that nearly one-third of the total gig workers are in the low-skilled category.[38] The NITI Aayog report further suggested that data containing information relating to gig workers shall be collected by designated government departments so that the welfare schemes as directed by the code on Social Security 2020[39] can be extended to gig workers working on

[36] *NITI Aayog (2022). India's Booming Gig and Platform Economy, Perspectives and Recommendations on the Future of Work. NEW DELHI: NITI Aayog, pp.10–25.*
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*

various gig platforms.[40] With the adoption of modern technology, millions of Indian workers are now employed by gig platforms in various sectors and most of them are aged between 18 and 45. The report suggested that for the welfare and empowerment of gig workers, the government shall formulate a policy on passing quick and collateral-free loans for acquiring essentials including bikes for delivery purposes, smartphones, etc., be landed by the banks so that a beginner can begin his career in the gig economy as a platform worker.

4.2.2. RAISE: The way forward

The report suggested a R.A.I.S.E. framework for operationalizing the code of Social Security 2020.[41] Under this approach, social security concerns of gig workers through policy safeguards will be ensured. It is praiseworthy that Niti Aayog came forward with creative suggestions to implement labour welfare provisions for gig workers.

4.2.3. Criticism of the Niti Aayog report

The Niti Aayog report fails to shed light on challenges relating to implementation mechanisms for safeguarding the rights of gig workers in India. Laws and policies shall be directed towards effective compliance of labour social security policy by digital service-oriented platforms, which employ and utilise gig workers for their business purposes.

V. THE CODE ON SOCIAL SECURITY, 2020: A SAFETY NET FOR INDIA'S GIG WORKERS?

The gig economy in India has been flourishing for the past few decades, but it has remained highly unregulated. The low-skill gig workers were continuously exposed to exploitation and remained unheard and unrepresented. Before the enactment of the Code on Social Security 2020, the aggregators took advantage of the legal lacunae and shortcomings of outdated legal provisions contained in Indian labour law legislation to escape from their obligations. The Ministry of Labour & Employment was initially reluctant to recognise and formalise gig workers who are working on gig platforms but the first legislative attempt made by the union government to recognise and regulate gig workers in the country enacted the Social Security Code 2020. The code integrated several labour welfare provisions of existing laws and directed for implementation of various schemes and regulations. The key idea behind the inclusion of

[40] *Ibid.*
[41] *Ibid*

gig workers in the 2020 Code was the eradication of the malpractices done by aggregators and service providers in the gig economy. The Social Security Code 2020 has not yet been properly enforced by the government of India. The welfare provisions contained in the code do address the challenges being faced by gig workers and other platform workers in India.

5.1. Important Provisions of The Social Security Code 2020 For Gig Workers

A. Extension of Social Security to Gig Workers

Under provisions of Section 2(78)[42] just as in the case of unorganised sector workers, gig workers are now entitled to inclusion in Social Security-related schemes and policies, which will be formulated based on the new Social Security Code.

B. State Government's Role in Gig Worker Protection

Furthermore, under S-6[43], the state government is directed to formulate and monitor welfare schemes for gig workers and platform workers.

C. Central Government's Regulatory Framework

Under Section 45[44], the Union Government is directed to formulate a scheme for extending applicable benefits and labour rights to workers in the gig economy.

D. Social Security Benefits for Gig Workers

Under Chapter 9 of the New Social Security Code 2020[45], safeguards for protecting the rights of gig workers are elaborated, and now gig workers are entitled to accidental cover compensation for loss, old age protection education, and they are also entitled to seek benefits of other labour welfare schemes.[46] Under this chapter, both the state and central government have been entrusted with the responsibility to safeguard the interests of gig workers.[47]

E. Grievance Redressal and Dispute Resolution

Section 112 of the Social Security Code directs the appropriate government to establish call centres and helpline facilitation centres for addressing grievances and appropriately providing legal assistance in cases of exploitation of gig workers.[48]

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[42] *The Code on Social Security, 2020 s 2(78)*
[43] *The Code on Social Security, 2020 s 6.*
[44] *The Code on Social Security, 2020 s 45.*
[45] *The Code on Social Security, 2020 s*
[46] *The Code on Social Security, 2020 s 111-112.*
[47] *Ibid.*
[48] *The Code on Social Security, 2020 s 112.*

F. Enrolment in the National Portal for gig workers

It has also been stated that gig workers and other unorganised workers shall obtain enrolment in a database so that their interests can be well protected and suitable schemes can be formulated accordingly. However, under Section 113[49], the procedure for registration and the eligibility for registration are prescribed, and both the union and state governments are directed to act by the provisions to facilitate the registration of gig workers.

G. Governing Body for Gig Worker Welfare

Section 114 states that a Social Security Board shall be established by the union government to safeguard and formulate the rights and entitlements of gig workers through constant research.[50] Under section 114[51] **The provision granting the central government discretion to exempt aggregators from Social Security Code liabilities is a cause for concern.** Given the substantial revenues generated by major platforms like Ola, Uber, Zomato, and Swiggy, there is a risk that these companies could leverage their financial influence to secure exemptions, thereby undermining the code's intent to protect gig workers' social security.

H. Social Security Fund for Gig Workers

Furthermore, under Chapter 14, Section 141[52], there is a provision regarding the establishment of a fund for funding welfare schemes formulated to safeguard the interests of gig workers. However, various funds may receive funding through sources like aggregate state funds and even corporate social responsibility funds.[53] However, a significant flaw in this provision is the absence of a mandate for the central government to contribute to the fund. Moreover, the sources of funding for the fund's expenses are not specified. Consequently, even with a concerted effort to establish and manage the fund, the government may be constrained by the legislation from employing coercive measures to collect contributions.

[49] *The Code on Social Security, 2020 s 113.*
[50] *The Code on Social Security, 2020 s 114.*
[51] *Ibid.*
[52] *The Code on Social Security, 2020 s 141.*
[53] *Ibid.*

5.3. The Aftermath: Implementing the Social Security Code, 2020

India's labour and social security landscape sees a major reset with the Social Security Code, 2020 While it holds the potential to make processes more efficient and improve outcomes for workers, its application has been a difficult one in progress. The Code has the effect of imposing additional compliance obligations, which can increase costs and administrative burdens. However, it also streamlines some components and possibly helps you with benefits in the long run.

5.3.1. The Union Government's initiatives for safeguarding Gig Worker rights

Following are the main initiatives and steps Taken by the Central Government to Implement Provisions of the Social Security Code for the Protection of Gig Workers

A. E-shram portal for gig workers

The current progress of the Union Ministry of Labour and Employment, as reflected in parliamentary question answers by the honorable Minister, indicates that the Union Government has effectively activated the e-Shram portal to register unorganized and gig workers. Through registration on this portal, the government aims to extend Provident Fund-related benefits to gig workers at its expense. Since September 2022, the portal has been registering gig workers, but out of millions of gig workers, only around 45000 have enrolled thus far.[54] This data indicates that the implementation of the registration portal is ineffective, and a lack of education and awareness about the portal is a significant obstacle to ensuring social security for gig workers.

B. Provident fund and Career benefits initiative

Provident Fund benefits are also made available to gig workers through the MaanDhan portal under the Pradhan Mantri Shram Yogi Pension scheme for individuals aged 18 to 40 years. Payments are made using a unique registration number assigned to each registered gig worker.[55] The portal further offers access to the National Career Service portal, empowering gig workers to search for better employment opportunities based on their skills and

[54] *Government of India (2023). Government of India, Ministry of Labour and Employment, Lok Sabha Unstarred Question No. 2856, 7 August 2023.*
[55] *Ibid.*

requirements. Platform workers are now eligible for skill enhancement and apprenticeship opportunities through the digital portal of the Ministry of Skill Development, Government of India.[56]

5.3.2. State-Specific Strategies for Social Security Code 2020 Compliance

Although the Social Security Code, 2020 is a precedent to labour insurance, it requires jurisdictional enactment for proactive and continuous implementation. Considering the heterogeneity of the economic landscape and socio-demographic profile across different states in India, it seems that the prevailing one-size-fits-all implementation of this Code might be a tad overwhelming. States that have better digital infrastructure will be able to accelerate registration, claims and benefits disbursement processes. Some of the major state initiatives are as follows -

A. Karnataka State Gig Workers Insurance Scheme 2023

To give effect to the provisions of The Social Security Code 2020 the state of Karnataka has recently introduced a scheme to extend insurance benefits to gig workers within the state who are engaged on various platforms with market aggregators. This pioneering scheme covers all gig workers aged between 18 and 60. Notably, the entire financial burden of the insurance is borne by the Karnataka government. Karnataka is the first state in India to implement such a scheme, Karnataka offers coverage for various risks including accidental death, life insurance, and medical expenses incurred due to road accidents or other occupational hazards.[57]

B. The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023

The first model law to implement the Social Security Code 2020's provisions was the Rajasthan Platform-Based Gig Worker (Registration and Welfare) Act 2023[58], which includes several provisions to put the Code of 2020's safeguards into effect.

Under the Act, the state has constituted a board for the welfare of gig workers. Section 3 and Section 8[59] outline the registration process for platform-based gig workers via a state

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[56] *Ibid.*
[57] *Karnataka State Government, 2024. Karnataka State Gig Workers Insurance Scheme. Available at: https://ksuwssb.karnataka.gov.in/info-2/Karnataka+State+Gig+Workers+Insurance+Scheme/en [Accessed 2 July 2024].*
[58] *The Rajasthan Platform Based Gig Workers (Registration And Welfare) Act, 2023.*
[59] *The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 s.8.*

government platform, ensuring the maintenance of a database and welfare ID, as well as the effective implementation of the scheme designed for their benefit.

Furthermore, Section 14[60] of the Act outlines a grievance redressal mechanism for platform-based gig workers. It establishes a quasi-judicial authority to resolve their grievances. Additionally, the Act provides for a right of appeal against the authority's decisions, which can be filed within 90 days of the order.[61]

5.4. The Social Security Code, 2020: Gap in Protection for Gig Workers

Although the Social Security Code 2020 is equipped to bring uniformity in the treatment of gig workers. The dynamic nature of employment in the gig economy poses several challenges that need to be addressed by filling the legislative gaps in the governance of gig workers. Furthermore, The Social Security Code 2020 is intended to strike a balance between the rights and obligations of the aggregator and gig workers, as there is a huge disparity and it is mostly the aggregator who dictates the rules by using the dominant position. These terms and conditions are accepted by the gig workers without any negotiation or alteration. Some major criticisms of the code are as follows: -

I. **Discriminatory treatment of gig-workers as a separate class:** The legislation is expected to formulate legislative enactments so that discrimination and disparities can be eradicated, but it is not wrong to say that the Social Security Code 2020 actually created a classification and is severely affecting the right to equality[62] enshrined under the Constitution of India by discriminating regular employees or labourers with gig workers merely on the ground that the latter is a partnership-based model and thus does not attract provisions and protections of the labour law of the land.

II. **Lack of effective dispute redressal mechanism:** Separation of classification in terms of the nature of work gives recognition to gig workers, but at the same time, it snatches the right of gig workers to bring disputed matters under adjudication. In cases of infringement of the rights and Entitlements of the gig workers, they cannot directly bring the dispute into the labour courts as the Social Security Code 2020 vested the responsibility of creating a helpline and grievance portal to the Central government but

[60] *The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 s.14.*
[61] *Ibid.*
[62] *Ind. Const. art. 14.*

the language used by the legislators is more of directory giving discretion to the union government for establishing the portal at its convenience. It is surprising to see that instead of empowering gig workers to directly approach judicial forums for violation of their rights an indirect way of dispute resolution has been created depriving the gig workers of their basic right to access courts and seek legal remedy.

III. **Lack of safeguards for minimum and living wages:** The code was supposed to eradicate the discrimination that is currently being caused between employees and gig workers by giving a free hand to aggregators. Two outright defy the grant of hourly or per-assignment minimum wages to gig workers. The Wages Code of 2019 does not even mention the gig workers' right to seek minimum wages or the legal records available, which is a major flaw in the Social Security legislation as it has failed to recognise a new form of work emerging in Indian jurisdiction.

IV. **Lack of penal provisions for causing deterrence:** For effective implementation of any welfare legislation, penal liability for non-fulfilment of obligations needs to be inflicted for violations of provisions through non-compliance. The Social Security Code 2020 directs states to develop welfare policies but fails to create penal provisions if the market aggregator fails to give effect to the provisions and scheme formulated for gig worker protection.

V. **Loose language and weak compliance mechanism:** Another criticism of the provisions for gig workers given in the Social Security Code 2020 is that although there are safeguards for protecting the rights of gig workers in the code, the language does not stipulate any deadline for giving effect to the provisions contained in the Social Security Code 2020. The tone of the legislation is advisory and directory-like instead of authoritative and mandatory; hence, the central government is not bound to give effect to the provisions contained in the Social Security Code 2020 for gig workers.

VI. CONCLUSION

Based upon a wide range of literature and reports analysed during the course of the study, it can be concluded that the engagement of gig workers is on the rise in most of the platform-based service sectors of India. As the gig economy expands and potentially becomes a major employment sector, addressing the challenges faced by gig workers is crucial. Gig workers in India face significant vulnerability due to their exclusion from the 'employee' definition, which leaves them unprotected from labour welfare provisions. While the Union government's approach to implementing the provisions of the Social Security Code 2020 for gig workers is commendable to some extent, significant efforts are still required to improve the conditions of gig workers in India. The Social Security Code 2020 is a great step but pinpointed strategies need to be formulated for effective implementation of the 2020 Code, and a deadline needs to be set for fulfilling the objectives of the 2020 Code. A balance needs to be created as the inclusion of gig workers in the category of regular employees would inflict a severe economic burden on market aggregators, potentially jeopardizing their profitability. Imposing stringent conditions solely on the private sector to ensure gig workers' social security is unrealistic. Instead, a collaborative effort between government and private sectors is essential for mutual support and cooperation in safeguarding the social security of gig workers. Lastly, International organizations such as the International Labour Organization should take the lead in formulating a global regulatory framework to ensure social security for gig workers worldwide. This framework could serve as a foundation for nations to adapt their domestic legislation.

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