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Unaddressed Status of Gig Workers

What is the issue?

As the status of gig workers regarding their engagement by service aggregators remains largely unaddressed at present, it would have several ramifications for the fast-growing gig economy in India.

What is the status of gig workers in India?

Gig worker is a person who performs work or participates in work arrangement and earns from such activities, outside of the traditional employer-employee relationship.

- According to industry estimates, India's gig workforce comprises 15 million workers employed across industries such as software, shared services and professional services.
- The surge in demand for gig workers, particularly in the shared services and logistics segments, in the aftermath of the pandemic led to mushrooming of job discovery platforms specifically targeting this area.
- Service aggregators have identified gig workers as independent contractors without any underlying employment relationship but exercise extensive control on them.
- But their work has all aspects that form the basic tenet of employer-employee relationship in terms of
 - the manner and timeline of delivering services
 - the fixation and collection of service charges
 - the availability of personnel at the behest of the service aggregator
 - the regulation of their conduct under internal policies
 - the directions of service aggregators on what needs to be done and how the work needs to be done
- The employer and worker relationship is enforced in terms of Industrial Disputes Act, 1947, where the driver is performing a 'skilled' work of driving a cab through which the cab aggregator is delivering its services to the end consumers and earn profits.
- **Cab aggregator- Cab driver tensions-** The drivers are demanding
 - The inclusion of a minimum base fare
 - Increased per-km fee from cab aggregators
 - Inclusion in the employer-employee relationship
 - Against the constantly changing conditions relating to the incentive payments to the drivers
 - Against the hectic work hours,
 - Against the withdrawal of concession and privileges, etc.

Is there any legislation in India to deal with gig workers?

- **Unorganised Workers' Social Security Act, 2008** - It aims to provide for the social security and welfare of unorganised workers.
- It defines "unorganised sector" as an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods/service of any kind, where the enterprise employs **less than ten** number of workers.
- It does not directly provide any entitlements to unorganised workers, rather it states that the Centre shall come up with schemes for their benefit on matters relating to life and disability cover, health and maternity benefits, old age protection, etc.
- It provides for the constitution of National and State Social Security Board by the Central and State governments respectively.
- It is unclear if gig workers would fall within the purview of the Act.
- **The Code on Social Security, 2020**- It recognises gig workers as a new occupational category.
- It defines gig worker as a person who performs work or participates in work arrangement and earns from such activities, outside of the traditional employer-employee relationship.
- The code does not seek to grant the status of 'employee' to gig/platform workers
- It only envisages special social security schemes for them which may be framed by the Union government on matters relating to life and disability cover, health and maternity benefits, wherein contributions may be required from service aggregators.
- **The Code on Wages, 2019**- It provides for universal minimum wage and floor wage across organised and unorganised sectors, including gig workers.
- **Motor Vehicle Aggregator Guidelines, 2020**- It states that aggregators are obligated to obtain a health insurance and a term insurance for each driver engaged by them
- It also ensures that such drivers are not logged in for an aggregate of more than 12 hours on any day.

What has been the role of judiciary in this respect?

- In 2017, the Delhi Commercial Driver Union filed a writ petition before the Delhi High Court alleging poor working conditions faced by cab drivers and seeking recognition of such drivers as employees of cab aggregators.
- However, the petitioner withdrew the writ petition later with liberty to approach the appropriate government for making a reference under the Industrial Disputes Act, 1947.
- This issue currently remains pending judicial scrutiny and legislative examination.
- Recently, the Supreme Court took cognizance of the writ petition filed by the Indian Federation of App-Based Transport Workers that seeks coverage of gig workers within the labour laws applicable to the organised sector or declaration of gig workers as being covered under the UW Act.
- The court issued notice to the Centre to respond to the contentions and relief sought under the writ petition within 4 weeks.

What is the need of the hour?

- The court may adopt an integrated approach to look into a comprehensive set of factors governing the engagement of gig workers by service aggregators.
- It may examine the international jurisprudence on the issue, including the decisions rendered by the competent courts in the US and the UK.
- In *Barbara Ann Berwick Vs UBER Technologies Inc.*, the labour court of California and in *Mr Y*

Aslam Vs Uber BV & Others, the employment tribunal of London, have held that cab aggregators are in essence functioning as an employer of the drivers so registered on their platform.

References

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