

Legal Framework for Sexual Harassment in the Gig Economy

By Anjali Verma

Table Of Contents

Abstract	2
Literature review	2
Introduction	3
Gig economy in India	4
Sexual harassment in gig economy	5
Cases of sexual harassment in gig economy	6
Laws related to gig economy	6
POSH Act, 2013	7
Attempts at formulating Sexual harassment policy for gig workers	8
Recommendations	9
Conclusion	10
References	10

Abstract

The introduction of the gig economy has brought a revolution in the nature of work. People can now work in an environment offering flexible working hours and autonomy to work globally. The gig economy has been of advantage to people but still lacks at various key steps for development. It faces numerous legal challenges including the pervasive issue of sexual harassment.

This paper highlights the criticality of the issue and provides with an examination of the existing legal framework for coping with sexual harassment in the context of the gig economy. It analyses the relevant statutes, case laws, and regulatory mechanisms adopted by the platforms. This paper presents the challenges faced by the gig workers. Additionally, it discusses the measures taken by platforms to enhance the protection of gig workers. It provides the recommendations that can be inculcated in bringing reforms that offer insight to policymakers and stakeholders to foster a safer and more equitable environment.

Keywords: The gig economy, gig workers, sexual harassment, platform workers, Non-platform workers.

Literature review

An article, 'COVID-19 and Gig workers: need to democratise economy' by Bhaskar Pant and Geetima Das Krishna, talks about the effect of COVID-19 on the status of the Gig economy in India. According to them, the Code of Social Security 2020 has welcomed the gig economy more openly in India. The article begins with the introduction of the gig economy and the inclusion of workers in the gig economy. Pant and Krishna highlighted the reason for workers changing from traditional work to the gig economy. They have touched on the issue of bringing new policies and regulations for strengthening workers' status and given recommendations for the betterment of the gig economy.

In the policy brief by NITI Aayog titled, 'India's booming gig and platform economy', the report begins with an explanation of the gig economy with the data and changing trends. The other part deals with the recommendation for stakeholders covering the various sectors of the gig economy and the last part of the report highlights the futuristic goal of the platform economy in India.

A Research paper 'Cross country study on gig economy' by wage indicator highlights the background of the gig economy with its advantages and disadvantages around the world. This

paper mainly highlights the study of the gig economy in various countries like the Netherlands, India, Spain, and Argentina and also provides a comparative study of the labour laws in the mentioned countries. This paper also highlights the results of surveys conducted in these countries. That highlights the benefits and drawbacks of the existing laws in those countries. This paper also gives recommendations for the improvement of the gig economy in India.

In an Editorial in the Economic Times, Umang Mathur highlights the increasing trend of the Gig economy in India but also mentions the change in the trend in the gig economy in India from other countries. He says that the nature of the gig economy in India would be different from the other countries. He highlights COVID as the main reason for the increasing number of contractual workers in India. Mathur also brings up the challenges while applying for gig work and mentions the technological gap as the main reason for the challenges.

Most of the literature available on the gig economy mostly discusses its advantages and challenges but remains silent on the critical aspect of sexual harassment faced by the gig workers. If certain literature pieces have attempted to address the issue, they have addressed the same from the lens of a female-gendered struggle. This paper is an attempt to assess the issue of sexual harassment in the gig economy expansively from a gender-less lens and tries to bring recommendations for the same.

Introduction

Over the stretch of the last fifty years, technology has traversed from gadgets to social media and digital platforms. The availability of digital platforms has contributed to increasing the scope of the gig economy.

The gig economy is a free market system where businesses frequently hire temporary employees and engage independent contractors for brief assignments. An individual who works or engages in labour for a limited period of service and receives compensation for these activities outside of the conventional employer-employee relationship is a gig worker.

NITI Aayog in its report ‘ India’s Booming Gig and Platform Economy¹’ highlighted the increase in workers in the gig economy. The study estimates that in 2020, 21.77 lakh workers were engaged in the gig economy. By 2029-30, gig workforce is expected to expand to 2.35 crore. At present, about 47% of the gig work is in medium-skilled jobs and about 22% in high skilled, and about 31% in low skilled jobs. Usually, gig workers are classified into two types a) Platform gig workers and b) Non Platform gig workers. Platform gig workers are synonymous

¹https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf

with online platform workers i.e. those who work using online platforms. Examples: Swiggy, OLA, Uber, Zomato and Big-Basket etc. Non-platform gig workers are casual wage workers and self-employed part-time or full-time workers.

A Boston Consulting Group analysis states that 15 million individuals in India are engaged in gig work variety of businesses including professional services² (like freelancing, delivery, and construction), shared services (Uber and Ola) and software. The Indian gig workforce will reach 90 million by 2023. This growth will be affected by various factors :

1. Rise of technology
2. Young demographic dividend
3. Rising level of education and skills
4. Urbanisation and rising consumer demand
5. Cost-effective labour
6. flexible working hours and many more.

The COVID-19 pandemic has been the major reason for the boost in the scope of the gig economy in India. According to Press Trust of India, there has been a 115% increase in work-from-home gigs during the first six months of pre- and post-lockdown. Increase in the contractual nature of the white and grey-collar workers. The rise in the gig economy has also led to a rise of sexual harassment in the gig economy.

Freelancing has become a popular career choice, attracting both male and female workers. While freelancing is an attractive option to earn a livelihood, it lacks immediate safeguards against sexual harassment. Sexual harassment is a deeply ingrained problem affecting gig workers across various sectors, including ride-hailing, food delivery, freelance work, short-term contract work and other services.

Sexual harassment in gig economy

According to the report of NITI Aayog, women are more likely to engage in the gig economy due to its versatile nature of work. While there has been a rise in the participation of the female force in freelancing and the gig economy, similar has been the case of sexual harassment in these arrangements. Moreover, the ambiguity over the redressal of legal protection, security of the workplace and formal employer-employee relationship has led to unreported instances due to fear of termination of contract and retaliation from companies and digital aggregators.

² <https://media-publications.bcg.com/India-Gig-Economy-Report.pdf>

Various cases like the Dunzo delivery boy case³ and Blinkit delivery boy sexual harassment case⁴ have garnered negative attention. The Dunzo delivery boy case highlighted the irresponsible nature of the Dunzo company in hiring the delivery partners without the background check of the person and for not addressing the complaint of Rahella. Blinkit delivery boy sexual harassment case also highlighted the irresponsible nature of the company in hiring the delivery agents. Besides, gig workers, whether women or men have also shared their experience of being uncomfortable with their customers and facing a dilemma on how to handle the situation.

Ride-hailing male drivers face situations of bafflement especially in case of female customers in case they fell asleep or were sick during the ride. Female drivers face the instances of male customers ogling them and being in a state of helplessness for rebuking customers as that would affect their ratings and future work. There has been no assistance provided by the company to the victims. Women workers are becoming pickers of place and time of their job to prevent the risk of harassment as the workers are not employees in a legal sense which leaves them defenceless and without a monastery or social capital to pursue legal remedies independently. Workers working online also face cyber crimes related to sexual harassment and exploitation.

54% of freelance respondents reported being sexually harassed at work, according to a Honeybook survey. This points to the fact that online platforms that facilitate such work must take responsibility for instances of sexual harassment. The increase in Sexual harassment cases affects the participation of victims in the gig economy. It could lead the victims to terminate their assignments untimely, which would further affect their engagement in the professional space. Furthermore, the victims might avoid participating in gig culture.

Cases: Status of employee and sexual harassment in gig economy

1. Uber BV v/s Aslam case (UK)⁵

On February 19, 2021, a landmark ruling was passed by the Supreme Court dismissing the appeal filed by the Uber BV concerning the employment status of private hire vehicles. The main concern raised in this case was whether an uber driver is a 'worker' for the purpose of written contract executed between them and drivers, stating that Uber was an 'independent company' and that the drivers were the 'customer' (of uber)

³<https://bhaskarlive.in/delhi-consumer-court-notice-to-dunzo-for-sexual-harassment-by-delivery-agent/>
⁴<https://timesofindia.indiatimes.com/city/noida/delivery-agent-who-groped-customer-held-after-gunfight/articleshow/104811610.cms>

⁵ [3] <https://www.supremecourt.uk/press-summary/uksc-2019-0029.html>

who received access to the app in return for a service fee. The Supreme Court dismissed Uber's plea and upheld the original finding that Uber drivers are workers.

2. DUNZO delivery boy case

A delivery agent of DUNZO had appeared drunk at the doorsteps of a female customer and abused her when she ordered a delivery at midnight. The delivery agent tried to threaten her over WhatsApp and abused her for complaining to the company. After being given a threat of rape and abuse, she registered FIR.

A notice was issued to Dunzo company by the Consumer Dispute Redressal Commission following a complaint seeking Rs. 50 lakh damages for negligent hiring and alleged Sexual harassment by delivery partner.

Sexual Harassment Of Women at Workplace (Prevention and Redressal) (POSH) Act, 2013

With an increase in sexual harassment of women in the workplace, the Supreme Court implemented the Sexual Harassment Of Women at Workplace (Prevention and Redressal) (POSH) Act, 2013. This act aims to create a safe and conducive work environment. This act gives a proper definition of sexual harassment cases. Vishakha guidelines given by the Supreme Court in a landmark judgement in Vishakha and others v/s State of Rajasthan 1997 case formed the basis of the POSH Act.

Indian Labour laws regulate the traditional employment landscape more effectively than that of the gig - economy. Gig workers don't exhaustively fit in the definition of Employee mentioned in these laws so they are termed as contractors under the Code of Social Security 2020.

The definition of 'employee' Section 2(f) of the POSH Act makes it evident-

“Employee means a person employed at a workforce for any work on a regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name”

Though the definition of 'employee' in Section 2(f) of the POSH Act might, for a while address the issues and cater to the nascent stage of the gig economy in India, it will not be able to address the same extendedly due to ever-evolving technology and dynamic nature of gig work.

Further, Section 2(a) of the POSH Act defines "aggrieved woman" as a woman of any age, whether employed or unemployed, who alleges to have been subjected to any act of sexual harassment. Unfortunately, The statute remains silent on the possibility of an "aggrieved male".

The definition of a workplace does not clearly include the continuously changing workplace of women in the gig economy, such as that of a cab drivers or beauty professionals.

While the company engaging these workers may fall within the ambit of a workplace under the POSH Act, the provision closest to addressing the evolving workplace of gig workers is defined as "any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey."

It is therefore emphasised that a change in the POSH Act is necessary to safeguard the right to a safe workplace in the gig economy. This aligns with the objective of the act, as acknowledged by the Supreme Court in *Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University*, where it held that the workplace definition should be sufficiently broad to ensure inclusion of any area where a woman could face sexual harassment.

Attempts at formulating a Sexual harassment policy for gig workers

Uber :

Uber has taken several measures to prevent sexual harassment under its platform. Uber trains its employees in the way of communicating and the topics to be included in the conversation. They are trained to avoid having personal conversations and have no sex rules where sexual contact is prohibited during an Uber ride. Driver and rider both are asked to maintain formal relations during the ride.

Zomato

Zomato has introduced a zero-tolerance policy at the workplace. Discrimination and sexual harassment of any type are strictly prohibited to provide a comfortable working environment. Zomato focuses on the growth and development of employees.

The Prevention of Sexual Harassment Policy (“Policy⁶”) has been formed to prohibit, prevent, and deter the commission of acts of sexual harassment at the workplace and to provide the procedure for the redressal of complaints about sexual harassment. This Policy is made under the overall ambit of the Zomato Code of Conduct and is also in compliance with the Indian law - The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (“Act”). This global policy extends to all the employees of Zomato (interns, contractual workers and employees). Zomato will take reasonable, necessary and strict action against the sexual harassment caused by a third party to the employee while on duty.

Under this policy, Zomato has explained clearly the sexual harassment acts, the scope of these acts and the preventive measures to be taken in a very detailed manner. The Internal Complaints Committee (hereinafter referred to as the IC) has been constituted under Section 4 of the Indian law - The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act,2013 (“Act”) for the timely and impartial resolution to complaints of sexual harassment at all workplaces of Zomato. It consists of senior employees of Zomato along with an independent member under statutory requirements of the Act.

Recommendations

- As the nature and functioning of gig work is different from traditional work. There should be an entirely different ‘Gig Work Code’ which only caters to the field of gig economy.
- The POSH act under section (2) (a) addresses women being the victim of sexual harassment. However, the act is silent upon men also being the victims of sexual harassment. In order to cater to this problem the term ‘aggrieved women’ should be replaced with ‘aggrieved individual’ and the definition should be expanded accordingly.
- The scope of definition of ‘employee’ should be broadened to cater to the gig workers in an ever evolving gig economy.
- In accordance with the statutes, each firm offering freelance work, shall establish a freelance internal committee to handle worker complaints under the state government’s jurisdiction. The committee’s primary responsibility would be to assist the workers in resolving their grievances through legal means and to assist them in overcoming obstacles.

6

https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://b.zmtcdn.com/data/file_assets/5c66f36ae6937fb8495534d1258f55521652942323.pdf&ved=2ahUKEwicveyolcmFAxV0yTgGHfBQD0UQFnoECA8QBq&usq=AOvVaw36uYiMFAicDZ30g8vtq8Zi

- Evaluations or comments from clients and employees should be asked after their work to maintain transparency and check over the activities.
- Particular status be granted to gig workers and statutory definition should be provided.
- Initially, the Online aggregators or digital platforms could connect the gig worker with the employer anonymously if the job does not need such specific details. Certain platforms have started to use blockchain to hide data and maintain privacy.
- All the agreements for gig work should contain a code of conduct stipulated by the firms or employers in accordance with the Code for Gig work mentioned above.
- Digital aggregators to have portals for reporting incidents of alleged sexual misconduct, aiming to promote transparency.
- "No retaliation" policy, ensuring that employees who report misconduct, including sexual harassment, will not face any reprisals.
- Mandated comprehensive training for all employees, including drivers, to raise awareness about sexual harassment, and to educate them on prevention strategies and reporting procedures.
- Stringent background check requirements for gig workers.
- Installations of emergency buttons in apps for both customers and workers that will send messages to both emergency contacts and police and call them will be the most important feature of the gig companies to take action.

Conclusion

A gig economy can be a boon and bane for the country's development and social well-being if operated under proper provisions. The gig economy can be the platform for improving the status of women by making them financially independent if it overcomes the challenges of sexual harassment. The current legal framework is not qualified to decrease sexual harassment in the gig economy. The amendment and new provisions need to be made to facilitate the growth of the gig economy as well as gig workers. India can overcome the hurdles of the gig economy by strengthening the legal framework and taking the recommendations from countries like the USA, UK, France and the Netherlands as these countries are progressing gradually. Private and government collaboration can set outstanding examples in the development of the gig economy with traditional work. Gig economy is very prosperous for countries' economic growth.

References

1. NITI AAYOG, (June 2022), India's Booming Gig and Platform Economy : Perspective and recommendations on the future of work , https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf

2. Anderson Monica, McClain Collen , (2021,September 8), The State Of Gig work in2021 , Pew Research centre , <https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/>
3. Singhvi Apurva, (2023,March 3), Female Workers in the Indian Platform Mediated Gig Economy - Highlighting a need for a comprehensive policy for protection from Sexual Harassment:, <https://lawschoolpolicyreview.com/2023/03/03/female-workers-in-the-indian-platform-mediated-gig-economy-highlighting-a-need-for-a-comprehensive-policy-for-protection-from-sexual-harassment/#:~:text=In%20India%2C%20these%20workers%20are,certain%20benefits%20by%20the%20government.>
4. Gandhi Anuradha and Sharma Isha, (2023,July 21), Women at (Gig) Work : Redressal in Case of sexual harassment?. S.S. Rana and Co.: <https://ssrana.in/articles/women-gig-work-case-of-sexual-harassment/>
5. Kasliwal, R. (2020). Gender and the gig economy: A qualitative study of gig platforms for women workers. *Observer Research Foundation, ORF Issue Brief, 359.*
6. Zomato, (2021,April 12),Prevention Of Sexual Harassment Poliy , pg 3-7 https://b.zmtcdn.com/data/file_assets/5c66f36ae6937fb8495534d1258f55521652942323.pdf
7. Augustinraj, R., & Bajaj, S. (2021). Unlocking the potential of the GIG economy in India. BCG, Michael & Susan Dell Foundation.pg 21-25