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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE STATUS OF GIG ECONOMIC WORKERS IN GLOBAL LABOUR LAW FRAMEWORK**

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## **Abstract**

Gig economy is not a new concept, but it started growing when the pandemic started. This economy helps people to work in favorable conditions. This economic condition is much more skill-oriented rather than your degree. Now employers want to see more skills that they used to look for in traditional jobs. But due to the higher rates of population, the employment rate is so high that sometimes employees need to face underemployment. The world so far does not have a proper legal framework for gig economy workers, even if we have failed to implement the existing legal framework.

The authors of this article will try to explain the evolution, legal framework, and challenges of gig economy workers through doctrinal research

**Key Words:** gig economy, traditional jobs, pandemic, skill-oriented, employment.

## **Introduction:**

The word gig is not new; it was coined almost a few decades earlier. We can witness these workers in various sectors such as legal consultancy, bloggers, digital marketing, etc. The most important thing for gig workers is to keep on updating them about their skills and technologies. Due to advanced technology, people can work from home anywhere. The growth of the gig economy profession over the last few years allows workers to join as independent contractors by using digital platforms to provide their intermediate labor. Long-term contracts like traditional full-time jobs do not hire workers in the gig economy. Workers are flexible and self-employed, but this casual nature of work creates insecurity. Platform works do not have the bonafide employer and employee relationship, and employees face wages and working hours violations.<sup>1</sup>

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<sup>1</sup> Analysis of Labour Laws with respect to gig workers, Darshit Vora, available at <https://blog.iplers.in/analysis-of-labour-laws-with-respect-to-gig-workers/> (last visited on May 22,2022)

## **Background:**

The term Gig economy was evolved in the early 1900s by jazz club musicians. Workers have greater work flexibility without having the certain benefits of traditional employment like healthcare, pensions, and paid holidays. After the great depression in the 1930s, there was a fear of job security. At that time, farmers sold their land because of drought and falling prices. They did not find any stable jobs. So to sustain their livelihood, they were forced to work as migrants. During the 1940s, a temp agency was started for the first time, which provided the business with typists and other trained Clarks temporarily. During the 1990s, about 10 percent of the US workforce was employed as contractors, temps, and non-permanent staff. After that, in 2008, Airbnb provided opportunities so that some people could generate extra income by letting it out. Now some big companies like Amazon, Flipkart, Ola, Uber have increased the opportunity for the gig workforce to enhance their service.<sup>2</sup>

**Types of Gig Economy Profession:** There are four types of Gig Economy Profession as follows:

**Part-Time work:** When people work for a few hours of the day, which is less than any full-time employee of any company is known as a part-time job. Students are involved in this profession to pay their school and tuition fees, but sometimes people involved in other professions are also doing this to enhance their income.

**On-call workers:** People who report to the organization or company when the company requires them are known as on-call workers. Here employees do not get a monthly salary; they earn it during working hours.

**Platform workers:** When workers work for any company or organization using an online platform known as platform workers. This work can be content writing to food delivery anything. According to a report of ILO digital labour platforms has been increased from 142 to 777 since 2010 to 2020. Between 2015 and 2019 suggest that there is a proportion of adult who performs platform works between 0.3 and 22 percent. Interesting facts about these platforms are that most of the workers are below 35 of age and highly educated.

**Dependent self-employment:** People who earn from one employer further than that worker are provided by one employer, known as dependent self-employment. These employers have certain

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<sup>2</sup> ibid



benefits from the legislation, but it is limited.<sup>3</sup>

### **Legal Frameworks of gig economy workers.**

**Universal Declaration of Human Rights:** This legal document does not make any difference between standard and non-standard forms of workers, but Article 23 declares that everyone has the right to have just and favorable work conditions. Workers will receive remuneration based on equity. Every signatory under this declaration is entitled to have social protection and human dignity. Everyone has the right to join a trade union to protect their interest.<sup>4</sup>

**The Conventions of International Labour Organisation:** After the first world war, when the treaty of Versailles concluded, the International labor organization established the belief that peace was predicted upon worldwide social justice. The constitution of ILO included the treaty of Versailles proclaimed freedom of association as of special and urgent importance. The declaration of 1944 proclaimed that freedom of association is one of the fundamental principles which helped to establish the ILO. In the year 1948, when the second world war concluded, convention 87 was adopted in July 1948. This Convention provides an obligation to states to grant both employers and workers to join an organization of their own choice without any prior authorization by the state.

The term workers used in Convention 87 are important to determine the subjects of the rights contained in the instrument. The phrase workers are distinguished from other conventions of ILO, which apply more narrowly to wage earners. As gig workers are not considered employees, they do not come under the definition of wage earners. Convention 87 expressed the right to freedom of association which was part of the 1998 declaration. This Convention covers all employment situations, so it is applicable to gig workers.

Article 3 of this Convention said that no state parties should refrain from interfering in an organization's right to draw up their own rules to organize its administration and activities.

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<sup>3</sup> ibid

<sup>4</sup> ibid

Article 7 of this Convention explains that states shall not implement any legislation regarding the acquisition of legal personality, which will deprive any organization of exercising the rights of freedom and association.<sup>5</sup>

## **ICCPR and ICESCR**

Article 22(2) of ICCPR can restrict the right to freedom of association if any law prescribes that right and requires it for a democratic society.

The right to freedom of association is not well defined by ICESCR. The Human rights Commission has not delivered any general comment regarding this concept in ICCPR. There was a general comment related to Article 6 that there will be a separate general comment for Article 8. ICESCR has not issued any general comment related to the right of freedom of association under the ICESCR.<sup>6</sup>

### **USA**

In the USA, the legislature of California has codified the landmark decision of *Dynamex Operations West Inc.V. Supreme court of Los Angeles* to pass Assembly Bill 5, which addresses the concept of Independent contractor that classifies the gig workers.

This decision held that all workers are free from any kind of control and directions of the hiring entity to perform their work. Workers who perform the work that is not included under the usual course of the hiring entity's business. Workers who are customarily engaged in a self-established trade, occupation of the same nature involved in the work performed.

If any organization fails to fulfill these three-tier tests, the workers of that organization will not be recognized as independent contractors.

This legislation will not apply to certain occupations like legal professionals, insurance agents, etc. For these professions, *S.G. Borello & Sons, Inc V. Department of Industrial Relations* laid down

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<sup>5</sup> Naomi.R.Kefford, *The human rights of gig workers*”(2019),(Unpublished PhD Thesis, University of Amsterdam)

<sup>6</sup> Ibid

the multifactor test.<sup>7</sup>

## UK

The tribunals and courts of the UK are not impressed by self -the employment status set up by gig platforms. According to Osborne Clarke's partner, Kevin Barrow, courts and tribunals are looking at the parties' relative bargaining power. Big companies like Uber, Addison Lee tried to prove that their workers are self - employed then the honorable Supreme court heard the matter in the UK. After that, in September, Transport for London revoked its license with Uber due to safety concerns. UK Government had no obligation to follow the EU laws since Brexit. Judges are also not clarifying the Employment laws for companies.<sup>8</sup>

## India

### **Labour Rights of gig economic workers after covid 19:**

According to the decent work agenda of ILO, there are four elements i.e job creation, rights at work, social protection floor, and social dialogues.

**Job creation:** The term job creation connotes the creation of creating secure, sustainable, and income-generating employment opportunities for everyone. This is a process that links rural and urban areas, youth and women, and various educational and skill levels, workers.

**Rights of work:** Rights at work are an integral part of the labour standard which determines safety, remuneration, and working hours of labour. Today's gig economy is characterised by flexible working hours which put an impact on wages, working hours, and work-life balance. Recently on Union budget of 2021 discuss the ways by which minimum wages were to be set for the gig economy.

**Social Protection Floor:** This means the minimum social security to alleviate poverty, vulnerability, and social exclusion. It also ensures maternity leave and care, basic income security for education, nutrition, and other necessary services. Under this element, it ensures to fulfill of the sustainable development goals by alleviating poverty, universal health coverage, decent work, and economic growth.

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<sup>7</sup> Regulating The Gig Economy, Anurag Pillai available at <https://cll.nliu.ac.in/regulating-the-gig-economy/> ( last visited on May 23,2022)

<sup>8</sup> The gig economy: a new global battleground? Lucy Trevelyan, available at <https://www.ibnet.org/article/CBA4C174-2A35-4E5F-A278-9255C1C25773> ( Last visited on May 23,2022)

**Social Dialogue:** It is any type of negotiation about any issues regarding common interests. It fulfills the sustainable development goals like recognising the labour rights, respecting freedom of association and the rights of collective bargaining, rule of law, etc.<sup>9</sup>

### **The Contract Labour (Regulation and Abolition) Act, 1970**

This Act regulates the workers who are hired through a contract between employer and employee. This Act also protects third-party contractors. So, gig economy workers are also included in this Act. They are eligible for welfare and health benefits, but most organizations have still not implemented the provisions of this Act, nor has the judiciary discussed this issue.

### **The Employment Compensation Act,1923.**

This Act provides compensation to the employees during or out of the chores of employment. This Act needs to be implemented for gig workers to protect their occupational safety hazards.<sup>10</sup>

### **Other Safeguards**

The social security code was introduced in the Lok Sabha in 2019 to simplify the nine laws, including the Employees' Provident fund Act, The maternity Benefits Act, and the Unorganised worker's Social Security Act. This code brings the concept of gig workers and provides social security to them. This code also includes various non-traditional works which are categorized as gig workers, platform workers, unorganized workers, home-based workers, etc. The code considers gig workers to be the person who performs work and earns from that work which is outside of the traditional employer and employee relationships.

The term platform workers under this code mean where any person or organization hires workers. Still, the hiring entity uses an online platform to access other organizations or individuals to solve any problem or provide any service in terms of payment.

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<sup>9</sup> Kavya Selvi, Uma Maheswari K. and Francis Kuriakose” Re-Imagining Labour Rights in the Online Gig Economy after Covid -19”SSRN Electronic Journal, Page number 6 to 9(2021)

<sup>10</sup> The Law for Gig workers in India, Malavika Rajkumar, available at <https://medium.com/the-law-for-gig-workers-in-india-4163cfaee18b> (last visited on May 23,2022)

The code provides certain protections by mentioning that the central government may implement social security schemes for gig and platform workers regarding life and disability cover, health and maternity benefits, and old age protection.<sup>11</sup>

### **Protection Regarding Sexual Harassment At Workplace For gig workers**

Due to the huge spread of covid 19 Indian economy has changed its direction towards the gig economy. As per a recent economic survey, India is one of the largest growing gig economies. According to a recent study by the United Nations Development Program, women can join the gig economy in the coming future by providing certain remote working characteristics.

The biggest concern is protecting against sexual harassment for female gig and platform workers.

Low-skilled gig workers like cleaning, beauty have a higher chance of sexual harassment. Other skilled and educated freelancers can encounter their own matters with the human resource department. Now employers are instructed by the national women's commission to frame certain rules for their employees. The sexual harassment at workplace Act of 2013 protects against sexual harassment. According to the 1997 judgment of the honorable Supreme Court, it is the fundamental right of any person, irrespective of their gender, to carry on any occupation, trade, or profession in any safe working condition.

As per the recent context, gig workers are not employees, but independent workers mentioned under the social security code, 2020. So gig workers and platform workers are not coming under the POSH Act. So to implement this Act, if we try to amend this Act, it may face certain obligations as the employer under this Act must provide certain resources for the prevention and the redressal of sexual harassment with the establishment of an internal committee.

So to protect the gig and platform workers, the Occupational safety, health, and working conditions code was enacted in 2020. This code may protect the workers from sexual harassment. This code

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<sup>11</sup> Gig workers and platform workers: The Code on Social Security 2020, Singhania & Partners, available at <https://www.mondaq.com/india/employee-benefits-compensation/1035552/gig-workers-and-platform-workers-the-code-on-social-security-2020> (last visited on May24,2022)

has established the social security fund for the welfare of Unorganised workers. This fund under this code can create SHE BOX for gig and platform workers so that they can put their complaints under that instrument with the National Commission for Women. Then this commission may organize training workshops for gig and platform workers.<sup>12</sup>

### **Challenges:**

According to a report, an Uber driver earns 3 dollars an hour. A housecleaner from Homejoy admits that she lives in a shelter. According to the research of Oxford University, gig workers from Kenya, Vietnam, Nigeria perform transcription, photo editing, data entry, etc. On the other hand, gig workers in the US prefer the flexibility of their work, but for others, it is lucrative. Angel, a contingent worker, affords her apartment, pays for her own bills, internet connection, food, and milk for her children. Another hand, in the US, gig workers find their job is unstable, uncertain, and about half of the workers feel that they are easily replaceable. They face racism, discrimination. According to Moses, a translator said that if you want to protect your client, you need to create a certain identity that is not you.

Another issue is massive labor oversupply. One work platform has reported that they have nine times as many workers as necessary. It creates a massive impact on their salary expectation. According to one virtual assistant from Filipino, he set his mark on 8 dollars per hour because he used to get that much from his previous client, but now he doesn't find any job at this amount. So he is bound to set his mark On 4 dollars.<sup>13</sup>

The Employment status of gig workers is unfavorable or unclear. They are not represented and do not have proper benefits like unemployment insurance, pensions, and healthcare. The gig economy and platform workers do not have workers' representation. As they are independent, they do not have collective driving agendas for workers' rights. They do not have unions. But they can find each other and make a transitional network. They can discuss the issues via group chat or video

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<sup>12</sup> Safety of Women in the Gig Economy, Soumya Jha, available at [https://www.shrm.org/shrm-india/pages/safety\\_of\\_women\\_in\\_the\\_gig\\_economy-.aspx?loc=india](https://www.shrm.org/shrm-india/pages/safety_of_women_in_the_gig_economy-.aspx?loc=india), (last visited on May 24, 2022)

<sup>13</sup> What is Gig Economy around the world, Annie Lowrey, available at <https://www.theatlantic.com/business/archive/2017/04/gig-economy-global/522954> ( last visited on May 25,2022)

call.<sup>14</sup>

The Indian government promised several measures in 2021 to help the gig economy workers, but they remain to be fulfilled. Workers are not getting the social security or minimum wage guarantee. According to the managing director of Lexport Srinivas Kotni, in budget 2021, finance minister Nirmala Sitharaman announced that the government is looking toward including gig workers under the social security code. But still, it's not implemented.

As per a Zomato Executive, he lost his wife in a police car hit accident. If there was any government scheme with a one-time accident coverage payout that would help his family. He said Zomato provided 10 lakh rupees for his family. In other instances, Zomato started dropping at doorstep service during the pandemic. A delivery boy received a call after 25 minutes that food was not delivered; although he updated the status in the app, the company deducted rs 850 from his account. He said that if there were some government intervention, it wouldn't happen.

According to an Uber driver, the company started to reduce its fees. Earlier he used to save rupees 50000, but now he can manage only 10000. Car repairing fees are paid by them only. Even the company has no policy to ensure their safety like carjacking, murders, etc. According to a report, IndiaSpend last year to help the unorganised sector e-Shram portal workers launched to avail the government's social security scheme. It had registered 130 million workers. According to the report, over two-thirds of workers are yet to register.<sup>15</sup>

### **Conclusion:**

New age workers who do not like the traditional job market gig economy is the best option available for them. It is a lesser burden for the employer to not engage in long-term commitments with the employee. It generates several job options that are protected by the new labour codes.<sup>16</sup>

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<sup>14</sup> What is the gig economy and how will it change the future of work? Patrik Hedlund, available at <https://www.ericsson.com/en/blog/2022/2/gig-economy-what-is-it> ,( last visited on May,25,2022)

<sup>15</sup> Sarthak Choudhuri, "Life is tough for India's gig workers", *rediff Business*, February 13,2022, available at <https://www.rediff.com/business/report/life-is-tough-for-indias-gig-workers/20220213.html> ( last visited on, May 25,2022)

<sup>16</sup> What is the law for new age Gig workers in India: an overview, Satabdi Bhattacharya, available at <https://blog.ipleaders.in/what-is-the-law-for-new-age-gig-workers-in-india-an-overview/> ( last visited on ay 26,2022)

According to the report published on MoneyControl, India has registered 7,17,686 gig workers. Among them, about 58% are from West Bengal, Uttar Pradesh, Bihar alone.<sup>17</sup>

According to a recognized job agency Apna.co, platform women have registered themselves; more than 2.5 lakh women applied for work-from-home jobs in companies like Byjus, Teamlease. Still, none of the labor codes has been implemented though it was passed by the parliament more than a year ago<sup>18</sup>. As per the report, 36% of US citizens are part of the gig economy<sup>19</sup>. In the UK, 1 in 6 adults is part of the gig economy<sup>20</sup>.

According to International Labour Organisation the number of gig workers is increasing worldwide due to this pandemic. The gig economy is very common in developed countries, people generate their extra income from this but another way of developing this economy is still an emerging concept. Many people use this as a main source of income due to its flexibility in developing countries<sup>21</sup>.

According to the United Nations, technological advancements shaped media, retail, health, financial transactions, etc. Before the outbreak of covid 19. To survive in this economy people need to be technologically sound, otherwise, it would be a great problem. An example portrait by ILO shows that the education system has been shifted towards an online mode.<sup>22</sup> This means that students who are technically sound and are financially stable can avail of this education. For some students, it is easy to access but for others, it's very tough, they cannot access the education.

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<sup>17</sup> Prashant K Nanda, India registers 7,17,686 gig workers; 58% are from Bengal, UP and Bihar, "moneycontrol", February 3, 2022 available at <https://www.moneycontrol.com/news/business/companies/india-registers-717686-gig-workers-58-are-from-bengal-up-and-bihar-8033601.html> ,(last visited on May 26, 2022)

<sup>18</sup> Kalpana Pathak, Women to drive gig economy in new India, suggests Apna.co, "mint", August 11, 2021, available at <https://www.livemint.com/industry/human-resource/women-to-drive-gig-economy-in-new-india-apnaco-1162866033818.html> ,(last visited on May 26, 2022)

<sup>19</sup> Damjan Jugovic Spajic, The Future of Employment -30 Telling gig economy statistics, "smallbizgenius", available at <https://www.smallbizgenius.net/by-the-numbers/gig-economy-statistics/> (last visited on May 26, 2022)

<sup>20</sup> Gig Economy Statistics UK, Andrew Fennell, available at <https://standout-cv.com/gig-economy-statistics-uk> , available at <https://standout-cv.com/gig-economy-statistics-uk> ,(last visited on May 26, 2022)

<sup>21</sup> Prashant Nanda, Despite flexibility gig jobs making work insecure: ILO, "moneycontrol", available at <https://www.moneycontrol.com/news/business/economy/virus-fuelled-gigs-are-deepening-insecurity-and-widening-digital-divide-in-emerging-economies-un-agency-7951391.html> , January 18, 2022, (last visited on May 26, 2022)

<sup>22</sup> Isabelle Deganis, Makiko Tagashira, Wenyan Yang, (Division for inclusive social development), Digitally enabled new forms of work and policy implications for labour regulation frameworks and protection systems. [Download the UN/DESA Policy Brief#113](#) 20 September 2021



On the other hand, we receive mixed responses from gig workers in other countries. For someone, it is unstable, uncertain, discriminatory, and for others, it is lucrative, flexible, etc.<sup>23</sup> But everywhere, we can see that existing legal frameworks are not implemented. So, due to the enormous growth of gig economy workers, it is expected that existing legislation shall put its efforts into protecting the rights of gig economy workers.



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<sup>23</sup> Supra note 13 at 17.