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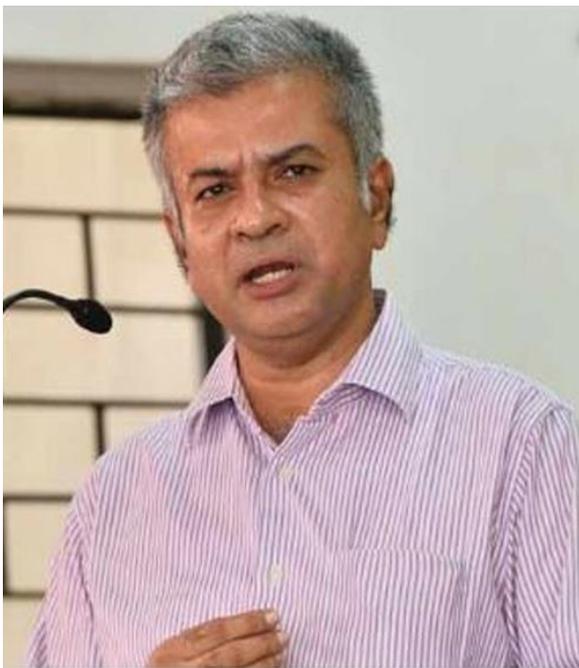
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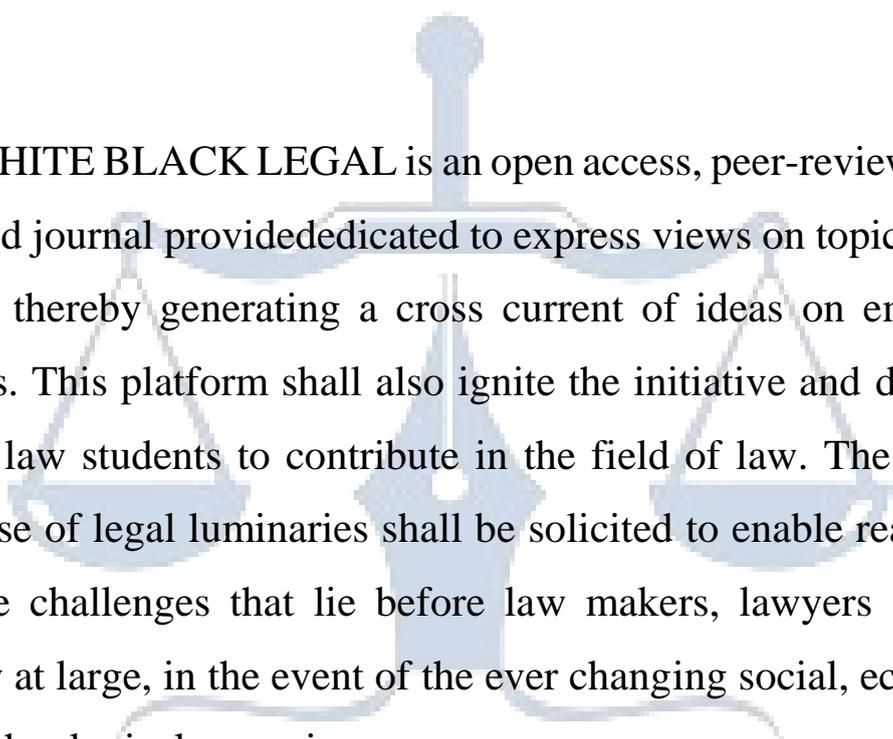


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and 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



“NEED FOR ENHANCING SOCIAL SECURITY LAWS FOR GIG WORKERS IN INDIA”

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ABSTRACT

Gig economy, one of the fad things of the modern world, is seen as one of the fastest growing sectors of society. Due to its flexibility and autonomy, some people find running gigs to provide them a work life balance. But a major chunk of this ecosystem gets caught in the vicious cycle of lack of minimum pay and unstable work culture which makes their lives miserable.

This paper examines the challenges and hardships faced by the forlorn side of this sector. It focuses on the lack of social security laws pertaining to gig workers alone in India by highlighting the gaps existing in the current legal framework and loopholes which will emerge in the pending legislatures when brought into place. As a result, the paper also states out the possible solutions to overcome this problem by comparing the existing labour codes, legal models from nations around the world like the UK, US and Spain, which have lately shown some remarkable changes in their legal system pertaining to gig workers. Using this analysis the paper also highlights the legal rights of these workers and how to uplift them. The approach in this paper is to illustrate the various policy interventions that should be enacted so as to protect and improve the conditions of gig workers in India.

1. OBJECTIVE

The objective of this paper is to critically analyse the current legal framework governing gig workers in India, identify its limitations, and emphasize the necessity for a distinct legal statute that addresses their unique employment conditions. It's high time the nation implements its drafts and notices, which are in place to help these workers. Policy think tank NITI AYOOG did lay out some recommendations to support and enrich these workers, where it plans on improving the skill set of these workers and by taking numerous examples globally and is planning to provide Paid Sick leave, Insurance covers, Pension plans, and many more ideas

and approaches to help and improve the Gig Economy.¹ It's necessary to put this play into existence. The paper also seeks to conduct a comparative study of international legal models to explore potential solutions that can be adopted in India. Legally enacting the Rights is more important than recognizing interests because what is the point of identifying the interest when it's not legally enforceable in the right manner.

2. RESEARCH PROBLEM

With the number of gig workers expected to surpass 23 million by 2030² the gig economy is seen as one of the fastest-growing industries in the nation. But a report by Fairwork underscored the extreme hardships and challenges faced by this sector. Issues such as lack of job security, no minimum wage, lack of other social security benefits like insurance or any sort of financial support makes this field a purgatory. Moreover, lack of specified legal provisions for gig workers alone elevates these problems. Based on these, the research delves into the complex interplay between the existing labour laws and upcoming proposed labour laws pertaining to gig workers in India. The research problem delves on the inadequacies of India's legal system in protecting rights of these workers and identifying the gaps present. The research also revolves around a comparative analysis with laws related to gig workers' rights around the world, from which potential solutions can be adapted in the Indian context. It is in this direction that this study is aimed to explore these complexities and contribute in moulding a more equitable and inclusive policy, which will protect the welfare and rights of the new workforce, including gig workers, in this modern labour market.

3. RESEARCH METHODOLOGY

The research methodology adopted in this paper is doctrinal in nature combined with comparative study relying on an in-depth analysis of existing legislation, International judicial precedents, policy proposals related to gig workers in India and abroad as Primary sources. Secondary sources such as government reports, scholarly articles, and comparative legal frameworks from other Commonwealth nations are examined to provide a comprehensive understanding of the legal landscape. The study also includes a critical analysis of the proposed

¹ NITI AAYOG, https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf (last visited March. 7, 2025)

² PRESS INFORMATION BUREAU, <https://pib.gov.in/PressReleasePage.aspx?PRID=2035286#:~:text=As%20per%20an%20estimation%20by,23.5%20million%20by%202029%2D30>, (last visited Feb. 9, 2025)

draft bills concerning gig workers and draws comparisons with International best practices from countries like the UK, US and Spain to suggest potential reforms for India. This approach allows for a systematic evaluation of the current gaps in the legal system and the exploration of feasible legislative solutions. AI Tools like Chat GPT, Microsoft Co-Pilot have been used in the course of research to simplify and for a better understanding of certain complex texts and in certain minimal instances to enhance the texts. Directly generated AI content has not been used in the paper.

4. GIG ECONOMY: A DESIRABLE OR A DEVASTATING JOB?

The term gig economy is defined as “a way of working that is based on people having temporary jobs or doing separate pieces of work, each paid separately, rather than working for an employer.”³ ⁴Changing times and the developing world led to the emergence of the ‘Gig Economy’, a new fad started in the United States mostly post the 2007 Great Recession, this was a period when unemployment reached its peak, and many looked out for more than one job to sustain in society.⁵

The trend peaked in India during the Covid-19 pandemic, as this period saw a lot of layoffs and people looking out for odd and numerous jobs to survive. In India, as of 2021, there were around 7.7 million gig workers in the nation⁶ and by 2029-30 this is expected to reach around 23.5 million people, generating 4% of the country’s income.⁷ There are two sides in this system. One is the fancy chic freelancers, who are known to charge a high sum per hour for their expertise and opinions across various industries. Freelancers use this economy to their advantage by not being bound or obliged to a single firm or entity. They tend to live on their own terms and the New Generation finds this attractive due to its flexibility and work-life balance, giving them an opportunity to explore beyond just one job.⁸

³ Deepika M G, Madhusoodhan M, *Labour Laws for Gig Workers in the Context of Labour Law Reforms*, 57, EPW, (2022)

⁴ Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/gig-economy> (last visited March. 3, 2025).

⁵ COLLEGE OF LIBERAL ARTS, COLORADO STATE UNIVERSITY, <https://www.libarts.colostate.edu/redi/wp-content/uploads/sites/50/2017/02/REDI-Gig-Economy-1-NK.pdf> (last visited Feb. 7 2025)

⁶ *supra* note 1

⁷ Aditi Madan, *Dark Side of the Gig Economy*, 58, EPW, (2023)

⁸ Arne L. Kalleberg, Michael Dunn, *Good Jobs, Bad Jobs in the Gig Economy*, 20 Perspectives on Work, 10-13, 74-75, (2016)

But the other side is a Mediocre system, where the Gig workers, also known as Platform workers, struggle against the odds and yet are not even paid enough for their basic needs. These workers are involved in pity and small jobs, which barely pay their checks. Our delivery agents working at big platforms like Amazon and eBay or our Cab drivers working at Uber and Ola all come under this category. This showcases the dissimilitude of the gig economy. A comfortable and alluring job on one end while the other side unveils the population who work in this sector out of obligation, in spite of facing a harsh work environment and zero job security.

5. HARD REALITY OF GIG WORKERS: A LEGISLATIVE LOOPHOLE

A report by Fairwork, an international action research project organisation that evaluates working conditions in the platform economy in more than 30 countries, conducted a survey in across 11 platforms in India and gave a report on the working conditions of Gig workers in the nation and these platforms are scored based on 5 criterias which are, Fair Pay, Fair Conditions, Fair Contract, Fair Management and Fair Representation.⁹

Out of the 11 platforms, major giants like Ola and Porter scored 0, showing how inadequately workers are treated at these platforms. It is seen that one of the major reasons for the failure of these platforms is that they don't have any sort of minimum wage policy or protection against risk during the work course. While contrasting 2024's report with the previous year's it was seen that during the Survey, a lot of workers have shared their experiences, and some women workers said that their working conditions were too pathetic, that these workers faced threats of Assault and some other near-death experiences.^{10 11} But the worst of all this is, in spite of such destitution, the labour laws in the nation too do not cover such platform workers and freelancers. Since labour laws consider gig workers as either 'self employed' or 'independent contractors', the companies use this as a way to bypass.¹² Instances like these show us the

⁹ FAIRWORK, <https://fair.work/en/fw/publications/fairwork-india-ratings-2024-labour-standards-in-the-platform-economy/> (last visited Feb. 7, 2025)

¹⁰ FAIRWORK, <https://fair.work/en/fw/blog/fairwork-india-report-2023-examining-working-conditions-of-workers-on-digital-labour-platforms/> (last visited Feb. 7, 2025)

¹¹ Mugdha Variyar, The Gig Economy Gets Grimmer,(2023), <https://open.spotify.com/episode/2Z00RvB7SJ82R3PmVCCNk5>, (last visited Jan. 29, 2025)

¹² THE-LEAFLET, <https://theleaflet.in/gig-workers-should-be-included-under-the-industrial-disputes-act/#:~:text=Since%20labour%20laws%20do%20not,employed%27%20to%20bypass%20labour%20laws> (last visited Feb. 7, 2025)

ground reality of these workers which doesn't seem to have changed now too. This also highlights a flaw in the system by neglecting protection of these workers not just against vehicular accidents but also against sexual harassment.

The lack of ability to form unions or engage in collective bargaining was seen as a problem in the previous report as well, which seemed to continue in the same manner. But ironically, a new factor that has added to the load is the De-Flexibilisation of gig workers. Traditionally, gig workers had the flexibility to choose their working hours, which is what gig stood for, as more of a side hustle. But the latest report pointed out a trend where platforms are moving towards a rigid slot system, which takes away the autonomy of these workers.¹³

But a major attention grabber of this year's report was that welfare for gig workers is becoming more of a Political Manifestos and legislative initiatives.¹⁴ The report highlights proposed legislations in states like Karnataka and Jharkhand aimed at better protecting gig workers. This shows that the gig economy is no longer a niche area, but all it needs is the implementation of these proposals which still remains an uncertainty.



Image 1: Fairwork India Report 2024

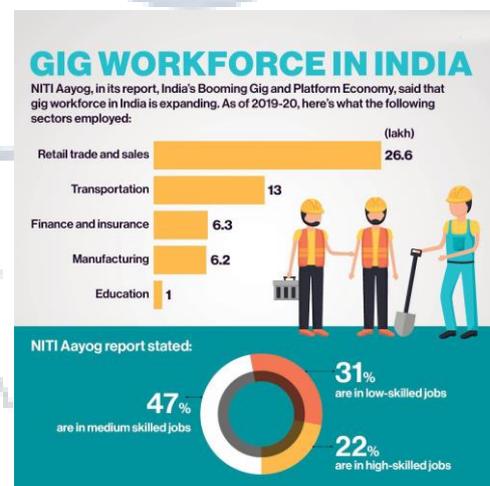


Image 2: Growth of Gig Economy

But equivalently, the State's negligence regarding this matter is seen in a lot of instances. Firstly, The Industrial Relations Code 2020¹⁵, Occupational Safety, Health and Working

¹³ Anees Hussain, *BigBasket, Urban Company lead as gig economy shows 'de-flexibilisation' trend: Fairwork India report*, FINANCIAL EXPRESS, (Feb9, 2025, 9:29 PM)

¹⁴ FAIRWORK, <https://fair.work/en/fw/blog/fairwork-indias-sixth-report-examines-the-changing-nature-of-platform/>, (last visited Feb. 9, 2025)

¹⁵ The Industrial Relations Code, 2020, No. 35, Acts of Parliament, 2020 (India)

Conditions Code 2020¹⁶ and Code on Social Security, 2020 are yet to be notified and implemented.¹⁷ Some even say the Code on Social Security, 2020 has destroyed the gig economy. It is said, the much talked-about inclusion of gig and platform workers comes with a declaration that they are not workers¹⁸ While the released draft is filled with a lot of ambiguities and will likely cause more chaos and challenges than solving any. Some suggest this is more of a Political manifesto than a legal document,¹⁹ meant to cater to the rights. Also, the non-binding obligations by the bill, show that they are basically of no use.²⁰ This shows the States negligent interest regarding the matter. But with changing trends, gig workers are seen as potential vote banks and are becoming part of agendas and manifestos, but everything as of now is only on paper. In fact, State-level initiatives, like Rajasthan's proposed welfare board, may offer localised solutions, but the lack of a cohesive national policy continues to leave a substantial gap in protections for gig workers.²¹

In summary, the current legislative framework is not up to the mark to safeguard the rights and welfare of gig workers. Without better, revised and more adaptable regulations and a more large-scale unified approach to address their needs, gig workers remain trapped in a legal and economic position, struggling to secure recognition and rights that should be inherent to their labour.²²

6. ANALYSIS: EXAMINING LEGAL RIGHTS AND CHALLENGES

To understand and to find a solution to the issue, one can analyse the Legal Rights of these workers. Salmond defines legal right as *An interest recognized and protected by a rule of justice*.²³ But when the definition is broken down and applied in the case of Gig workers, it is seen that their interests are being considered for the first time under the code of social security, 2020. Here the law has defined Gig workers and Platform workers. It says Gig workers are

¹⁶ The Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament, 2020 (India)

¹⁷ The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India)

¹⁸ Babu Mathew, *From Labour and Capital to Labour for Capital*, 56, EPW, (2021)

¹⁹ FORBES INDIA, <https://www.forbesindia.com/article/take-one-big-story-of-the-day/why-the-code-on-social-security-2020-misses-the-real-issues-gig-workers-face/63457/1> (last visited Feb. 7, 2025)

²⁰ *supra* note 12

²¹ The Rajasthan Platform Based Gig Workers (Registration and Welfare) Bill, 2023, https://prsindia.org/files/bills_acts/bills_states/rajasthan/2023/Rajasthan%20GIG%20workers%20bill,%202023.pdf (last visited Feb. 4, 2025).

²² Vidhi Rane, *Platform-based Gig Workers: a Blind Spot in the Indian Labour Laws*, SSRN, (Feb. 08, 2025, 9:20 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4821229

²³ JOHN SALMOND, JURISPRUDENCE (Sweet & Maxwell 1924)

those outside traditional employee-employer setups,²⁴ while platform workers use online platforms to provide services.²⁵ Unorganised workers include those not covered by certain labour laws.²⁶ However, there's overlap in these definitions. For instance, a driver for a ride-hailing app, like Uber, fits the gig worker, platform worker, and unorganised worker categories. So, under what grounds can he actually file a suit, if need arises.²⁷ This creates ambiguity as to what rights he actually possesses.

It is true that the government is taking measures to support and help these workers through the Code of Social Security, 2020, but due to the fact that these codes are yet to be implemented, there are issues pertaining to its applications and feasibility.²⁸ As a result it can be said that these workers are still not under the ambit of possessing their own Legal rights.

Overlooking the hardships faced by a Gig worker, as an individual, one can consider it possible to provide a legal personality to a community or Union of Gig workers, just the way Trade Unions are given recognition. But as seen in the Fair Work India survey, Gig workers do not have a Single registered Union of their own,²⁹ lacking the possibility of providing a legal personality to the union.

There have been a number of cases where the legal personality of Gig workers has been questioned. In the Landmark case of *Pimlico Plumbers Ltd v Smith*³⁰ In the UK, the Supreme Court, as discussed below, provided the “worker” status to a previously “self employed”, enhancing their employment status and one of the grounds for this was that the employee in this case wore the company shirt with its logo on it. This case showed that gig workers, who wore company-branded clothing, should not be treated as independent contractors, a consideration missing in India's Code of Social Security. It is necessary to consider here that the company shirt is not just a piece of marketing, but an integral part of the employment relationship which makes them included. Such cases have helped in upholding the solo rights of gig workers assuring us there can be legal clarity which needs to be established in the

²⁴ The Code on Social Security, 2020, § 2(35) No. 36, Acts of Parliament, 2020 (India)

²⁵ The Code on Social Security, 2020, § 2(61) No. 36, Acts of Parliament, 2020 (India)

²⁶ The Code on Social Security, 2020, § 2(86) No. 36, Acts of Parliament, 2020 (India)

²⁷ Santosh Mehrotra, Kingshuk Sarkar, *Social Security Code, 2020 and Rules*, 56, EPW, (2021)

²⁸ *supra* note 1

²⁹ *supra* note 10

³⁰ *Pimlico Plumbers Ltd v Smith*, [2018] UKSC 29

legislations to identify the unique legal personality of gig workers.

7. COMPARATIVE STUDY OF GIG WORKERS RIGHTS ACROSS THE GLOBE

The global scenario relating to the rights of gig workers is gradually improving and countries around the world are showcasing interest and are shedding light for a new legislative pertaining to gig workers alone. In the Landmark case of *Pimlico Plumbers Ltd v Smith*³¹ in UK laid down the difference between worker and independent contractor and said that the latter, who is usually deprived of certain employment benefits as he's not a part of the corporation, should also be considered as part of the company, on certain grounds, such as wearing the uniform with logo, which Mr Smith fulfilled here as a result was able to enable the benefits. Similarly, in the recent ruling in *Uber BV v. Aslam (2021)* clearly classified Uber drivers as workers, showcasing that the company emphasised certain control upon the workers by dictating their wages and other conditions.³² Both these cases are criterias on which it can be said UK is by far one of the most forward looking nations in terms of uplifting the rights of Gig workers.

While in the Australian case of *Diego Franco v. Deliveroo (2022)* the initial court hearing favoured the gig workers by classifying them as employees but unfortunately this was later overruled by the higher court. Cases like these seem like stepping stones towards achieving the goal of categorising gig workers, and cases like these are an indication that this goal is achievable in the near future.³³ The U.S. further contributed to the debate with *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County (2018)*,³⁴ where the California Supreme Court's recourse to the "ABC test" helped in redefining the rights of gig workers. This further led to Assembly Bill 5, which extended employee protections to gig workers, although the controversial Proposition 22 later provided exemptions for companies like Uber and Lyft.³⁵ This did not completely vanish their rights, but reduced the scope of its application, by providing limited benefits like minimum earning guarantees and healthcare subsidies. But Gig workers in the US are protected to an extent by the CARES Act, which turned out to be a

³¹ *Id*

³² *Uber BV v Aslam* [2021] UKSC 5

³³ *Deliveroo Australia Pty Ltd v Diego Franco* [2022] FWCFB 156

³⁴ *Dynamex Operations West, Inc., v. The Superior Court of Los Angeles County and Charles Lee, Real Party in Interest*, 4 Cal.5th 903

³⁵ Miriam A. Cherry & Ana Santos Rutschman, *Gig Workers as Essential Workers: How to Correct the Gig Economy Beyond the COVID-19 Pandemic*, 35 A.B.A. J. LAB. & EMP. L, 11, 14, 2020

ray of hope for these workers during the pandemic.³⁶ This shows that both the nations haven't ideally reached the square, but are taking steps by amending laws and implementing new ones in favour of gig workers showing that in near future they will achieve the goal.

With regard to Legislative interventions Spain's *Rider's Law (2021)*, which likely sees delivery couriers as employees with entitlements like minimum wage and social security,³⁷ alongside Australia's *Fair Work Act* amendments (2023), providing a minimum standard for gig workers, signalling a progressive shift in safeguarding the rights of gig workers.³⁸ These legal and legislative milestones around the world provide a captivating comparative framework, underlining the grave need for India to introduce similar social security laws, including a more plausible employee status and more rigorous statutory guarantees, ensuring constitutional recognition and social security for gigworkers.

8. CONCLUSION: TOWARDS A FAIRER GIG ECONOMY

The above data and comparisons clearly underscore the need for a new legal framework for gig workers and show the gaps present in the existing ones. The main focus of this paper was to highlight the fact that on the face, gig workers look like every other common labourer who might seemingly be capable of exercising their rights under the existing labour norms, but their work nature clearly differentiates them from independent workers or other employees. A solution for this distinction can be resolved by implementing the existing legislation in place. Also a deeper analysis of the legal rights of these gig workers helps in highlighting the rights and status they truly deserve. But the pending legislations, which might uplift the rights, too have certain limitations and loopholes which can be overcome by effectively adapting certain international practices from other countries, accordingly in the Indian context. Ultimately, the growing number in the gig economy pushes the state to enhance social security rights of gig workers in order for an overall socio-economic improvement and to create an equitable labour market in the society.

³⁶ LAW OFFICES OF RICHARD MUCCI, <https://muccilegal.com/gig-workers-and-employment-laws-heres-an-update/>, (last visited March. 6, 2025)

³⁷ Adrián Todolí Signes, *Notes On The Spanish Supreme Court Ruling That Considers Riders To Be Employees*, 30, COMP. LAB. L. & POL'Y J, 1, 1-7, 2020

³⁸ Adam Wyatt, *New Australian Legislation to Protect Gig Workers*, PENINSULA, (Feb. 08, 2025, 9:29 PM), <https://employsure.com.au/blog/closing-loopholes-new-legislation-to-protect-gig-workers>

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