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***Title: Assessing Labour Rights: Reimagining The Gig Economy for
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Department of Law, University of Mumbai,
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ABSTRACT:

*“The gig economy has experienced transcendental leap in the recent years. This shift has also given the traditional labor industry a makeover at the global level. Whether this has been revolutionizing, or not, is a matter of assessment. There is no denying that there has been heavy reliance on gig economy and that the shoulders of gig workers have been heavily bent, both literally and figuratively in handling the enormous workload. **A pertinent issue that remains is there adequate, if not equal compensation for the level of work done by gig workers?** The aim of this paper is to assess the underlying ethical and legal considerations. The focus would primarily be on the classification of workers, labor protections and the uncertainty over income stability and job security. Exploitation also remains a sub-theme of the paper. The paper would delve into the safeguards as envisaged by the **International Labor Organization (ILO)** and by various other national level legislations. The role of gig economy platforms becomes vital when talking of ethical and legal considerations of gig workers. The responsibility of such gig economy platforms in ensuring fair treatment to gig workers and providing them with adequate safeguards is also of vital importance in the current context. The aim of this paper also being, to highlight the potential measures that should be taken by online platforms, to study the lacuna in the existing laws and suggest plausible measures in filling such gaps. Eventually, assessing the need for a global cooperative approach in ensuring that there is a uniform body of labor standards that cater to the basic rights of the gig workers”.*

Keywords: Gig workers, Gig Economy, Platforms, Legislations, Rights.

I. INTRODUCTION:

Gig economy has experienced a recent bloom which has led to a change in the shape of the traditional labor market across the globe. This change has also shifted the focus on how factors like regulation, compensation and organization of gig workers is being done by countries and what are the safeguards that legislations across have meted out to them. This transcendental

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leap in the strength on the workforce also exposes certain grim issues, those pertaining to social security, income stability, classification, governmental schemes applicability, their collective bargaining rights and their representation amongst many other aspects. A major impediment, in the Indian context has been in terms of defining gig workers. This lacuna leaves the field open and subject to interpretation with regard to accessibility of various schemes by gig workers. Many proponents who fight to labor rights opine that gig workers be recognized as employees so as to enable them to avail uniform accessibility to the social security schemes and that the fundamental rights remain available to them.

II. UNDERSTANDING BASICS:

Gig Economy:

It was in 2009 when Tina Brown, a journalist, came up with the term ‘Gig Economy’ to denote the series of short term and part time shifts being undertaken by people. This was usually transacted over digital platforms which made oscillating jobs on the go easy. But the idea that gig economy has been the result of digital market place seems a little misconceived. The concept of gig work traces far back to period before industrial revolution. Back in the day when jobs were mostly seasonal, people often shifted jobs which were short term in period, this enabled them to piece together a decent living. This idea sprang up from a place of job uncertainty. People skilled in a certain domain would often switch alternate jobs, at times multiple jobs in a day. The trend in those days and the current trend reflect a similar nature in the nature of work done by gig workers. The only difference being in the involvement of digital platforms being used to engage gig workers. However, off technology, even under the traditional work structure, one can still see heavy reliance on gig work, a simple example that best reflects this is domestic help. Often seen switching multiple jobs in a day, a domestic help barely makes a decent living. Perhaps, such is the state of affairs of gig workers engaged through digital platforms as well.

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The term 'gig' was also used by jazz musicians in 1905 to refer to live performances. This term, in this context, is also in use in the present day to refer to live performances by musicians, comedians, theatre performances. A simple metaphor that can be used to assess the nature of gig economy is that of fast food. The obsession of fast food only because it is accessible on the go has made people heavily reliant on it. The dependence is such that it is difficult to envision a scenario where a fast-food stall isn't present near a busy working hub. While consumption has been high, no one ever has spared a moment to consider its long-term impact on the health of the person, especially if the usage is unchecked. On similar lines, there is a massive surge in use of gig work but barely does anyone spare a moment to consider factors pertaining to the health of gig economy. To check if the factors at the grassroots have been regulated well enough to secure better health of the gig economy.

In simple terms, a market that thrives on short-term service of work¹. This mostly includes on demand jobs and function, at least in the present day, more often through digital platforms. Gig worker- a worker who often engages in non-standard work that falls outside the scope of standard, long-term and established employer-employee relationships.² The law in India which has recently roped in the idea of gig workers within its ambit is the Code on Social Security, 2020³ which, in simple terms indicates that a gig worker is anyone who engages in work arrangement and derives income from any such activity arising out of such arrangement. Classifying this nature to fall beyond the traditional notion of employer-employee

¹ The gig economy—also called sharing economy or access economy—is activity where people earn income providing on-demand work, services or goods – Available at <https://www.irs.gov/businesses/gig-economy-tax-center#:~:text=The%20gig%20economy%E2%80%94also%20called,demand%20work%2C%20services%20or%20goods> – accessed on 28.11.2024

² What is a gig worker?

Non-standard or gig work consists of income-earning activities outside of standard, long-term employer-employee relationships – available at <https://www.gigeconomydata.org/basics/what-gig-worker> - accessed on 28.11.2024

³ Chapter I, Section 2(35) of the Code on Social Security, 2020 defines a gig worker as “a person who participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship.” – available at <https://www.epw.in/engage/article/how-does-law-define-gig-worker> - accessed on 28.11.2024

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relationships. At the very outset there seems to be a problem with this indicative definition since it lacks clarity. The offshoot of this problem is that the lack of clear categorization and the blurry legal equation understanding of gig workers would leave them in a limbo when wanting to avail of social security benefits.

III. GIG WORKERS- ASSESSING THE RIGHTS PERSPECTIVE:

When we talk of fundamental rights of workers in general, few facets of rights that emerge at the surface are Justice, dignity and reward⁴. Justice in this context is more bent towards distributive justice. Fair compensation is an integral component of distributive justice and it therefore becomes pertinent to ensure that input of gig workers is compensated on a humane level. Procedural justice in this regard would mean the timely dispensation of their pay. A foul play here would stem from delayed payments, refusal to cater to the concerns of workers or even exercising coercion. The unfair bargaining power often gives a leeway to the master. The workers, being in a low positional power often concede to the pressure exerted over them by their employer. This is even more pressing when it comes to gig workers as any demand of refusal to work to fulfill the demands of the employer may even result in termination. While permanent workers have a structured remedy mechanism set up, it is the gig workers that languish and suffer from all ends. While we talk of dignity, the underlying theme of dignity is being able to do the right kind of work of being assigned the right kind of work. Given the conditions in which gig workers work, it is only a despicable sight to witness. While one may certainly harp on to the luxury of getting a sumptuous meal delivered at the door step, one is barely every reluctant to be considerate of the horrid struggles of the delivery agent to meet the deadline.⁵ Delivery agents deliver happiness in no time while often suppressing their own

⁴ Calum Samuelson, 'Justice, Dignity, and Reward: Nurturing Relationships in the Gig Economy' (2019) 108 Studies: An Irish Quarterly Review 432. – accessed on 28.11.2024

⁵ 'Invisible Heroes: Food Delivery Boys and Their Hunger for a Better Life'. "This is the story of most food-delivery boys. They travel all over the city with a bag carrying an assortment of dishes for others to eat, but are themselves unable to eat at the usual meal hours." Available at

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hunger pangs. Adding to the peril is strict deadlines and murkier roads⁶ which infringes upon the life of delivery agents, particularly food delivery agents. Death toll arising out of accidents of food delivery agents has been on the rise and in most cases the reasons attributed to the same has been the distraction of multiple orders and this urgency to make it to each location on time while stipulating the enormous line up of orders for the day. These are just some glaring instances of dignity violation, life and food are basic guarantees and any conditions implicit to avail these should prima facie be subject to scrutiny. The answer lies in ensuring that food is made available to these delivery agents at regular intervals and enough road safety measures are taken to ensure that they don't meet fatal accidents while carrying out their work. The third element of right is that of reward⁷. Any motivation for work arises out of certain compelling reasons, sometimes the reasons spring from choice and sometimes out of having no choice. But any kind of motivation thrives on rewards. Morality may also be a motivation but morality in poverty may not satiate one's hunger. We live in a world that is marching towards a phase where even Artificial Intelligence may thrive on rewards and reinforcement mechanism, the issue at hand is that of gig workers who are pooling in all that they can to make the bare minimum. Rewards thus become crucial to ensure that efforts are recognized. This also encapsulates the idea of incentive. The better the reward and incentive the better is the input which in the long run only benefits the health of the economy.

IV. GOOD GIG JOBS VERSUS THE BAD GIG JOBS:

A job is a job as long as there is reciprocity of labor and compensation. A good job may be followed by additional perks, may be even a holiday to a beautiful destination to rejuvenate and bounce back to work with the same vigor. A bad job might on the other end not offer the

<https://www.thenewsminute.com/features/invisible-heroes-food-delivery-boys-and-their-hunger-better-life-51056> - accessed on 28.11.2024

⁶ 'Speed and Urgency Taking Lives of Delivery Boys on Hyderabad Roads'. – Available at <https://www.thehindu.com/news/national/telangana/speed-and-urgency-taking-lives-of-delivery-boys-on-hyderabad-roads/article68507028.ece> - accessed on 28.11.2024

⁷ Samuelson (n 4).

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basics needed to work in a dignified environment. When it comes to the gig economy, is there any such line of difference between a good gig work and a bad gig work.⁸ There are certain examples of a good gig work. Some online companies such as 'Q' which is primarily an on-demand office-staffing agency and 'Bridj', a Boston based shuttle service⁹, that treat gig workers also as their regular employees which implies that the benefits available to the regular employees to some extent is also made available to them. These workers are comparatively paid better wages and are also provided with health insurance benefits. Gig jobs are also beneficial for immigrants who may not be able to secure a stable employment immediately. This is mostly seemed as a common practice among students who leave their home country to study elsewhere and end up oscillating between classes and the shift-based jobs. While many consider this as a means of financial independence, others consider it viable from the perspective of managing studies and expenses. Perhaps this distinction of good and bad can be blurred out if ideal working conditions and the basic rights are set in place. The world is inching more towards gig economy so it becomes pertinent to set the right foundations to let this economy thrive.

V. GIG WORKERS VOICE:

The strongest weapon that one can be armed with is their voice. The voice becomes even more relevant when it comes to representing the concerns of the workers¹⁰, in any capacity. Overtime, we have witnessed the changing nature of expression of workers. Tracing the blurry image of the Industrial Revolution which is one of the accounts where one can often see the collective spirit of the voice of workers. The concept of unionization is where the workers found strength to raise their concerns. This, eventually paved way for various labor reforms that included within its ambit safety regulations, minimum wages amongst the other concerns. This

⁸ Arne L Kalleberg and Michael Dunn, 'Good Jobs, Bad Jobs in the Gig Economy' (2016) 20 Perspectives on Work 10.

⁹ *ibid.*

¹⁰ DAVID PEETZ, 'Worker Voice and Collectivism', *The Realities and Futures of Work* (ANU Press 2019) <<http://www.jstor.org/stable/j.ctvq4c16w.12>> accessed 28 November 2024.

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transcended into the idea of collective bargaining which provided a common ground for multiple concerns that workers often faced. This set up however, suited that work structure which was more formal in nature and where establishing the relationship of employer-employee wasn't difficult. When we consider gig workers, their voice lacks a common platform of expression. Not only is the absence of formal and established relationships a reason but also the lack of clarity on established mediums.

Gig workers, in the present day mostly operate through online mediums(platforms). Many such platforms highlight these workers as independent contractors which has a downside to it. Across several jurisdictions, because they are identified as independent contractors, these workers are precluded from forming unions and raising their voices via the medium of collective bargaining.¹¹ This calls for regulating the digitally mediated labor landscapes that would foster a medium for voicing shared interests amongst this labor community. Given the online operation of gig economy, there is an absence of geographical boundaries that define their operation. This exposes the vast expanse in which they operate and thus providing them an umbrella medium to express becomes a difficult task given the magnitude of their operation. A possible solution to this would be for jurisdictions to make a collaborative effort in arming them with this tool of collective bargaining, basically assuring them the freedom of expression. While we talk of unionization, a pertinent example can be drawn from the United Kingdom (UK). The GMB¹² Union in UK provides a platform to Uber workers to raise their concerns where stakeholders schedule routine meetings to discuss on ground issues that uber drivers face. The GMB has been successful in holding companies liable for exploiting under drivers and taking such companies to court. The result of such organized representation has also led to landmark decisions by UKSC in favor of uber drivers. This is one example that sets a great precedent to lay a blueprint in organizing voices of gig workers through a common channel.

¹¹ Hannah Johnston and Chris Land-Kazlauskas, 'Organizing On-Demand: Representation, Voice, and Collective Bargaining in the Gig Economy'. Available at [wcms_624286.pdf](#) – accessed on 30.11.2024

¹² Available at <https://www.gmb.org.uk/uber> - accessed on 01.12.2024

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Jurisdictions across can draw upon this reference to provide for better expression of gig worker's voice.

VI. A CASE PERSPECTIVE:

The United Kingdom Supreme Court (UKSC) in a case¹³ laid down a landmark decision which revolved around the employment status Uber self-employed drivers. The respondents (Uber Drivers) argued that they be classified as 'workers' and not independent contractors. They contended that they worked under the directions of Uber which in a way controlled their working conditions. This nature directly exhibited an employer-employee equation and thus necessitated protections under the United Kingdom employment law especially with regard to minimum wage and paid leaves. The counter argument by Uber for Uber BV (Appellants) against what the respondents contended, was that there was no direct contract between the drivers and Uber BV. It was stated that "Uber BV merely acted as a technology provider which primarily functioned as a booking agent for the drivers approved by Uber London to use the app"¹⁴. It claimed that there was only a contract between the drivers and passengers and refuted the existence of any contract between the drivers and Uber BV, the appellants also put forth the argument there was no fixation in the number of hours the drivers were expected to work, there was only a mere facilitation of service fees which Uber BV charged from the drivers for using the online platform. But what came as a welcome move through this case was the decision of the UKSC in favor of the drivers. The reasoning of the court rested on five important findings of the employment tribunal¹⁵ through which it was interpreted that the drivers were working

¹³ *Uber BV and others (Appellants) v Aslam and others (Respondents)*.- Hilary Term [2021] UKSC 5 On appeal from: [2018] EWCA Civ 2748

¹⁴ Retrieved from <https://www.supremecourt.uk/press-summary/uksc-2019-0029.html> - accessed on 01.12.2024

¹⁵ "First, where a ride is booked through the Uber app, it is Uber that sets the fare and drivers are not permitted to charge more than the fare calculated by the Uber app. It is therefore Uber which dictates how much drivers are paid for the work they do [94]. Second, the contract terms on which drivers perform their services are imposed by Uber and drivers have no say in them [95]. Third, once a driver has logged onto the Uber app, the driver's choice about whether to accept requests for rides is constrained by Uber [96]. One way in which this is done is by monitoring the driver's rate of acceptance (and cancellation) of trip requests and imposing what amounts to a penalty if too many trip requests are declined or cancelled by automatically logging the driver off

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for uber and that there was indeed an established contract between the parties. This case stands as a precedent as far as interpretations of national legislations is concerned. This can be starting point to provide a legitimate categorization to gig workers which eases out expression-seeking mechanisms for them.

VII. PLATFORM ORIENTED MECHANISMS:

While a major section of gig economy thrives on online platforms, these platforms have a major role to play in management of gig workers registered on the respective platforms. These platforms can enable the creation of worker cooperatives¹⁶ which can act as representative medium for gig workers to share their common concerns. The platform cooperatives are in the nature of modern form of labor unions. The traditional form of worker cooperatives was organized and run by members themselves, the idea of a modern-day platform cooperative may however, work well where there is an established structure even on the platforms. The management of this would demand capital and an institutional arrangement for raising concerns. The extent of heterogeneity existing in the sector of gig economy may also stand as an impediment in this regard. Incorporation of this idea in national legislations can perhaps be the starting point for the want of a structured set up. This would require platforms to collaborate on the initiatives laid down in various national legislations. The platforms can also ease out concerns of gig workers by laying down clear categorization of workers, the nature and duration of employment, the income, the leave policy, the insurance and coverage for gig

the Uber app for ten minutes, thereby preventing the driver from working until allowed to log back on [97]. Fourth, Uber also exercises significant control over the way in which drivers deliver their services. One of several methods mentioned in the judgment is the use of a ratings system whereby passengers are asked to rate the driver on a scale of 1 to 5 after each trip. Any driver who fails to maintain a required average rating will receive a series of warnings and, if their average rating does not improve, eventually have their relationship with Uber terminated [98 - 99]. A fifth significant factor is that Uber restricts communications between passenger and driver to the minimum necessary to perform the particular trip and takes active steps to prevent drivers from establishing any relationship with a passenger capable of extending beyond an individual ride [100].” – quoted from <https://www.supremecourt.uk/press-summary/uksc-2019-0029.html> - accessed on 01.12.2024

¹⁶ Damion Jonathan Bunders and others, ‘The Feasibility of Platform Cooperatives in the Gig Economy’ (2022) 10 Journal of Co-operative Organization and Management 100167. – accessed on 01.12.2024

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workers, the online dispute resolution measures amongst the few safeguards. These measures would only enable the participation of gig workers more effectively, which would otherwise be hampered in the absence of clear safeguards and mechanisms.

VIII. THE WAY FORWARD:

The discussion around gig economy has just gained momentum and will only demand more deliberations around the rights perspective. While many jurisdictions have envisaged the concept of gig workers in their scope, the multitude of interpretations have only led to more ambiguity and uncertainty. A worker, whether be classified under any category, deserves a universal protection owing to the input provided by him. Gig workers have been suffering on this front for want of clear categorization. This oscillation between being called a ‘worker’, ‘independent contractor’ has been a subjective factor in most jurisdictions so far. This uncertainty has also led to the varied interpretations by various courts. It is therefore crucial to lay a unified understanding of the status of a gig worker. We have placed heavy reliance on their shoulders, we must be responsible enough to provide strength to those shoulders by assuring them the basic rights which does not demand a battle to be fought for. The gig economy can only thrive if the foundations laid are clear and definite. National legislations, established redressal mechanisms, responsible platforms, judicial interpretations, all can collectively contribute for the effective sustenance of the gig economy.

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