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THE JURIDICAL CLASSIFICATION OF GIG WORKERS **UNDER THE LABOUR CODES: REVISITING THE** **EMPLOYEE–INDEPENDENT CONTRACTOR DICHOTOMY**

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Abstract:

The swift growth of the platform economy has fundamentally upset the traditional forms of labour law based on the dichotomous nature of the relationship between the employee and the independent contractor. Ride-hailing, food delivery, logistics, and freelance services made possible through digital platforms have created a huge labour force that engages in economically dependent work and is officially employed as an independent contractor. In India, the action was taken in 2019-2020 to rationalise labour legislation by enacting the four Labour Codes. It is worth noting that the Code on Social Security, 2020¹ provided statutory coverage of so-called gig workers and platform workers, which is a major break with the paradigm of traditional employment. Nevertheless, even with this official acknowledgment, the gig workers still remain out of the protective sphere of core labour laws concerning minimum wages, workplace conflicts, occupational safety, and collective bargaining, unless they meet the traditional requirements of employment. This paper critically evaluates the juridical categorization of gig workers according to the Indian Labour Codes as well as questions whether the current employee-independent contractor dichotomy can be held normatively and doctrinally viable. It examines statutory definitions in the Code on Social Security, 2020, the Code on Wages, 2019², the Industrial Relations Code, 2020³ and the Occupational Safety, Health and Working Conditions Code, 2020⁴. It also reviews the judicial tests that have been formulated by the Indian courts; the control test, the integration test and the economic dependency test and uses them to establish the employment status based on landmark rulings such as *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* (1957)⁵, *Silver Jubilee Tailoring House v. Chief Inspector of Shops* (1974)⁶, and *Balwant Rai Saluja v.*

¹ *Code on Social Security*, No. 36 of 2020, India Code (2020)

² *Code on Wages*, No. 29 of 2019, India Code (2019)

³ *Industrial Relations Code*, No. 35 of 2020, India Code (2020).

⁴ *Occupational Safety, Health and Working Conditions Code*, No. 37 of 2020, India Code (2020).

⁵ *Dharangadhara Chemical Works Ltd. v. State of Saurashtra*, AIR 1957 SC 264 (India).

⁶ *Silver Jubilee Tailoring House v. Chief Inspector of Shops*, (1974) 3 SCC 498 (India).

Air India Ltd. (2014)⁷. The paper states that even though the statutory recognition of gig worker is the progressive intent of the law, the inability to end the binary model fosters the ambiguity of the law and makes it vulnerable. The experience of comparative jurisprudence in the United Kingdom and elsewhere in the world indicates a worldwide movement towards the acknowledgement of intermediate classes of workers. The Indian system, despite its innovation in the realm of introducing social security coverage, fails to cover the problem of wage security, collective bargaining, algorithmic control, and occupational risks comprehensively. Finally, the article suggests doctrinal changes so as to redefine the existing definitions liberalistically or, in a more formal manner, to establish a third type of labour classification that would capture the economic dependency and functional control. It finds that the employment law should be re-calibrated by the rule of principle that will balance the technological innovation with the constitutional rights of dignity, equality, and livelihood under Articles 14, 19, and 21⁸ of the Constitution of India.

Key Words:

Gig Workers; Platform Workers; Labour Codes 2019–2020; Employment Classification; Independent Contractor; Industrial Relations; Social Security; Algorithmic Control; Economic Dependency; Indian Labour Law.

Research Methodology:

The methodology that will be employed in this research will be a doctrinal and analytical approach based mainly on the statutory interpretation and analysis of case law. The paper involves a close textual analysis of the four Labour Codes adopted since 2019- 2020, i.e., the Code on Wages, 2019; the Industrial Relations Code, 2020; the Occupational Safety, Health and Working Conditions Code, 2020; and the Code on Social Security, 2020. The definitional clauses of the terms of employee, worker, gigs worker, and platform worker are particularly considered, and the goal is to detect the conceptual inconsistencies and normative gaps of the legislative scheme.

The doctrinal question is enhanced by analysis of judicial precedent that have defined the jurisprudence on the subject of employment classification in India. The historic cases of the

⁷ *Balwant Rai Saluja v. Air India Ltd.*, (2014) 9 SCC 407 (India).

⁸ *INDIA CONST.* arts. 14, 19, 21.

Supreme Court like *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* (AIR 1957 SC 264), *Silver Jubilee Tailoring House v. Chief Inspector of Shops*, 1974, *Hussainbhai v. Alath Factory Thezhilali Union* (1978) 4 SCC 257⁹ and *Balwant Rai Saluja v. Air India Ltd.* (2014) 9 SCC 407. These case laws can be analyzed to find the development of the law tests applied to determine the relationships between the employer and the employee. These precedents are examined in relation to the platform-based work arrangements to determine their relevance in the modern context.

The study also uses a narrow comparative dimension by mentioning the progress made in other countries especially how the United Kingdom of Britain has acknowledged the presence of workers in the *Uber BV v. Aslam* (2021)¹⁰ UKSC 5. Although the major emphasis is made on the Indian law, comparative analysis is used to shed light on other regulatory models and possible normative options. The secondary sources such as academic journal articles, reports of the Law Commission, governmental policy documents such as the NITI Aayog report on the gig economy in India and the ILO materials are used to put the doctrinal changes in context of the wider socio-economic changes.

The approach is qualitative in nature as it was based on the interpretative arguments as opposed to empirical arguments. This does not aim to gauge economic impact, but it aims to gauge conceptual coherence and normative adequacy within the legal framework. Ultimately, the study integrates the statutory interpretation, constitutional and judicial reasoning to offer the reforms that would enhance the protection of labour and yet not to make innovation impossible.

Introduction:

One of the most radical changes in the modern labour market is the gig economy. Online platforms have transformed the hierarchy of work by mediating the services using algorithmic systems that can pair the demand with labour availability in real time. The aggregate employment of ride-hailing services, food delivery platforms, logistics aggregators, and freelance marketplaces puts millions of workers to work doing flexible and task-based work. This trend questions deeply entrenched principles within the labour law which have historically developed to govern the stable and long-lasting employer-employee relationships marked by

⁹ *Hussainbhai v. Alath Factory Thezhilali Union*, (1978) 4 SCC 257 (India).

¹⁰ *Uber BV v. Aslam*, [2021] UKSC 5 (U.K.).

identifiable employers, work place, and command-and-control hierarchy.

Traditionally, the Indian labour jurisprudence has been based on the difference between employee and independent contractor. The employees have rights to statutory protections such as minimum wages, social security and collective bargaining rights and unfair dismissal. Independent contractors, in their turn, are considered self-employed individuals, whose treatment is not established by the labour welfare law, but mostly by the contract law. Employment status has been determined using courts derived tests, which include control test and integration test. Nonetheless, gig workers are somewhere in between: they are not always allowed to set prices independently, to be in control of customers, or performance metrics, but are legally considered independent contractors.

The adoption of the four Labour Codes was a great milestone in the reform of the Indian labour. The Code on Social Security, 2020 is also one of them, formally describing the concept of a gig worker under Section 2(35)¹¹ and the concept of a platform worker under Section 2(61)¹². This statutory recognition is a legislative recognition of new types of labour. However this recognition does not necessarily grant the entire gamut of labour rights. Rather, the social security schemes that apply to the gig workers are mostly executive-notified and funded. This article challenges the idea of whether the current legal framework is a sufficient capture of the realities of gig work. It analyses the question of whether the binary classification model can still hold or whether the model needs to be innovated in terms of doctrines to embrace the hybrid forms of labour. The discussion then goes to analyze statutory provisions, judicial precedents and constitutional concepts to determine the juridical status of gig workers. It claims that legislative recognition is a step to the right direction but substantive protection is still incomprehensive and conditional.

This article, as it places the concept of gig work in the context of the wider constitutional obligation to promote social justice and dignity of labour, is an addition to the existing corpus of arguments about the future of the employment law in India. The main question is whether purposive interpretation should allow the inclusion of gig workers in the category of employees or whether a third category based on the economic dependency is more coherent to provide a

¹¹ Code on Social Security, No. 36 of 2020, § 2(35), India Code (2020).

¹² Code on Social Security, No. 36 of 2020, § 2(61), India Code (2020).

regulatory solution.

Traditional Foundations of Employment Classification in Indian Law:

The Indian labour law has conventionally relied on the discovery of a master-servant relationship when it comes to the classification of the workers. In *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* (AIR 1957 SC 264) the Supreme Court decided that right of control and supervision is the prima facie test that can be adopted to determine employment. The Court highlighted that the fact that the employer has power to dictate not just what to do but how to do it in a way that is a very good pointer to employment.

Then, in *Silver Jubilee Tailoring House v. The Court* broadened the enquiry to further control taking into consideration modern industrial relation which could be contained in decentralised supervision as was done in *Chief Inspector of Shops (1974) 3 SCC 498*. The Court was more relaxed and allowed economic reality and integration into the establishment to be viewed.

In *Hussainbhai v. The judge* explained that the employer is the person who has economic control over workers to subsist, whether through intermediate arrangements or not. This was a progressive change of acknowledging camouflaged employment relations.

In more recent times in *Balwant Rai Saluja v. The Supreme Court in Air India Ltd. (2014) 9 SCC 407* reaffirmed the relevance of several factors such as control, supervision, integration, and economic dependency thus recommending a composite test instead of a single test. All these precedents testify to the fact that formalism has not been limited to strict rules by Indian courts. Nevertheless, it is unclear how these tests might be applied to gig workers, especially so considering algorithmic and data-driven forms of control as practiced by online platforms.

Statutory Framework under the Labour Codes:

Code on Wages, 2019 under Section 2(k)¹³ has a broad definition of employee, but they have not specifically covered the gig workers. Under the traditional industrial establishments, the worker is defined by the Industrial Relations Code, 2020 in the Section 2(zr)¹⁴. The Occupational Safety, Health and Working Conditions Code, 2020 also assumes a more

¹³ *Code on Wages*, No. 29 of 2019, § 2(k), India Code (2019).

¹⁴ *Industrial Relations Code*, No. 35 of 2020, § 2(zr), India Code (2020).

traditional employer-employee relationship, associated with physical workplaces. The Code on Social Security, 2020 is a deviation. Section 2(35) entails the meaning of a gig worker as someone who renders work or engages in a work arrangement and derives a remuneration based on the said work other than a conventional employer-employee relationship. Section 2(61) provides that a platform worker is a person who does or performs platform work.

The Chapter IX of the Code¹⁵ establishes social security plans to be adopted by gig and platform workers, which are partly paid in contributions by aggregators (Section 114). Nevertheless, these facilities do not include the rights concerning minimum wages, collective bargaining and unfair dismissal. The legislative model therefore acknowledges the presence of gig workers without considering them as employees thereby developing a narrow welfare-based system without compromising the contractual autonomy.

Algorithmic Control and the Illusion of Autonomy:

Digital platforms also often claim that gig employees have freedom as to working hours and taking up work. Nevertheless, the algorithmic management systems assign rides, calculate the remunerations, place fines, and assess performance by ratings. It is necessary to redefine the traditional control test through the technological mediation. Physical supervision can be eliminated but functional control is still in place via the digital medium. Termination which follows account deactivation is usually procedurally inadequate. Platforms set prices unilaterally, which restricts the freedom of entrepreneurs.

The adoption of the economic dependency approach is *Hussainbhai v. Alath Factory Thezhilali Union*, Gig workers who have no alternative way of earning a living that is not based on a single platform might meet the standards of employment on a purposive interpretation. Moreover, the so-called flexibility of gig workers is usually limited by economic imperatives in the design of platforms. Incentive programs, including surge bonuses, multiplier-peak hour bonuses, performance-based bonuses, and others, encourage employees to work longer hours without explicit direction. Rejection or high accusation rates can lead to reduced task assignments in future indirectly punishing the workers. These processes are similar to managerial control but they are done using data analytics and not human supervisors. Considered as a whole, the aggregated impact of algorithmic surveillance, economic coercion,

¹⁵ *Code on Social Security*, No. 36 of 2020, ch. IX, India Code (2020).

and the unilaterality of the framework of the contract neutralizes the argument that gig workers are actually independent entrepreneurs and supports the notion that the juridical status of the group should be re-examined.

Constitutional and Comparative Perspectives on the Recognition of a Third Labour Classification:

Whether gig workers should be classified as such or as workers cannot be answered without not only relying on statutory interpretation but also putting it in its context of evaluation within the larger constitutional framework of social justice in which Indian labour law is driven. Article 14 of the Constitution provides equality before the law and equal protection of the laws, which has translated into a doctrine of substantive equality and not formal equivalence. Where the gig workers rely economically on the digital platforms and do not receive the same protection as employees working in the same position, we can speak about arbitrariness and structural inequality. Such workers should not even be covered by minimum wage standards, collective bargaining, and work protection, even though they may functionally be the same as the traditional employees, which can be discriminatory even in accordance with the constitutional tenets.

Article 21 that safeguards the right to life and personal liberty has been broadly construed to mean the right to livelihood. In *Olga Tellis v. Bombay Municipal Corporation*¹⁶, The Supreme Court appreciated that Bombay Municipal Corporation had lost its livelihood, which is tantamount to withdrawing its life. Gig workers who use platform-mediated work as either their sole or their primary form of subsistence are in a state of economic vulnerability that involves the implicated constitutional safeguard. The pre-carity can be subject to constitutional examination when the algorithmic deactivation or unilateral modification of remuneration structures is made without procedural protection, and the State has decided to exercise authority over but not to fully safeguard this type of labour.

Moreover, the normative basis of labour protection is supported by the Directive Principles of the State Policy. Articles 38, 39, and 43¹⁷ all envisage an informed social order that is informed by justice, equitable allocation of material resources and the guarantee of living wages and

¹⁶ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 SCC 545 (India).

¹⁷ *INDIA CONST.* arts. 38, 39, 43.

decent work conditions. These principles, though not directly justifiable, have always been used by courts as an attempt to interpret benefitably and purposively the labour welfare legislation. The social and economic democratic promise of the constitution thus forms a powerful context on which the categorization of gig workers should be considered.

This argument is reinforced by comparative jurisprudence. In *Uber BV v. The United Kingdom Supreme Court*, Aslam, held that the contractual classification of Uber workers as independent contractors should be disregarded and Uber workers should be treated as workers an in-between status in the laws that is entitled to minimum wage and paid leave. The Court also stressed the inequality of bargaining power, the level of control that the platform had on the remuneration and performance thresholds, and the fact that drivers were part of the business model of Uber. Notably, the Court did not consider the formal provisions of contracts but examined the reality of the relationship. The same pattern in other jurisdictions indicates that there is increasing recognition that the current strict dichotomies do not capture the economics of platform labour. All of these constitutional and comparative processes lead to a normative conclusion: the classical dichotomy of employees and independent contractors is becoming less and less suitable in describing hybrid employment relationships of algorithmic control, economic dependence, and contractual flexibility. The flexibility would be balanced with fairness by such a model and innovation would be retained without eroding labour standards.

Finally, to fit the labour classification with the constitutional values of dignity, equality, and social justice, it is imperative to shift to stopping the formalistic labels. Regardless of its attainment by judicial overruling or legislative modification, the adoption of an intermediate status would be a principled development of employment legislation in response to the conditions of the platform economy.

Recommendations:

The juridical classification of gig workers should be reformed coherently, and it would need specific legislative and regulatory measures. To begin with, the definitional clauses of the Industrial Relations Code, 2020 and the Code on Wages, 2019 are to be reconsidered so that the workers who are economically dependent could be explicitly taken into consideration. The current framework still is based on a traditional conception of employment, which assumes a more direct and identifiable control within a traditional workplace environment. The use of

language acknowledging economic dependence and functional domination would lead to adjudicatory bodies applying the core labour protection to workers who, although formally characterised as independent contractors, work in structurally inferior relationships.

Second, the legislature should wonder to bring in a statutory presumption of employment in cases where given indicators of control are fulfilled. These signs can be one-sided set of remuneration, the impossibility to negotiate with the customers, monitoring performance based on algorithmic systems, and the authority to deactivate. An admissible presumption would ensure that the burden of evidence lies with platforms to prove that they were truly independent so that contractual writing does not degrade substantive labour protections.

Third, it should be a universal rule that requires regulatory norms to provide transparency and accountability in the decisions made through algorithms. Since the digital platforms regulate the assignment of work, scoring, and disciplinary actions based on automated systems, employees must have a right to know their performance indicators, the cause of negative actions and have a proper grievance redress mechanism. The procedural protection would be the solution to harmonizing digital operations management with the principles of natural justice and fairness.

Fourth, platform workers should be given collective bargaining rights either expressly through legal statutes or through clarifying that such association is not contrary to the principles of competition law. Collective representation would also contribute to resolving the unfair competition of bargaining power between individual gig and large digital aggregators.

Lastly, the social security system envisioned in the Code on Social Security, 2020 needs to be realised by providing the funding systems, the defined contribution model, and the implementation schedule that can be enforced. Statutory recognition will be just a symbol without proper implementation. A holistic and consistent reformation strategy would help to make sure that flexibility in work arrangements is provided without the sacrifice of dignity, security, and even fairness.

Conclusion:

The juridical status of gig workers as per the Indian labour codes is a success and failure at the same time. Although the Code on Social Security, 2020 recognises itself the crown of the guiding forces of labour law by formally recognising gig and platform workers, they are not brought under the protective tent. The continued existence of the employee-independent contractor dichotomy bring about doctrinal imbalance and practical susceptibility especially with respect to algorithmic control and economic dependency. The Indian judicial precedents show that there is interpretative flexibility that could be used to tackle disguised employment relationships. But use of case by case adjudication can create uncertainty. It would be desirable, however, that the legislative clarification be made. A comparative jurisprudence depicts increased awareness of the world with the use of intermediate categories that compromise flexibility and protection. Finally, the constitutional values of dignity, equality, and social justice should inform the future of the employment classification. A re-oriented system that recognises functional control and economic dependency would be more appropriate toward labour regulation with the realities at hand. Without this reform, the giants will be left officially included but practically adjacently in the entire coverage of the benefit of the labour welfare law.

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