VOLUME 6 | ISSUE 4

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

THE RIGHTS PARADOX: EVALUATING THE EXCLUSION OF GIG AND PLATFORM WORKERS FROM COLLECTIVE BARGAINING UNDER THE INDUSTRIAL RELATIONS CODE, 2020

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I. ABSTRACT

The redefinition of the labour law structure of India formerly under the Industrial Disputes Act, 1947 (IDA), Trade Unions Act, 1926 and the Industrial Employment (Standing Orders) Act, 1946to the Industrial Relations Code, 2020 (IRC) is a huge consolidation of industrial jurisprudence. Section 2(s) of the IDA defined workman in narrow terms, excluding any managerial and supervisory position and as the foundation of collective bargaining rights and resolution of disputes. Section 2(zf) IRC, worker and Section 2(l) employee are broadening definitions to cover those who work in industry to be hired or rewarded. This change modernises the industrial relation with the establishment of an organized union recognition (Section 14, IRC) and increases the costs of standing order and retrenchment (Section 77, IRC) balancing the rights of the workers and the flexibility of the employers. Although this has been modernized, gig and platform workers are not included in collective bargaining by IRC. Conversely, they are specifically acknowledged in the Code on Social Security, 2020 as Section 2(35) is known as gig worker and Section 2(61) is known as platform worker, which gives them the right to welfare benefits but not the rights to industry. This has an effect: gig workers receive social security but are not covered by unionization and dispute resolution.

Judicial interpretations within the IDA have been quite insistent to focus on functional designations than contractual ones, as the main source of bargaining power, that is, the employer-employee relationship. Applying this principle to the gig workers would be consistent with the constitutional provisions applicable to Articles 14, 21, and 23 of the Constitution. Indian Federation of App-Based Transport Workers (IFAT) v. the Supreme Court (Case in Proceedings) (PIL). Union of India (W.P. (C) No. 1068/2021) proposes that

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the gig workers be recognised as unorganised workers pursuant to Unorganised Workers Social Security Act, 2008 and social security code and, therefore, the statutory protections would be availed to them. The case presents the constitutional aspects of the regulation of gig work and the necessity to reconcile the rights to welfare and the rights to industrial relations.

This trend is supported by foreign precedents. In the United Kingdom, Uber BV v. the Supreme Court. According to Aslam (2021), Uber drivers received minimum wage and paid leave, which was characterized as workers. The Dynamex case, and California AB5 law, in the US, use the "ABC test," which assumes that gig workers are employees unless this can be proven to be incorrect. These comparative experiences prove that it is not only possible but also needed to statutorily recognize the right of bargaining by the gig workers. The gap between welfare claims and industrial rights would be bridged by either extending collective bargaining rights to gig and platform workers, through the inclusion of them under the definition of workers or employees in the IRC, or by providing them with specific statutory protection. This kind of reform would enhance labour democracy, minimize litigation and improve industrial harmony, so that the collective bargaining strength stays abreast with the Indian realities of a changed workforce.

II. INTRODUCTION

The process of changing the Indian system of labour law in the Industrial Disputes Act, 1947 (IDA)[2] to the more recent Industrial Relations Code, 2020 (IRC)[3] is a serious move towards consolidating industrial jurisprudence. This legislative revision is one of the most far-reaching changes to the relationship between capital and labour in since independence since it brings together three landmark acts; the IDA, the Trade Unions Act, 1926,[4] and the Industrial Employment (Standing Orders) Act, 1946.[5] The mentioned purpose of this consolidation is to make industrial relations more modern through streamlining a complex legal regime and aligning it with the requirements of an increasingly liberalizing economy. Section 2(s) of the IDA limited the definition of workman to a very small group of employees that did not work in the managerial, administrative, or supervisory category and earned a certain amount of salary exceeding a stipulated limit. This definition was the foundation of the collective

[2] *Industrial Disputes Act 1947.*
[3] *Industrial Relations Code2020.*

[4] *Trade Unions Act 1926.*
[5] *Industrial Employment(StandingOrders)Act 1946.*

bargaining rights and the right to access the industrial dispute resolution system in the pre-existing system. Section 2(zf) of the IRC titled worker and Section 2(l) titled employee expand these definitions to cover persons engaged in industry, to work and receive remuneration over an expanded range of occupations.

This change purportedly modernizes the industrial relations by bringing the organized union recognition with respect to the Section 14, which gives a mechanism to identify the sole negotiating union in an establishment, as well as an increase to thresholds in standing orders and retrenchment with respect to the Section 77, therefore, attempting to create a balance between the rights of workers and the flexibility of the employers. Nevertheless, the shift is happening in the context of a new crisis in the domain of work: the so-called gig economy that is going through the roof. Online applications such as Uber, Ola, Swiggy and Zomato have rearranged the nature of employment in itself forming millions of livelihoods that are not within the frame of employer-employee dyad.

The new model is a mediated work, where algorithm, not a human manager, dictates how work is distributed, rated, priced and even punished through deactivation. This change of structure has made the primary question of labour classification extremely important. The legal status given to these workers is what dictates whether or not they have the full range of labour rights including collective bargaining and minimum wage and social security.

The gig and platform employees have no right to collective bargaining according to the pledges of the modernization the IRC offers. Conversely, the Code on Social Security, 2020 (SS Code)[6] provides them with welfare benefits like life and disability insurance, health and maternity benefits, and old age protection explicitly and in Section 2(35) of the Code under the definition gig worker and in Section 2(61) of the Code under the definition platform worker. This builds a structural gap in this project: gig workers are not only the beneficiaries of social security but also do not belong to the sphere of unionization and the possibility to resolve industrial disputes. They are recognized sufficiently to be able to get welfare, but are systematically excluded due to the transformative potential of the industrial relations law.

Central Thesis: This project argues that while the Industrial Relations Code, 2020, expands the definitions of "worker" and "employee" on paper, it fundamentally weakens the bargaining power of gig workers by denying them the industrial status granted to their

[6]*Code on Social Security2020.*

traditional counterparts. The Code establishes an expansion without inclusion whereby the most rapidly expanding category of the workforce resides in legal limbo that it has rights to welfare in the absence of the collective voice to influence the terms of their work.

Central Research Question: the current study aims to answer the following question: Does the Industrial Relations Code, 2020 weaken workers' bargaining power by excluding gig workers from the industrial relations framework despite expanding labour definitions?

III. RESEARCH METHODOLOGY

This project employs a **doctrinal legal research** methodology. Doctrinal research focuses on the systematic analysis of legal rules, principles, and doctrines through the examination of statutes, judicial precedents, and academic commentary to understand the law and its underlying structures.

Primary sources used are:

- The Industrial Relations Code, 2020, particularly Section 2(zf) ("worker") and Section 2(l) ("employee");
- The Code on Social Security, 2020, specifically Section 2(35) ("gig worker") and Section 2(61) ("platform worker");
- The repealed Industrial Disputes Act, 1947, particularly Section 2(s) ("workman"), to facilitate comparative analysis;
- The Trade Unions Act, 1926, and the Industrial Employment (Standing Orders) Act, 1946, insofar as they are consolidated into the IRC.

Secondary sources used are:

- Judicial statements of the Supreme Court of India and the High Courts, including the currently pending litigation of public interest in the case of Indian Federation of App-Based Transport Workers (IFAT) v. Union of India case.
- Academic articles from peer-reviewed law journals examining labour law reform and the gig economy,
- Constitutional provisions under Articles 14, 21, and 23,

- Comparative legal analysis from international jurisdictions including the UK (*Uber BV v. Aslam*), the USA (*Dynamex* and the "ABC test"), to provide a global context for reform.

The method of analysis is a functional and comparative analysis. It looks at the practical effects of legal definitions of workman, worker and employee to either deny or accede to collective rights and the Indian framework in comparison with how the world is responding to the platform economy. The judicial interpretation-based functional approach to the IDA focuses on the fact of working relationships, rather than on contractual nomenclature, which offers a doctrine of the coverage of gig workers.

IV. THE EVOLUTION OF DEFINITIONS: EXPANSION WITHOUT INCLUSION

A. THE IDA LEGACY: THE NARROW "WORKMAN" AND THE FUNCTIONAL TEST:

In order to grasp the limitations of IRC, it is necessary to review the legal architecture that IRC substituted. In section 2(s) of the Industrial Disputes Act, 1947, the term "a workman" was given very narrow meaning as any person employed in an industry to perform manual, unskilled, skilled, technical, operational, clerical or supervisory work but expressly overseas those employed in a managerial or administrative capacity and those earning a wage which exceeded a given limit. The collective bargaining rights and the possibility to use the industrial dispute resolution mechanisms in the IDA were based on this definition. More importantly, the IDA judiciary system has always stressed functional positioning rather than contractual designation. The case of Dharangadhra Chemical Works Ltd v.The State of Saurashtrawas a landmark case.[7] made the so-called functional test, which stated that the determinative element in identifying a workman was not the informal name of the employee but the character of the main duties carried out and the master-servant relationship, which is related to the control and supervision. This intentional reading enabled the courts to look above the contractual labels and examine the work relationship in the real sense to uphold the employer-employee relationship as the basis of bargaining power. Nevertheless, even this general judicial interpretation was based on a 20th-century industrial prototype where human

[7] *DharangadhraChemicalWorksLtdvStateofSaurashtra*AIR1957SC264.

control was paramount and workplace was physical and evident. The test assumed the presence of a visible master who is assumed to exercise control over a visible servant, assumptions fundamentally changed by the gig economy.

B. THE IRC EXPANSION: BROADER LANGUAGE, NARROWER APPLICATION:

The Industrial Relations Code, 2020, introduces two significant definitions intended to modernize this framework. It is a broadly defined concept, section 2(zf), of a worker since any person working in an industry to perform any skilled, semi-skilled or unskilled manual, supervisory, technical, operational or clerical work to earn a living is referred to as a worker. Such a definition expressly covers the people who have been dismissed, discharged or retrenched as a result of an industrial dispute. On the same note, Section 2(l) provides the definition of the term employee to encompass a broad scope of jobs even though there is wage limit on the latter. Superficially this seems to be an expansion of coverage. The Code broadens the definition of the term-worker to cover explicitly working journalists, and sales promotion employees-under categories which were previously addressed by different enactments. It also proposes that there be a structured union recognition as per Section 14 that gives a way of establishing a sole negotiating union in an establishment that theoretically enhances collective bargaining among the covered. Nonetheless, as implied in both definitions, there must be an industrial establishment and a direct or indirect relationship of employment defined by the traditional hire or reward. It is at this point that the gig worker gets lost in the cracks. Although the Code brings an updated language, it still maintains the basic condition of an employer-employee relationship that is inherently lacking in the legal development of the gig work where platforms consciously organize their relationships to prevent the impression of employment.

C. THE PERSISTENT OMISSION: ALGORITHMIC MANAGEMENT AND THE "STRUCTURAL GAP":

The greatest failure of the IRC is that it does not comment on the characteristic of digital work, which is its algorithmic management. Gig employees do not have a human manager to oversee them in the classical understanding of the term. Rather, they are controlled by the platforms, which has come to control them by code- who receives what order, dynamic pricing, performance rating and whether the worker is kept on the platform- all without it ever coming to the juridical truth that the worker is an independent contractor or part-ner. This creates a legal paradox. Unlike the IRC exclusion, the Code on Social Security, 2020

specifically refers to gig workers under the 2(35) and platform workers under the 2(61) section and provides them with access to welfare benefits. It is certainly a step in the right direction and will offer a social safety net to a section of labour force that was previously deprived of it.

This emphasis on welfare, registration, and grievance boards has been reflected at the state-level in Karnataka and Rajasthan. However, as the abstract states itself, it puts a structural gap in place: the gig workers become the victims of social security and at the same time, are not subject to the processes of unionization and dispute resolution.

The IRC requirements that consider registration of trade unions, collective bargaining and industrial dispute processes are not available to them. They are unable to create a negotiating union under Section 14, to collectively bargain wages and working conditions, and to seek redress by grievance statutory institutions when they are arbitrarily deactivated by an algorithm. The platforms thus retain one-sided dominance and the labour democracy that the IRC advertises is virtually inefficient to the digital workforce. There is no chance occurrence to this omission. It is suggestive of a deliberate legislative act of keeping gig workers in a welfarist hold zone -which is acknowledged to receive benefits, but not be bestowed with a bargaining right.

The definition expansion performed by the IRC is, therefore, an expansion by proxy and the digital workforce is left in the same predicament of legal invisibility as to their most fundamental right the right to be in such a position to have a collective action on the terms of their working. Socioeconomic effects are catastrophic: workers are not represented collectively; hence, they are subjected to one-sided algorithm control, wages determination, and layoffs, creating an imbalance in the industry, which is not only not addressed by the new Code but is strengthened by it.

V. THE RIGHTS PARADOX: WELFARE VS. BARGAINING

The rise of the gig economy has led to a piecemeal legislative reaction in India, which has initiated a deep-seated Rights Paradox wherein gig and platform workers are acknowledged regarding welfare and suppressed in industrial relations. The Code on Social Security, 2020 (SS Code) is definitely progressive, as it provides statutory acknowledgment of the gig economy. By defining the term gig workers in 2(35) and platform workers in Section 2(61), the legislature has taken a significant step in providing a social safety net, comprising the

essential labour law benefits of insurance and old-age security to a section of the labour force that previously had not been a priority. This has been mirrored even in state level legislations like in Karnataka and Rajasthan where the major focus has been on welfare, registration and grievance boards. Nonetheless, such an addition effectively becomes a de-facto in a category of employees that is solely welfare-based, meaning not subjected to the transformative impact of the Industrial Relations Code (IRC), 2020.

This creates a structural loophole in the legislation: the state recognizes the physical risks of the job; nevertheless, it misses the fact that the gig model exposes the economy to vulnerability. This legislative evolution, despite the replacement of the Industrial Disputes (ID) Act, 1947, with the Industrial Relations Code (IRC), 2020, which expands the definition of a workman to include the full range of employee and worker, has been superficial to gig workers. They are still left out of the definition of workers who have a right to the presence of a so-called negotiating union, by the IRC. In turn, the socioeconomic aftermath is harsh, since these workers cannot access statutory grievance redressal institutions as well as collective bargaining, they are left at the mercy of algorithmic one-sided management. The platform companies have a complete power in wage setting and labour terms and since there is no collective bargaining system, the so-called labour democracy that has been proposed by the IRC is virtually inapplicable to the digital employees.

VI. JUDICIAL PRECEDENTS AND THE "FUNCTIONAL ROLE" PRINCIPLE

The introduction of gig workers into the IRC system can be successfully implemented with the assistance of the use of the so-called principle of the functional role, according to which the substance of work is a priority rather than the contractual designation. Courts in the past have outgrown labels as they seek to determine the truth behind the employer-employee relationship. In Dharangadhra Chemical Works Ltd v. State of Saurashtra, the court determined that the control and supervision of the work done by a person are the real determinants of the status of the person despite how the contract is shaped.

This is a functionality test that has its role in the constitutional debate. The Supreme Court is currently hearing Indian Federation of App-Based Transport Workers (IFAT) vs. Union of India,[8] disputes the existing omission, citing that these workers are practically subordinates in

[8] *Indian Federation of App-Based Transport Workers(IFAT)vUnionofIndia*(WP(C)No1068/2021).

a digital hierarchy. When referring to Articles 14 (Equality), 21 (Right to Life and Dignity) and 23 (Prohibition of Forced Labour), they claim that the state has a constitutional obligation to provide what is commonly known as decent work and living wages by statutory inclusiveness.[9]

International jurisprudence acts as a guide to such integration. Uber BV v. Aslam,[10] The UK Supreme Courtindeed, discredited the label of the independent contractor as a whole and decided that the extensive control of the platform imposed a method that required a worker classification. Likewise, the US "ABC test" (as cited in the Dynamex ruling)[11] places the burden of proving on the employer that a worker ought not to be considered an employee. These cases affirm that the functional reality of a gig-worker is irreconcilable with a legal status which denies workers the right to bargain.

VII. REFORMATIVE SYNTHESIS: STRENGTHENING THE DIGITAL WORKFORCE

The current legislative architecture for India's digital workforce remains insufficient, as it bifurcates the rights of gig and platform workers by offering them limited welfare while denying them the tools for industrial democracy. In order to have real industrial harmony, the current structure should shift beyond a subsistence-only model, where welfare is a charity, toward a model that acknowledges the primary agency of these workers. Two main, but non-exhaustive, legislative paths of fixing this bargaining gap to effectively incorporate the gig economy into the wider labour system exist.

The direct and the most obvious one is the formal extension of the definition of a "worker" using Section 2(zf) or "employee" using section 2(l) of the Industrial Relations Code (IRC), 2020. The legislature by categorizing the gig and platform workers as either workers or employees would automatically give them all of the established protections that the traditional industrial worker is entitled to, including the right to organize into trade unions, have access to collective bargaining as well as formal dispute resolution processes. This would make these workers not be seen as fringe contractors but be considered a part of the industrial ecosystem and thus able to confront arbitrary deactivation, opaque algorithmic wage-setting, and unilateral policy changes.

[9] *Constitution of India*,arts 14,21,23.
[10] *Uber BV v Aslam*[2021]UKSC5.
[11] *Dynamex Operations West,Inc v Superior Court* 4 Cal 5th 903(2018).

Secondly, the legislature might create a separate category of "dependent contractor" in the IRC. Such a hybrid framework would act as a "middle ground" for workers (like delivery drivers or app-based freelancers) who aren't traditional employees but aren't truly "bosses" of their own businesses either. Currently, most laws recognize either employees/workers or independent contractors who don't have any rights, in such a scenario,this category would cushion the workers who are not the traditional employees but depend economically and operationally on a platform to make their livelihood. Such an interim solution would enable these workers to oppose algorithm results and bargain service terms as a group without requiring such a strict and binary employee status.

More importantly, any form of reformative synthesis should also require transparency in algorithmic management and the creation of independent mechanisms of redressing grievances as in the Rajasthan model and Karnataka model to offer an immediate remedy to the power imbalances that characterize the sector at present.[12]

VIII. CONCLUSION & EVALUATION

Replacing the existing law on industrial disputes, the Industrial Disputes Act (IDA), 1947, with the Industrial Relations Code (IRC), 2020, was hailed as a historic unification attempt that was aimed at modernizing Indian labour jurisprudence. This repositioning, however, missed a critical opportunity to capture the largest growing segment of the Indian workforce, in effect making gig and platform workers a second-class citizen. Although they are eligible to social security programs, they are effectively denied the democratic right of collective bargaining through which they can be assured of long-term sustainability and dignity at work.

We are of the opinion that the rights to bargain should not only be recognized legally, but that such a step is absolutely imperative to the industrial stability of this country in the long-term. The existing legal vacuum marked by the existence of a bargaining gap, implies that, although the Industrial Disputes Act (IDA), 1947 transitioned to the Industrial Relations

[12]*GigWorkers(Registration and Conditions of Service)Act 2023* (Rajasthan);*Karnataka Platform Based Gig Workers (Social Security and Welfare) Act 2024* (Draft).

Code (IRC), 2020, which broadened the definition of "worker" and "employee," excluding the role of gig and platform workers due to the Code weakens the bargaining power of such workers. The status quo is merely a mechanism of pushing the digital workforce even deeper into the sphere of economic and social precarity, transforming their potential empowerment into a cycle of systemic marginalization. To sum it up, it can be stated that there has been no change with regards to bargaining power of gig and platform workers under both the IDA, 1947 as well as the IRC, 2020. Therefore, we must admit that the right to negotiate, the conditions of working is a component of human dignity in the digital economy just like the right to social security. So not only is closing this gap a regulatory imperative, but also a constitutional imperative to ensure that economic growth in India is sustainable, but also equitable to all the stakeholders in the growth.

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