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MAHARASHTRA NATIONAL LAW UNIVERSITY MUMBAI

IV – SEM

Labour Law-I

CUSTOMER REVIEWS, THE GIG ECONOMY AND LABOUR PROTECTION

Submission towards End Semester examination

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Customer Reviews, the Gig Economy and Labour Protection

“The connection economy thrives on abundance. Connection creates more connection. Trust creates more trust. Ideas create more ideas.” - Seth Godin

INTRODUCTION

The modern economy, popularly referred to as the gig economy has been under scrutiny for bypassing labour laws across the globe. A gig economy is categorized by popularity of temporary and mobile jobs and businesses tend to recruit independent contractors and freelancers rather than full-time workers.¹The archaic system of full-time employees who seldom change jobs and rather concentrate on a lifelong profession is something that undermines a gig economy.²The gig economy which is governed by mobile phone applications has substantially altered the way we perceive labour laws. The applications that act as a middle-man between oneself and a commodity or service are growing as the gig economy grows greater in scale. Be it Swiggy, or Uber, or Amazon, the driver or the delivery guy, are the ones at the bottom of the production line.

The primary problem cited by industry experts is that such corporations treat these people as independent contractors, instead of employees.³ The courts in different countries have taken divergent stance on this question. For instance, in U.K., the Court of Appeal has previously held that drivers working through the Uber App need to be recognized as regular employees instead of independent contractors.⁴ Similar position was taken in both France⁵ and Switzerland.⁶ On the other hand, the United States seems to diverge here and treats Uber drivers as independent contractors.⁷

Therefore, while the courts in this gig economy have attempted to address the question involving employer and employee relationship, what remains unaddressed is the impact of customers on workers. An astonishing change that has taken place in the labour regime is regarding the over-subordination of workers. It needs to be seen that his over-subordination, instead of being driven by the employers, is driven by the customers. Consumers in the modern economy are usually given an

¹Alex de Ruyter, Martyn Brown and John Burgess, *The Fourth Industrial Revolution*, 72(1) J. INT. AFF. 8 (2019).

²Id. at 40

³Michael Ford, *The Fissured Worker: Personal Service Companies and Employment Rights*, 49 INDUSTRIAL L.J. 35–85 (2019).

⁴Mr. Y Aslam, Mr. J Farrar & Others v. Uber BV, Uber London Ltd and Uber Britannia Ltd., Case No: A2/2017/3467, on 19 December 2018 (The Court of Appeal, United Kingdom).

⁵UNIA, SECO confirmation: Uber is an employer (3 March 2018) at: <https://www.unia.ch/fr/actualites/actualites/article/a/14710>

⁶Uber France, société par actions simplifiée unipersonnelle et autre(s) v. M. A. X., Cour de Cassation, Chambre Sociale (4 March 2020).

⁷Darrin E. McGillis v. Uber, Third District Court of Appeal of State of Florida (1 February 2017).

option to the rate the services they received from the workers, which they hired through an online medium.⁸ This rating is subsequently used by other customer to choose the best service provider (For the sake of simplicity, we shall use the term service provider and worker interchangeably.) and discard the ones with lower ratings. It is our argument that customers are the primary cause for such over-subordination as they are the ones who complete the ratings and determine the quality of worker. Therefore, it is the opinion of the authors that, in a gig economy, with employers, customers should also bear some responsibility with respect to labour protection since they are the ones directly in contact with workers.

In this regard, the article has been divided into four parts, the *first part*, would attempt to bring out an understanding about the nature of work involved in a gig economy, *second part*, would assess the impact of customer surveys and ratings on the labour, the *third part*, would attempt to analyze the potential of these surveys for ensuring worker satisfaction and finally, the *fourth part*, would provide some suggestions for the labour law which align with the principles of the gig economy.

1. THE NATURE OF WORK INVOLVED IN A GIG ECONOMY

A gig economy is generally categorized under two forms of works:

- The Crowdwork,⁹ and
- The work on demand through mobile or computer applications¹⁰

Crowdwork is work carried out via online channels that put in infinite number of institutions, companies and individuals in communication through the internet, eventually enabling consumers and employees to be linked at globally.¹¹ The nature of tasks performed through this medium can vary to a considerable degree. These can range from tasks as small as completing survey and tagging photos¹² to as complex as development of a website or coding a programme.¹³

⁸ See, Uber, Rating a driver at <https://help.uber.com/riders/article/rating-a-driver?nodeId=478d7463-99cb-48ff-a81f-0ab227a1e267>

⁹Valerio De Stefano, “The Rise of the ‘Just-in-Time Workforce’: On-Demand Work, Crowd-Work and Labour Protection in the ‘Gig-Economy’” (Conditions of Work and Employment Series Report, no. 71, International Labor Organization (ILO), Geneva: 2016)

¹⁰ R. Smith and S. Leberstein, *Rights on Demand: Ensuring Workplace Standards and Worker Security in the On-Demand Economy*, NATIONAL EMPLOYMENT LAW PROJECT (New York 2015) (*hereinafter* “**Smith et. al.**”).

¹¹ Id.

¹² L. Irani, *Justice for Data Janitors*, PUBLIC BOOKS (2015).

¹³Fayomi et. al., *The global opportunities in online outsourcing*, WORLD BANK REPORT (2015).

In case of work on demand, the traditional services such as cleaning, driving, cooking, washing, etc. are offered to customers through mobile applications, on one-time basis.¹⁴ Normally, the firms operating these applications interfere in determining the basic service criteria and in choosing and maintaining the workforce.¹⁵

It needs to be seen that the gig economy is growing exponentially across the globe. It is estimated that around 5 million workers in the United Kingdom were working in the gig economy.¹⁶ The Indian gig economy is estimated to constitute around 15 million freelancers.¹⁷ In fact, as per a study titled “*Workforce Agility Barometer*” it was revealed that 56 per cent of the Indian businesses engage more than 20 per cent temporary workers.¹⁸ This number is only likely to increase, particularly due to the advent of the COVID 19 pandemic which has allowed firms to explore the options of freelancing more than ever.¹⁹ As per the projections of ASSOCHAM, the Indian gig economy will grow at a rate of 17 per cent annually until 2023.²⁰ In the United States, it has grown by 43 per cent in the year 2019 – 2020 itself.²¹

The gig economy is characterized by a delivery of services as an extremely high speed. The use of internet substantially reduces the costs associated with transaction. Thus, the ability for anyone to hire anyone from any place in the world has allowed for a degree of flexibility unimagined in the traditional business model.²² However, the pay as you go model has allowed labour to be seen as a sheer commodity.²³ One basic danger is that these practices are not even known as work in this kind of economy. They are usually designated as “gigs”, “rides” etc. which further add to their commodification.

¹⁴Smith et. al., *supra note 10*.

¹⁵ Id.

¹⁶ Huws and Joyce, *Crowd Working Survey: Size of the UK's "Gig Economy"*, ENGLISH BULLETIN (February 2016) at <http://englishbulletin.adapt.it/wp-content/uploads/2016/02/crowd-working-surveypdf1.pdf>

¹⁷ Harsha Sheelam, *The exploitation of the gig economy in India*, INVENTIVA (22 June 2020).

¹⁸ Kellogg OCG, *Workforce Agility Barometer*, KELLOG(2018) at <https://www.kellyocg.com/siteassets/apac-workforce-barometer>

¹⁹ Ajay Trehan, *Focus on people, policy to making the most of gig economy*, THE INDIAN EXPRESS (9 August 2020) at <https://indianexpress.com/article/jobs/focus-on-people-policy-to-making-the-most-of-gig-economy-6502095/>

²⁰ Id.

²¹ Id.

²² M. Cherry, *Beyond misclassification: The digital transformation of work*, 37(3) COMP.LAB. L. & POL'Y. J. 577, 577 – 602 (2016).

²³ Id.

2. THE IMPACT OF CUSTOMER SURVEYS AND RATINGS ON THE LABOUR

The platforms or facilitators in the gig economy hold a significant control over the workers. These platforms have the ability to constantly monitor the performance of a worker by means of the rating and reviews provided by customers. Instead of a passive matchmaking, such rating structures ensure that the worker completely conforms to the firm's policy and customer instructions. In fact, these ratings are often used to terminate the workers from the platform when they receive lower ratings.²⁴

After taking a closer look it is stated that it is not the firm that exercises a considerable control, it is, in fact, the consumer who is at the root of the control. These online platforms work on the framework of an 'online reputation' which is useful for guiding the selection process of workers and to thereby ensure smooth performance of the system.²⁵ Therefore, it is only the customer-generated data that makes it possible to control the labour. Because only those with the highest credibility are provided and delegated to more lucrative and better paying assignments, it is likely that some workers always remain excluded from receiving a better opportunity.

Moreover, the impact of reviews is more profound than mere money. As per a research conducted by Prof. R.M. Stock and Prof. M. Bednarek, "*the primary cause of emotional exhaustion amongst gig-workers is the negative customer reviews.*"²⁶ Therefore, one may argue that the motivation among the workers is directly proportional to how they are already perceived by the customers.²⁷

It needs to be understood that the problems associated with the gig economy cannot be solved by imposition of minimum wage laws because the new structure is inherently based on the 'pay as you go' model. Further, it not feasible to prohibit the gig economy because it is indeed true that the gig economy has substantially reduced transaction costs and has provided access to labour to those in need. In essence, it has made our lives easier and more efficient. Therefore, drawing an inspiration from the idea of Prof. Brian Langille, we argue that the solution to this labour law crisis should be devised form within the framework of gig economy itself.

²⁴ O'Connor et al. v. Uber Technologies, Inc., et al., Document 251, United States District Court, Northern District of California (11 March 2015).

²⁵ J. Prassl, M. Risak, *Uber, Taskrabbit, and Co.: Platforms as Employers – Rethinking the Legal Analysis of Crowdwork*, 37 COMP.LAB. L. & POL'Y. J 619-651 (2016).

²⁶ R.M. Stock and M. Bednarek, *As they sow, so shall they reap: customers' influence on customer satisfaction at the customer interface*, 42(2) JOURNAL OF THE ACADEMY OF MARKETING SCIENCES 400 (2015) (hereinafter "**Stock and Bednarek**").

²⁷ Id.

3. THE USE OF CUSTOMER SURVEYS AS A MODEL FOR WORKER SATISFACTION

Considering that labour laws cannot be amended using the traditional logic, we must find out innovative ways to create workable labour standards. These innovative solutions need to rely on the core aspects of the gig economy and make use of the modern technology, the internet and the data. The gig economy despite of the negatives, have been extremely beneficial for the workers as well. For instance, workers enjoy more autonomy and self-control than ever in this economic environment. Therefore, on a broader scale, workers are working under comparatively less strict working environment, focusing directly on the tasks assigned by the customers.

One of the ways to protect the gig workers could be by correcting the power imbalance between the customers and workers. This could be done by the development of a large-scale customer reputation system. This is already undergoing in form in popular application services such as Uber²⁸ and eBay which have allowed the workers to rate and review their customers after the service has been availed. A more detailed rating of customers was proposed by the project titled Turkopticon in 2008. Therein, the workers could rate consumers on four criteria, (i) communication, (ii) generosity, (iii) fairness, and (iv) promptness.²⁹ This is a step to move beyond simply efficiency and customer centricism towards the incorporation of more moral and social values. In fact, Uber has started blocking the accounts of customers who are rated extremely low by the drivers.³⁰

While the idea appears simple, the use of the review of customers in formation of labour laws could be transformational. This is primarily because, despite being an important stakeholder, customer has been generally absent in labour law formulation. In fact, the vanishing control of the firm and the advent of the consumer has remained completely unnoticed in the labour law development.

Thus, it is important to improve the relationship and interactions between customers and workers. While it is true that the negative feedback is a cause of emotional exhaustion, positive feedback has been said to stimulate workers and buffer the negative assessment.³¹ Thus, customers are also

²⁸ Hamza Shaban, *Uber will ban passengers with low ratings*, THE WASHINGTON POST (29 May 2019) at <https://www.washingtonpost.com/technology/2019/05/29/uber-will-ban-passengers-with-low-ratings/#:~:text=Uber%20passengers%20can%20see%20their.they%20have%20received%20from%20drivers> (hereinafter “**Hamza Shaban**”)

²⁹Turkopticon Frequently Asked (28 September 2014) at <https://turkopticon.ucsd.edu/faq/index.html#7.4>

³⁰Hamza Shaban, *supra* note 27.

³¹Stock and Bednarek, *supra* note 26.

enablers of satisfied workers.³²The satisfaction of a worker then directly impacts his ability to stay in the employment for longer durations and increase his productivity.³³

Therefore, determining the actual impact of customers on workers is quite complex. The answer could be found by the use of Self-Determination theory.³⁴ The theory states that human beings have four basic needs, (i) belongingness, (ii) autonomy, (iii) relatedness and (iv) competence.³⁵Prof. Y. Malhotra studied the impact of the Self Determination theory from the customer relationship perspective.³⁶ He found that when workers develop the skills necessary to effectively interact with their customer, they found themselves to be more valued and had higher need satisfaction. Thus, the feeling of being valued was triggered among the workers by the positive feedback received from the customers.

Therefore, along the lines of the Work-related Basic Need Satisfaction scale which is used to capturing the satisfaction of the workers,³⁷ a scale can be developed to assess the relationship between customers and workers. Herein, a set of questions would be put before the customers and workers alike and they would be asked about their feeling for the others side. This is somewhat similar to the customer reputation survey that we discussed earlier.

4. SUGGESTIONS FOR THE DEVELOPMENT OF LABOUR LAW IN THE GIG ECONOMY

During the course of this paper, we analyzed as to how the gig economy is shifted the control largely from the hands of the employers to the end customers. This in turn has made the workers overly subordinated as they now need to satisfy two stakeholders of the gig market. Therefore, there need of the hour is to create labour law that could address the changing needs of the market. It needs to be addressed in the modern context and it must be understood that the market can now not be pushed to its traditional structure. In these suggestions, the core of the labour law is taken as the satisfaction and well-being of the vulnerable gig workers in the economy. Herein, we would attempt to distribute this responsibility between both the employers and the customers.

³² Id.

³³ Id.

³⁴Deci, E.L. and Ryan, R.M, *The 'what' and 'why' of goal pursuits: human needs and the self-determination of behavior*, 11(4) PSYCHOLOGICAL INQUIRY 227-268 (2000).

³⁵Ryan Deci et. al., *Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being*, 55(1) AMERICAN PSYCHOLOGIST 68 – 78 (2000).

³⁶Malhotra, *Desperately Seeking Self-Determination: Key to the New Enterprise Logic of Customer Relationships*, AMCIS 2004 PROCEEDINGS, 490 (2004)

³⁷Daiana Colledani et. al., *The Work-Related Basic Need Satisfaction Scale: An Italian Validation*, FRONTIER PSYCHOLOGY (2018).

In this regard, we must understand that while it is true that customers provide the negative reviews, the responsibility to protect the workers still rests on the employers. Irrespective of the fact whether the employer considers the workers as employees or as independent contractors, the responsibility stems from the fact that the employer creates a pool of workers and promotes of the culture of rating them. This culture has found to have various negative psychological impacts and provides differential opportunity to each worker. Moreover, the employer generally has detailed guidelines which the workers need to follow in order to sustain himself on the platform. They often demand the employers to be identified by the identification mark of the employers and therefore, to a larger public, they are identified by the employer himself. Therefore, there exists a moral and medical responsibility on the employer to control the subordination of workers by customers. We have identified the following points that could be used to initiate the discussion for amending labour laws by looking within.

First, in all situations where the customers are required to rate the services provided by the workers, the employers must regulate the negative reviews received by the workers. Since it is difficult to assess the workers from the crude 5-point ratings, the customers should be asked to write a small review in case they genuinely dissatisfied with the service. This is because a crude rating is subject to each customer's own whims and subjective assessment. For instance, in case of cab services, it is an arbitrary decision of the customer whether he wishes to rate a silent driver 5-star or 1-star. A small review would act as an additional hurdle and only those customers who genuinely dissatisfied by the service would provide a negative review. Additionally, this would prevent the workers performance from being subjected to the unknown whims of the customers. This would also allow the company to assess whether the worker is fulfilling the actual minimum requirements of the work or not, instead of subjective requirements of the customers.

Second, we saw previously that some organisations such as Uber and Turkothon have allowed the workers to rate their customers. It is our suggestion that the government should mandate all such platforms to integrate some kind of system where the workers could be allowed to rate the customers. This would serve three purposes, *one* it would provide a psychological satisfaction to the workers when they come across a customer who showcases alien behavior, by allowing them to rate and review the customers, *second*, emanating from the previous point, we can see that this would eventually lead to a promotion of a culture of good behavior by the customers towards workers, and *third*, this would also allow the firm to chalk out customers who are giving genuine reviews of the

workers. By disregarding the reviews of the customers who are generally rated low by the drivers, the genuine reviews could be chalked out. The government can also consider creating a centralized independent body which could be responsible for distinguishing the genuine reviews from the arbitrary ones so that similar standards could be applied across all corporations.

Third, the government can mandate the adoption of the need satisfaction surveys by the employers. The need satisfaction survey allows us to identify the actual needs and expectations of the customers and workers alike. Instead of focusing on the crude ratings, when real expectations of the workers and customers could be identified, it would become easier to deliver services more efficiently but would also ensure better working conditions for workers.

The crux behind all these suggestion is to reduce the gap of power balance between the workers and customer. The idea is to end the notion of considering customers as the king of market and establishing a more balanced space where worker well-being could also be looked into, particularly in a gig economy.

While determining the content of labour law in a gig economy, what must be remembered is that is aim of labour law is to protect the worker. In this regard, the source of exploitation is irrelevant i.e. while the traditional labour was governed more by the demands of the employers, the gig labour is governed by the needs of the customers. The need based cross surveys of labour and customers, could allow us to understand what could be considered as the minimum rights for the gig labour.

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