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Exploring the Employment Rights of Gig Workers through Theoretical Lenses

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Abstract

The employment rights typically linked to the conventional theory of the employment relationship, which is fundamentally grounded in the legal framework of employment, have hindered gig workers from qualifying for essential employment rights, including access to minimum wage, social security protection schemes, and collective bargaining rights. It also means that the concept of employment relationship has narrowed down the scope of employment law, which is argued by some scholars to be against the established theoretical framework that initially shaped the labour law itself. Hence, this study examines theoretical perspectives to assess their support or opposition to the extension of employment rights for gig workers. This qualitative study employs a doctrinal method that mainly involves an evaluation of legal and non-legal sources, including law reports, statutory provisions, journal

articles, government reports, and newspapers. The authors found that both traditional theory and contemporary theories like human rights and justice theory fundamentally support the extension of employment rights to gig workers, despite the limitations associated with the employment relationship principle. The study provides theoretical insights concerning the status and rights of gig workers in general.
Keywords: Employment Law, Employment Rights, Justice Theory, Human Rights Theory, Gig Workers

Introduction

Gig work in the 21st century has emerged and expanded across the world. Despite the common favourable features of gig work, such as flexibility and accommodation for both businesses and workers, gig workers have also been linked to a lack of employment rights (Tanel & Aleksi, 2022). The primary reason for this issue is gig workers are generally treated as independent contractors. Therefore, they were not legally eligible for most of the employment rights typically enjoyed by traditional employees (Hießl, 2022). The established theories of contract of employment and employment relationship form the foundation of most common law countries' employment legal framework, primarily covering employees in traditional employment (Riley, 2017). The contract of employment establishes a division, or fault line, between various working relationships, creating a 'dichotomy between the relationship of employer-employee and the relationship of principal-independent contractor' (Walton, 2016). This distinction is crucial as common law imposes specific obligations on parties within an employment relationship that do not apply to independent contractors; statutory rights and obligations typically pertain to employees rather than independent contractors (Walton, 2016). In other words, the legal theories of employment contracts and employment relationships limit the scope of employment law, especially for employees hired under conventional working hours, fixed job, and permanent arrangements.

In spite of these constraints, the theories that generally establish the framework for labour and employment laws may not have intended to restrict their scope or diminish their relevance. The authors do not intend to engage in a debate regarding the limited application of the employment relationship and contract of employment; rather, will explore the theories that underpin labour law to determine the extent to which they enable the invocation of a more comprehensive scope of the law beyond the scope of individuals employed under a contract of employment. Consistent with this premise, the authors argue that both the conventional theory of employment law and certain contemporary theories, while not explicitly identifying the rights of gig workers, promote more inclusive employment rights.

It is considered significant to study the theoretical perspectives in untangling the gig worker issue, as these theories serve as the foundation for the development of employment law and subsequently shape its scope. Numerous studies questioned the narrow scope of employment law, challenging its historical perception as a law protecting workers (Deakin, 2016). This was true even though the job market and working environment have changed a lot in the digital world, with many people using digital platforms to connect with vendors, customers, and service providers for gig work.

Gig work is a broad term covers employment arrangements that are short-term basis, project-based reward, multiple engagements of work simultaneously and platform work is a sub-set

of the gig work (Peetz, 2023). Platform work refers to employment facilitated through online digital platforms like Uber, Grab, Upwork, and Fiverr, which link clients with workers or service providers. This mediated activity is generally confined to a defined duration and is project-oriented. In fact, platform work is distinct from conventional freelance labour because of the participation of online digital platforms when the digital platforms employ algorithms to pair workers with employment opportunities and implement performance monitoring through transparent rating systems, allowing clients and organisations to evaluate gig workers online (Zwettler et al., 2024). At the international level, studies initated within the International Labour Organization (ILO) refer platform work to include both web-based platforms, where work is outsourced through an open call to a geographically dispersed crowd and location-based applications which allocated work to individuals in a specific geographical area (De Stefano et al., 2021). This study reflects both types of platform work. In addition, this study uses the term gig workers and platform workers interchangeably by limiting the term gig work to merely those individuals perform gig work that is mediated by digital platforms.

Driven by flexibility, the platform work gaining its popularity essentially among millennials and generations Z (Agrawal, 2024). However, many countries in the world regarded gig workers as not employees who are eligible to the basic employment rights. For example, the common law coutries such as Malaysia and Australia positioned gig workers as independent contractors whilst the UK generally positioned the gig workers as workers, an intermediate category of workforce who entitles to a few basic employment rights such as sick pay leave and minimum wage (Peetz, 2023).

Many studies explored on various strategies to position the gig workers in the employment legal frameworks so that their rights are protected. Bertolini and Dukes (2021) analysed the potential of recourse to trade union to elevate the rights of gig workers in the context of the UK which encountered challenged by the organisational and cultural obstacles in organising gig workers. Meakin (2022) in the same vein, assessed the idea of mobilising trade unions of platform workers through strategic litigation. In opposite perspective, Muldoon and Sun (2024) analysed the strategies of platform companies in six countries in adopting to the regulations changed which in turn pose the risks to platform workers in protecting their rights. Therefore, this study that intends to draw the issue of precarious working conditions of platform wokers from the perspective of theories will offer a distinct approach. It is admitted that the scholars have also embarked on this area of study. For example, Kocher (2022) and Davidov and Langille (2011). Both academic works offered comprehensive and diverse theoretical views that influenced the development of labour law, including the emergence of gig work. Building on a body of scholarly works, this study revisits both traditional and contemporary theories that reconceptualise employment law, thereby redefining the coverage of employment rights to specifically address new forms of work like gig work. The exploration of these theoretical perspectives is crucial as it sheds light on the limitations of existing legal frameworks and offers pathways for rethinking the legal definitions and protections for gig workers. By bridging the gap between theoretical insights and practical applications, this study aims to enhance the inclusivity and adaptability of labour law while ensuring it aligns with the realities of the gig economy. It further aims to contribute to policy development, ensuring that gig workers are not excluded from basic employment rights, and to advance the discourse on labour law in the context of the evolving nature of work.

Research Questions

How do the selected theories classify gig workers within labour laws?
To what extent do these legal theories support or fail to support gig workers' rights?
What legal reforms or interpretations could enhance the protection of gig workers' rights?

Methodology

This study applies a qualitative approach with a legal doctrinal analysis focusing on theoretical perspectives and legal interpretations. The authors examine legal sources essentially legislation, case law and legal documents relevant to gig workers. Whilst, the non-legal sources in the form of academic articles, books, and reports on legal and non-legal theories as well as employment rights. All the data were critically analysed focusing on the interpretation of key legal principles in governing the rights of gig workers and the extent the selected theories were founded in the key legal provisions which facilitate the employment rights of the gig workers.

Employment Rights

The legal dictionary defines a right as an interest or priority recognised and protected by law, as well as the freedom to exercise any power granted by law (A Concise Dictionary of Law, 1991). Furthermore, it refers to something where an individual has a legitimate claim under the law or an interest that will be recognised and protected under the law, where respecting it is a responsibility and violating it is an offense under the law (Hepple, 2002). Hepple (2002) lists workers' rights, which include the right to a harmonious work environment, fair wages, job security, the right to join trade unions, and collective bargaining. Estlund (2002), in discussing workers' rights in the context of the USA, divides employment rights into four categories. First, collective labour rights such as the right to be represented in the workplace; second, rights to equality of status, for example, the right not to be subjected to discrimination or harassment based on race or gender; third, individual rights not to be dismissed arbitrarily or unfairly and without cause; and fourth, the right to receive minimum employment terms such as minimum wage, maximum working hours, job security, and paid leave or caregiver leave (Estlund, 2002). In the context of the platform work ecosystem, the most concerning rights are the rights to be fairly compensated, adequately protected by insurance schemes and retirement schemes, rights to unionise and collectively bargain, as well as job security in terms of proper channels for unfair termination.

Employment Law and Challenges in Facing the Rise of Gig Work

The issue that is often raised is that the capacity of employment laws will be limited while the labour market environment is pressured by changes due to various factors such as economic globalisation and digitalisation, making it increasingly complex and confusing. Weiss (2011) explains that the boundary between employees and self-employed workers is becoming increasingly difficult to determine. There are categories of workers labeled as self-employed, but in reality, they are workers due to the presence of similar elements in their work activities, such as economic dependence on a single firm, even though they may be free to organise and manage their work. Along with that, approaches have emerged that view employment or labour law with a broader dimension. Collins et al. (2019) comment that appreciating labour law as a fundamental element in society requires studying a wide range of laws and institutions. This includes regulations governing access to the labour market, any transactions

involving employment, the management of capital and labour, social welfare systems to address unemployment, the provision of training and education to workers, and the relationship between the workplace and political institutions. Creighton (2004), on the other hand, tests the acceptability of international labour laws to replace national labour law standards in order to create healthy competition in the international market. Dismantling the method of tolerating labour standards by a country's government to gain economic advantages. Deakin (2007) proposes a new paradigm of labour law called labour market regulation to replace the existing one. Quoting Mitchell and Arup, Deakin (2007) explains two reasons why the existing labour law paradigm is considered outdated. First, because of the changing practices in the labour market and the structure of society. The second reason is the proliferation of new economic theories that are primarily related to the labour market. The proposed approach is to examine the differences in aspects within firm structures and address new actors and groups in the labour market.

Hyde (2006), on the other hand, emphasised that to address the issue of labour law capacity within the existing scope and meaning, it is necessary to revisit the foundation, which is why we pay attention to employment law. That is, what are the true objectives of employment law. Davidov (2012), who shares a similar opinion, outlines the importance of identifying the objectives of labour law. First, at the policy drafting stage, whether for the purpose of proposing amendments or improvements to existing laws. Second, at the court level or in any interpretative process, and finally at the constitutional level, especially if the law is challenged for being unconstitutional. The approaches presented, such as the role of labour law as a method of regulating the labour market, the acceptance of international labour law, inclusivity, and the purposive approach, are among the core elements introduced in the theories related to labour law discussed in the following section.

The traditional concept of employment or labour law is recognised to have certain limitations due to its focus on two main perspectives, namely collective relations and private relations between employers and employees. This limits its ability to address new issues emerging in the current labour market, particularly the position and rights of gig workers in labour law. Following that, it is also acknowledged that new ideas have been proposed by experts in this legal discipline to ensure that employment or labour laws remain relevant and coherent. However, at the same time, there is no certainty in establishing any superior idea because experts and practitioners in this field, in particular, are still caught up with conflicting visions and objectives, standards and regulations, regulatory styles, global and national economies, and social contexts (Mitchell, 2010; Collins et al., 2018). Weiss (2011), on the other hand, emphasises that new ideas for providing perspectives on labour law should not function to completely reject its traditional meaning. Similarly, it should not be misunderstood as an attempt to undermine other regulatory subsystems in society, nor as a tool to displace all weaker parties within the broader labour market system.

The next section examines specific theories related to labour law. An investigation into the theories arising from moral, political, principles, and values provides a clear picture of the policies, objectives, and scope that underpin and are embedded within the law (Creighton & Stewart, 2010). Specifically, this philosophical study is expected to empower the discovery of a point of balance between the perspectives of reality and theory regarding the position of labour laws in addressing the rights of gig workers.

Theories on Employment Law and Gig Worker Rights

The authors identified three theories that derived from the legal concept, the foundation of justice, and the advocacy of human rights. Traditional theories are regarded as central to the theoretical framework of labour law, which subsequently facilitated the emergence of contemporary theories such as human rights theory and justice theory. The list of the selected theory is presented in Table 1 below.

Table 1
List of the Selected Theories

Theories central in employment law		
Traditional theory	Human rights theory	Justice theory

Traditional Theory

The Fordism economic model depicts workers as economically dependent on others, and the traditional theory of labour law serves as a mechanism to protect them (Sipka & Puskas, 2018). This term is widely used to describe a mass production system pioneered by the Ford Motor Company in the early 20th century or a typical model of post-war economic growth and is related to social and political rules in advanced capitalism (Watson, 2019). Mitchell (2010) explains that the traditional concept of labour law safeguards the workforce by regulating employment contracts, terms and conditions of employment, collective bargaining, dispute resolution, trade unions, and industrial action.

Sinzheimer, a German legal and sociological expert, conceived this idea to support the role of law in regulating employer-employee relations during the establishment of the new German Republic in the World War I era (Dukes, 2008). He explained that labour laws could serve as a protective tool for the workforce through an economic constitution. Sinzheimer proposed the establishment of an economic constitution as a primary condition for achieving social democracy. According to him, the imbalance of power between capitalists and labour is inherent in the capitalist mode of production. An economic constitution is needed to create balance, giving advantages to labour and ending the subordination of labour to capitalists, placing labour on par with capitalists, and transforming the position of workers in the eyes of the law into that of a human being. Not just an individual recognised by the law (legal person) (Dukes, 2011).

According to Sinzheimer, the economic constitution entails state intervention through the establishment of trade unions and workers' councils, along with their legal right to engage with employers in autonomously regulated economic matters. The term 'constitution' implies two aspects: the replacement of 'democratic workplaces' with 'iron-fisted workplaces'. The other aspect is the role of the state government in facilitating and setting boundaries to the regulatory power of employers, employer associations, trade unions, and labour commissions through rights and responsibilities recognised by the constitution and laws (Dukes, 2008).

Kahn-Freund developed the concept of industrial or economic democracy within the British labour legislation system during the 1940s and 1950s, applying the same idea in a different

context (Dukes, 2008). This concept is better known as 'collective laissez-faire' (Davies, 2004). Unlike Sinzheimer, Kahn-Freund, who was Sinzheimer's student, argued that the role of law in democratising the economy was unnecessary. Lord Wedderburn of Charlton (1978) described this non-interventionist legal approach, later known as 'non-intervention' or 'abstention', as a source of strength for trade unions. The statute does not provide any positive rights for workers to join trade unions or to compel employers to negotiate. On the other hand, statutory law only supports the validity of the collective bargaining system through negative protections (Lord Wedderburn of Charlton, 1978). Section 2 (5) of the Trade Union and Labour Relations Act 1974 asserts that the doctrine of restraint of trade does not apply to unions, rendering them invalid. This means that trade unions, in particular, are immune from civil or criminal liability if they cause damage or loss during the process of collective bargaining, such as conducting a strike. In fact, collective agreements under English labour law do not take effect as contracts but rather function more as gentleman's agreements (Lord Wedderburn of Charlton, 1978). The court's function to intervene in the administrative affairs and negotiation powers between trade unions and employers is also limited. The general content of union regulations is decided by the union itself without court intervention, except when there is a complaint about unfair treatment by the union that violates the principles of natural justice against any union member, such as being fined (Lord Wedderburn of Charlton, 1978).

Davies (2004), described Kahn-Freund's belief in the concept of 'collective laissez faire' with the doctrine of 'non-intervention' as more than just a legal description but as a foundation for the law to develop for three reasons. First, legal intervention is unnecessary because collective bargaining is an effective way to provide that protection. The presence of trade unions can overcome the power imbalance between workers and employers. Second, workers' rights are said to be more guaranteed if obtained through collective bargaining compared to statutory provisions because of the belief that if the government did not originally enact laws to establish these rights, it would certainly not be possible for these rights to be abolished or revoked. Third, Kahn-Freund assumes that the flexibility of 'collective laissez faire' compared to statutes facilitates employers and employees in deciding to respond to any changes. Workers' unions and employers or more commonly employers' associations agree through a constitution and code of procedure to periodically review the terms of the collective agreement. In fact, collective agreements usually do not have a specific fixed term that allows amendments to be made according to current changes (Kahn-Freund, 1957).

Dukes (2008) identifies the similarities between the ideas of Sinzheimer and Kahn-Freund, namely that the core purpose of labour law is to facilitate the autonomous regulation of employment relationships and working life through the collective voice of workers and employer associations. It is achieved by eliminating the effects of inequality resulting from the implementation of private law in the economic market environment. The difference lies in the role of law in facilitating the regulation of economic autonomy. Sinzheimer considers this to be a public matter. He recognises the legitimacy of the state's power to intervene by setting the framework within which economic actors can discuss and negotiate. Whereas for Kahn-Freund, collective bargaining is a process that is more private to the parties involved. Not only are they free to decide the content of the negotiations and agreements, but also the methods for discussing and enforcing the outcomes of the negotiations among themselves (Dukes, 2008).

According to Weiss (2011), conventional labour law jurisprudence is a legacy of industrialisation and is based on outdated economic circumstances. The Fordist economic model, which at one point encouraged fierce rivalry among employees and produced a labour market that was extremely unbalanced, made collective action necessary to safeguard the wellbeing of workers. Weiss (2011), however, argues that the societal concerns that fuelled this sense of urgency in the 19th century are not as urgent in the present. He challenges the legitimacy of labour laws when viewed through this conventional paradigm.

Brown and Oxenbridge (2004) contend that the significance of negotiation power endures yet requires adaptation. They assert that collective bargaining needs to evolve from exclusively championing workers' rights to functioning as a diplomatic forum. This platform aims to elevate minimal employment standards for non-unionised labour and govern these worker groupings. Dukes advocates for the continued significance of collective bargaining theory, emphasising that the law must proactively establish, acknowledge, and uphold trade unions and employers' associations organisations. Dukes asserts that these bodies are crucial for devising and executing administrative strategies to successfully govern the economy (Dukes, 2011).

However, the question of whether traditional theory is relevant or not as a basis for the justification of gig workers' rights needs to be viewed from the perspective of the essence of this theory, which is the need for trade unions solely to ensure that the negotiation gap between employers and workers can be bridged, thereby allowing workers to access their rightful labour rights. If a power imbalance continues in the gig labour ecosystem, similar to that seen in traditional employment, the relevance of trade unions in rectifying these inequalities remains significant. While trade unions' scope may be confined to lobbying for workers' rights in the formal labour market, it still cannot negate the fact that trade unions can function well for existing workers in the labour market who need protection.

Human Rights Theory

The theory of human rights is a more contemporary theory compared to traditional theories. Collins (2011) argues that workers' rights can only be recognized as human rights if they adhere to the main characteristics of human rights. Collins (2011) questions the adherence to the four main characteristics of human rights, namely moral consideration, universal application, stringent standards, and the endless necessity in labour rights. Despite this argument, the Universal Declaration of Human Rights 1948 (UDHR) (Articles 23 and 24) includes workers' rights such as the right to work, the freedom to choose employment, a fair working environment, protection against unemployment, no discrimination in receiving wages commensurate with the work done, as well as receiving fair wages and being protected by appropriate social security. In addition, the right to form and join trade unions to protect their interests, as well as the right to rest and leisure, including reasonable working hours and the right to vacation. Although the above features are not consistent with human rights, their presence in such a significant Declaration has a substantial impact.

This argument is consistent with the positivist approach. Positivists list labour rights contained in human rights documents and easily conclude that any listed labour rights are human rights (Mantouvalou, 2012). Examining the background of the presence of labour rights in the UDHR

is very appropriate to conclude a stance on this issue (Collins, 2011). UDHR was adapted from the Treaty of Versailles, which ended World War I. This treaty also gave birth to the International Labour Office. This treaty is not only about ending wars but also addressing the root causes of wars that are found to occur due to aggressive economic competition between countries in the global economy. One of the proposed elements of the solution is to ensure social justice for workers by establishing binding minimum labour standards at the international level. Thus, economic competition does not cause economic hardships that ordinary workers cannot handle, and it also reduces the spread of competition regulations. This stance makes it clear that international labour rights are not synonymous with universal human rights, but rather serve as a tool to tackle social justice and welfare concerns arising from global competition regulations and the effects of market globalisation.

The consideration of labour rights as human rights is also made using Rawls' theory of justice. Collins (2011) tests Rawls' two principles of justice to see the possibility of labour rights being absorbed as human rights. Labour rights such as the right to work have the potential to become part of human rights, such as the right not to be discriminated against, which is not related to work performance, and protection against wrongful termination. Even the civil right not to be oppressed by employers has become part of the theory of liberal justice. However, this individualistic liberal justice theory is not willing to encompass collective labour rights, such as the right to strike, as human rights.

The stance of the instrumental group denies this aspect because there are indeed human rights that need to be fought for collectively, such as the freedom of association and assembly. These two rights are closely related to labour rights, namely the right to join trade unions and collective bargaining (Mantouvalou, 2012). More positively, instrumental groups argue that the European Court of Human Rights (ECtHR) has also, in the past two decades, begun to extend human rights to labour rights through an 'integrated approach' in the interpretation process. The 'integrated approach' is a technique for interpreting specific provisions of the European Convention on Human Rights 1950 (ECHR) related to labour and social rights. In the case of *Sidabras and Dziautas v Lithuania* (App Nos 55480/00 and 59330/00, Judgement of 27 July 2004), the ECtHR explained that the meaning of 'right to private life' (Article 8 ECHR) is a guarantee that individuals are free to live and fulfill their personality. Broad restrictions on employment can stifle connections with the outside world and cause difficulties in obtaining resources for living, which constitutes an obstacle to enjoying private life. Clearly, the 'right to private life' also includes the right to work. Even the right to enjoy a harmonious work environment has been recognized by the ECtHR as part of human rights. In the case of *Siliadin v France* (App No. 73316/01, Judgement of 26 July 2005), the ECtHR ruled that the employer's imposition of 'modern slavery' terms should carry criminal implications and be codified in statutes (Mantouvalou, 2012).

This theory takes place after realising that collective bargaining is unable to provide all the protections needed by workers (Davies, 2004). In the 1980s, within the context of the development of labour laws in the UK, employment rights became controversial due to the conflicting stance of the government. The government recognised the workers' right to unionise but denied the workers' right to firm autonomy. Clearly, this is to safeguard the country's economic interests so that it can continue to compete. If we examine the background of human rights principles in labour laws, it is found to originate from the

influence of international institutions and instruments at the regional level. The institution that most significantly influences the framework of labour laws in most countries around the world is undoubtedly the ILO. The labour standards introduced by the ILO have a strong influence on the elements of labour human rights.

However, other international and regional institutions such as Europe that promote human rights also encompass employmment rights in their instruments. The two treaties that form the basis of modern international human rights law are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both are treaties that bind all the countries that sign them. Two major categories of human rights are identified from both treaties, namely civil and political rights, and the other category is economic and social rights (Davies, 2004). The freedom of association (Article 23 (4) UDHR; Article 22 of ICCPR, Article 11 ECHR) and the right to non-discrimination (Article26 ICCPR; Article 7 UDHR) are relevant labour rights from the category of civil and political rights. Meanwhile, economic and social rights related to labour include the right to work (Article 23 (1) UDHR; Article 6 ICESCR; Article 1 European Social Charter 1961 (ESC 1961), the right to fair wages (Article 23 (2) and (3) UDHR; Article 7 ICESCR: Article 4 ESC 1961), a safe and healthy work environment (Article 7 ICESCR; Article 3 UDHR), the right to maintain dignity at the workplace (not exposed to sexual harassment or any form of bullying) (Article 26 Revised European Social Charter 1996 (ESC 1996)), the right to non-discrimination (in terms of job opportunities, duties, and wages) (Article 20 ESC 1996), the right to receive information and be given the opportunity to negotiate (Articles 21 and 29 ESC 1996), and the right not to be unfairly dismissed (Article 4 (4) ESC 1961).

Despite the increasing recognition of labourers' rights through international instruments, a number of obstacles continue to exist. These include discussions regarding the prioritisation of rights, their scope, interpretation, and, most importantly, accountability. In particular, there is an ongoing debate regarding whether private employers should be held accountable for ensuring that these rights are upheld, rather than exclusively governments. This reflects an instrumental approach to framing labour rights as human rights. In this context, courts, who are the primary interpreters of the law, have become more aware of the responsibility of private entities. Notably, the ECtHR has consistently ruled in recent years that private institutions share the responsibility of upholding human rights within employment relationships, recognising that private power can be as detrimental as public authority (*Wilson and Palmer v UK* App Nos 30668/96, 30671/96 dan 30678/96, Judgement of 2 July 2002; *Siliadin v France* App No. 73316/01, Judgement of 26 July 2005).

The consequences of acknowledging labour rights or employment rights as human rights are significant. Labour rights are not subject to economic considerations or trade-offs for economic efficacy when they are regarded as human rights. Additionally, their scope must encompass all categories of employees, including non-citizens and gig workers, without any form of discrimination. Labour rights, like other human rights, should not be disregarded or undermined as a result of unequal bargaining power. Employment clauses that may jeopardise these rights must be assessed with meticulousness and rigour (Mantouvalou,2012).

Justice Theory

The theory of justice is regarded as a normative foundation for labour law (Collins et. al, 2018). Regardless of the empirical changes and evolving concepts it encounters, the normative dimension of labour law confirms its relevance as a distinct and robust discipline of law, according to Langille (Langille, 2011). The moral perspective of labour law moulds the scope and content of the discipline, with the normative dimension emphasising the discipline's fundamental objectives. This viewpoint facilitates the identification and definition of the scope of labour law (Henderickx, 2012). Langille (2011) emphasises the fact that the theory of justice is fundamentally linked to the morality of labour law. In the same vein, Weiss (2011) affirms the significance of the normative aspect of labour law and aligns it with the theory of justice as its guiding principle.

From a normative standpoint, labour law is distinct from other private law disciplines, including tort law and contract law, as stated by Collins et al. (2018). While tort law is primarily concerned with safeguarding existing legal rights, contract law is morally based on the obligation to fulfil promises, rather than pursuing broader policy objectives, such as reducing community accidents. On the contrary, labour law is frequently linked to a more extensive set of principles, as it incorporates components of tort, contract, and property law (Collins et al., 2018; Henderickx, 2012). As a result, the normative foundation of labour law is not limited to conventional legal principles; it also includes moral and political philosophy.

Langille (2011) posits that the traditional theory of labour law, which regards labour law as a means of reducing the disparity of bargaining power between capitalists and labour, is intertwined with the theory of justice. In other words, it is evident that the theory of justice in question pertains to the necessity of equitable treatment between employers and employees or capitalists and workers. However, this theory of justice is extremely narrow (Langille, 2011). It is narrow because labour laws appear to have reached a halt when there are no longer elements of negotiation power imbalance. There are no further aspects to address. In other terms, it is no longer relevant (Langille, 2011).

A more appropriate theory of justice to address changes in concepts and empirical realities must encompass a broader meaning of justice that goes beyond mere morality (Langille, 2011; Collins et al., 2018). In fact, it needs to extend to political philosophy and sociology (Collins et al., 2018). Thus, most labour law experts consider the theory of social justice as a suitable option, particularly for maintaining the relevance of employment law (Langille, 2011; Collins et al., 2018). Social justice refers to justice in the collective context for all individuals as a society (Henderickx, 2012). According to Henderickx (2012) social justice as a pillar of labour law resembles a mechanism of distribution and distributive justice. The distribution in question is not only of wealth but also of power (Henderickx, 2012). To ensure that distribution occurs fairly, among the rules that must be considered in determining distribution, irrelevant criteria such as race, gender, or religious belief must be set aside. When people in the same group are equally entitled, they must enjoy the same benefits (Davidov, 2018). Third, when there are two groups that are jointly entitled, the people in these groups must enjoy the same benefits. On this basis, the type of employment contract is considered an irrelevant consideration in ensuring workers' rights such as the right to fair wages. Moreover, Davidov (2018) explains that fair distribution ensures individuals are free

to achieve meaningful functions. When there is no functional freedom, it can trigger risks and threats. For example, gig workers who are exposed to the risk of not securing minimum wages represent a form of threat and require a societal response. Therefore, the theory of social justice is seen to have dimensions that align with other theories that support the guarantee of rights for gig workers similar to those in other conventional job categories.

Discussion

The selected theories consistently point towards gig work and should also be protected by law so that the workers involved can enjoy their rightful worker rights. Two main themes applied in theories regarding the existence of labour laws have been identified, namely that labour laws or employment laws are protective and provide justice. Traditional theoy, for example, emphasise that the imbalance of bargaining power between employers and employees leads to the necessity of labour laws to ensure that workers' rights are recognised. However, the method highlighted in addressing this imbalance is through the power of collective bargaining. The theory of justice also upholds the same principle in supporting the need for labour laws, particularly those based on the concept of distributive justice. It proves that justice is the core of balance in employment relations. Meanwhile, the theory of workers' rights promotes the recognition of workers' rights as part of human rights, which is certainly based on the principle of protection.

Therefore, if return to the question of how theoretical paradigms can influence the existing employment law framework, particularly in Malaysia, the authors argue that this theoretical aspect is important to be incorporated into the legal reform agenda. The authors further contend that the core elements in implementing labour law reform measures must be extracted from the theoretical framework regarding the existence of labour law itself. Based on the observation of the theories discussed above, two fundamental elements underpin the philosophy of employment law, namely emerging as a method of protection and providing safeguards. This observation is also in line with the ILO's approach as a leading body in setting international labour standards. The agenda regarding employment has shifted from a goal-oriented approach to an outcome-oriented one. The goal is understood to refer to the function of labour law as a mechanism of protection for the group with weaker bargaining power, namely the workers. On the other hand, the outcome approach is more focused on the desired end result, which is to ensure a win-win situation between both parties regardless of the balance of bargaining power they possess. In simple terms, the law being drafted must be fair and meet the needs and interests of both parties in the relationship.

Conclusion

The established theories presented that are associated with employment law verified the extension of employment rights to gig workers through their key elements founded in them. However, another hurdle in term of theoretical perspective to break is the narrower approach of the theory of employment relationship. Hence, having passing the first tier of barrier, the employment legal framework has to untangle this concept of employment relationship so that it can be practically positioned in the effort of framing the laws for gig workers especially. The intended reform can either be entirely new law for gig workers, extension of existing employment rights to gig workers or through the judicial interpretation would need to end this barrier.

The findings of this study are limited to the general concepts of employment law. Further analysis to discover the extent the theories would favourable gig workers has to be done by examining each of the strands in the concept of employment relationship. Assessing how the key elements in the employment relationship could be positioned under the complex eco-system and operation of platform model economy will be significant to justify any further actions to be taken by state authorities in regulating the gig workers subsequently improving the rights of gig workers.

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