



Insights into ‘Strategic Litigation’ for Advancing the Rights of Gig Workers in Malaysia

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Abstract. In industrial relations, ‘strategic litigation’ is used by trade unions and activists to advance workers’ rights, both to pressure stakeholders and to raise public awareness. Malaysia’s legal context, however, has meant relatively limited attention to ‘strategic litigation’ for gig workers. By contrast, the United Kingdom (the UK) has seen more frequent use by independent unions. Unions such as the Independent Workers Union of Great Britain and the GMB have been recognised for supporting and funding the landmark case of *Uber BV v Aslam* [2021] UKSC 5. Motivated by the impact of these movements, this study aims to examine the potential and limitations of ‘strategic litigation’ in addressing gig workers’ protection issues in Malaysia, drawing on the UK experiences and to explore how ‘strategic litigation’ can be effectively employed, alongside other solutions, to tackle challenges associated with gig work. Methodologically, this socio-legal study uses qualitative interviews and document review, with critical content analysis of interview data and legal and non-legal sources. Findings indicate that ‘strategic litigation’ offers a targeted yet conditional pathway to strengthen protections for Malaysian gig workers. The UK experience shows that well-chosen test cases can reframe status determinations and procedural safeguards. Nevertheless, local impact is moderated by independent-contractor classification, low association density, resource constraints, and uneven enforcement. Accordingly, litigation should be embedded within a broader strategy aligned with association-led mobilisation, regulatory engagement, and implementation of the Gig Workers’ Bill, emphasising due process in account termination, transparency in pay-setting, and access to SOCSO/EPF. When systematically organised and evidence-based, such cases can translate courtroom outcomes into durable institutional practice. The Bill’s tribunal access and appeal mechanisms can operationalise these aims, while iterative litigation helps counter adaptive platform practices. Comparative lessons also caution that court judgments alone rarely secure change unless paired with organising and monitoring to ensure compliance.

Keywords: Employment law, Collective mobilisation, Gig workers’ rights, Strategic litigation.

1 Introduction

Malaysia’s platform-mediated gig economy, as part of the broader gig work, expanded markedly in the post-COVID-19 period, driven by digitalisation, workers’ preference for flexibility, and firms’ pursuit of lower operating costs and agile market access [1]. Yet the very features that facilitate participation, especially the widespread classification of gig workers as independent contractors, simultaneously constrain access to core labour protections, including minimum wage guarantees, social security, and structured career pathways [2], [3], [4]. Reflecting these tensions, collective mobilisation by rider and driver associations has intensified around wage floors, grievance mechanisms, and broader social protection i.e., Social Security Organisation (SOCSO), Employees’ Provident Fund (EPF), drawing sustained policy attention and precipitating recent legislative reform efforts to address structural vulnerabilities in platform work [5], [6], [7].

Empirically, Malaysia’s gig ecosystem has scaled rapidly. As of August 2020, approximately 140 platforms offered gig and freelance opportunities, engaging an estimated 540,000 active workers [1]. Major platforms continue to grow, with roughly 190,000 individuals specifically involved in delivery services nationwide [1]. Beyond digitalisation as an enabling condition, the sector’s appeal is amplified by limited formal employment opportunities, autonomy, easier market access, and lower operating costs [1], [8]. However, consistent with international evidence, many studies indicate persistent barriers to key employment rights and protections within contractor arrangements, including minimum wage coverage, career progression, and social security [2], [3], [9].

Policy responses have begun to crystallise. Malaysia’s Dewan Negara passed the Gig Workers’ Bill 2025 on 5 September 2025, following Dewan Rakyat approval on 28 August 2025, signalling a legislative shift toward safeguarding welfare and well-being in the sector [6], [7]. Over the past five years, associations representing gig workers have actively pursued enhanced rights, opposing low pay rates set by platforms, calling for regulatory oversight of fair compensation, and advocating for stronger social protection and redress mechanisms. Organisations such as the Malaysian P-Hailing Delivery Riders Association (Penghantar), the Malaysian Grab Drivers Association (GDMA), the Malaysian E-Hailing Drivers Association (MeHDA), and activist coalitions such as the Malaysian E-Hailing Alliance Secretariat (GEM) have urged the establishment of a dedicated commission to address gig-worker needs and to develop targeted interventions, including bespoke legislation. Their sustained mobilisation is widely viewed as instrumental to recent policy shifts [5].

Alongside collective action, litigation has surfaced as a second pathway for change. To date, Malaysian courts have adopted a cautious approach. In *Loh Guet Ching v. Minister of Human Resources & Anor* [2022] 1 LNS 2388, an e-hailing driver’s unfair-dismissal claim was rejected on the basis that the claimant was not an

‘employee,’ a view upheld by the High Court and the Court of Appeal. By contrast, the United Kingdom’s landmark *Uber BV v. Aslam* [2021 UKSC 5 decision reframed platform drivers as ‘workers,’ unlocking statutory rights and prompting industry-wide adjustments. The differing paths highlight the significance of ‘strategic litigation’, which involves the intentional choice and arrangement of test cases to stimulate legal and policy transformation parallel with legislative reform and collective action [10].

Hence, this article examines the conceptual foundations of ‘strategic litigation’, synthesises comparative lessons from the United Kingdom (the UK), and maps practical pathways for case design and sequencing within Malaysia’s evolving statutory and jurisprudential landscape. In doing so, it situates ‘strategic litigation’ concurrently with ongoing collective organising and emerging statutory frameworks to assess its potential contribution to durable rights protection for Malaysia’s gig workforce.

Accordingly, the study pursues two objectives: (a) to examine the potential and limitations of ‘strategic litigation’ to address gig workers’ protection issues in Malaysia, drawing on the UK experience; and (b) to identify how ‘strategic litigation’ can be effectively utilised alone or in combination with other solutions to address persistent regulatory and rights gaps in gig work.

2 Problem Statement

The mobilisation of unions, particularly through ‘strategic litigation’, has been very prevalent within conventional labour unions in securing enhanced working conditions. There were occasions when the strategies were successfully implemented. The gig economy, characterised by unique, individual participants, has consistently been perceived as a barrier to adopting uniform strategies like those of traditional actors. The primary obstacle is the legal status as independent contractors rather than employees. Consequently, denied the right to unionise, as well as the rights to collective bargaining and representation by unions in court proceedings.

Moreover, the intrinsic attributes of gig work may significantly hinder their ability to unionise and mobilise, including competitiveness, isolation, and diverse interests. The legal system predominantly negated their employment rights, except for those that operate unilaterally, such as contributions to retirement savings and social insurance protection. Pursuing parliamentary initiatives may be regarded as a long-term strategic initiative to enhance employment rights for gig workers, necessitating comprehensive support from political stakeholders. While advocating for collective activities through union mobilisation, which is posited as a superior short-term solution for gig workers to rectify their lack of employment rights. In terms of global experiences, it has distinct potential. Nevertheless, investigating inherent constraints and potential within the local context may be regarded as a valuable exploration for bridging the gap between knowledge and practical

implications by incorporating views from primary stakeholders and secondary sources on the issues in question.

3 Methodology

This research is a socio-legal study that applies a qualitative approach. Toy-Cronin clarified that socio-legal research encompasses disciplines and subjects concerned with law as a social institution, with the social effects of law, legal process, institutions, and services, and with the influence of social, political, and economic factors on law and legal institutions [11]. The socio-legal study is described as a combination of traditional legal research and the sociology of law. Traditional legal research normally employs the doctrinal method [12]. This method involves research into the law and legal concepts primarily through the study of legal rules, by analysing court judgments and statutes with little or no reference to the world outside the law. The sociology of law examines causal, structural, and functional connections among legislation, legal practice, legal research, and various social factors. Where the existence of law is correlated with social existence, empirical data is usually supplemented to traditional legal research.

Two qualitative methods were primarily employed: interviews and document review. These methods are substantiated by critical and analytical content analysis of interview data and various legal and non-legal resources. The legal authorities, principally the legal provisions and reported cases relating to the 'strategic litigation' and gig workers in Malaysia and the UK were critically analysed. Furthermore, the non-legal resources consulted included, but were not limited to, scholarly research journals, reports, and relevant news articles. The process of developing the research questions is grounded in the document reviews. Based on the research questions, the authors identified the respondents and designed the research instruments as a semi-structured questionnaire. The data collected from the interviews was primarily intended to capture insights from actual players in the gig workers ecosystem on the issues studied, while treating document reviews as the primary sources of analysis. As the primary aim in qualitative studies is to explore diversity, the significance of sample size and sampling strategy is somewhat diminished, as careful selection can effectively encapsulate the breadth of diversity even through a single individual's insights [13]. For this study's scope, the selected respondents were two gig workers who mainly are p-hailing riders and e-hailing drivers, respectively, and two representatives of two different gig workers' associations. Finally, one representative from an influential p-hailing and e-hailing digital platform. The data collected from the respondents were transcribed and coded, then segmented by the issues covered. The process of triangulation was conducted while analysing the documents; i.e., the findings were verified against empirical data collected directly from relevant parties in the gig work ecosystem. This process added the credibility and reliability of the study and made it unique on its own.

4 Discussions and Findings

4.1 Union Mobilisation and Strategic Litigation

Fisher-Lescano describes strategic litigation as the legal measure adopted by lawyers and public-interest non-governmental organisations (NGOs) who have sought to bring socio-structural problems before the courts [14]. By doing so, they (a) initiate legally substantiated lawsuits that (b) pursue goals beyond a legal process's "success" and (c) address considerable political issues. Burkhard Hess adds that litigation might only be a part of a much broader campaign, and the outcome of the litigation might not even be the most important element [10]. In fact, litigation is supposed to raise public awareness to promote political and societal change. The plaintiff(s) attempt to persuade the court to develop the case-law further or to interpret the legal situation in a new direction. Hence, it facilitates transforming the individual case into an exemplary case in which many other persons are similarly concerned. The claimant's story serves as the starting point for media reporting, giving the problem a face and may even bring emotions into the courtroom and the media. Hence, the promotion of the legal proceedings by a multitude of communication media plays an important role. Additionally, the lawsuits are not necessarily initiated by individuals alone. Association NGOs operating within civil society support the litigation [10].

In the employment law context, trade unions commonly initiated and represented litigation proceedings consistent with their common function. Trade unions, in general, perceived their primary role as improving their members' terms and conditions through collective bargaining [15]. Furthermore, trade unions may assist workers in enforcing their legal rights. Kahn claimed that statutory provisions may not be effective tools for workers to pursue their rights, due to the natural imbalance between workers' and employers' power and the lack of law enforcement [15]. Hence, representation by a trade union which knows how to recognise the potential of test cases is beneficial in putting pressure on employers to comply with legal obligations [15]. Furthermore, Adams et al. describe the trade unions' regulatory function as becoming increasingly political and industrial, with regulatory ambitions secured through political campaigning and lobbying for legislation rather than through collective bargaining [15].

The success of 'strategic litigation' often depends on several enabling factors, including adequate financial support [16], access to legal or policy experts [17] and a stable workers' union or collective body [18], [19]. These elements ensure the litigation is well-resourced, legally sound, and representative of the wider worker community. Given the strong link between collective mobilisation and strategic litigation, the discussion will adopt an integrated approach. It will assess how combining the strategies of legal action and grassroots organising can more effectively promote and protect gig workers' rights in Malaysia.

4.2 Strategic Litigation and Gig Workers in the UK (Law and Practice)

The English legal framework governing employment has identified three classes of workers: primarily employees, workers, and independent contractors. An employee enjoys complete legal protection, whereas workers enjoy certain employment rights. An independent contractor is completely excluded from any employment legal framework. Trade unions, including independent trade unions, for instance, the Independent Workers Union of Great Britain (IWGB), United Voices of the World (UVW), the Cleaners and Allied Independent Workers Union (CAIWU) and GMB, have played an important role in the battle of gig workers in advancing their rights. The common approach sought by trade unions is to classify gig workers as workers who are, in fact, misclassified as independent contractors. A few landmark legal suits were brought to the courts seeking remedies for underpayment, benefits not received, and readmission to properly classified work. The cases like *Uber BV v Aslam*, *Marshall & Ors v The Doctor's Laboratory Ltd* (Case No: 22303491/20) (challenging the lack of legal entitlements based on misclassification of e-hailing drivers and medical couriers respectively as independent contractors) demonstrated the influence of litigation in the UK regulatory setting towards their gig economy workers. In the landmark case of *Uber BV v Aslam*, the claimants, Yaseer Aslam and James Farrer who were Uber drivers brought a legal action against Uber (was funded by and supported by both GMB and IWGB) argued that they should be treated as 'workers' within the meaning of Section 230 (3) (b) of the Employment Rights Act 1996, Regulation 36 (1) of the Working Time Regulations 1998 and Section 54 (3) of the National Minimum Wage Act 1998. It gives the right to receive minimum wage for all hours logged in the digital application. Initially, the Employment Tribunal decided that the reality of the relationship between the drivers and Uber, rather than the written contractual provisions, determined that the drivers were workers. On the issue of working time, the Employment Tribunal endorsed a fact-specific approach to determining entitlement to pay, based on when drivers might hold themselves out as able and willing to accept driving assignments. This decision was upheld on appeal by the Employment Appeals Tribunal. In a further appeal to the Court of Appeal, there was a split decision on whether the court should give primacy to the written contract in determining the terms of the actual contract or to the practical realities of the working relationship. Finally, when Uber appealed the matter to the Supreme Court, the original decision of the Employment Tribunal was substantially upheld: the reality of the relationship took precedence over contractual documents, and the level of control exercised by Uber over the drivers pointed to their status as workers. A month after the Supreme Court's rulings, Uber's CEO announced that Uber drivers in the UK would be treated as workers and urged their competitors engaged in their own litigation to reconsider their approach [20].

Furthermore, Prassl reported that the same rulings had influenced not merely the individual dimension but had covered the collective rights [20]. Following the same rulings, the GMB trade union (one of the largest trade unions in Great Britain and one of the two giant general unions) announced that it would be formally recognised by Uber, allowing for the collective representation of up to 70,000 drivers in the UK. The agreement was set to cover a wide range of topics, including earnings, pension arrangements and discretionary benefits; health and safety measures; account deactivation; and worker representation and organisation, including ‘access rights for GMB representatives at driver hubs to enable them to meet and support drivers.

Additionally, these unions have also gained victories by attracting media attention to their advocates for instance regarding the issue of parity treatment for outsourced cleaners at the University of London, challenging the exclusion of independent contractors from the statutory recognition process for collective bargaining, challenging an attempt to end lockdown prematurely [21] and even successfully sought judicial review of the government’s failure to include workers within the ambit of health and safety protections (*IWGB v Secretary of State for Work and Pensions & Ors* [2020] EWHC 2039 (QB) (Admin)).

Overall, beyond legal arguments, the UK gig-worker mobilisation and ‘strategic litigation’ have been strengthened by reliable financial resources to fund lengthy cases and sustained campaigns, backing from established unions that bring legal capacity and bargaining leverage, the activism of militant grassroots unions (i.e., IWGB) that link court action to organising, strikes, investor pressure, and public campaigning, and a broad suite of mobilisation strategies that blends litigation with media framing, coalition-building, and policy advocacy rather than relying on conventional union channels alone [22], [19], [23].

4.3 Strategic Litigation and Gig Workers in Malaysia: Law and Practice

Malaysia adopts the English legal framework for governing the employer-employee relationship, as set out in statutory provisions and judicial precedents. Two categories of workers are recognised in the legal framework: employees and independent contractors. The protection only covered the employed people who are ‘employees’. The primary statutes regulating employment relationships, i.e. Employment Act 1955 (EA 1955), the equivalent statute for Sabah and Sarawak Labour Ordinances, Industrial Relations Act 1967 (IRA 1967) and Trade Unions Act 1959 (TUA 1959), mostly define an employee as a person who is employed under a contract of employment by an employer. Hence, the employee is subjected to tests applied by English courts to determine whether a worker is an employee or an independent contractor, given the unclear definition of the same across the relevant statutes. However, with the latest legislative development (the passing of the Gig Workers Bill 2025 (the Bill), gig workers’ position in Malaysia is confirmed as independent contractors and will be denied the right to establish a trade union, but their rights will

be better protected with the coming into force of the Bill itself. The scope and key contents of the Bill are covered below.

The concept of ‘strategic litigation’ is not popular in Malaysia, particularly for advancing the rights of independent contractors, as they are generally not recognised to unionise. Hence, an individual gig worker lacked the financial resources to pursue a legal suit. Litigation has been generally treated as a specific approach to resolve a particular concern of the intended claimant, i.e. employees or a group of employees, instead of viewing it as a more general measure to influence the whole labour market. In the case of *Loh Guet Ching v Menteri Sumber Manusia & Anor* (WA-25-296 10/2020) (Loh Guet Ching), the claimant made a report against MyTeksi Sdn Bhd (which operates under the name Grab) to the Department of Industrial Relations for holding his account on the Grab digital application due to the reviews and ratings of passengers who were not satisfactory to him. The claimant filed a representation of unfair dismissal under Section 20 of the IRA 1967. The Minister of Human Resources refused to refer this matter to the Industrial Court. Accordingly, the claimant filed a judicial review application seeking to have the High Court set aside the Minister's decision. However, the claimant's application was rejected by the High Court. Judge Ahmad Kamal Md Shahid, through an oral judgment, decided that the claimant was a non-employee of Grab. Grab, through its lawyers, argued that Grab drivers are not employees under the IRA 1967 because the contract between drivers and Grab is a commercial rather than an employment contract. This is the first case brought to the courts to determine the status of e-hailing drivers, who constitute the majority of gig workers in Malaysia. Since the Malaysian legal framework does not recognise gig workers' right to form trade unions, many pursue their common rights and welfare through associations. Empirical data analysed in the next section shows that associations had significant awareness of strategising litigation, but the gig work associations admitted they faced issues in attracting members and securing financial resources to pursue the same. Hence, the fundamental points of apprehension regarding alternative avenues for safeguarding gig workers, i.e., through ‘strategic litigation’, especially regarding fair wages and other social protection rights, constitute the core issues this research aims to address.

4.4 Gig Workers Bill 2025, Key Contents and Collective Rights of Gig Workers

As have been presented above, Gig Workers Bill 2025 (the Bill) has been passed by the Parliament as the country's first statute for platform and other gig workers. The government frames the law as a rights-protective regime-, paired with dispute resolution and social-dialogue mechanisms, including a new Gig Workers Tribunal and a Consultation Council. The scope of the law is framed among other things in the stated definition of ‘gig worker’ as an individual who earns income by performing services under a ‘service agreement’ with a ‘contracting entity,’ whether mediated by

a platform provider or listed in a First Schedule for non-platform services (i.e., transport of passengers, food delivery, creative and care work) (Clause 2).

The Bill codifies key rights that attach to the service agreement i.e. to be informed of terms, services, and income details, to timely payment (within seven days if unspecified by contract), to consultation on changes, protection against termination without reasonable cause, to access dispute resolution (Clause 8), to non-discrimination (Clause 9), and to associate, participate in, or form gig worker associations (Clause 10). Hence, it is clear that the right of gig workers to form and participate in an association of gig workers is well defined and recognised by the Bill, which will substantially benefit gig workers in strategising litigation collectively, even though they are not entitled to form a trade union.

On dispute resolution, Part IV of the Bill sequences (i) an internal grievance mechanism (for non-individual contracting entities), (ii) conciliation administered by the Department of Industrial Relations, and (iii) adjudication by the Gig Workers Tribunal if settlement fails (Clause 33). The Tribunal sits in public, takes evidence, may proceed in a party's absence, and issues final awards, subject to appeal to the High Court (Clauses 38-40).

Part VI of the Bill also creates a Consultation Council with tripartite composition to advise the Government, including on minimum income rates and standards for gig work; ministerial orders may be made and gazetted to give effect to accepted recommendations.

In social security, platform providers must register gig workers under the Self-Employment Social Security Scheme, deduct and remit contributions, and integrate their systems with Social Security Organisation (SOCSO) (Clause 83); failures attract offences and penalties (Clauses 85 - 86). Part XI of the Bill also imports occupational safety and health duties, risk assessment, training, emergency procedures, and safe systems of work for contracting entities (save for individuals in certain contexts), aligning with an enforcement role for the Department of Occupational Safety and Health.

4.5 Empirical Research in Assessing the Potential and Challenges of Pursuing Strategic Litigation

To comprehend the promise and challenges of strategic litigation, the authors, in parallel with document analysis, present interview findings conducted to triangulate and validate the secondary data. The secondary data focus on problems related to the legal framework, while the practical and operational aspects are elucidated through respondents' accounts of the opportunities and limitations they encounter as gig workers. The discourse commences with a brief description of the respondents, as illustrated in Table 1, followed by an examination of the empirical data through a thematic approach. It initially delineates the primary challenges encountered by

contract workers before transitioning to the specific obstacles associated with strategic litigation and collective mobilisation.

Table 1. Respondents' profile.

Coding	Description	Gender	Age	Gig work experience
R1	Gig workers association representative	Male	30s	10 years in the digital platform sector
R2	Gig workers association representative	Male	40s	15 years in the digital platform sector
R3	P-hailing rider	Male	40s	15 years in the digital platform sector
R4	E-hailing driver	Male	30s	10 years in the digital platform sector
R5	Digital platform representative	Male	30s	10 years in the digital platform sector

Issues Surrounding Gig Work. Common issues faced by gig workers include low pay that is not commensurate with the work performed. Several factors contribute to this. First, in the p-hailing sector, there are frequent revisions to task payment methods and rates, no consultation with gig-worker groups, and inaccurate

map-reading algorithms (R2 and R3). Meanwhile, in the e-hailing sector, the absence of floor-fare controls, compounded by intense competition, has led to declining delivery remuneration (R1 and R4). Other major issues include account termination or suspension without giving gig workers sufficient opportunity to defend themselves.

Despite these issues, gig workers do use existing channels to lodge complaints or draw attention to problems, such as submitting complaints directly to digital platforms; however, these are often ineffective, for example, due to a lack of follow-up action or the absence of long-term remedies (R1 and R2).

Roles of Collective Actions and Challenges

Legal Status Limits Unionisation; Associations Fill a Union-Like Role. Participants and documents converge on a core structural constraint. Most gig workers are classified as independent contractors, not ‘workmen,’ under Malaysian employment law. Section 2 (1) of the Trade Unions Act 1959 (TUA 1959) defines a trade union and a workman in terms that presuppose a contract of employment, thereby excluding typical platform arrangements. This status, coupled with Section 9 of the IRA 1967, which states about employer recognition of a union, restricts gig workers’ access to registration and recognition as trade unions [9]. In principle, a trade union regulates relations between workers and employers to promote harmonious industrial relations, improve working conditions, enhance economic and social status, increase productivity, and represent parties in trade disputes [24].

In practice, gig worker associations have emerged to perform analogous functions within legal limits. They engage platforms and government to seek better pay and protections and to channel worker concerns into policy processes. As R1 explained, associations frequently act as negotiators with digital platforms and as interlocutors in discussions with the government to improve policies safeguarding gig workers’ welfare.

Capacity Constraints in Association Building. Evidence indicates persistent difficulties in expanding and sustaining membership. Reported barriers include reluctance to pay membership fees (even when minimised), short tenure in gig work that reduces perceived returns to joining, and attitudinal/awareness gaps about collective action. Consistently, R1 and R2 noted that many workers approach associations only when they need immediate assistance (i.e., service access issues), limiting the formation of stable collective capacity.

Platform Perceptions and Alternative Engagement Channels. From the platform side, associations are sometimes viewed as politically influenced or pursuing personal agendas, which undermines trust and willingness to collaborate. Platforms described alternative liaison mechanisms, such as appointing experienced gig workers as field representatives to provide feedback loops. As R5 noted:

“We also appoint a few representatives among gig workers to raise concerns and supply the latest developments. We, in fact, prefer this approach over having

representatives from gig worker associations because some come with personal interests or political motives rather than solving the actual issues.”

These perceptions shape the institutional receptivity that any collective strategy, including litigation support structures, must navigate.

Readiness and Preconditions for Strategic Litigation. Associations generally see potential in ‘strategic litigation’ but emphasise preconditions, for instance, basic enforcement capacity and foundational protections must be in place to make litigation outcomes meaningful. R2 stressed:

“Every legal provision needs to be supported by enforcement to ensure effective implementation, so that benefits return to individuals who comply with legal requirements.”

By contrast, R1 expressed caution about the near-term viability of ‘strategic litigation’, citing low levels of collective-action awareness among Malaysian gig workers, which may weaken mobilisation around test cases.

Taken together, the findings depict a legally constrained organising environment rooted in contractor status and recognition rules in which associations play union-adjacent roles but face membership and legitimacy challenges. Platforms’ preference for curated representative channels further complicates collective leverage. Under these conditions, ‘strategic litigation’ is viewed as promising but contingent. Its effectiveness depends on (i) baseline enforcement and operational remedies, (ii) organising capacity to support case selection and follow-through, and (iii) institutional receptivity among regulators, courts, and platforms. These preconditions align with the article’s broader argument that strategic litigation should be sequenced alongside collective organising and policy engagement to advance gig-worker rights in Malaysia.

4.6 Comparative Lens: Strategic Litigation in the UK and Lessons for Malaysia

The UK experience, especially the Independent Workers’ Union of Great Britain (IWGB), illustrates ‘strategic litigation’ as one instrument in a broader organising repertoire. IWGB’s approach coupled legal action (worker-status claims, health-and-safety judicial review, recognition efforts) with collective mobilisation, campaigning, and media pressure, recognising that judgments alone rarely secure durable workplace change. The union emphasises that legal wins become worker wins only when embedded in sustained organising.

A pivotal IWGB case forced the UK Government to extend European Occupational Safety and Health directives to limb (b) ‘workers,’ clarifying that the legal notion of ‘worker’ is broader than ‘employee,’ and that platforms bear employer-type occupational safety and health duties where they control work systems

[22]. This shifted the litigation terrain from contested status reclassification to universal preventive duties, a strategy with wider and more immediate protective reach.

Malaysia's Bill mirrors this pivot by legislating substantive rights and occupational and health obligations without first requiring a judicial contest over 'employee' status. In that sense, Malaysia leapfrogs some of the UK's path-dependency, providing clear statutory hooks for enforcement in a dedicated tribunal and through regulators. At the same time, the UK record cautions that platforms may adapt contracts and systems to blunt the impact of judgments. Thus, litigation must be iterative and paired with organising. Malaysia's explicit right to associate and the provision allowing gig worker associations to represent members in the Tribunal (Clause 36 (b) of the Bill) could operationalise that pairing if those associations are resourced and recognised in practice.

There are also structural differences. UK unions often litigated to obtain worker status as a gateway to statutory protections and collective rights. By contrast, Malaysia creates a distinct statutory category with built-in rights, a Consultation Council to shape minimum income and standards, and appeals to the High Court to build doctrine. The trade-off is that, where the UK cases sometimes unlocked access to the full industrial-relations framework, Malaysia's protections are self-contained within the new law unless harmonised by ministerial orders or future amendments.

4.7 Recommendations of the Adoption of 'Strategic Litigation' by Gig Workers in Malaysia

Taking into account the analysis of strategies and practices of 'strategic litigation' by gig workers and trade unions in the UK, this section considers 'strategic litigation' approaches that may be suitable for application in the Malaysian context.

Although the authors have identified several key challenges for gig workers in Malaysia namely, the absence of recognition to join trade unions and the reliance on worker associations for collective strategies, financial constraints and low association membership, and the tendency of digital platforms to appoint their own designated representatives from among gig workers to monitor and understand workers' needs, 'strategic litigation' is still regarded as relevant, particularly for sustaining improvements to gig workers' welfare. Indeed, with the introduction of the Gig Workers law, 'strategic litigation' can serve as a complementary tool to support its enforcement.

The arguments for such a claim are, first, that the Bill creates justiciable rights and regulatory obligations that open clear avenues for litigation. Statutory rights and prohibitions, for example, payment timelines, limits on income deductions, and non-discrimination, are enforceable through the Tribunal, with non-compliance punishable and awards enforceable. This gives rights-holders (gig workers' claimants)

a low-cost front door for adjudication, potentially reducing reliance on creative common-law framing or status reclassification litigation.

Second, the Bill addresses algorithmic management by granting gig workers' rights to information about automated monitoring and decision-making systems and to manual reviews, creating an evidentiary hook for procedural fairness challenges when platforms deactivate access or allocate work in opaque ways. Where a deactivation is allegedly arbitrary, claimants can test whether the platform complied with the notice, investigation, and right-to-be-heard standards the Bill spells out.

Third, SOCSO integration transforms what used to require advocacy into a matter of statutory compliance. Strategic cases can target systematic under-remittance, inaccurate classifications, or technological non-integration with SOCSO data and system, relying on explicit offences and enforcement powers.

Fourth, the occupational safety and health part furnishes substantive duties and an enforcement architecture, DOSH, that can be leveraged both administratively and through judicial review where regulators fail to act reasonably. Notably, this echoes the UK experience, where unions strategically litigated to extend statutory OSH protections to gig workers, an approach that proved impactful because it built on general health-and-safety duties rather than contentious employment-status tests.

Fifth, the Consultation Council and ministerial order-making powers present opportunities for impact litigation framed around administrative law (i.e., reasonableness, legitimate expectation, or procedural fairness) if the government rejects or implements recommendations in a manner that is arguably irrational or ultra vires. This is complemented by the Bill's appeal to the High Court from Tribunal awards, enabling the superior courts to develop principled interpretations on novel issues such as algorithmic transparency, non-discrimination in task allocation, and the interface between gig-work rights and other labour laws.

There are, however, design choices that shape strategy. The Bill indicates that, save for limited exceptions, lawyers do not appear before the Tribunal (Clause 36 (3)). Gig workers may instead be represented by authorised association officials or family members (Clause 36 (2) (b) of the Bill). This both centres collective organisation and keeps the forum accessible, but it may push complex or precedent-setting questions into the appellate courts more quickly or encourage parallel filings seeking declarations or judicial review, particularly on constitutional or administrative questions.

5 Conclusion

Pursuing 'strategic litigation' to improve gig workers' rights in Malaysia remains a viable option. The Bill's passage reduces the need for status-reclassification suits in order to access baseline protections, because many rights now arise by operation of

law. But ‘strategic litigation’ remains central to: (i) teasing out ambiguities (i.e., algorithmic decision-making disclosures, evidentiary standards for ‘reasonable cause’ terminations, and the scope of non-discrimination in task allocation), (ii) pressing for faithful enforcement of SOCSO and OSH duties when regulators under-enforce, (iii) testing the reasonableness and lawfulness of ministerial orders issued on the Council’s advice, and (iv) securing appellate guidance from the High Court to harmonise tribunal practice nationwide. In short, litigation shifts from access-to-rights to quality-of-rights and institutional-design questions.

The UK experience suggests that litigation is most effective when paired with organising, public campaigning, and media strategies. Malaysia’s architecture Tribunal procedures that permit representation by associations, combined with tripartite social dialogue, invite precisely that movement-lawyering model. If associations develop litigation capacity while mobilising members and engaging the Council’s standard-setting processes, the Bill’s formal rights can translate into lived rights.

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