

Innovations

Labour Code 2020- The Inaccessible Reformation for the Gig Workers

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Abstract: An ILO report claims the Gig economy to account for 15% of the global workforce by 2025. The dearth in the protection for gig workers is not only a concern for the workers themselves, but also for the economy as a whole. In an effort to incorporate the principle of universalisation of social security of the Gig workers the Union labour ministry brought the Gig workers into the domain of the labour laws for the first time, via the 2020 Labour Codes. The immediate issues that need reassessment: Firstly, Gig work finds reference only in the Code for Social Security (section 2(35)), excluding gig workers from benefitting the protections offered by the other codes. Second, The New Codes have raised elemental questions pertaining to the clarity of the fundamental classification of these temporary workers. The Code on Social Security 2020 labels “a person who participates in a work arrangement and earns from such activities outside of a traditional employer–employee relationship” as a gig worker. Similarly Section 2(61) designates a platform worker “as someone engaged in or undertaking platform work”. While all platform workers were likely to be gig workers, all gig workers may not necessarily be platform workers. The labour codes have also failed to distinguish the employment contract from the employee-independent contractor thus furthering the gaping problem in the classification. This evident overlap in these definitions may result in lack of intelligibility on the applicability of the appropriate social security schemes to these different categories of workers. To harness the Government’s efforts in protecting the rights of gig workers, and harnessing the potential of the Gig economy, evaluating whether these codes protect the legal status of gig workers becomes ineluctable. This article envisages to investigate the earlier literature regarding the definition and classification of the gig workers, the nature of their engagement, the laws elsewhere, and the challenges in dealing with them in the developed nations as well.

Keywords: Gig workers, New Labor Code 2020, Social security schemes, worker classifications, Gig economy

1. The background

The term "gig work," which has gained popularity recently due to platform work, refers to the short-term, task-by-task exchange of labor for money. It includes currently popularized, various kinds of nonstandard employment (NSE) that differ from the traditional definition of standard employment and are referred to as flexi-work, on-call job, freelance, and other future terms. These emerging forms of work make it necessary for policy makers and labour legislators to examine the 'Future of Work' through the lens of labor contracts governing workers' rights, social protections, pensions, end-of-service benefits, and active labor market programs, the cost of which impacts, firms, and workers and the economy as a whole.

India's employment landscape is hugely evolving due to the gig economy and gig workers. According to Niti Aayog's report "India's Booming Gig and Platform Economy," by 2029, there will be close to 23.5 million workers participating in the gig economy. The study also highlights how unjust contracts, inadequate safety standards, a lack of minimum salaries, and a lack of job benefits like medical leave, overtime pay, and worker's compensation have all become more prevalent in the gig economy. However, the development of the gig economy and technological advancements have altered the conventional view of the workplace, creating serious problems for the labor law system.

2. Statement of the Problem

In India, the gig workers were not covered by any of the previous labor laws until 2019. However, in 2020, nine laws were replaced with the new Social Security Code, which stipulated that gig workers would also be eligible for benefits under the code.

A "gig" is a colloquial phrase for a temporary position. It refers to workers who are not part of the usual employer-employee relationship, such as freelancers, employees who operate under contract with their employers, workers engaged on project-based work, and other short-term workers. The gig economy is a form of free market economy where jobs are often transient and may comprise of workers including freelancers, independent contractors, project-based laborers, and temporary employees like photographers, ridesharing drivers, food delivery agents, e-commerce delivery agents. They are present in all sectors of the economy, enter into formal agreements with companies to provide services but without being on the payroll. This workforce is becoming more mobile due to digitization; as a result, workers can choose temporary positions from anywhere in the world, and employers can locate the most qualified candidates for each position with less geographical restrictions.

While offering workers benefits like a better work-life balance and the ability to choose the gigs or profiles they are interested in, the gig economy also saves businesses money on things like office space, training and benefits. Gig workers typically trade off their flexibility for low compensation, little or no health or retirement benefits, complicated tax situations, and out-of-pocket equipment costs. The distinction between those who choose to work as contractors on a voluntary basis and those who are exploited by an employer who uses the contractor classification as a way to avoid providing them with fair wages and benefits is not always clear.

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This Uberization of the economy has radically altered or destroyed job relationship by using digital platforms. Gig workers are amongst the most vulnerable sections of the workforce. The atypical nature of gig work coupled with regulatory uncertainty has allowed companies to centralize profits and minimize expenses, risks, and accountability through strategies like contracting, franchising, and the use of digital platforms. These Uber-like companies further weaken the collective bargaining power of its employees by atomizing labor and turning individuals into little bosses in charge of their own expenses.

3. The Status of Gig Workers

One of the main characteristics of the gig economy, and the topic of most public and scholarly discussion, is the assertion made by businesses in the low-cost, low-investment sector that people who use their applications for employment are independent contractors rather than employees of the enterprises.

This claim is supported by the companies' contention/justification that they serve as platforms that link independent small business owners with their clientele rather than acting as service providers matching employers with employees. The claim that workers on these apps are denied fundamental employment protections like the right to a minimum wage, workers' compensation, unemployment insurance, or the ability to establish a union is what labor advocates refer to as employment "misclassification."

Employees see gig companies' administrative control over who, what, and where labor is done as blatant evidence of employer decisionmaking. This discussion is essential to comprehending how the gig economy affects employees and the nature of employment.

oyment in the future. Gig companies interrupt not only the lives of app users but also the regulatory environments and economic sectors in which they operate. Their activities also have regulatory spillover effects on the economy, as other industries try to imitate the employment-free business model in an effort to lose government control and the rights that it grants to workers.

Gig businesses try to avoid rules and contest the Government's regulatory control when they claim to just offer an electronic platform rather than services. The employer-free business model of the gig economy is really a continuation of broader employment trends, as labor is reshaped to get around laws.

Formerly, employees could readily observe the ways in which they were faced mistreated by their employers as a group, but in today's Gig setup, workforce is isolated, making it difficult for employees to communicate with one another and for labor unions to gain influence.

Do they work as employees or as independent contractors?

The issue of whether gig workers should be classified as independent contractors or employees has come up in courts all across the world. The standard used in various jurisdictions, including India, to ascertain whether a person is an employee or an independent contractor usually centers on elements like the parties' intentions and the employer's level of control. These tests, across the globe, can evaluate dimensions like working practices, authority to fire or appoint people, equipment ownership, contract title, and the establishment of guidelines and standards. Courts in a few countries, like in France and Switzerland, have classified gig workers as employees. Some countries like Brazil and Australia, have legally classified gig workers as independent contractors. The Department of Labor in the US declares gig workers, under the Fair Labor Standards Act (FLSA), as independent contractors.

Owing to the distinct characteristics of gig labor, the application of these principles/guidelines to certain practical cases yields inconsistent conclusions on the classification of gig workers as either independent contractors or employees. This is especially true for gig workers, who exhibit traits common to both independent contractors and employees. Uber is a classical example. The corporation exhibits strong employer-employee relationship traits by controlling standards of conduct, managing complaints, collecting fares, and setting prices.

4. Solving the Gig Economy Conundrum: Will a hybrid 'tertiary worker' taxonomy suffice?

The foregoing debate demonstrates the issues that might arise from rigidly classifying gig workers as independent contractors or as employees. Will the proposal of creating a third category 'tertiary worker' status for the hybrid Gig workers address this problem. It describes the fundamental ideas around which this framework can be developed. The practical issues are outside the purview of this piece and would require additional scholarly and legislative examination.

The Uber drivers enjoy many of the same rights as independent contractors, including choosing their own work assignments, refusing clients or locations, setting their own hours, bringing their own equipment, and frequently not having an exclusive contract with a single company.

Because of the very nature and intent of gig labor, gig workers tend to exhibit traits common to both independent contractors and employees. It is therefore suggested that gig workers cannot be categorically classified as independent contractors or employees. Even in the unlikely event that such a classification is possible, there are normative arguments opposing it. If gig workers are rigidly classified as employees, employment contractors may be forced to bear unsupportable costs in the form of taxes, back wages, and fines. Consequently, this can worsen the quality for customers, lower the total employment rate, and stunt their economic expansion. On the contrary, classifying gig workers as independent contractors would result in their ongoing mistreatment and denial of fundamental job benefits like paid time-off and overtime benefits.

The suggested hybrid 'tertiary' category would theoretically work as a middle ground between independent contractors and employees. This would require compliance with the policies and procedures of the hiring company, grant gig workers limited employment rights and benefits, and require the hiring company and the gig worker to share accountability.

By placing gig workers squarely inside the purview of labor law and giving them tangible rights and benefits, this hybrid classification will enhance their welfare. In contrast to classifying gig workers as employees, the hybrid approach would preserve the flexibility of gig labor, which is essential to the viability of such aggregators' business models. This hybrid tertiary worker taxonomy would enable a lot of benefits, especially when compared to gig workers' status under the 2020 Labour Codes.

More important concern in the upcoming Labour Code 2020 is that out of the four codes, gig work finds reference only in the Code on Social Security in section 2(35). Gig workers are consequently excluded from the advantages and safeguards provided by the other codes, such as minimum wages, occupational safety and health benefits, and overtime pay. Moreover, the Code on Social Security only sets a definition of a 'gig worker', and does not prescribe any concrete mention on specific benefits or protections, as it merely provides that Central Government, in the future, will notify schemes for the gig workers.

Therefore it can be stated that, the new labor rules do not provide a conceptual or legal answer to the classification issue; instead, they only serve to conceal the issues ailing the gig economy.

This falls short of placing gig workers squarely within the purview of India's labor and employment laws. This non-inclusion presents a perennial problem for two reasons. The specialized redressal system provided by the Industrial Disputes Act is not available to gig workers. The proposed framework would give gig workers a legitimate remedy for grievances against their employers and would place them under the Industrial Disputes Act. Gig workers do not now have the explicit right to collective bargaining because of the contract-based relationship.

Gig workers' ambiguous status makes it difficult for organizations to register as a labor union. Without this registration, trade unions, if any, will not be protected from legal action, criminal prosecution, and contractual obligations, which would enable them to successfully communicate their demands to their employers. This assessment paper underlines that the situation of gig workers in India is not sufficiently addressed by the new labor rules, despite the fact that they are a major improvement over the previous labor law framework.

In conclusion, gig workers' rights are not sufficiently protected by India's new labor laws. Two major issues are the vagueness surrounding the classification of gig workers and the lack of a minimum salary for them. The gig economy is an extreme example of employer-driven labor deregulation and the logical conclusion of what continually exploit their workforce without bearing commensurate responsibilities under labour law. However, the mere non-traditional nature of gig work cannot serve as a justification to avoid imposing the most primary obligations arising from labour law on such corporations with regard to their employees.

Status in some of the the developed countries: In the United Kingdom, individuals can fall into one of three categories: self-employed, employee, or in the middle, dubbed "worker." Depending on the specifics of their engagement, a person in the gig or sharing economy may fit into any one of these three groups. For workers in

the gig economy, the majority of countries only have the option of a self-employed status or an employment contract. There is a third option available in just three of the participating countries—the UK, Spain, and Italy—that offers more flexibility and basic social security for self-employed individuals who are economically dependent. But none of those countries' gig economy workers were intended to have this third option.

5. Recommendations

Tackling the misclassification of workers

To address this concern the Indian government must give gig workers precise definitions under the new labor laws in order to allay uncertainties about their legal identity. The government should also guarantee the safety and health of gig workers' workspaces and their coverage under the Occupational Safety, Health, and Working Conditions Code. In order to defend their rights, the government should also think about permitting gig workers to organize into trade unions and participate in collective bargaining.

The role of companies - harmonizing rules for standard and non-standard employment

Apart from the government, companies also have a responsibility to protect the rights of gig workers. Companies should ensure that they pay gig workers fairly and provide them with adequate social security benefits. Companies should also provide gig workers with a safe and healthy work environment, regardless of whether they work from home or other non-traditional workspaces.

Incorporating flexible work arrangements such as telework into the labor law

The labor legislation should include provisions for flexible work arrangements like telework as the third component to harmonize the regulations. There are various forms of work arrangements and employment contracts that allow for teleworking. However, working off-premises creates a non-standard type of employment with unique issues because it differs from traditional standard employment. Policies should ensure that such new agreements boost output without increasing operating expenses for workers.

Expanded/Inclusive social protection system

Government can encourage portable savings accounts (pensions and unemployment insurance) through incentives such as matching contributions or tax exemptions and also relaxations of the eligibility thresholds so as to extend those benefits to more people.

Gig workers themselves must play a part in defending their rights, in addition to the government and businesses. It is important for gig workers to know their rights and make sure they are getting paid appropriately. In order to express their interests and participate in collective bargaining with their employers, they need also take the initiative to organize associations or groups.

6. Summary

The rise of gig work and more forms of nonstandard employment (NSE) globally presents both potential and challenges for countries and governments. The gig economy is an extreme example of employer-driven labor deregulation necessitating the implementation of legal/ policy measures to both reduce their negative effects and reap their benefits. In India, most of the Gig workforce work outside the purview of labor regulations, and lack access to social insurance and benefits.

The new labor laws hold little to alleviate the problems of this hugely growing economy.

References

1. Zeid, Ramy; Alrayess, Dana Jasmine; Ajwad, Mohamed Ihsan; Soytaş, Mehmet Ali; Rivera, Nayib. *The Gig Economy and the Future of Work : Global Trends and Policy Directions for Non-Standard Forms of Employment (English)*. Social Protection and Jobs Policy and Technical Note Washington, D.C. World Bank Group. documents.worldbank.org
2. NITI Aayog. (2022). *India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work*. June, 2022. Copyright @ NITI Aayog, 2022 NITI Aayog Government of India, Sansad Marg, New Delhi - 110001, India.
3. PRESS RELEASE, September 7, 2023, 'Demand for Online Gig Work Rapidly Rising in Developing Countries', World Bank Group.
4. Datta, Namita; Rong, Chen; Singh, Sunamika; Stinshoff, Clara; Iacob, Nadina; Nigatu, Natnael Simachew; Nxumalo, Mpumelelo; Klimaviciute, Luka. 2023. *Working without Borders: The Promise and Peril of Online Gig Work*. © Washington, DC: World Bank. hdl.handle.net
5. PWC Legal , A multidisciplinary law firm , 'Gig economy report : Employment status', 2019