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Gig and Platform Workers

Published On: 01-05-2023

Why in News: The recent strike by Zomato-owned Blinkit delivery agents has once again brought to the forefront the issues plaguing the gig economy in the country and the reforms required to stop the exploitation of such workers.

About Gig and Platform Workers

Gig workers refer to workers outside of the traditional employer-employee relationship. There are two groups of gig workers— platform workers, and non-platform workers.

When gig workers use online algorithmic matching platforms or apps to connect with customers, they are called platform workers. Those who work outside of these platforms are non-platform workers, including construction workers and non-technology-based temporary workers.

Whether gig workers should be categorised as ‘employees’ or as ‘independent contractors’ has been a frequent debate.

Across different jurisdictions, the test to determine whether a worker is an ‘employee’ or an ‘independent contractor’ depends on the extent of control and supervision exercised by the employer and the integration of the worker with the organisation.

In India, employees are entitled to a host of benefits under statutes such as the Minimum Wages Act, 1948, Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (EPFA), and the Payment of Bonus Act, 1965. Similarly, contract labourers are governed under the Contract Labour (Regulation and Abolition) Act, 1970 and are also entitled to benefits such as provident funds in accordance with the EPFA

However, given the unique nature of gig work, gig workers display characteristics of both employees and independent contractors and thus do not squarely fit into any rigid categorisation.

As a result, gig workers have limited recognition under current employment laws and thus fall outside the ambit of statutory benefits.

A 2022 report by NITI Aayog estimates that nearly 23.5 million workers will be engaged in the gig economy by 2029.

However, since the gig economy falls outside the scope of traditional, full-time employment, gig workers are usually not afforded basic employment rights such as minimum wages, overtime pay, medical leave, and a statutorily bound resolution of employer-employee disputes.

Proposed law for gig workers

In keeping with the National Commission on Labour’s recommendation to consolidate central labour laws, the Ministry of Labour and Employment introduced the Code on Social Security, 2020 which brings gig workers within the ambit of labour laws for the first time.

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Under section 2(35) of the Code, a ‘gig worker’ is defined as ‘a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship’.

The Code defines platform work as ‘a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services’ in exchange for payment. Further activities can be added to this list via a Central Government notification.

Although the Code recognises ‘gig workers’ including platform workers, it distinguishes between such workers and employees.

While employees have benefits such as gratuity, employee compensation, insurance, provident fund, and maternity benefits, the Code only stipulates that Central and State Governments must frame suitable social security schemes for gig workers on matters relating to health and maternity benefits, old age security, education, provident funds, accident benefits, life insurance, disability insurance among others.

The Central Government has also been tasked with establishing a social security fund for gig workers. Gig employers must contribute 1-2% of their annual turnover to this fund, which may be used for the aforementioned schemes.

The Code also mandates the compulsory registration of all gig workers to avail of benefits under these schemes. The Code also envisages the constitution of a National Social Security Board by the Central government to monitor the implementation of such schemes.

Concerns with the regulation

Out of the four new labour codes proposed, gig work finds reference only in the Code on Social Security. As a result, gig workers remain excluded from vital benefits and protections offered by other Codes such as minimum wages, occupational safety and health benefits, and overtime pay.

They cannot create legally recognised unions and access a national minimum wage that applies to all forms of employment.

Even the proposed law does not guarantee minimum wages for gig workers. Minimum wages, which is presently governed by the Minimum Wages Act, will be subsumed under the Wages Code and the Wages Code again is only looking to protect those who fall under the traditional employer-employee relationship.

As of today, there is nothing to protect the minimum wage of a gig worker unless and until one can prove that the gig worker is actually an employee and that could be a challenge where engagements are structured in a way to ensure that one stays outside an employer-employee relationship

Gig workers also remain excluded from accessing the specialised redressal mechanism under the Industrial Disputes Act, 1947, thus denying them an effective remedy for grievances against their employers.

Considering the non-traditional nature of their work, gig workers also do not have the right to collective bargaining— a fundamental principle of modern labour law crucial to safeguard the rights of workers given the skewed bargaining power between employers and employees.

However, despite receiving the assent of the President, the Labour Codes are still awaiting implementation three years on. The Centre has said that this is due to the delay in framing of rules by the States.

Last year, Union Minister for Labour Bhupender Yadav said that only a few States have not yet framed the rules.

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A 2022 report by Fairwork India, an international research project, highlighted the deplorable working conditions of the employees of digital labour platforms in India and the need for statutory affirmation of the rights of gig workers.

With the gig industry gaining prominence across the world and legislations being passed to that effect, over and above social security benefits, it is possible to expect continuing challenges brought about by gig workers to protect their rights until the law is amended to protect their interests

Judicial Intervention

On September 20, 2021, the Indian Federation of App-based Transport Workers (IFAT) filed a public interest litigation on behalf of gig workers before the Supreme Court.

The petition demanded that gig workers or platform workers be declared as ‘unorganised workers’ so that they come under the purview of the Unorganised Workers’ Social Security Act, 2008 (UWSS Act) and are thus provided statutory protection in the form of social security benefits.

It has been contended that the exclusion of gig workers from the category of ‘unorganised workers’ or ‘wage workers’ under Sections 2(m) and 2(n) of the UWSS Act, is violative of their fundamental rights under Articles 14 and 21 of the Constitution.

Further, it has been argued that such denial of social benefits amounts to exploitation through forced labour, within the meaning of Article 23.

Although the Supreme Court sought the Centre’s response to this petition back in December 2021, the Centre has not filed any response yet. No further hearing has taken place either.

Views of international courts

In 2021, in a landmark judgment, the UK Supreme Court classified Uber drivers as ‘workers’ under the UK Employment Rights Act 1996, thus entitling them to various benefits like paid holidays and minimum wages. The Court ruled that since drivers are not permitted to charge more than the fare delineated by the app, Uber regulates the contact between the driver and the user, making it an intermediary.

The Dutch High Court also handed down a similar ruling, stating that the legal relationship between Uber and the drivers meets all the characteristics of an employment contract, making them entitled to workers’ rights under local labour laws.

In August 2021, the Superior Court of California struck down a 2020 ballot measure known as Proposition 22 that excluded gig workers from labour laws by declaring them ‘independent contractors’.

Germany’s Temporary Employment Act provides for equal pay and equal treatment of gig workers. Further, Singapore has also proposed legislative changes to extend work injury insurance and pension coverage to such workers.