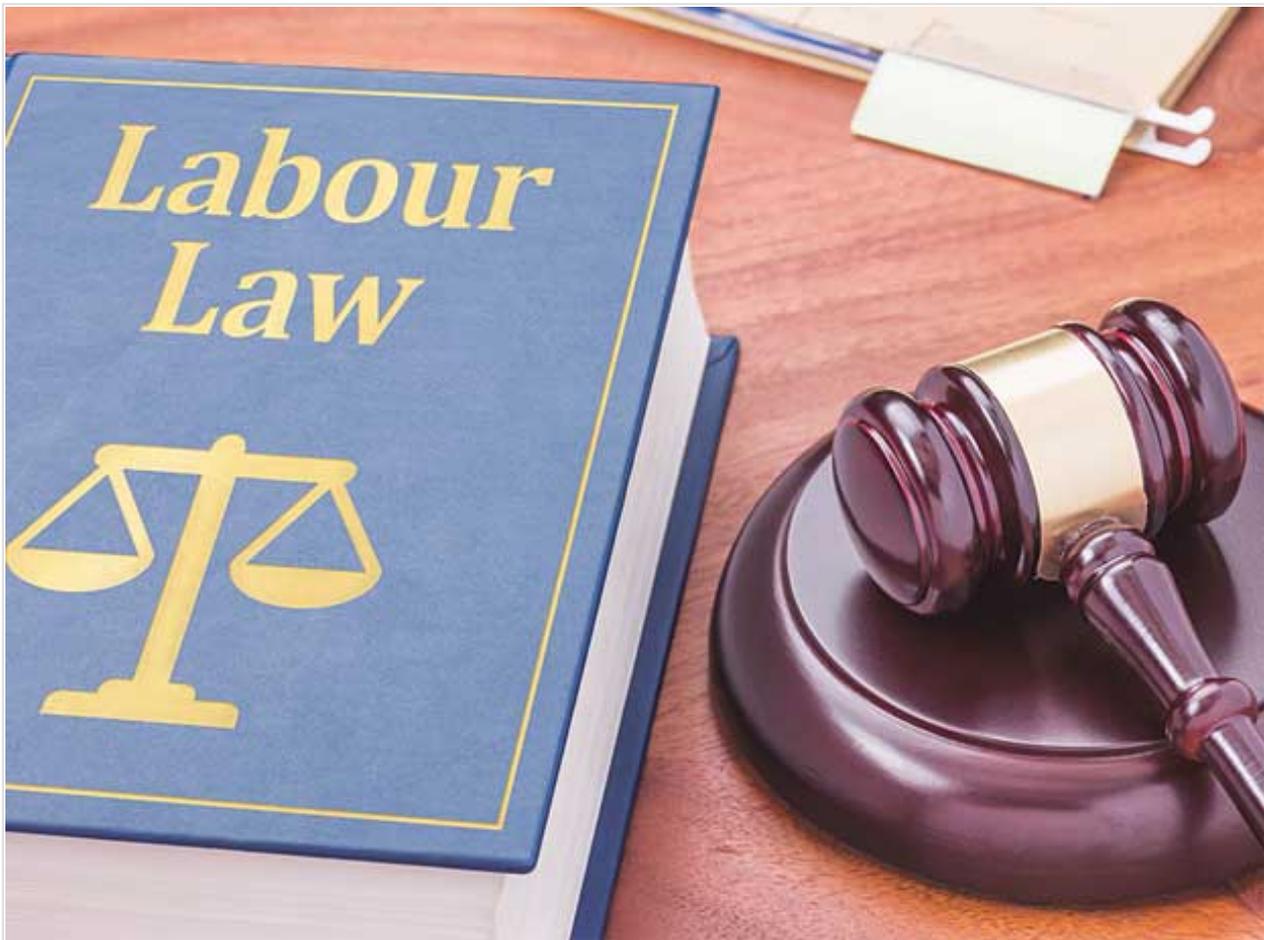


Business Standard

Writing labour laws for growing 'gig workers' prove a laborious process

A draft social security law has employers who rely on flexible hiring worried about rising costs

Somesh Jha October 09, 2019 Last Updated at 22:03 IST



Representative Image

In attempting to rewrite the country's complex labour law framework, the Indian government is keen to accommodate the interests of the growing gig economy in which millions of workers are involved. So on September 17, the labour and employment ministry put out a third draft of the Code on Social Security Bill, 2019, in which the terms "gig workers", "platform workers" and "gig economy" appeared. This essentially means, the government wants some sort of social security protection for gig workers.

Gig workers are usually spoken of in the context of on-demand work, such as drivers for Uber and Ola, delivery people for Zomato and Swiggy and so on. Essentially, they are engaged in jobs created by a tech-enabled platform where the worker is not bound to the organisation and can choose to work for as long they want.

Then there are graphic designers, coders, web designers, writers working as freelancers on short-term projects, who also can be referred to as gig workers. They work from stint to stint according to their convenience or availability of a task.

With the explosion of app-based services by domestic firms and multinationals, the size of India's gig economy has expanded rapidly too. According to a recent report by HR consultancy firm Noble House, 70 per cent of companies in India have hired gig workers at least once for major organisational work in 2018.

The dynamics of labour laws come into place in the traditional employer-employee model. A worker is hired directly or through a contractor on a permanent basis or on a fixed-term contract. Depending upon which category under which they fall or the size of the firm, workers in India are eligible for certain benefits — provident fund, insurance, gratuity and, in some cases, protection from termination.

THE GIG WORLD

What other countries have tried

- California recently passed a law to reclassify gig workers as employees, instead of contractors
- New York passed a minimum wage law for gig workers last year but didn't classify them as employees
- In the UK, a local court has said that Uber drivers should be classified as employees, getting the minimum wage law benefits; the Supreme Court is set to hear the firm's appeal next year
- The European Parliament recently approved rules requiring employers to inform all workers about their employment terms such as description of duties, no exclusivity clause for work, compensation for late cancellation of work

But gig workers do not fit into the definition of "employee" or "worker" and, therefore, remain out of India's labour law coverage. The real challenge in regulating them is the nature of work that they perform. For instance, 32-year-old Mohit, who delivers food for Swiggy in Delhi, works only three days — Friday, Saturday and Sunday and earns Rs 65-Rs 70 per food delivery on these days. "There is no written contract. I get paid on the basis of the task. I can decide to pull the plug by logging out of the mobile application," he said. Balister Singh, who owns a Chevrolet Sail, drives for both Uber and Ola in the National Capital Region.

The government has sought to maintain status quo when it comes to defining gig workers. The draft law says a gig worker is "a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship."

To ensure the definition is as broad-based as possible, the government has used the term "platform workers" separately in the draft law. "Platform work is an employment form 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," the draft code reads.

The provisions for gig and platform workers fall under the chapter on unorganised workers, hinting that the government is not ready to classify them as part of the formal workforce where social security benefits are partly funded by employers.

"The government has attempted to balance the needs of gig workers and distinguished them from the traditional employee-employer relationship. This is reflected in the proposal to form schemes for such workers instead of blindly extending the provisions of provident fund and employees' state insurance and so on," said Ajay Singh Solanki, leader, labour and employment law practice at Nishith Desai Associates.

Gig workers, therefore, will remain outside the coverage of Employees' Provident Fund and Employees' State Insurance schemes, gratuity and maternity benefit laws, if the draft code becomes law. These are some of the schemes in which companies take a financial hit through monetary contributions. By not bringing gig workers under the Code on Wages Act, which became law in August 2019, the government has sought to keep them out of the minimum wage legislation too.

But the industry is anxious about the government's move to bring gig workers under labour laws.

"There should be inclusive policy-making in which all key stakeholders are invited for consultation, instead of knee-jerk reactions. The government shouldn't end up creating something that destroys a vital industry. Gig workers do need social security benefits, but what needs to be covered and who will bear the cost needs

to be clear,” Dinesh Goel, chief executive officer of OLX People, pointed out. OLX People helps companies like Zomato and Swiggy hire workers and around 20 per cent of its recruitments in the last six months has been in the gig economy.

The industry’s concern is that it will have to bear the cost of social security for gig workers, a move that is not really business-friendly. As Goel points out, the gig economy has been lucrative for employers and employees because of the flexibility that it offers. Solanki cautioned that any attempt to regulate the gig economy will adversely impact aggregators and platforms, which count on the ease of engaging such flexible workers and reduced compliance.

The proposed law suggests that the Central government will frame social security schemes for gig and platform workers that will be mostly related to life and disability cover, health and maternity benefits and old age protection. But the industry is anxious that the government will also “define the role of aggregators” in such schemes once the draft law is approved by Parliament.

The question is whether such laws can be truly effective. One index can be had from the Unorganised Workers’ Social Security Act of 2008, which has provisions to frame similar schemes for unorganised sector workers. The United Progressive Alliance (UPA) government had set aside Rs 1,000 crore for the welfare of unorganised workers under this Act, All India Trade Union Congress general secretary Amarjeet Kaur said. “Recently, the finance ministry wrote to the labour ministry to take back around Rs 700 crore lying underutilised in the fund. The welfare mechanism of unorganised sector workers is in shambles.” What failed for a relatively better mobilised section of the workforce is unlikely to work for a section of people as disparate as a driver and a designer.