

Report on Proceedings from the Roundtable Discussion on Developing Legislative Interventions for On-Demand Platform Work in India

Executive Summary

Vidhi Centre for Legal Policy, Karnataka and Friedrich-Ebert-Stiftung (FES), in collaboration with the Indian Federation of App-based Transport Workers (IFAT) organised a day-long round-table discussion on developing legislative interventions for on-demand platform work in India on 15th October, 2022, at Bangalore International Centre. Several stakeholders such as trade union representatives, researchers, academics, lawyers and other experts in the field participated in the discussion, across three sessions, each discussing various aspects of on-demand platform work. The event opened with remarks from Alok Prasanna Kumar (Vidhi), Anup Srivastava (FES) and Sangam Tripathy (IFAT) on the need for regulating on-demand platform work, working conditions in the gig economy and challenges faced by gig and platform workers.

Structure of the Roundtable

The discussion was organised with the objective of inviting discussant ideas and contributions on various facets of regulating platform work, divided into the following three sessions, each followed by an open floor discussion:

1. **First Session on Working Conditions & Occupational Health & Safety:** Led by Vinoj Abraham, the session featured Sheikh Salauddin, Rahul Sapkal, Balaji Parthasarthy, and TR Gopalakrishnan. This session explored extant labour laws including the recent labour codes, their applicability to regulating platform work, gaps, problems in implementation, factors impacting government accountability, at state and central levels.
2. **Second Session on Algorithmic Transparency and Data Rights:** Led by Alok Prasanna Kumar, the session featured Anita Gurumurthy, Sarayu Nataranjan, Mounika Neerukonda, and Aditi Surie. This session explored the gig workers' rights internationally, the need to shift from algorithmic transparency to standard-setting, impacts on workers, especially challenges faced by women in on-demand platform work.
3. **Third Session on Global Developments in Regulating Platform Work and Legal Reform:** Led by Kamala Sankaran, the session featured Manjunath Gangadhara,

Anweshaa Ghosh, Gayatri Singh, and Jai Vipra. The speakers discussed global developments in platform regulation and current legal challenges in India, with examples from Karnataka. The session closed with suggestions to improve the nature of contractual gig work under existing circumstances.

4. **Summary and Way Forward:** The event closed with a summary of the day's proceedings by Sneha Visakha. The roundtable ended with a discussion on ways forward including engaging with the judiciary, pursuing better implementation of existing labour laws, initiating dialogue with various aggregators and platform companies with workers' representatives and generating public awareness, among others. Ishika Ray Chaudhuri and Swabhimani Patil, interns at Vidhi, were rapporteurs for the roundtable.

This note summarises the various points discussed and key concerns raised by the discussants over the course of the discussions. Sources of information, laws, cases referenced and reports discussed in the session are provided in Annexure - I.

Detailed Proceedings from the Roundtable Discussion

A. On Working Conditions, and Health and Safety for Platform Workers

On the theme of working conditions, the session was kickstarted by a discussion of the figure of approximately 7.7 million gig workers in India, as recently reported by Niti Aayog as of 2020-2021.¹ Explaining that this figure was merely an estimate, speakers highlighted the elasticity inherent in the nature of gig/platform work, noting that there is a larger share of informal workers in the organised sector in the current year than ever before, mainly in segments of transport and sales.

When discussing the ground realities of on-demand platform work, issues surrounding the incentives advertised to gig workers were raised. The trajectory and evolution of car usage amongst apps like Uber, Ola and Rapido was traced. It was pointed out that, with the increasing use of leased vehicles and loan schemes, many workers sold their land or possessions to purchase cars to enter the taxi service. This was based on attractive promises made by app-based taxi platforms, designed to capture the market, that dwindled over time. It was pointed out that this led to increasing numbers of vehicles now being prevalent in Tier 1 and Tier 2 cities in the country subsequently, which in turn has led to an imbalance between the number of cars and the customer base. This resulted in self-exploitative practices amongst platform workers, with their numbers also consequently increasing over time. Without designated work hours and

¹ India's Booming Gig and Platform Economy, June, 2022, available at https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf.

an established base pay, the average gig worker may even work 12-14 hour shifts, with pay as low as Rs. 500 per day, not amounting to even a living wage.

Speakers discussed the employer-employee relationship, as defined in various ILO documents as specific and time-bound. While tasks from the apps in questions may be specific and “one-time”, a fixed term of employment was non-existent. Speakers observed that the employer-employee relationship is further complicated by the ease with which algorithm-based e-contracts, like those that govern on-demand platform work, can be changed. It was stated that this led to a situation where the degree of control of all parties involved became ill-defined, and thus the nature of employment was difficult to identify as well. This, of course, meant that all other benefits relevant and related to employed status were poorly claimed, if at all. Benefits like paid sick leave, maternity benefits, etc., thus were not attached to the sector at all.

Further, reports from various experts were also discussed, with the group arriving at the general consensus that the government’s lax attitude to the issues in the sector, with them passing the regulatory buck along amongst various departments, caused a state of affairs with little to no accountability. The inadequate implementation of existing legislation was also pointed out, with the issue of definition being eschewed by some panellists in favour instead of an effective grievance redressal mechanism involving the State Labour Department and a “bottom-up” approach.

Issues in engaging in adequate and effective collective bargaining due to a fear of de-platforming were also brought up while discussing the shared risks and work conditions across platforms. Further, discrimination through the course of work faced by workers was discussed at length, with many stating that social factors such as sex, caste, and religion often affected the distribution of work across platforms. The issues facing women were brought up as an especially vital topic in this discussion, with many panellists reiterating the issue in various contexts, from home-based telework to beauty work and other location-based platform services.

Issues raised were as follows:

1. The precarious nature of work in the gig / on-demand platform economy and informality of the economy; Serious health and safety concerns (both occupational, hazardous, and in terms of mental health) and limited avenues for collective bargaining.
2. Exploitative work practices and working conditions especially company incentives to participate in self-exploitative practices
3. Challenges faced by women platform workers and discrimination faced by platform workers in the course of their work, especially based on factors such as sex, caste and religion.

B. On Algorithmic Transparency and Data Rights

In this session, the nuances of algorithmic transparency - and, as one participant aptly put it, the 'despotism of digital devices' - were discussed. Concerns raised were multi-fold, including the despotism of algorithmic control overriding foundational labour guarantees. Further, the issue of global corporate control over algorithmic decision-making, in the face of the retreat of the neoliberal state slowing the regulation of companies globally, was recognised as especially troubling in the context of labour rights and digital-enabled work. It was pointed out that both the state and the labour force are precarious in their approach to on-demand platform companies, due to the unwillingness of state actors towards regulating platform companies.

The absence of human intermediaries in favour of AI-enabled liaison on various applications, and the lack of human review in general, was raised as a specific concern, one that is exacerbated by many aggregators' lack of avenues for conversations with workers, both in general and while implementing any changes to platforms. Moreover, in case of de-platforming of gig-workers, the lack of human-based labour management renders the worker immediately as a "human out of the loop" due to the set-up structure of the on-demand platform, and their interaction with the algorithm. This leaves the worker with no way to initiate human contact with the platform.

Other concerns highlighted in this session focused on the need for exceptionalism to address the current context of platform workers working for on-demand platforms who face distinctive challenges. Issues like the obfuscation of the quantum of work allocation under the algorithm, the effect and role of ratings, and other such elements inherent to on-demand platforms can lead to or exacerbate discrimination on the basis of social factors such as sex, caste and religion. Examples given discussed women workers on some on-demand platforms not being allocated work post 6 pm, due to notions of unsafety for women, without consultation with women workers or compensation for loss of income.

It was discussed that the aforesaid issues have serious implications on the very notion of 'consent' in contractual relationships between workers and platforms. It was pointed out platform workers are devoid of meaningful agency in providing informed consent while entering into digital contracts with platform companies.

Issues raised were as follows:

1. Algorithmic control overriding foundational labour guarantees, impacted by receding neoliberal state, resulting in stark imbalance of power between workers and companies.
2. Absolute lack of algorithmic transparency over critical issues such as quantum of work allocation, the role of ratings, and other elements inherent to

on-demand platform work, which contributes to and exacerbates social discrimination faced by platform workers.

3. Lack of agency for platform workers in providing meaningful consent to digital labour contracts with platform companies.

C. On Global Developments in Regulating Platform Work

In the third session, the discussion focused on employment rights and potential legislative reforms, and the concerns therein. It was brought up that the perspective of the judiciary on labour rights, especially in the Indian context, hinged on the provision of social security, not the provision of employment rights, and that, in comparison to other international examples, affected the jurisprudence that could be applied to on-demand platforms.

The necessity of uniform global regulations on both data protection and localisation was also touched upon, especially in the face of the phenomenon of business that ignored borders (as opposed to what was once business-across-borders). The lack of localisation, it was pointed out, also affects accountability, with only a very small percentage (0.05%) of online platform companies actually falling within the scope of international due diligence obligations currently.

Further, other issues brought up included a concern as to whether the time was right to introduce legislation, in the face of prior ineffective and incomplete legislative implementation.

Finally, concerns regarding the negotiation process with aggregators were brought up, with many panellists bringing up the difficulty in effectively negotiating or conducting conversations with on-demand platforms due to the lack of an effective legislative framework holding them accountable.

Issues raised were as follows:

1. Difficulties laden in establishing an employment relationship, owing to a complex labour law regime in India as well as digitalisation of labour; establishing ownership of data and shifting towards understanding data as a 'commons' as opposed to privately-owned resource.
2. Critical need for strengthening and protecting workers' rights, especially in regard to collective bargaining and unionisation, noting it as a critical right for labour interests
3. Efforts towards legal reform hitting road-blocks (as seen in Karnataka, with efforts to regulate the gig economy being unsuccessful), the role of judiciary,

both at the level of labour courts and higher constitutional courts, was discussed as an important site of interest.

Proposed Solutions

The following were some of the solutions proposed in the roundtable discussion:

- **Better identification of gig/ platform workers and appropriate regulatory government authorities at the central and state level.** Utilising the e-Shram portal, it was suggested that legal provisions governing gig workers be included under existing legislation regulating the unorganised sector, like the Code on Social Security enacted in 2020 along with a call for better implementation of existing legislations.
- **Differing Viewpoints on Regulating Platform Work.** While some called for recognition and regulation of 'on-demand' platform work industry as an industry on its own, without conflation with other forms of unorganised labour, others differed. The differing view suggested a throughline of the necessity of strategic pathways via existing laws, as opposed to introducing new laws. First, it was proposed to prioritise an open, non-exhaustive interpretative perspective in applying data-centric legislation to on-demand gig labour platforms. Secondly, a broader framework for what constitutes - or is related to - on-demand platform work was recommended.
- **Emphasis on the necessity of unionisation and collective bargaining efforts in the sector.** Calls for platform aggregators to be brought under the IT Act, 2000, and regulated thereafter, were made. Periodic updates on e-Shram registration numbers, with state-wise implementation statistics, and the provision of data from both aggregators and government institutions to better adjudge the implementation of existing legislation were also suggested.
- **Focus on introducing labour-focused (and not data-focused) human intervention was suggested.** Thus reducing human biases on the algorithm while improving labour conditions. To ensure this phenomenon, data minimisation was emphasised so that the arbitrary collection of data, especially on identifying personal factors such as caste, was curtailed. A "pan-market" view on governance was proposed therefore, one that focused on the digital economy as a whole even while centering labour rights. In the Indian context especially, with the lack of comprehensive data policy, it was suggested that this approach could provide some much-needed checks and balances.

- **Calls for greater algorithmic and human governance scrutiny**, perhaps through the conducting of periodic algorithmic audits and the publishing of regular transparency reports. It was also proposed that algorithmic standards be developed, to be issued by the government. This was accompanied by a suggested deviation from - or perhaps an update in - traditional legal labour frameworks, none of which adequately centre or discuss data, and an examination of what actually constituted consent in the context of e-contracts, gig work, and arbitrary data collection. It was also suggested that it was time to discuss work futures and full-time employment in on-demand gig work, with the inclusion of certification, experience-mapping, and data-sharing. Further, it was recommended that the focus - in order to ensure labour rights - must be on the workers gaining stability.
- **Adopting an employee rights perspective, going beyond social security.** In discussing legal reform, recommendations included a proposed switch to an employment rights perspective when dealing with on-demand platforms, instead of focusing solely on social security and benefits. A detailed process was also proposed for the introduction of on-demand platform-specific legislation in states, such as Karnataka. It started from establishing employment relationships, ensuring the freedom of association and collective bargaining, and installing dispute and grievance redressal mechanisms, to evaluating both the contributions of gig workers to the economy, and the status of current existing policy frameworks, to then bringing in a legislative framework under the Code on Social Security, 2020. It was also suggested provisions on forced labour and various other recommendations by the ILO on employment relationships be incorporated.
- **Adopting “Decent Work” standards.** It was proposed that “decent work” be defined in this context, with the inclusion of protection against sexual harassment at the workplace, collective bargaining, data portability of platform elements like ratings, etc. It was also suggested that the “contracts of adhesion” proposed by the ILO in 2021 be used in the context of gig workers in order to best incorporate differences within the workforce on the basis of the nature of work.

Way Forward

At the conclusion of the roundtable discussion, various panellists offered their perspectives on potential next steps. The main avenues discussed were:

- a) engaging with the judiciary, at the level of labour courts and other constitutional courts,
- b) working towards better implementation of existing labour laws and protections, along with exploring areas for legal reform to meet the challenges presented by the platform economy,
- c) initiating dialogue with various aggregators and platform companies, to create fora where workers' representatives can directly engage with management,
- d) generating public awareness, through leveraging social media and other forms of civic engagement to create a public consciousness of the deep-rooted issues faced by various platform workers.
- e) creation of an e-group as a platform to continue exchange of information, ideas, and strategies.

It was noted by some panellists that pending PILs before the judiciary in various states as well as coinciding cases in the labour courts, could lead to better laws due to the adjudication on the basis of facts of cases. It was agreed that, therefore, the provision of good law from one state would not necessarily restrict the jurisprudence of the same from applying across the country. Moreover, with respect to the state and central government, it was observed that any legislative support to be provided by the same could only come after more ground was covered on specific legislative and policy reforms, with a focus on local and state authority.

Further, it was important to also involve aggregators and on-demand platforms themselves more fully in any policy or legislative improvements suggested, so as to more effectively legislate for the rights of gig workers. Similarly, it was noted that ensuring collectivisation and unionisation, allowing for more effective representation of gig and on-demand workers in discourse surrounding their rights, is critically important. Finally, it was determined that an international approach to regulation of gig and on-demand platform work, as a long-term strategy was also determined to be necessary going forward.

Annexure - I

Sources Referenced

Several sources were cited and referenced during the event, including:

1. Reports and Working Papers

- 'India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work', Niti Aayog <[https://www.niti.gov.in/sites/default/files/2022-06/25th June Final Report 27062022.pdf](https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf)>
- 'Platform Work and the Employment Relationship', International Labour Organisation <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_777866.pdf>
- 'Making Decent Work a Reality for Domestic Workers', International Labour Organisation <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_800224.pdf>
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- 'Futures of Work', Aapti Institute <https://aapti.in/wp-content/uploads/2020/06/Future-of-Workers_Final_High-Resolution-1.pdf>
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2. Laws and Conventions

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<https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_829999.pdf>
- R198 - Employment Relationship Recommendation, 2006 (No. 198), International Labour Organisation
<<https://www.ilo.org/legacy/english/inwork/cb-policy-guide/employmentrelationshipprecommendationno198.pdf>>
- General Data Protection Regulation, 2018, European Union
<<https://gdpr.eu/tag/gdpr/>>
- The Fair Labor Standards Act, 1938 29 USC 203, United States
<<https://www.dol.gov/agencies/whd/flsa>>
- The Trade Unions Act, 1926, India
<https://www.indiacode.nic.in/bitstream/123456789/13322/1/trade_unions_act_1926.pdf>
- Code on Social Security, 2020, India
<https://labour.gov.in/sites/default/files/SS_Code_Gazette.pdf>
- Draft Data Protection Bill, 2021, India
<http://164.100.47.193/lsscommittee/Joint%20Committee%20on%20the%20Personal%20Data%20Protection%20Bill,%202019/17_Joint_Committee_on_the_Personal_Data_Protection_Bill_2019_1.pdf> (from page 475).

3. Cases

- Uber BV vs. Aslam, [2021] UKSC 5
<<https://www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf>>
- Shivnandan Sharma vs. Punjab National Bank, AIR 1955 SC 404
<<https://indiankanoon.org/doc/549992/>>
- Dharangadhara Chemical Works Ltd vs. State Of Saurashtra, AIR 1957 SC 264
<<https://indiankanoon.org/doc/1996477/>>
- Chintaman Rao vs. State of Madhya Pradesh, AIR 1951 SC 118
<<https://indiankanoon.org/doc/1256541/>>
- The Officer In Charge, Sub-Regional Provident Fund Office vs. M/S Godavari Garments Limited, Civil Appeal No. 5821 of 2019
<<https://indiankanoon.org/doc/99081167/>>