

Summary Comments on the Rajasthan Platform Based Gig Workers (Registration And Welfare) Bill, 2023

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This is an independent, non-commissioned piece of work by the Vidhi Centre for Legal Policy, an independent think-tank doing legal research to help make better laws and improve governance for the public good.

About the Authors

Alok Prasanna Kumar is Co-founder and Team Lead at Vidhi Karnataka.

Varini G and Deepa Padmar are Research Fellows at Vidhi Centre for Legal Policy.

The authors would like to acknowledge Raghunandan Sriram for his contribution to this work.

Correspondence

For any clarifications/queries in relation to this submission, please contact:

Vidhi Centre for Legal Policy
43, Residency Rd, Srinivas Nagar,
Shanthala Nagar, Ashok Nagar,
Bengaluru 560025.

Email: alok.prasanna@vidhilegalpolicy.in

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Executive Summary

The NITI Aayog in its report¹ titled “India’s Booming Gig and Platform Economy” estimated that there were about 77 lakh workers in the gig economy in 2020-21. The report further estimated that by 2029-30, about 2.35 crore workers would be engaged in the gig economy. However, in spite of their active participation in the economy, constituting 1.5% of the current workforce, gig workers lack the minimum protection and benefits that other forms of employment provide. The Code on Social Security, 2020 was the first labour legislation that made a reference to the gig economy and its workers, and guaranteed certain rights and benefits to gig workers.

Given that the Code has not come into force yet, gig workers do not have a legal framework that focuses on their welfare. In July, 2023 the Government of Rajasthan released a draft of the Rajasthan Platform Based Gig Workers (Registration and Welfare) Bill, 2023 (“the Bill”) seeking comments from the public. This Bill principally sought to provide gig workers with social security. With this Bill, the state becomes the first in India to envision a law for the welfare and protection of gig workers. The Government of Rajasthan has [estimated](#)² that there are about 2.25-2.70 lakh gig workers within the state. Given that gig workers are a newly formed vulnerable class of labourers and continue to remain sidelined under labour regulations, this law is a step in the right direction.

The Rajasthan Platform Based Gig Workers (Registration and Welfare) Bill, 2023: A Brief Summary

The Bill provides for the establishment of a Rajasthan Platform Based Gig Workers Welfare Board (“the Board”) for ensuring the social security of gig workers, including the management of their entitlements, payments and benefits. The Board consists of the Minister and Secretary in charge of the Department of Labour, the Secretaries in charge of the Departments of Information and Technology, Social Justice and Empowerment, Transport and Finance, five representatives each from amongst gig

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.

² Archie Bandyopadhyaya, In precarious existence, the vulnerable human underbelly of gig workers get relief in Rajasthan, Financial Express, July 1, 2023, available at <https://www.financialexpress.com/india-news/in-precarious-existence-the-vulnerable-human-underbelly-of-gig-workers-get-relief-in-rajasthan/3149831/#:~:text=The%20Rajasthan%20government%20has%20also,Ola%20and%2035%2C000%20for%20Uber.>

workers and aggregators, and one member each belonging to civil society or evincing interest in any other field, to be nominated by the state government.

The Bill seeks to formalise the gig sector by requiring aggregators and primary employers to provide a database of registered and onboarded gig workers to the state government, which may then be utilised for the implementation of social security schemes. The Bill also provides for the establishment of a Rajasthan Platform Based Gig Workers Social Security and Welfare Fund (“the Fund”) for gig workers. As per the proposed legislation, this fund shall be financed by a Platform Based Gig Workers Welfare Cess (“cess”) to be imposed on every payment made to gig workers through the platform, and will be monitored through a Central Transaction Information and Management System (CTIMS).

The Bill specifies the social security rights of platform based gig workers. Specifically, the following rights have been mentioned-

- (a) The right to be registered with the Board on being onboarded onto any app based platform work, irrespective of the duration of the work, and to be provided with a unique ID applicable across all platforms;
- (b) The right to have access to general and specific social security schemes based on contribution made, as may be notified by the Board;
- (c) The right to be heard for any grievances through an appropriate grievance redressal mechanism;
- (d) The right of workers to participate in all decisions taken for their welfare through representation in the Board.

Additionally, the Bill sets out duties for aggregators and primary employers. These duties include-

- (a) The duty to get registered with the Board;
- (b) The duty to provide the Board with the latest data on all platform based gig workers engaged by them;
- (c) The duty to update the Board about changes, i.e., any increase or decrease in the number of platform based gig workers in the data so provided;
- (d) The duty to deposit the amount of cess;
- (e) The duty to submit monthly returns in such form as may be prescribed.

The Bill also sets out a grievance redressal mechanism in respect of entitlements, payments and benefits due to gig workers under the Bill.

While the Bill is a welcome move, there are a number of concerns which are yet to be addressed, owing to the unique nature of the gig sector. This document contains our summary comments on the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Bill, 2023. It briefly addresses broader concerns with the current draft of the Bill. They are divided into four broad categories. 1) Definitions of “primary employer” and “gig worker”; 2) Rights of gig workers; 3) Composition of the Board; and 4) Grievance Redressal.

1. Definition of ‘primary employer’ and ‘gig worker’

The draft Bill, throughout the document, refers to ‘primary employer’ and defines the same as those ‘individuals or organisations who directly engage platform based gig workers for a particular task against payment’.

We propose that this term be removed from the legislation. This is because the term is ambiguous and there is an absence of clarity on the difference between ‘aggregator’ and ‘primary employer’ as it has been used interchangeably. We believe that this will lead to aggregators negating their obligations towards gig workers by claiming that such obligations ought to be cast on primary employers and not them.

Moreover, given that ‘aggregators’ and ‘primary employers’ have different definitions, they must not be used interchangeably. The definition of ‘primary employer’ incorrectly suggests that they could be clients receiving services from the aggregator and gig worker. One major purpose of the law is to ensure that aggregators perform their duty towards gig workers. The addition of the term ‘primary employer’ would lead to dilution of the aggregators’ obligations.

Additionally, as a matter of abundant caution, the definition of ‘gig worker’ may be expanded to include agents and subcontractors of aggregators, to remove doubts as to whether they would fall within the scope of this law.

2. Rights of Platform Workers

The central idea behind the draft Bill is the recognition and protection of platform workers as a new class of workers. The need for this Bill arose due to the differences between gig workers and traditional employees covered under labour laws. While imposing compliances identical to those of traditional employers may not be an

accurate approach for platform workers, there is a larger necessity to empower the Board to impose rights-based compliances on aggregators.

Currently, all rights of platform based gig workers envisaged under Section 13 of the Bill are solely enforceable against the Board. The inclusion of a sub-clause on the 'right of platform workers to reasonable working conditions' will play an important role in empowering the Board to create basic compliances on aggregators. Apropos this, Section 14 on the duties of the aggregator must include a sub-clause requiring aggregators to provide 'reasonable working conditions' to platform based gig workers. The Board must also be empowered, under Section 5, to formulate minimum working conditions for platform workers, to be complied with by aggregators, through rules and regulations.

3. The Board

We propose that the size of the Board must be reduced to ensure efficiency. Where the size of the Board is large, logistical issues such as ensuring attendance may impede timely decision making. The existing Board under the Bill consists of 18 members. Considering that the principal role of the Board is to disburse entitlements and benefits to gig workers, it becomes crucial to ensure efficient coordination among the members of the Board.

Additionally, creating an executive head, such as a Chief Executive Officer, will significantly improve implementation and accountability within the Board.

Further, the Board must also comprise a technical member who has knowledge of artificial intelligence and technology or algorithm based allocation of work. This is in order to enable detailed clarifications from the aggregators on their use of data and algorithms. Consequently, the Board must also have the power to seek such information on algorithms from aggregators.

4. Grievance Redressal

The Bill, under Section 15, enumerates the grievance redressal mechanisms available to gig workers in case of any grievances they may face in claiming the entitlements, benefits or payments due to them under the Bill. However, this section only addresses grievances that workers may have against the Board and does not include issues faced by gig workers against aggregators. There is a need for the Bill to include mechanisms through which workers may seek redressal against aggregators. Such a grievance

redressal mechanism may require aggregators to set up internal redressal cells to hear complaints filed by gig workers. Consequently, a clause imposing an obligation on aggregators to create such internal grievance redressal mechanisms must be included in the provisions on duties of aggregators.

Summary Comments

SI No.	Concern	Clauses Affected	Issue	Potential Solution
A.	Primary Employer	Section 1(4); Section 2(a), (i); Section 3(4)(viii); Section 5(b); Chapter III; Section 12; Section 14; Section 15; Section 17.	<ol style="list-style-type: none"> 1. The purpose of a law such as this is to make the responsibility of the aggregator towards the gig worker very clear. Introducing a term such as “primary employer” dilutes this responsibility. 2. “Aggregator” and “primary employer” are used interchangeably throughout the document (<i>see, for example</i>, Sections 1(4)(ii), 3(4)(viii), 9(1) etc). 3. Possibility of confusing “primary employer” with a client receiving services. 	Remove the term “primary employer” from the legislation.
B.	Gig Worker	Section 2 (f)	Inclusion of workers working for sub-contractors within the definition of gig workers.	<p>An alternative formulation is below-</p> <p>“Gig worker” means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship and who works on contract that results in a given rate of payment, based on terms and</p>

				conditions laid down in such contract and includes all piece-rate work, <i>and includes a worker of a sub-contractor or an agent of an aggregator;</i>
C.	Rights of Platform Workers	Section 13	While the Bill recognizes the rights of gig workers against the Board, it must include labour oriented rights which may be enforced against aggregators.	<ol style="list-style-type: none"> 1. Addition of the right of workers to collectively bargain with aggregators through a union of workers. 2. Addition of the right to be informed and the right to seek information: <ol style="list-style-type: none"> i. Right to be informed about rights and obligations prior to commencement of a contractual relationship with a platform; ii. Right to be informed about the grievance redressal mechanisms and dispute resolution mechanisms; iii. Right to be informed about the reasons for denial of work or termination of the contract with the aggregator with prior notice and in a timely manner; iv. Right to seek information from aggregators on fares and earnings;

				<p>v. Right to seek information on the personal data collected about the worker and reasons for removal from the platform where the decision is automated.</p> <p>3. Right to reasonable working conditions.</p>
		<p>Section 14</p>	<p>The provision on duties of aggregators does not recognise duties towards the gig workers as it only recognises the aggregators' duties towards the Board. The Bill must also draw a link between gig workers and aggregators.</p>	<ol style="list-style-type: none"> 1. Duty of the aggregator to provide information sought by the worker in a timely and accessible manner; 2. Duty to provide information about the rights and obligations of the platform workers during the on-boarding process; 3. Duty to set up an internal grievance cell; 4. Duty to make the internal grievance cell accessible to the gig worker; 5. Duty to not prevent the formation of unions by gig workers. 6. Apropos the right to reasonable

				working conditions, the aggregators must provide reasonable working conditions to platform based gig workers.
		Section 5	The clause on powers, duties and functions of the Board does not recognise the powers of the board to seek information on algorithms and algorithmic transparency by the aggregators.	<ol style="list-style-type: none"> 1. The Board should be vested with the power to seek data on algorithms and their transparency as devised by the aggregators on their app. 2. In extension, it should also be the duty of aggregators to comply with such a demand made by the board, and the consequences imposed for failure to comply.
			The Board must be empowered to prescribe reasonable working conditions for platform based gig workers.	<p>Apropos the right of the platform based gig workers to reasonable working conditions, Section 5 must include the following sub-clause-</p> <p>“Prescribe reasonable working conditions through rules and regulations under this Act”</p>
D.	Board	Section 3(4); Section 4(4).	The Board is currently too large to function effectively, and should be limited to no more than ten people in addition to the Chairperson and the Secretary.	<ol style="list-style-type: none"> 1. The quorum is currently too high, and can lead to difficulties in conducting meetings and taking necessary action. Therefore, the size of the Board must

				<p>be reduced.</p> <p>2. Apart from the ex-officio chairperson, only three other ex-officio members, namely the secretaries in-charge of the Departments of Labour, Social Justice and Empowerment, and Information and Technology must be on the Board. The secretaries of the Departments of Transport and Finance may be invitees as and when necessary, and need not be members of the Board.</p>
		Section 3	Given the functions vested in the Board and its importance in enabling the rights granted under the Bill, it is necessary for the Board to have a full time executive head.	There must be an executive head who is not an ex-officio member. Such an officer can oversee the functioning of the Board and ensure the implementation of its duties.
		Section 3(4)(vii), (viii), (ix).	The number of non-governmental representatives can be reduced to match the number of governmental representatives. Further, given the digital nature of the industry which is being regulated, there is a need for a member who is well versed in technical matters to inform the Board on how best to draft and implement rules, regulations and bye-laws under the Bill.	<p>1. The number of representatives for gig workers and aggregators can be reduced to three each to match the number of government representatives.</p> <p>2. The final non-governmental representative could either be a person from a civil society organisation who has worked in the</p>

				<p>subject area before or an expert that works in the subject area.</p> <p>3. A technical expert in Artificial Intelligence, Machine Learning and allied fields may be included on the Board when necessary, particularly to ensure algorithmic transparency by aggregators, and to enforce the right of workers to avail information on the algorithms utilised by the applications in an accessible format.</p>
E.	Grievance Redressal	Section 15	The Bill does not address the modes in which grievances of the gig worker can be addressed by the aggregator.	<p>1. A provision may be added on the internal grievance redressal mechanism to be adopted by each aggregator, that the gig worker may approach;</p> <p>2. The subject matters concerning which grievances may be raised with the internal cell may be specified through rules and regulations under the Act.</p>
		Section 17(ii)	Inclusion of specific penalties for aggregators for specific non-compliances.	The penalties must co-relate to the duties of the aggregators.