

**Model Law for
Platform Based Gig
Workers
(Working Draft)**

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**This Model Law is a working draft,
and 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.**

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The following draft of a model law for the gig economy has been published with the intention of starting a conversation on how a regulation on the platform economy can go beyond social security and provide for concrete rights for gig workers similar to those enshrined in conventional labour law. This law is envisioned to be adopted at the state level. Feedback and inputs on this model law are welcome. Please write to us [here](#).

List of Abbreviations

| | |
|----------------------------------|---|
| PAIGAM | People's Association In Grassroots Action and Movement |
| SS Code | Code on Social Security, 2020 |
| IR Code | Code on Industrial Relations, 2020 |
| EU | European Union |
| PWD | Platform Work Directive |
| DLP | Digital Labour Platform |
| Rajasthan PBGWW Act, 2023 | Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 |
| ILO | International Labour Organisation |

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1. Introduction

The growth of the platform economy has led to the need for a legal framework to regulate work conditions and protect the rights of platform and gig workers. Although platforms were initially conceived as flexible options to realise additional income, workers have become increasingly dependent on platform-based aggregators for their livelihoods, often making platform work their primary source of income. The platform economy has become a major creator of unskilled and semi-skilled jobs for lakhs of persons, many of whom have given up¹ agricultural work and migrated to urban centres to take up gig work for aggregators. NITI Aayog has estimated that by 2029-30, gig workers would constitute 4.1% of the country's total workforce.²

The current labour law framework does not encompass the nature of work done by platform workers and treats them as self-employed workers - hence giving rise to the need for a separate legislation to govern platform based gig work to tackle the distinct challenges faced by gig workers in this sector.

The four Labour Codes recently enacted by Parliament define 'employee'³ as any person *employed* by an industrial establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be expressed or *implied*. 'Worker'⁴ is defined to mean any person *employed* in any establishment to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or *implied*. The terms 'employee' and 'worker' thus connote contracts *of service* and do not include contracts *for service*. The clause 'express or implied' in the above definitions connotes that an agreement need not use the term 'employee' or 'worker' for it to create an employment relationship. The question of the existence of an employment relationship is to be determined from the terms of the contract.

In fact, the Code on Social Security, 2020 (SS Code) separately defines a gig worker as '*a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship*'.⁵ Therefore, the

¹ Prachi Salve, 'India's Gig Workers: Overworked And Underpaid' (4 June 2019) <<https://www.indiaspend.com/indias-gig-workers-overworked-and-underpaid/>> accessed 15 April 2024.

² 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.

³ Section 2(l), Industrial Relations Code, 2020; Section 2(t), Occupational Safety, Health and Working Conditions Code, 2020; Section 2(k), Code on Wages, 2019; Section 2(26), Code on Social Security, 2020.

⁴ Section 2(zr), Industrial Relations Code, 2020; Section 2(zzl), Occupational Safety, Health and Working Conditions Code, 2020; Section 2(z), Code on Wages, 2019.

⁵ Section 2(35), Code on Social Security, 2020.

central legislations have envisioned gig workers as a separate class of workers, functioning outside employer-employee relationships.

In the context of employment law, courts have evolved various tests in order to determine whether a relationship between two parties constitutes an employment relationship. As per the control test, an employment relationship exists when the hirer has control over the work assigned and the manner in which it is to be done.⁶ According to the integration test, the existence of an employment relationship depends on the degree of integration of the work with the hirer's primary business.⁷ Courts have also combined the control and integration tests with other factors in order to decide on cases of employee misclassification and pierce 'sham contracts', where a de facto employment relationship exists, but without any associated legal protections for the workers.⁸

The classification of persons as 'workers' or 'employees' is what brings them within the purview of labour regulations in terms of minimum wage entitlements, social security entitlements such as insurance, regulated working conditions, occupational safety standards and the right to collective bargaining through registered trade unions, among others. Persons who enter into work-for-hire agreements are 'independent contractors' and thus are not covered by these legal protections. However, the issue as to the status of gig workers as employees or independent contractors is also pending before the Supreme Court in *The Indian Federation of App-based Transport Workers (IFAT) & Ors v Union of India & Ors*.⁹

Across jurisdictions, regulatory frameworks are being formulated to respond to the challenges posed by the gig economy. For example, the Seattle City Council has enacted¹⁰ an ordinance that provides protections such as minimum payment, transparency on payment, information and invoices, and flexibility to reject offers, limit availability and to cancel gigs without being penalised. Similarly, cities such as New York City¹¹ and Bologna have provided municipal level protections for gig workers that include minimum wage, social protections, fair contracts and transparency. The New York City law goes to the extent of mandating equal access to bathroom facilities for food delivery workers whereas the Bologna law has a provision

⁶ MP Ram Mohan, Sai Muralidhar K, *Tests to determine employer-employee relationships in India: Looking towards the future?*, IIM Ahmedabad, Working Paper 2023-04-02 (Apr 2023).

⁷ *Ibid*.

⁸ *MP Ram Mohan, see note 6.*

⁹ W.P.(C) No. 1068/2021 (Supreme Court of India).

¹⁰ App Based Worker Minimum Payment Ordinance, Ordinance 126595, City of Seattle <<https://www.seattle.gov/laborstandards/ordinances/app-based-worker-ordinances/app-based-worker-minimum-payment-ordinance>>

¹¹ 'New York City Council Passes Six Bills Protecting Gig Economy Delivery Workers' (Ogletree, 30 September 2021) <<https://ogletree.com/insights-resources/blog-posts/new-york-city-council-passes-six-bills-protecting-gig-economy-delivery-workers/>> accessed 16 April 2024.

for overtime pay.

A draft law at the state level in Ontario¹² has a dedicated chapter on rights of workers which includes the right to information, right to minimum wages, dispute resolution, notice of removal and timely payment of wages. Australia, on the other hand, has passed a law to include gig workers within the ambit of the definition of a traditional employee. Numerous countries have draft proposals underway. Belgium, Chile, Croatia etc. are looking to integrate gig workers into existing labour protection laws, whereas the legislations in Ontario and other cities are more specific to the gig economy.

Workers in the platform economy can decide when and how long to work, by choosing when to login and logout of the platform. In other words, platform workers are deemed to be independent contractors as per both the contracts entered into with aggregators and as per current law. However, for a large proportion of platform workers, platform work is full-time work and their primary source of income, and not 'freelance' work in the way that the gig economy operates in some industrialised countries. A recent survey by People's Association In Grassroots Action and Movement (PAIGAM) of over ten thousand platform-based cab drivers and delivery workers across eight cities in India found that over 80% of cab drivers and over 55% of delivery workers spent over ten hours a day on platform work.¹³

The law in India must therefore respond to changes in the nature of work brought about by technology in order to prevent the exploitation of platform workers, and institute a basic rights framework akin to conventional labour law.

2. Pending matter on gig workers' status in the Supreme Court

The Indian Federation of App-Based Transport Workers filed a petition before the Supreme Court of India in 2021.¹⁴ The petition primarily aimed at three questions of law: 1) Do gig workers fall under the scope of 'unorganised workers' under the 'Unorganised Workers' Social Security Act, 2008?; 2) Is the failure to include gig workers under the scope of 'unorganised workers' a violation of their right to equality?; 3) Does the denial of social security to gig workers amount to a violation of right to life under Article 21, and exploitation through forced labour under Article 23?

The petition came in the aftermath of the COVID-19 pandemic, which affected the workers. Gig workers claim that their work significantly increased during the pandemic whereas the pay and benefits remained low. Therefore, they filed this

¹² Digital Platform Workers' Rights Act, 2022, <<https://www.ontario.ca/laws/statute/22d07>> accessed 16 April 2024.

¹³ *Prisoners on wheels? Report on working and living conditions of app-based workers in India* pp. 21, 31, People's Association In Grassroots Action and Movement (2024).

¹⁴ WP (C) 1068/2021.

petition seeking the court to interpret the word ‘unorganised workers’ to include gig workers so that they can access welfare benefits that other workers receive. This petition is pending before the Supreme Court and has not been heard at length. Therefore, there has been no effect on the legal status of gig workers being treated as independent contractors by aggregators.

3. State v. Union approach to regulation

Social security and labour welfare are subjects of List III (concurrent list) of the Seventh Schedule of the Constitution (items 23 and 24). Therefore, both the Centre and states possess the jurisdiction to legislate on the issue, with the Centre prevailing in case of repugnancy. Of the four labour codes recently enacted by Parliament, only the Code on Social Security, 2020 (SS Code) includes platform workers within its scope. The Code defines ‘gig worker’ as a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship, and a ‘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 or any such other activities which may be notified by the Central Government, in exchange for payment.”

The SS Code requires that the state and union governments create schemes intended to provide for provident fund, life and disability cover etc., without imposing any obligations on the aggregators themselves. The National Social Security Board is tasked with recommending and monitoring schemes for platform workers.¹⁵ The funding of social security schemes is through contributions by aggregators of up to 5% of the amount payable to platform workers through a Social Security Fund.¹⁶ Since the SS Code is not yet in force, there is currently no cap on the quantum of welfare fee (in percentage of transaction terms) that may be collected from aggregators. However, once the SS Code comes into force, the Union and State Governments must work together to ensure that the welfare fee collected from aggregators by the Union under the SS Code, and by the State under a platform-based gig workers welfare legislation, does not cumulatively exceed the 5% threshold mentioned above.

At the state level, the primary response to the growth of the platform economy has been to provide for the welfare of platform workers through social security schemes administered through a welfare board. Some states have done this through executive action, with Rajasthan being the only state to provide statutory backing to such a

¹⁵ Sec 6(7) and 114(6), Code on Social Security, 2020.

¹⁶ Sec 114(4) Proviso and 141(1), Code on Social Security, 2020.

welfare board. There has thus far been no attempt to provide for any statutory rights for platform workers or legally binding obligations on the part of aggregators. It is to correct this lacuna that a state-level legislative framework becomes necessary to regulate the platform economy in a manner that considers the issues faced by gig workers.

A second area of potential overlap arises with the enactment of laws which provides for a cess to be levied on the registration of certain classes of motor vehicles, in order to provide for welfare schemes for motor transport workers. It is a preliminary assessment that it is unlikely that this legislation will lead to a double burden on aggregators, since the cess is collected on the registration of vehicles on a one-time basis, whereas the fee under the platform-based gig workers welfare legislation will be collected on a per-transaction basis.

4. Approach in the European Union

A major attempt at regulating platform work was recently undertaken by the European Union (EU), which in March 2024 provisionally agreed on a Platform Work Directive (PWD) that aimed to improve the working conditions of platform workers and protect the personal data of persons performing platform work, irrespective of the nature of their contractual relationship with the platforms. The PWD is yet to be formally ratified by the European Parliament and the Council of the EU. The Directive introduces several innovations in labour law in order to respond to the new challenges thrown up by platform-based gig work organisations. Some of the provisions of the Directive are as follows:

- Member States are to institute mechanisms to ensure the correct determination of employment status of platform workers, in order to combat cases of false self-employment (4(1)).
- Digital labour platforms (DLPs) are required to inform platform workers regarding the processing of personal data by automated monitoring or decision-making systems (9(1)). DLPs are also obligated to facilitate the portability of data generated through the performance of work by platform workers, including ratings and reviews (9(6)).
- DLPs are prohibited from processing personal data to predict the exercise of rights by platform workers (7(1)(d)), or to infer racial or ethnic origin, religious beliefs, disability, trade union membership etc (7(1)(e)).
- Member States are to ensure that DLPs carry out a biennial evaluation of the impact of automated monitoring or decision making systems on platform workers, including their working conditions and equal treatment at work (10(1)).
- Any decision to suspend or terminate the contract of a platform worker must be taken by a human being (10(5)).

- Member States must ensure that DLPs provide platform workers with access to a point of contact to discuss and clarify the reasons for any decision taken by an automated decision making system (11(1)).
- DLPs are prohibited from using automated monitoring or decision making systems in a manner that endangers the safety, physical and mental health of platform workers (12(3)).
- Member States must take measures to ensure that DLPs create channels for platform workers to contact and communicate with one another, while refraining from accessing such communications (20).
- Member States are required to protect platform workers from any adverse consequences by DLPs resulting from the exercise of any of their rights under the Directive (22).

By providing for data protection and algorithmic accountability, the provisional PWD has sought to ensure that the hard-won protections and rights of workers are not reversed by new forms of work organisation in the platform economy.

5. The need for providing social security

Because of the unique nature of the work undertaken by gig-workers, and the use of algorithms in the allocation and management of work, there is a need for unique solutions to tackle the issues faced by gig workers. State Governments are increasingly looking towards providing social security, such as insurance and entitlements, to gig workers through the establishment of tripartite boards consisting of gig-workers, aggregators and officials. To this effect, Rajasthan enacted the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Rajasthan PBGWW Act), aimed at establishing a welfare board for gig workers, a method of cess collection and enactment of welfare schemes via the board. However, the legislation failed at providing rights for gig workers. Other states like Tamil Nadu and Haryana are looking to develop boards for the disbursement of social security, along similar lines as the Rajasthan PBGWW Act.

While providing social security is a desired first step, a law seeking to truly account for the welfare of gig workers must go beyond mere social security and consider including compliances for aggregators. Such a legal framework must provide for rights that gig workers may exercise against aggregators as well as the State Government. While imposing compliances on aggregators, identical to those imposed on traditional employers, may not be an accurate approach for the gig sector, the State must look towards modifying existing labour standards to match the needs of gig workers.

6. Summary of the preliminary draft of the Bill

The existing framework of labour law in India, built in an industrial context where

there is unity of employer, employee and workplace is perhaps not suitable to protect the rights of gig workers who do not have a fixed workplace or only one employer. The challenge therefore is to create a legal framework that accounts for the flexible nature of gig work without sacrificing the rights that gig workers should enjoy in the same manner as all workers. These rights include the rights to safe working conditions, the right to collective bargaining, the right to fair working conditions and the right to social security protection.

The model Bill presented in this document seeks to comprehensively include all protections due to gig workers from state governments as well as aggregators. This Bill is a first attempt by Vidhi at providing a framework that can be adopted by states that seek to regulate the platform economy to protect gig workers. It is pertinent to note that this Bill borrows provisions from the Rajasthan PBGWW Act, but builds on it to create a rights based framework for gig workers. The Bill covers the following aspects-

a. Registration of workers and aggregators

The lack of conclusive data on the number of gig workers in the country is a major issue faced by both the central and state governments. Currently, reports¹⁷ attempt to estimate the number of gig workers across the country, and a number of gig workers across the country have been registered on the e-shram portal, but definitive data continues to be absent. This data becomes necessary in the context of budget allocations for schemes and benefits, and the framing of policies for gig workers. Hence, there is a need for aggregators to be mandated to ensure the registration of gig workers being engaged by them, to enable governments to effectively devise social security and allied benefits for such workers. This model Bill proposes that aggregators must register gig workers with the proposed Welfare Board within 60 days of the coming into force of the law. Further, the Board must allocate a unique ID number for each gig worker, which is envisaged to be interoperable across platforms, and shall be utilised for the disbursement of benefits by state governments.

b. Constitution of a Board for disbursement of social security

Informal workers work in an unorganised fashion, therefore it becomes more difficult for them to claim social security benefits that organised sector workers otherwise receive. It is easier to disburse social security through employers because they have existing structures within their respective organisations. Government currently relies on employers to ensure social security such as Employee Provident Fund (EPF),

¹⁷ The study by Niti Aayog estimates that in 2020- 21, 77 lakh (7.7 million) workers were engaged in the gig economy. Page 3, *NITI Aayog* note 2.

Employee State Insurance (ESI) etc. For EPF, it is the responsibility of the employer¹⁸ to register and make timely contributions if the employer has more than 20 employees. It further makes it the responsibility of the employer to ensure all employees are enrolled for EPF. Similarly, for the ESI, it is the employer that needs to register themselves.¹⁹ Therefore, social security disbursement becomes easier for formal workers. The state governments can simply rely on existing systems put in place by the employers to engage in the disbursement of benefits etc. However, with informal workers, especially in India, to administer social security better, governments have been setting up welfare boards to dispense social security to workers through the board. Boards would act as the organisation that ensures social security reaches all workers registered with them. There have been sector specific welfare boards for different forms of informal labour. For example, construction workers have had a separate board for their welfare.

Similarly, given the nature of the gig economy where there is no single employer and the workers are not organised, there is a need for a board that administers social security for such workers. Gig workers fall in the middle of formal and informal workplaces wherein aggregators collect data on the work done by workers, their earnings etc., while also being unorganised as they work with multiple platforms and do not have fixed work timings. The draft provision constituting a board looks at the formation of the board by ensuring representation from different stakeholders within the gig economy. Further, the board is tasked with ensuring social security for workers by implementing welfare schemes. The constitution of a Board is aimed at ensuring gig workers receive welfare benefits. The aggregators are expected to share all information on workers signed up with them with the Board in order to make benefit disbursement easier.

c. Social Security

The history of development of social security as a legislative right dates back to the great depression; post which the government of the United States of America had to bring in social security as a legislative right in order to provide immediate relief to families that were deeply affected by the economy. Economies go through fluctuations, therefore social security was envisioned to ensure that a law can take care of human needs against the loss of a job.²⁰ This goes to show that social security

¹⁸ Employee Provident Fund Organisation, Employers' Services, <https://www.epfindia.gov.in/site_docs/PDFs/Updates/Presentation_ERservices062016.pdf> accessed 16 April 2024.

¹⁹ Employee State Insurance Corporation, Employer Registration Help File <https://www.esic.in/EmployerPortal/ESICInsurancePortal/Employer_Employee%20Registration%20through%20ESIC%20portal.pdf> accessed 16 April 2024.

²⁰ Presidential Statement Signing the Social Security Act, August 14, 1935, '*Social Security History*' <<https://www.ssa.gov/history/fdrsiginstate.html>> accessed 18 March 2024.

exists as protections for workers and the population in general to protect them against risks. India, at the union level, has enacted labour-related social security measures such as the Payment of Gratuity Act, 1972, the Maternity Benefit Act, 1961, the Personal Injuries Act, 1962 and currently, it has enacted the Code of Social Security, 2020 which is yet to be implemented. At the state level, there have been multiple sector specific labour welfare boards set up by different state governments such as the Unorganised Workers Welfare Board in Karnataka, the Karnataka Building and other Construction Workers Board, the Maharashtra Domestic Workers Welfare Board, Tamil Nadu Manual Workers Welfare Board, to name a few.

The Rajasthan PBGGW Act, 2023 was the first law in India to deal with social security for gig workers in specific. However, the SS Code envisioned social security benefits to gig workers under Chapter IX. Under Section 109 of the Code, gig workers are entitled to social protections such as life and disability cover, health and maternity benefits, old age protection, education etc. The Code also empowers state governments to enact schemes on injury benefits, housing etc. for gig workers.

The draft provision in this Bill relies on the existing body of jurisprudence on social security to establish the need for social security for gig workers by forming a board for their welfare. It is an integral part of ensuring a better standard of living for the workforce. Gig workers are vulnerable to many forms of injury due to the nature of their work that involves always being on the road. Many studies show that they experience symptoms such as visual impairment, fatigue and also under pressure to violate speed limits in order to meet targets thus putting them under risk for road safety.²¹ Therefore, given the occupational safety risks they encounter, they should be entitled to benefits that other forms of employment provide to protect them against different forms of risks. Gig workers have time and again demanded better social security as they rely on platforms full-time to earn livelihood.²² They have previously stated that they 'provide essential services day in and out' but do it at a 'personal cost' therefore, the government must step in and enact a law on social security.²³

d. Fair contracts

In the Fair Work India report, 2023 only five platforms got rated full points in fair contracts for trying to ensure their contracts are accessible and comprehensive to the

²¹ Nicola Christie and Heather Ward, 'The Health and Safety Risks for People Who Drive for Work in the Gig Economy' (2019) 13 *Journal of Transport & Health* 115 <<https://www.sciencedirect.com/science/article/pii/S2214140518305772>> accessed 19 March 2024.

²² AM Jigeesh, 'Gig Workers Suffer from Lack of Social Security, Regulations: Study' *The Hindu* (10 March 2024) <<https://www.thehindu.com/news/national/gig-workers-suffer-from-lack-of-social-security-regulations-study/article67936093.ece>> accessed 19 March 2024.

²³ The Hindu Bureau, 'Gig Workers Demand Model Law, Labour Rights, Social Security' *The Hindu* (27 July 2023) <<https://www.thehindu.com/news/national/gig-workers-demand-model-law-labour-rights-social-security/article67128510.ece>> accessed 19 March 2024.

worker.²⁴ Employment contracts act as standard procedures within the employer-employee relationship in order to establish the working relationship and the rights, duties and legal protections associated with the relationship.

The gig economy's business model relies on 'flexibility' that it offers for workers to choose their gigs. In order to ensure that such flexibility benefits the workers, there needs to be a regulation of the contracts that are set out by the aggregators. The principle of ensuring fair contracts is about ensuring that the terms are simple, transparent and concise. Contracts are meant to provide more information to the worker, the terms of their work, the information they can seek from the aggregators and the grievance redressal mechanisms in case the worker faces an issue.

The draft provision aims to create fairness in contracts by ensuring that workers have better access to their working terms, better access to their rights under such terms and clarity on application of contractual terms.

e. Minimum wage

The Fair Work India report, 2023 suggests that there are only three companies, of all the aggregators that were assessed, who have a minimum wage policy to ensure that all workers earn hourly local minimum wages.²⁵ The International Labour Standards set by the International Labour Organisation (ILO) provides for minimum wages by stating that they must be set in order to ensure people receive their 'equitable share of the fruits of progress to all.'²⁶ They further state that minimum wages help in poverty alleviation and ensuring a decent standard of living for a large part of the workforce.

In India, there exists the Minimum Wages Act, 1948 that provides for minimum wages for different types of labour including piece rate work. From the new labour codes, the Code of Wages, 2019 also provides for minimum wages for different types of labour as set by the government. Therefore, minimum wage as a right under labour laws is well established and is available to most workers and employees. There is a need to ensure that platform based gig workers, as a new class of labour in the market, are protected against wage-related exploitation. Given how there is nothing to dictate how aggregators decide the pay for the workers and rely on internal mechanisms that might not consider other factors, this is an attempt at ensuring that the pay for gig workers are fair, equitable and allows them to maintain a decent standard of living.

²⁴ Fairwork, *Fairwork India Ratings 2023: Labour Standards in the Platform Economy* p. 16 (2023). <<https://fair.work/en/fw/publications/fairwork-india-ratings-2023-labour-standards-in-the-platform-economy/>> accessed 15 February 2024.

²⁵ *Ibid.*

²⁶ 'What is a Minimum Wage? Definition and Purpose' International Labour Organisation (3 December 2015) <http://www.ilo.org/global/topics/wages/minimum-wages/definition/WCMS_439072/lang-en/index.htm> accessed 18 March 2024.

The draft provision follows the piece rate work pay that already exists within labour law jurisprudence under the Minimum Wages Act, 1948 and the Code of Wages, 2019. In the Code of Wages, it states that when someone is employed based on piece rate, the government has the power to set minimum wage standards similar to that of time based work where minimum wage is set based on the time spent working. Therefore, piece rate work refers to work done by producing pieces similar to gigs that gig workers perform. Gig workers get paid based on the number of gigs they perform and piece rate workers get paid on the number of pieces they produce. In the case of *Shining Tailors v. Industrial Tribunal, Lucknow, Uttar Pradesh*²⁷ stated that “piece rate payment meaning thereby payment correlated to production is a well-recognised mode of payment to industrial workmen” and in the case of *Clothing Factory v. National Workers*²⁸ the Supreme Court had held that even piece rate workers were eligible for overtime pay under the law. Therefore, there exists a regime that already supports minimum wage standards for an industry similar to that of the gig economy, wherein assessment of minimum wages is conducted for individual tasks.

f. Transparency in algorithmic decision making

The platforms in the gig economy often employ algorithms in the management of work. Algorithmic management, in the context of gig work, has five central characteristics:

- a. Constant tracking of workers' behaviour
- b. Constant performance evaluation
- c. Automatic implementation of decisions
- d. Workers' interaction with a “system” rather than humans
- e. Low transparency.²⁹

The NITI Aayog report³⁰ on the Future of Work recognizes that platforms are criticised for having opaque algorithms, imposing excessive control over their workers through “ratings-based reputation systems” and assigning “disproportionate power” to customers over workers. These algorithms also create a power imbalance between workers and platforms, preventing workers from interacting with a human interface in expressing grievances or expectations. This also creates avenues for platforms to

²⁷ *Shining Tailors v. Industrial Tribunal, UP, Lucknow*, AIR 1984 SC 23.

²⁸ *Clothing Factory v. National Workers*, 1990 SCR (2) 617.

²⁹ Möhlmann M., Zalmanson L. (2017). “Hands on the wheel: Navigating algorithmic management and Uber drivers,” in *Autonomy’, in proceedings of the international conference on information systems (ICIS:)*, Seoul South Korea. <https://scholar.google.com/scholar_lookup?title=Autonomy%27,+in+proceedings+of+the+international+conference+on+information+systems&author=M.+M%C3%B6hlmann&author=L.+Zalmanson&publication_year=2017&>

³⁰ NITI Aayognote 2.

severely micro-manage workers which would otherwise not be possible through a human supervisor. For instance, algorithmic domination is also distinctive in adopting new systems of gamification and incentive schemes administered through software that has been specifically designed to induce certain responses from workers.³¹

Hence, it is imperative that legal systems recognise the uniqueness of the involvement of algorithms in management of work, and implement appropriate safeguards for workers. This Bill seeks to empower gig workers to seek information from aggregators regarding their ratings, allocation of work, reasons for denial of work and categorisations created by them.

g. Collective bargaining

The ILO explains collective bargaining as a voluntary process used to determine terms and conditions of work and to regulate relations between employers, workers and their organisations, leading to the conclusion of a collective agreement.³² Collective bargaining is utilised by workers to negotiate working conditions and terms of employment, relations between employers and workers and relations between employers or their organisations and workers organisations.

One principal mode of collective bargaining is through Unionisation. In India, the Trade Unions Act, 1926 (TU Act) governs the registration of trade unions, and the rights and liabilities of such unions. In the context of the platform economy, legal ambiguity persists regarding whether gig workers are eligible to register unions under the TU Act. Laws regarding trade unions fall under the concurrent list under the Constitution of India, allowing state level amendments to the TU Act. Under the TU Act, 'trade unions' are generally defined as associations constituted for regulating relations between workmen or employees amongst themselves or against employers. Ambiguity arises as to whether gig workers may be considered as 'workmen' or 'employees' under this definition. Therefore, there is a need for empowering gig workers to form associations to collectively bargain regarding the terms of the contracts that they enter into with aggregators.

h. Decent working conditions

The Occupational Safety, Health and Working Conditions Code, 2020 (Occupational Safety Code) consolidates compliances for employers regarding the health and safety of workers. This law replaces and consolidates 13 different labour laws relating to

³¹ Muldoon, J., & Raekstad, P. (2022). Algorithmic Domination in the Gig Economy. *European Journal of Political Theory*, 0(0). <https://doi.org/10.1177/14748851221082078>

³² 'Q&As on Business and Collective Bargaining' (1 February 2012) International Labour Organisation. <http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CB_FAQ_EN/lang--en/index.htm> accessed 15 April 2024.

safety, health and working conditions such as the Factories Act, 1948, Mines Act, 1952, Dock Workers Act, 1986 etc. Section 23 of the Occupational Safety Code specifies the responsibilities of the employer for maintaining health, safety and working conditions- which include cleanliness, ventilation, potable drinking water, adequate lighting etc. This section empowers the Central Government to specify other facilities to be maintained by employers. The Occupational Safety Code also provides for other sector specific safety compliances for employers for mine workers, dock workers etc.

It is pertinent to note that the platform economy is heterogenous and consists of various sectors within itself. From food delivery services, to ride hailing services, to home based services, each sector might require different occupational safety measures. Hence, this Bill empowers the respective state government to lay down sector specific occupational health and safety compliances for aggregators.

i. Dispute resolution process with aggregators

The Rajasthan PBGWW Bill, in its initial version³³ released for public comments, contained a section on the duties of aggregators, but without a corresponding provision on the enforcement mechanism in case of non-compliance by aggregators. The law, as finally enacted, did not contain even the provision on the duties of aggregators, thereby not imposing any compliances on them, and merely addressing social security providable by the state, through the Welfare Board.

Any attempt to comprehensively provide for decent work for platform-based gig workers must both contain obligations on aggregator platforms, and contain a mechanism to seek remedies in case of any violations of the rights of workers, or of the obligations of aggregators. The dispute resolution mechanism may draw from formulations in conventional labour law such as the Industrial Disputes Act, 1947 (ID Act) and the soon-to-be-enforced Code on Industrial Relations, 2020 (IR Code).

The ID Act provides for industrial establishments to constitute a Works Committee and a Grievance Redressal Committee as bipartite forums for preserving good relations and resolving disputes arising out of individual grievances, respectively. The Act provides for a graded system of tripartite forums, ranging from conciliation to voluntary arbitration to adjudication by a labour court or industrial tribunal. Finally, the Act also provides for a Court of Inquiry as an investigative forum for all industrial disputes. The IR Code largely retains this architecture, albeit in a simplified form.

The most contentious question in the realm of aggregator-worker disputes pertains to the employment status of workers in the platform economy. Since on-demand

³³ The Rajasthan Platform based Gig workers Welfare Bill, Draft 1, <<https://www.medianama.com/wp-content/uploads/2023/07/20-06-2023FinalDraftofPBGWWBill2023byLawDepartment.pdf>>

platform workers are as yet classified as independent contractors, it is difficult for them to register their trade unions under the TU Act which forms the basis of collective bargaining before adjudicatory forums such as industrial tribunals.

In other words, while the status of gig workers as self-employed allows for the resolution of individual disputes, it is not conducive for the resolution of collective disputes against aggregator platforms. Any legislative sanction for collective bargaining in the platform economy may thus require the recognition of worker collectives in forms other than trade unions registrable under the TU Act.

The model law provides for a human point of contact to respond to all enquiries by workers. It also provides for a mechanism for the resolution of individual disputes, which may be easily accessed by workers through the platform application itself.

Insofar as collective grievances are concerned, it is proposed to recognise a new category of 'workers associations', which shall be authorised to represent platform workers in their collective grievances against and engage in collective bargaining with aggregators, irrespective of the employment status of the workers. The workers associations shall be elected and representative bodies, which shall be registered and recognised in the manner prescribed by the State Government.

j. Grievance redressal process against the Board

The constitution of a statutory body for the provision of social security benefits to gig workers must be accompanied by the institution of a mechanism for the redressal of grievances arising out of any entitlements, payments and other benefits under the Act. The Rajasthan PBGWW Act provides for a two-tier redressal mechanism for grievances against the Welfare Board, comprising a grievance redressal officer designated by the State Government, and the convenor of the Welfare Board as the appellate authority. The limitation of the Rajasthan formulation is that by notifying designating the convenor of the Welfare Board as the appellate authority for grievances against the Board, it seems to contradict one of the principles of natural justice, i.e. that no one should be a judge in his/her own cause. An effective grievance redressal mechanism against the Welfare Board must entail that the grievance redressal authorities be neutral and disinterested vis-a-vis the Board and the gig workers. The law may also provide for awareness generation through communication of information regarding the grievance redressal mechanism among gig workers.

The draft model code provided here is going to be a work in progress in the years to come. As business models and needs of gig workers keep changing over the years, this model code will need to be updated as well.

Model Law for Platform Based Gig Workers

Arrangement of Sections

Object and Purpose

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Object and Purpose

To protect the rights of platform based gig workers and place obligations on aggregators in relation to social security, occupational health and safety, and transparency in automated decision-making systems; to avail dispute resolution mechanisms; to constitute a Welfare Board and create a welfare fund for platform based gig workers; to register platform based gig workers and aggregators in the State, and to provide for matters connected therewith or incidental thereto.

| Sec No. | Heading | Section | Explanation and/or Source |
|-------------------------------|---------|---------|---------------------------|
| Chapter 1: Preliminary | | | |

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|---|--|---------------------------------|
| 1 | Short title, extent, commencement and application | <p>(1) This Act may be called the ___Rights of Platform Based Gig Workers Bill, ___.</p> <p>(2) It extends to the whole of the State of ___.</p> <p>(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint:</p> <p>Provided that the provisions of the Act shall be deemed to have commenced on the date of notification.</p> <p>(4) It applies to:-</p> <p>(i) an aggregator operating in the State of ___;</p> <p>(ii) an aggregator providing any one or more services specified in the Schedule; and</p> <p>(iii) any service or work being carried out that meets with the definitions of 'platform based gig workers' and 'platform' as defined respectively under Clauses (h) and (i) of Section 2 under this Act.</p> | Section 1, Rajasthan PBGWW Act. |

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|-------------|---|--|
| 2 | Definitions | (a) “Automated monitoring and decision making systems” means systems which make decisions solely by automated means without human intervention; | This legislation seeks to ensure transparency in the automated monitoring and decision making systems utilised by aggregators in the allocation of work, Hence, it seeks to define automated monitoring and decision making systems. |
| | | (b) “Aggregator” means a digital intermediary for a buyer of goods or user of a service to connect with the seller or the service provider, and includes any entity that coordinates with one or more aggregators for providing the services; | Section 2(a), Rajasthan PBGWW Act. |
| | | (c) “Workers association” means a representative body of platform based gig workers onboarded or registered on a platform, in whatever manner constituted by the platform based gig workers; | As ambiguity persists regarding the applicability of the TU Act to gig workers, this Bill proposes the establishment of worker organisations to enable collective bargaining for gig workers. |
| | | (d) “Board” means the Platform Based Gig Workers | Section 2(c), Rajasthan PBGWW Act. |

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|---------|---|---|
| | | Welfare Board constituted under Section 3; | |
| | | (e) “Fund” means the Platform Based Gig Workers Social Security and Welfare Fund established under Sub-section (1) of Section 29 of this Act; | Section 2(d), Rajasthan PBGWW Act. |
| | | (f) “Platform based 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 conditions laid down in such contract and includes all piece-rate work, and whose work is sourced through a platform, in the sectors specified in the Schedule to this Act; | Section 2(e), Rajasthan PBGWW Act. Section 1(4)(ii), Rajasthan PBGWW Bill, 2023. |
| | | (g) “Platform” means an online transaction based arrangement of work that may involve a person or persons providing goods and services and a person | Section 2(f), Rajasthan PBGWW Act. |

| Sec No. | Heading | Section | Explanation and/or Source |
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| | | or persons receiving goods and services against a specified rate of payment; | |
| | | (h) "Prescribed" means prescribed by rules made under this Act; | Section 2(g), Rajasthan PBGWW Act. |
| | | (i) "Regulations" means the regulations made by the Board under this Act; | |
| | | (j) "Rules" means the rules made under this Act; | Section 2(h), Rajasthan PBGWW Act. |
| | | (k) "State Government" means the Government of the State of _____; | Section 2(i), Rajasthan PBGWW Act. |
| | | (l) "Unique ID" means the unique number issued to platform based gig workers registered as per the provisions of this Act; | Section 2(j), Rajasthan PBGWW Act. |

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|---------|---|------------------------------------|
| | | (m) "Welfare Fee" means the fee levied under Section 30 of this Act; | Section 2(k), Rajasthan PBGWW Act. |
| | | (n) "Notification" means a notification published in the Official Gazette of a State, as the case may be, and the expression "notify" with its grammatical variations and cognate expressions shall be construed accordingly; | |
| | | (o) "Wages" means wages as defined under Section 2(y) of the Code on Wages, 2019; | |
| | | (p) "Grievance redressal officer" means the authority appointed by the State Government to decide on complaints filed by platform based gig workers against the Board; | |

| Sec No. | Heading | Section | Explanation and/or Source |
|--|-----------------|--|---|
| | | (q) “Appellate grievance redressal authority” means the authority appointed by the State Government to decide on appeals from the decisions of the grievance redressal officer; | |
| Chapter 2: Obligations of Aggregators | | | |
| 3 | Social security | <p>Platform based gig workers shall be entitled to -</p> <p>(1) be registered with the State Government on being onboarded on any platform, irrespective of the duration of the work, and be provided a Unique ID applicable across all platforms;</p> <p>(2) have access to general and specific social security schemes based on contributions made as may be notified by the State Government;</p> <p>(3) participate in all decisions taken for their welfare through representation in the Board;</p> <p>(4) insurance coverage provided by aggregators for</p> | <p>Sub-clause (1) on Unique ID has been borrowed from the Section 8(4) of Rajasthan PGBWW Act which aims at ensuring direct benefit transfers by linking IDs with their accounts. It helps in tracking duplication of records as there are multi-platform workers in the gig economy.</p> <p>Sub-clause (2) allows the Board to come up with general and specific schemes akin to Section 13(b) of the Rajasthan PGBWW Act. This flexibility is given to the Board so that they can enact need based schemes. General would be schemes applicable to all types of workers whereas specific could target specific issues such as maternity care, etc for gig</p> |

| Sec No. | Heading | Section | Explanation and/or Source |
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| | | <p>health, accidents and other occupational hazards, as may be notified by the State Government;</p> <p>(5) individual social security accounts linked to their unique IDs, to which social security benefits shall be credited by aggregators on a per-hour or per-gig basis, as may be determined by the Board.</p> | <p>workers.</p> <p>Sub-clause (iii) is aimed at ensuring that gig workers are heard in the process of designing schemes to ensure schemes' complete utilisation. Sub-clause (iv) has been added to ensure that aggregators participate in ensuring the welfare of the gig workers' by providing social security at the platform level. Many companies already provide such benefits.³⁴ However, there have been reports of inconsistencies across aggregators in providing such benefits.³⁵</p> <p>Social security is an integral part of ensuring a better standard of living for the workforce. Gig workers are vulnerable to many forms of injury. They are entitled to benefits that other forms of employment provide. Karnataka has previously rolled out schemes to help gig workers with health and accident cover.</p> |

³⁴ 'Zomato Health Cover: Zomato Says Piloting Rs 3 Lakh Health Cover for Delivery Workers, Families,' The Economic Times <<https://economictimes.indiatimes.com/tech/startups/zomato-to-pilot-rs-3-lakh-health-cover-for-families-of-delivery-workers/articleshow/94475502.cms?from=mdr>> accessed 15 April 2024.

³⁵ 'Swiggy Takes Away Health Insurance When Workers Don't Meet Quotas,' Rest of World <<https://restofworld.org/2024/swiggy-health-insurance-quotas/>> accessed 15 April 2024.

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|----------------------|---|---|
| | | | <p>However, making it a statutory right as opposed to a mere scheme helps strengthen their claim to social security. Currently, benefits such as maternity leave, ESI etc are all statutory protections as opposed to mere schemes.</p> <p>Although the Rajasthan PBGWW Act was the first law to deal with social security for gig workers in specific, the Social Security Code 2020 envisioned social security benefits to gig workers under Chapter IX. Under Section 109 of the Code, gig workers are entitled to social protections such as life and disability cover, health and maternity benefits, old age protection, education etc. Other benefits the Code empowers the State governments to enact on are injury benefits, housing, etc.</p> |
| 4. | Workers associations | (1) All platform based gig workers onboarded or registered with the same platform and working in the same municipal area shall have the right to form workers associations, which shall be recognised by the State Government in the manner | <p>Section 14, IR Code</p> <p>The right of collective bargaining through unions is intrinsic to labour rights as codified under labour laws. Such a right should also be recognised for gig workers, as they are a newly formed class of workers.</p> |

| Sec No. | Heading | Section | Explanation and/or Source |
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| | | <p>prescribed.</p> <p>(2) The platform based gig workers of each workers association, who have been on the platform for a period of at least six months, shall elect a board of five representatives every year, from among themselves.</p> <p>(3) The representatives of the workers associations shall have the power to represent the workers in negotiations with the aggregators regarding pricing and other terms of the work contract.</p> <p>(4) There shall be constituted by the aggregator, a negotiating council for negotiation, consisting of the representatives of such workers associations which have the support of not less than twenty percent of the platform based gig workers onboarded or registered on the platform in a municipal area, and the representation of workers</p> | <p>The nature of their work also isolates them from other workers as they all perform their jobs independently.³⁶ Allowing them to form unions and participate in collective bargaining against aggregators gives them the opportunity to negotiate fair pay, working conditions etc. It further helps them balance the problem of power imbalances in working relationships.</p> <p>Article 15, Proposal for an EU PWD, 7 June 2023.</p> <p>Literature indicates that while most platforms do contain official channels of communication through the digital application itself, these channels have not proven to be adequate in ensuring a mechanism for grievance redressal as well as for communication among workers on the platform.</p> <p>Official channels usually only facilitated communication between workers and management, and not among workers themselves.</p> |

³⁶ Hannah Johnston and Chris Land-Kazlauskas, Organizing on-demand: Representation, voice, and collective bargaining in the gig economy, International Labour Organisation, Conditions of Work and Employment Series No. 94, 2019.

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|----------------|---|--|
| | | <p>associations on the negotiating council shall be proportionate to the proportion of such workers in the said association.</p> <p>(5) No platform based gig worker shall be deactivated from the platform or be docked pay or suffer adverse consequences from the aggregator, for joining a workers association.</p> <p>(6) Platform based gig workers shall have the right to communicate with other platform based gig workers onboarded or registered with the same platform and working in the same municipal area, through a communications feature on the platform itself.</p> <p>Provided that the aggregator shall refrain from accessing the said communications or their contents.</p> | |
| 5. | Fair contracts | (1) All contracts entered into between aggregators and platform based gig workers shall comply with | Guidelines 7(2)(d), Motor Vehicle Aggregator Guidelines, 2020. |

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|---------|--|---|
| | | <p>the terms hereunder:</p> <p>(i) Platform based gig workers shall not be logged in for an aggregate of more than twelve hours on a calendar day and a mandatory break of ten hours for the platform based gig worker shall be imposed subsequent to a login extending to twelve hours.</p> <p>(ii) Platform based gig workers may refuse or reject a specified number of gig requests per week, as may be prescribed in the contract entered into with the aggregators, without any adverse consequences.</p> <p>(iii) Platform based gig workers shall be paid for waiting time, when they are logged onto the application and awaiting a gig, as specified in the contractual agreement.</p> <p>(iv) The existence of subcontracts between the aggregator and third parties shall not affect the obligations of the aggregator towards the platform based gig worker, or the rights of the platform based gig worker against the aggregator.</p> | <p>Often, aggregators prescribe terms and conditions which are in the nature of ‘click to agree’ contracts, which do not allow workers to represent their interests. It is pertinent that gig workers be empowered to negotiate on the terms of these contracts, and also be notified in advance in the event that changes are made to such terms. The terms must also be transparent and accessible to gig workers, to ensure that they are aware of their rights and obligations under the contract to enable them to exercise their bargaining powers.</p> <p>While aggregators claim that gig workers are self-employed, as a result of which aggregators cannot be made to comply with maximum working hour obligations, the Motor Vehicle Aggregator Guidelines, 2020 issued by the union ministry of Road Transport and Highways for adoption by the states contained a clause on maximum working hours.</p> <p>Furthermore, as mentioned earlier, platform work functions as full-time work for a significant proportion of platform workers, and such a clause</p> |

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|---------|--|--|
| | | <p>(v) Once the contract has been entered into, the aggregator shall notify the platform based gig worker of any change in the terms of the contract not less than fourteen days before the proposed change, and the platform based gig worker shall have the option to accordingly terminate the contract, without any adverse consequences for their existing entitlements under the contract.</p> <p>(vi) Contracts shall contain an exhaustive list of grounds for termination of contract by the aggregator or deactivation of the platform based gig worker from the platform.</p> <p>(2) Platform based gig workers shall have the right to be informed about their rights and obligations, before the commencement of the contractual relationship.</p> <p>(3) Contracts shall be written in simple language, easily comprehensible to a lay reader, and shall be available in any language listed in the Eighth</p> | <p>will prevent unreasonable working conditions for them.</p> <p>Automated decision making systems deployed by DLPs often penalise workers for refusing or rejecting gig requests on the platform by temporarily deactivating their account - the platform economy equivalent of a lockout.³⁷ Such adverse consequences vitiate the aggregators' own description of persons performing platform work as self-employed independent contractors. The contracts entered into between aggregators and platform workers ought to thus specify the number of gigs that may be refused or rejected without adverse consequences for the worker.</p> <p>The earlier cited survey by PAIGAM also found that 40% of platform workers spent an hour daily waiting without pay for gigs while logged onto the platform, while 30% of the workers surveyed reported that their unpaid waiting time amounted to two hours per</p> |

³⁷ Alex Rosenblat, Luke Stark, *Algorithmic labor and information asymmetries: A case study of Uber's drivers*, International Journal of Communication 10 pp. 3758-3784 (2016).

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|---------|---|--|
| | | <p>Schedule of the Constitution, at the option of the worker.</p> <p>(4) The State Government shall publish sector specific guidelines for contracts from time to time.</p> <p>(5) The State Government may review contract templates sent by aggregators, on request, in order to ensure fair contracts with platform based gig workers.</p> | <p>day.³⁸ Given that the platform worker is available for work during this period but is not allocated one by the algorithm, this model law mandates that the contractual agreement entered into between the aggregator and worker specify how waiting time will be remunerated.</p> <p>As the draft EU PWD notes, increasingly, platform workers do not have direct contractual relationships with aggregator platforms, but enter into agreements with intermediaries through which they perform platform work. This has resulted in subcontracting chains which blur responsibilities between the aggregators and the intermediaries, even though persons performing platform work through intermediaries are exposed to the same risks as persons performing work directly on the platform.³⁹ This necessitates a provision that recognises the rights of platform workers irrespective of the contracting arrangement in each case.</p> |

³⁸ *People's Association In Grassroots Action and Movement*, See note 13.

³⁹ Directive of the European Parliament and of the Council on improving working conditions in platform work, 2021/0414(COD).

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|------------------------------|---|---|
| 6. | Fair wages and wage security | <p>(1) No platform based gig workers shall be subjected to discrimination in relation to wages on grounds of religion, race, caste, gender, or place of birth or any combination of such grounds.</p> <p>(2) Platform based gig workers shall be entitled to be compensated fairly for the work performed based on the sector specific minimum wage standards set and revised based on the economic factors, standard of and cost of living, and geographical location by the State government through notification.</p> <p>Provided that the minimum wage so notified shall exclude such operational costs borne by the platform based gig worker as fuel, raw materials etc.</p> <p>(3) The platform based gig workers shall be compensated based on the updated minimum wage standards set by the State government</p> | <p>Article 14 of the Indian Constitution guarantees equality as a right and prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Similarly, the Wage Code, under Section 3 states there shall no discrimination on the grounds of gender. In order to extend the same protections to gig workers, the equality clause has been added.⁴⁰</p> <p>The Wages Code, 2019 and the Minimum Wages Act, 1948 provide for ensuring minimum wages for ‘certain employments.’ However, since gig workers are not classified as ‘employees’ they would not fall within the ambit of pre-existing wage equality frameworks. There is a need to encode the wage related entitlement. Hence, this provision. Minimum wage policies help in poverty alleviation and reducing inequality. It is important to note that the government setting minimum wages would have various implementation challenges due to the nature of work being on-demand in the gig economy. Given</p> |

⁴⁰ Vandita Morarka, ‘Gig Work, Labour Rights, and Multidimensional Inequality in India’ (*Medium*, 3 May 2023) <<https://medium.com/@vanditamorarka/gig-work-labour-rights-and-multidimensional-inequality-in-india-70248bca78cd>> accessed 15 February 2024.

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|---------|---|---|
| | | <p>through regular and periodic notifications.</p> <p>(4) Platform based gig workers shall be compensated fairly for overtime pay based on the sector specific wage standards to be prescribed by the State government from time to time.</p> <p>Provided that the minimum wage so notified shall exclude such operational costs borne by the platform based gig worker as fuel, raw materials etc.</p> <p>(5) Platform based gig workers shall be compensated at least on a weekly basis with no delay in disbursement of wages and no deductions from the tips made towards their work by the service receiver.</p> <p>(6) The platform based gig workers shall be entitled to the correct amount for the piece of work carried</p> | <p>that there can never be fixed supply or demand promise, the market currently relies on dynamic pricing⁴¹ as a wage model.</p> <p>Moreover, reports suggest that almost 85% of the gig workers work more than 8 hours on platforms and within that, 21% work more than 12 hours a day.⁴² Therefore, ensuring minimum wages becomes important. There can be a division made by the government on workers that rely on platforms for part-time wages and workers that rely on platforms for full-time wages.</p> <p>State Governments may consider specifying minimum wages for specific sectors of the platform economy in a manner similar to that utilised in the Minimum Wages Rules of the respective States. The State may consider specifying minimum wages on an hourly basis, or on a daily basis. Additionally, eligibility criteria may be specified for those workers</p> |

⁴¹ Ben Wray, 'Gig Economy Project - Is "Dynamic Pricing" Ripping-off Gig Workers?' (*Brave New Europe*, 7 February 2023) <<https://braveneweuropa.com/gig-economy-project-is-dynamic-pricing-ripping-off-gig-workers>> accessed 19 March 2024.

⁴² The Hindu Bureau, '85% of Gig Workers Work for More than 8 Hours: Study' *The Hindu* (7 March 2024) <<https://www.thehindu.com/news/national/85-of-gig-workers-work-for-more-than-8-hours-study/article67926096.ece>> accessed 15 April 2024.

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|---------|---|--|
| | | <p>out by the worker. If there is a need for deductions towards the payment due, the aggregator and the platform must inform the platform based gig worker about the need for the deduction and the reasons for the same within the invoice raised for the gig performed.</p> | <p>who may be entitled to minimum wages- such as the requirement to work a specified number of hours. Further research is required on the modes through which minimum wages may be calculated, and to understand whether a minimum wage is implementable in the platform economy.</p> <p>Section 14 of the Wage Code deals with overtime work. Although ‘overtime’ would be different in the context of gig economy, the addition of a clause on ‘overtime’ pay is to ensure gig workers are fairly compensated for their work during ‘odd and irregular’ hours of work. For example, Bengaluru’s auto drivers are entitled to 50% more than regular pay for work between 10 PM to 5AM. The same is decided by the government under the Motor Vehicles Act.⁴³ Such protections must be extended to <i>all</i> gig workers. Wage standards must be based on the sector the workers are servicing.</p> <p>Section 18 of the Wage Code states that there will be</p> |

⁴³ ‘Bengaluru: From December 1, Pay Minimum Fare of Rs 30 for Auto’ *The Times of India* (8 November 2021) <<https://timesofindia.indiatimes.com/city/bengaluru/bengaluru-from-december-1-pay-minimum-fare-of-rs-30-for-auto/articleshow/87590637.cms>> accessed 15 February 2024.

| Sec No. | Heading | Section | Explanation and/or Source |
|---------|---------|---------|---|
| | | | <p>no deductions in the wages that the worker is entitled to based on their work. It states that unless it is the money owed towards the employer it cannot be deducted. There have been reports of instances where drivers allege lack of timely payment, cuts in payment due to customer ratings etc.⁴⁴ In order to ensure such mishaps do not occur and that the workers receive their payments on time, clauses on timely payments have been added.</p> <p>Section 6(2) of the Wage Code deals with wage standards for ‘piece rate work’ that the government is empowered to set. Gig workers are also paid on a per-gig basis, i.e their work <i>could</i> fall within the ambit of ‘piece rate work’ under Wages Code. However, given the lack of classification of gig workers as ‘employees’, a law dealing with gig workers in specific must address this issue. Similarly, the Wage Code, under Section 7, 8 and 9 of the Code, provides the ‘components’ and the ‘procedure’ and the ‘power’, respectively, in fixing minimum wage.</p> |

⁴⁴ ‘App-Based Cab Drivers Refuse Online Payments | Hyderabad News - Times of India’ <<https://timesofindia.indiatimes.com/city/hyderabad/app-based-cab-drivers-refuse-online-payments/articleshow/67135434.cms>> accessed 15 February 2024.

| Sec No. | Heading | Section | Explanation and/or Source |
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| | | | <p>Extending such benefits of regulation to gig workers can aid in their welfare and meeting a living wage standard. Finally, Fairwork India’s “Labour Standards in the Platform Economy” Report, 2023⁴⁵ suggested that there were only three aggregator platforms in the market that had ensured a ‘minimum wage policy’ for their gig workers. International institutions such as the International Labour Organisation (ILO) have previously advocated for the regulation of piece rate wages.⁴⁶</p> |
| 7. | Transparency in automated decision making | (1) On request from gig workers, the aggregators must provide information regarding the main parameters which, either individually or collectively, are the most important for determining the allocation of teams, the distribution of job offers and places of work, ratings of respective workers, the assessment of | <p>Automated systems record and quantify workers’ movement or activities, their personal habits and attributes, and even sensitive biometric information about their stress and health levels.⁴⁸ Digital platform companies use algorithmic technologies to rate, count, and track employees and even control</p> |

⁴⁵ Fairwork India, see note 24.

⁴⁶ ‘Piece Rate Pay’ (3 December 2015), International Labour Organisation <http://www.ilo.org/global/topics/wages/minimum-wages/definition/WCMS_439067/lang--en/index.htm> accessed 15 February 2024.

⁴⁸ Ifeoma Ajunwa, Kate Crawford and Joel S Ford, ‘Health and Big Data: An Ethical Framework for Health Information Collection by Corporate Wellness Programs’ (2016) 44 The Journal of Law, Medicine & Ethics: A Journal of the American Society of Law, Medicine & Ethics 474.

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| | systems | <p>work carried out, the arrangements for waiting time and for determining remuneration, as well as the relative importance of these main parameters, by providing a description which is set out in clear and comprehensible language.⁴⁷</p> <p>(2) The information to be provided in sub-section (1) shall be up to date and available in English and the official languages of the state.</p> | <p>their job opportunities⁴⁹, their behaviour and their work allocation.</p> <p>Research suggests that aggregators often engage in algorithmic wage discrimination⁵⁰ making it impossible for workers to predict wages - as pay is dynamic and based on numerous factors. It perpetuates a system of discrimination in pay within workers doing the same work in the same area. The incentivisation model engaged by aggregators often pushes workers to continue working beyond healthy working hours. Given the information asymmetry between workers and firms, companies can calculate the exact wage rates necessary to incentivize desired behaviours, while workers can only guess how firms determine their wages.⁵¹ Algorithms are</p> |

⁴⁷ Proposal of directive from Mrs Leïla Chaïbi Member of employment and social affairs committee, Article 4 of Proposal available at <<http://old.left.eu/content/uploads/2020/11/English.pdf>>

⁴⁹ Cameron LD, Rahman H. Expanding the locus of resistance: understanding the co-constitution of control and resistance in the gig economy. *Organ Sci.* 2022;33(1):38–58.

⁵⁰ Veena Dubal, *Columbia Law Review*, 'ON ALGORITHMIC WAGE DISCRIMINATION' (*Columbia Law Review*) <<https://columbialawreview.org/content/on-algorithmic-wage-discrimination/>> accessed 15 April 2024.

⁵¹ 'Dynamic Exploits: Calculative Asymmetries in the On-demand Economy' (vLex) <<https://law-journals-books.vlex.com/vid/dynamic-exploits-calculative-asymmetries-855606557>> accessed 16 April 2024.

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| | | | <p>also tasked with blocking the IDs of workers from the platform⁵², based on factors such as ratings.</p> <p>It is imperative that legal systems must recognise the uniqueness of the involvement of algorithms in management of work, and implement appropriate safeguards for workers. The European Union’s General Data Protection Regulation (GDPR), for instance, defines automated profiling as-</p> <p><i>‘any form of automated processing of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements’.</i></p> <p>Article 22 of the GDPR requires that, where automated decision or profiling is undertaken for performance of a contract between the data subject and the data controller,</p> |

⁵² Sanjay Samuel Paul, see note 52.

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| | | | <p><i>'the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.'</i></p> <p>In this context, for instance, the Dutch court has ordered that Uber must explain how drivers' personal data and profiling is used in Uber's upfront, dynamic pay and pricing system. Similarly, the court ordered Uber to transparently disclose how automated decision making and worker profiling is used to determine work allocation. It was held that secret worker profiling and management assessments and associated performance related tags are personal data and must be disclosed to drivers.⁵³</p> <p>Workers often have little to no information on what factors determine their pay and allocation of work Hence, this legislation seeks to create transparency</p> |

⁵³ Court of Amsterdam, 200.295.747/01 <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:GHAMS:2023:796>.

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| | | | in the otherwise opaque work allocation by platforms by empowering workers to access information on algorithmic management practices which have a direct impact on them. |
| 8. | Termination | The aggregator must provide the gig worker, reasons for termination of the contract with the aggregator, with prior notice and in a timely manner, as may be prescribed by the state government. | Currently, gig workers are often blocked from the aggregator platforms without prior notice and without reason for termination of contract. ⁵⁴ There is a need to create a fair termination process, which entails providing notice to the worker prior to being blocked from the platform. |
| 9 | Occupational health, safety and working conditions | Platform based gig workers shall be entitled to such health, safety and reasonable working standards for the employees as may be prescribed by the State government. | Section 23 of the Occupational Safety, Health and Working Conditions Code, 2020 provides for responsibilities of employers for maintaining health, safety and working conditions. This provision empowers the Central Government to prescribe health and safety compliances for employees. The provision provides an inclusive list of issues that may |

⁵⁴ A Beginner's Guide To Gig Workers' Global Campaign Against Unfair Deactivation Practices, Vallari Sanzgiri, January 12, 2023 <https://www.medianama.com/2023/01/223-gig-workers-global-campaign-unfair-deactivation-practices-termination/>

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| | | | <p>be addressed by the state government such as cleanliness, ventilation, drinking water, etc. The code also lays down separate health and safety responsibilities for employers in the mining sector, occupiers of factories engaged in hazardous processes, manufacturers, suppliers, importers etc.</p> <p>The Occupational Safety, Health and Working Conditions Code, 2020 does not apply to gig workers as gig workers are not currently covered under the definition of ‘employee’ under the code. However, it is pertinent to note that the occupational safety requirements of gig workers may vary vastly from occupational safety requirements of factory workers or workers engaged in other forms of labour. Even within the platform economy, the requirements of workers in one sector (eg: food delivery) may vary from the requirements of another (eg: transport or home services). Therefore, this provision seeks to empower the State Government to lay down sector specific health and safety guidelines as standards to be complied with by aggregators.</p> |

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| 10 | General Obligations of Aggregators | <p>Every aggregator shall be required to-</p> <p>(i) get registered with the Board within sixty days of enforcement of this Act in such manner as may be prescribed by regulations;</p> <p>(ii) provide the Board with the latest data of all platform based gig workers engaged by them within sixty days of enforcement of this Act in such manner as may be prescribed by regulations;</p> <p>(iii) update the Board about any changes, i.e., increase or decrease in numbers of platform based gig workers in the data provided under Sub-section (ii) within one month of such change;</p> <p>(iv) deposit the amount of platform based gig workers welfare fee levied as per this law, by fifth day of each calendar month;</p> <p>(v) submit monthly return in such form as may be prescribed, by the fifth day of each calendar month including all information as required under this</p> | <p>Sub-clause (i) is borrowed from Section 9(1) of the Rajasthan PBGWW Act, 2023. Sub-clauses (ii) and (iii) have been added to ensure data collection by the state government on the number of workers in the State and to ensure that all workers receive benefits that they are entitled to. It is inspired by Section 8(2) and (3) of the Rajasthan PBGWW Act, 2023.</p> <p>Sub-clauses (iv) and (v) have been added to ensure compliance of aggregators in respect of collection of the welfare fee. Further, it is aimed at ensuring financial accountability of the aggregators that come under this law. The monthly cycle has been added to ensure that it is a process that is undertaken continuously through the year to get fair estimates.</p> |

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| | | law. | |
| 11 | Nomination of point of contact for enquiries | <p>(1) Each gig worker must be provided with a human point of contact for all clarifications under the provisions of this Act;</p> <p>Provided that the aggregator may maintain physical spaces where gig workers may seek clarifications under the provisions of this Act.</p> <p>(2) The worker shall have the option of communicating with the point of contact in any language listed in the Eighth Schedule of the Constitution, at the option of the gig worker.</p> <p>(3) The contact information of the point of contact shall be provided on the respective gig workers' accounts on the platform application.</p> | <p>While aggregators have had communication mechanisms in place, most aggregators use softwares and chatbots that have limited functionality in communicating with the worker. It must thus be an obligation for aggregators to provide for a human point of contact for communication with the worker, for enquiries and other clarifications.</p> <p>In addition to a human point of contact, aggregators may establish physical spaces where platform workers may come in person for the purpose of such enquiries and other clarifications.</p> |
| 12 | Disputes against aggregators | <p>(1) The aggregators shall have the duty to set up an internal dispute resolution mechanism that the platform based gig worker may approach as and when required.</p> | <p>Grievance redressal mechanisms are an important part of standard employment relationships in India. Section 4 of the recently enacted IR Code provides for the constitution of grievance redressal</p> |

| Sec No. | Heading | Section | Explanation and/or Source |
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| | | <p>(2) Access to the internal dispute resolution mechanism shall be provided prominently on the platform application.</p> <p>(3) The aggregators shall have the duty to ensure that such an internal dispute resolution mechanism is not automated and has a human being responding to queries raised.</p> <p>(4) The aggregators shall have the duty to ensure smooth functioning of the internal dispute resolution mechanism.</p> <p>(5) The internal dispute resolution mechanism shall be accessible to the platform based gig worker in any language listed in the Eighth Schedule of the Constitution, at the option of the worker.</p> <p>(6) A platform based gig worker registered under this Act may file a petition against the aggregator before the concerned Labour Court constituted under the ID Act in case he is unable to obtain</p> | <p>committees in all industrial establishments employing twenty or more workers.</p> <p>Workers must be provided with appropriate forums for redressal of grievances in respect of the contractual relationships they hold with aggregators.</p> <p>Since platform workers do not fall under the purview of the IR Code, they do not have access to a mechanism for redressal and resolution of grievances and disputes against the aggregator platforms.</p> <p>While numerous aggregators have instituted grievance redressal policies in recent years,⁵⁵ there is a need to codify the same into a legal obligation applicable to all DLPs. Some aggregators use automated grievance redressal that make it difficult for platform workers to reach out for assistance or redress grievances.⁵⁶ It must thus be an obligation</p> |

⁵⁵ *Fairwork India*, see note 24.

⁵⁶ Kavya Bharadkar et al., *Is platform work decent work? A case of food delivery workers in Karnataka* p. 28, NLS Institute of Public Policy (Dec 8, 2021).

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| | | redress through the internal dispute resolution mechanism referred to in Section 19. | <p>for aggregators to provide for a human representative for the redressal of worker grievances.</p> <p>Of the four recently enacted labour codes, provisions on platform-based gig workers are contained only in the SS Code. In other words, platform workers have not been explicitly included in the scope of the Code on IR Code. Under the ID Act currently in force, the Labour Court is empowered to decide on any matter listed as a dispute in the Second Schedule of the Act. Therefore, this provision seeks to enable platform workers to approach Labour Courts under existing law, in case grievances against the aggregator are not resolved through internal mechanisms.</p> |
| 13 | Entitlement to more than one benefit | No right or entitlement provided for under this Act shall affect any benefit or protection accorded to platform based gig workers under any other law for the time being in force. | Proviso to Section 13, Rajasthan PBGWW Act. |

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| Chapter 3: Platform Based Gig Workers Welfare Board | | | |
| 14 | Establishment of Platform Based Gig Workers Welfare Board | <p>(1) The State Government shall, with effect from such date as it may appoint, constitute a Board to be known as the “Platform Based Gig Workers Welfare Board” to exercise the powers conferred on, and perform the duties and functions assigned to it, under this Act.</p> <p>(2) The headquarters of the Board shall be at ___.</p> | Section 3, Rajasthan PBGWW Act. |
| 15 | Composition of the Board | <p>The Board shall consist of-</p> <p>(a) the Minister in-charge of the Department of Labour as the ex-officio chairperson;</p> <p>(b) the Secretary in-charge, Department of Labour or his nominee not below the rank of Joint Secretary as the ex-officio Member Convener;</p> <p>(c) the Secretary in-charge, Department of Information and Technology or his nominee not below the rank of Joint Secretary, as an ex-officio</p> | Section 3(3), Rajasthan PBGWW Act. |

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| | | <p>Member;</p> <p>(d) the Secretary in-charge, Department of Social Justice and Empowerment or his nominee not below the rank of Joint Secretary as an ex-officio Member;</p> <p>(e) A Chief Executive Officer appointed by the State government who shall be a Member and be Executive in-charge of day to day functioning of the Board and carry out duties on behalf of the Board;</p> <p>(f) two representatives of the platform based gig workers to be nominated by the State Government as Members;</p> <p>(g) two representatives of aggregators to be nominated by the State Government;</p> <p>(h) one representative from the civil society that has experience working in the field or a subject matter expert that works in field to be nominated by the State Government;</p> | |

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| | | (i) a technical expert in the field of data collection and IT systems may be invited as and when necessary to provide inputs. | |
| 16 | Meetings of the Board | <p>(1) The Board shall meet at such time and place and observe such rules of procedure for transaction of business at its meetings as may be prescribed:</p> <p>Provided that the Board shall meet at least once in six months:</p> <p>Provided further that the Chairperson may convene a meeting of the Board upon a written request from at least six members of the Board.</p> <p>(2) The Chairperson, or, if for any reason he is unable to attend any meeting of the Board, any other member as decided by members present, shall preside over the meeting.</p> <p>(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting, and in</p> | Section 4, Rajasthan PBGWW Act. |

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| | | <p>the event of equality of votes, the Chairperson, or in his absence, the person presiding, shall have a second or a casting vote.</p> <p>(4) The quorum for the meeting of the Board shall be fifty percent of the total members.</p> | |
| 17 | Powers and Functions of the Board | <p>The Board</p> <p>(i) shall ensure registration of platform based gig workers as per the law;</p> <p>(ii) shall ensure registration of aggregators operating in the State as per the law;</p> <p>(iii) shall ensure that welfare fee deduction mechanism is integrated with the functioning of the application of the aggregator;</p> <p>(iv) shall set up a monitoring mechanism to certify that welfare fee is being duly deducted;</p> <p>(v) shall monitor the schemes for social security of registered platform based gig workers and provide</p> | Section 5, Rajasthan PBGWW Act. |

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| | | <p>recommendations to the State Government for administering such schemes;</p> <p>(vi) shall ensure that platform based gig workers have access to the benefits as per the schemes formulated by the State Government and to provide proactive facilitation to them in their engagement with concerned aggregator;</p> <p>(vii) shall engage with workers associations working with platform based gig workers and hold regular open consultations with them;</p> <p>(viii) may constitute a committee for providing the recommendations to the State Government for formulation, review and implementation of the schemes.</p> <p>(2) The Board shall have the power to make social security schemes for specific groups of platform based gig workers such as women, persons with disabilities etc.</p> <p>(3) The Board shall have the power to seek data from the aggregators and platforms on the work</p> | |

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| | | aggregated via their platform, in compliance with applicable data protection laws. | |
| 18 | Officers and employees of the Board | The State Government shall depute such officers and employees as it considers necessary for the efficient discharge of its functions under this Act. | Section 6, Rajasthan PBGWW Act. |
| 19 | Salaries and Allowances | The nominated members of the Board shall be entitled for allowances for attending the meetings of the Board, at such rate as may be prescribed by the State Government. | Section 7, Rajasthan PBGWW Act. |
| 20 | Accounts and Audit | (1) The State Government shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including a balance-sheet in such form as may be prescribed. (2) The accounts of the Fund shall be audited annually by the office of the Accountant General of | Section 12, Rajasthan PBGWW Act. |

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| | | <p>the State.</p> <p>(3) The accounts of the Fund certified by the auditor, together with the audited report thereon shall be forwarded annually to the State Government before such date as the State Government may specify in this behalf.</p> <p>(4) The Board shall comply with such directions as the State Government may, after perusal of the report of the auditor, think fit to issue.</p> <p>(5) The cost of the audit, as determined by the State Government, shall be paid out of the Fund.</p> <p>(6) All monies forming part of the Fund shall be kept in current or deposit account with the State Bank of India (SBI) or in any Nationalised Bank or invested in securities by the State Government.</p> | |
| 21 | Registration of Platform Based Gig | (1) The aggregators shall provide to the Board its database of all platform based gig workers onboarded or registered with them within sixty | Section 8, Rajasthan PBGWW Act. Given that the gig economy forms an unorganised sector, there needs to be data collection to disperse social security |

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| | Workers | <p>days of enforcement of this Act.</p> <p>(2) All platform based gig workers onboarded or registered with any platform shall be automatically registered with the Board.</p> <p>(3) The Board shall maintain a database of platform based gig workers in the State along with the details of their employment with one or more aggregators, notwithstanding the duration or time of engagement with any platform.</p> <p>(4) The Board shall register and generate a unique ID to every platform based gig worker who is onboarded by one or more aggregators operating in the State.</p> | <p>schemes. Such data collection can happen seamlessly with assistance from platforms that engage gig workers.⁵⁷ The Board needs to maintain such databases and coordinate with platforms to carry out effective disbursement of social security benefits.</p> <p>The draft provision, therefore, is aimed at registration of workers with the Board by the aggregator. It also imposes the obligation of maintaining and ensuring updation of the database by the Board.</p> |
| 22 | Registration of Aggregators | <p>(1) Every aggregator shall be required to get registered with the Board within sixty days of enforcement of this Act.</p> | <p>Section 9, Rajasthan PBGWW Act. Akin to registration of workers, platforms engaging such workers need to be registered with the Board as it</p> |

⁵⁷ 'By Putting the Onus of Registration on Workers, E-Shram Ignores Responsibility of Employers' (*The Wire*) <<https://thewire.in/labour/by-putting-the-onus-of-registration-on-workers-e-shram-ignores-responsibility-of-employers>> accessed 15 February 2024.

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| | | <p>(2) The Board shall maintain a register of aggregators operating in the State along with the name and designation of an officer authorised by the State Government responsible for carrying out obligations under this Act.</p> <p>(3) The Board shall publish the register of aggregators on its web portal.</p> | <p>helps engage all stakeholders within an economic sector. Availability of data facilitates easy interaction between the government and the stakeholders.⁵⁸</p> <p>Therefore, the provision is aimed at registration of aggregators and maintaining the database of the aggregators similar to that of the workers.</p> |
| Chapter 4: Platform Based Gig Workers Fund and Welfare Fee | | | |
| 23 | Fund for platform based gig workers | <p>(1) The State Government shall establish a fund to be called “The Platform Based Gig Workers Social Security and Welfare Fund” for the benefit of registered platform based gig workers and the following money shall form part of, and be paid into, namely:-</p> <p>(i) all sums received from welfare fee levied under this Act;</p> | Section 10, Rajasthan PBGWW Act. |

⁵⁸ Jennifer McNabb and others, 'Uses of Administrative Data at the Social Security Administration' (2009) 69 Social Security Bulletin 75.

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| | | <p>(ii) all contributions made by individual platform based gig workers;</p> <p>(iii) all sums received as grant-in-aid from the State Government;</p> <p>(iv) all sums received by way of grants, gifts, donations, benefactions, bequests or transfers; and</p> <p>(v) all sums received from any other sources as may be prescribed.</p> <p>(2) The Fund shall be utilised and managed in such manner as may be determined by the Board.</p> | |
| 24 | Platform Based Gig Workers Welfare Fee | <p>(1) There shall be charged, from an aggregator, a welfare fee known as “The Platform Based Gig Workers Welfare Fee”, which shall be at such rate (percent) of the value of each transaction related to platform based gig workers as may be notified by the State Government.</p> <p>Explanation. For the purposes of this section, ‘the</p> | <p>Section 11, Rajasthan PBGWW Act.</p> <p>The Rajasthan PBGWW Act adopts a per-transaction based fee collection from aggregators in order to finance welfare schemes for workers. Therefore, the same has been borrowed from the Act.</p> |

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| | | <p>value of each transaction' shall not include any tax paid or payable.</p> <p>(2) Such fee shall be collected by the State Government in such manner and within such time as may be prescribed.</p> | <p>The Rajasthan PBGWW Act has used a per transaction based model as it will be easier to implement and monitor fee collection based on the real time transaction data that is already collected by aggregators while processing orders through their platform. It allows a better measure of the work performed by the worker in the event of the Board implementing productivity based specific welfare schemes for workers that use gig economy as their primary source of income.</p> <p>For example, the Hamal Model envisaged 60 years ago implemented a similar welfare fee collected based on the number of sacks lifted by each worker.⁵⁹</p> <p>The draft provision adopts the Rajasthan method instead of the alternative of collecting cess from the aggregators based on a quarterly or monthly turnover as it would lead to fluctuations in financing the welfare. Transactions based methods also</p> |

⁵⁹ Nikhil Dey & Aruna Roy, 'Drawn from Gig Workers' Struggles, Hewn in Rajasthan' The Hindu (25 July 2023) <<https://www.thehindu.com/opinion/lead/drawn-from-gig-workers-struggles-hewn-in-rajasthan/article67120594.ece>> accessed 19 March 2024.

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| | | | <p>account for the workers’ productivity whereas the overall turnover might not. Direct linkage to the specific activity of the worker could be useful in the long run as social security in its essence is tied to productivity of the worker and not the profits turned in by the employer.</p> <p>Finally, it is also important to note that a turnover based model of collection might not be sustainable and viable as it could be disproportionate towards smaller firms with lower profit margins as opposed to larger firms operating at scale with larger profit margins.</p> |
| Chapter 5: Grievance Redressal Mechanism | | | |
| 25 | Grievance Redressal Mechanism | (1) A platform based gig worker registered under this Act may file a petition in person, before a grievance redressal officer, to be designated by the State Government or make a petition through the portal of the platform application, in relation to any | Section 14, Rajasthan PBGWW Act. |

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| | | <p>grievance arising out actions of the Board under this Act.</p> <p>(2) The officer so authorised under Sub-section (1) may, after inquiries, dispose of the said petition by passing an order of redressal with reasons, and may also issue a direction to the Board, as the case may be, for payment of penalties and appropriate compensation.</p> <p>(3) An appeal against the order under Sub-section (2) shall lie within ninety days from the date of order before the Appellate Grievance Redressal Authority.</p> <p>(4) The officer and Appellate Authority shall be guided by the principles of natural justice, and shall provide the opportunity for the platform based gig worker to be heard.</p> <p>(5) The platform based gig worker shall have the option of sending or receiving communications from the officer or Appellate Authority in any language listed in the Eighth Schedule of the</p> | |

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| | | <p>Constitution, at the option of the worker.</p> <p>(6) The grievance redressal process may be conducted online or in-person, at the option of the platform based gig worker.</p> | |
| Chapter 6: Tracking and Monitoring | | | |
| 26 | Central Transaction Information Management System | <p>(1) All payments generated on platforms shall be mapped on to a Central Transaction Information and Management System (CTIMS) administered by the State Government and monitored by the Board.</p> <p>(2) Every payment made to platform based gig workers and the welfare fee deducted shall be recorded on the Central Transaction Information and Management System (CTIMS) for each transaction related to platform based gig workers. The formats for the payment shall be such as may be prescribed.</p> | Section 18, Rajasthan PBGWW Act. |

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| | | (3) The details of welfare fee collected and spent at the platform based gig workers level shall be disclosed and made available on the Central Transaction Information and Management System (CTIMS). | |
| Chapter 7: Offences and Penalties | | | |
| 27 | General penalty for offences | Whoever commits an offence under this Act or any rules or regulations made thereunder for which no specific penalty is provided elsewhere than in this section, shall be punishable with imprisonment for a term which may extend to ____years or with a fine which may extend to ____rupees or, in the case of a company, with a fine which may extend to _____ rupees or with both. | |
| 28 | Offences by companies | (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the | |

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| | | <p>conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:</p> <p>Provided that nothing contained in this subsection shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.</p> <p>(2) Notwithstanding anything contained in subsection (1), where any offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, company secretary or other officer of the company, such director, manager, company secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.</p> | |

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| 29 | Cognisance of offences | No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. | |
| 30 | Compounding of offences | <p>(1) Any offence punishable under this Act may, either before or after the institution of the prosecution, on an application by the alleged offender, be compounded by payment of compounding amount not more than fifty percent by such officer or authority as the State Government may, by notification in the Official Gazette, specify in this behalf:</p> <p>Provided that the appropriate Government may, by notification in the Official Gazette, amend the said specified compounding amount:</p> <p>Provided further that the offences of the same nature committed by the same offender for more than three occasions shall not be compoundable:</p> <p>Provided also that such offences shall be compounded only after the alleged offender has</p> | |

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| | | <p>acted to the satisfaction of such officer or authority that such offence is not continued any further:</p> <p>(2) Where an offence has been compounded under sub-section (1), no further proceedings shall be taken against the offender in respect of such offence and the offender, if in custody, shall be released or discharged.</p> | |
| 31 | Specific offences and penalties | <p>Any aggregator who</p> <p>(a) does not get registered with the Board as required by;</p> <p>(b) fails to provide a contract to the gig worker, as required by;</p> <p>(c) fails to notify the gig worker of any change in the terms of the contract, as required by;</p> <p>(d) fails to communicate information sought by the gig worker regarding automated monitoring and decision making systems under;</p> <p>(e) fails to inform the gig worker regarding the procedure to seek information regarding automated monitoring and decision making</p> | |

| Sec No. | Heading | Section | Explanation and/or Source |
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| | | <p>systems, as required by;</p> <p>(f) terminates work on grounds not mentioned in the contract, in violation of;</p> <p>(g) fails to compensate the gig workers in a timely manner as provided for by;</p> <p>(h) fails to provide reasons for deductions in pay as provided for by;</p> <p>(i) terminates work without notice, in violation of;</p> <p>(j) fails to comply with occupational safety and health standards as prescribed by the State Government under;</p> <p>(k) fails to nominate point of contact as required under;</p> <p>(l) fails to appoint the dispute resolution committee required under;</p> <p>shall be punishable with imprisonment for a term which may extend to ____ years or with a fine which may extend to _____ rupees or, in the case of a company, with a fine which may extend to one_____rupees , or with both.</p> | |

| Sec No. | Heading | Section | Explanation and/or Source |
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| Chapter 8: Miscellaneous | | | |
| 32 | Annual Report | The Board shall prepare every year a report of its activities under this Act during the year and submit the report to the State Government. | Section 19, Rajasthan PBGWW Act. |
| 33 | Act to be in addition to any other law | The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force. | Section 20, Rajasthan PBGWW Act. |
| 34 | Protection of action taken in good faith | No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder. | Section 21, Rajasthan PBGWW Act. |
| 35 | Power to | (1) The State Government may make rules for | Section 22, Rajasthan PBGWW Act. |

| Sec No. | Heading | Section | Explanation and/or Source |
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| | make rules | <p>carrying out the purposes of this Act.</p> <p>(2) Every rule made under this Act shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or of the sessions immediately following, the House of the State Legislature makes any modification in the rule or resolves that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.</p> <p>(3) Every rule made under this Act shall be published in the Official Gazette.</p> | |
| 36 | Power to make | (1) The Welfare Board may make regulations to | |

| Sec No. | Heading | Section | Explanation and/or Source |
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| | Regulations | <p>provide for the following matters under this Act-</p> <p>(i) The manner of registration of aggregators as per Section 13(i).</p> <p>(ii) The manner in which the latest data of all platform based gig workers engaged by aggregators must be shared as per Section 13(ii).</p> | |
| 37 | Powers of inspection | <p>The State Government shall have the power to conduct surprise inspections and reviews of contracts, automated decision making systems, occupational safety standards and working standards adopted by aggregators to check compliance with the Act and rules thereunder, by such officer as may be designated.</p> | |
| 38 | Power to remove difficulties.- | <p>(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may be necessary or</p> | Section 23, Rajasthan PBGWW Act. |

| Sec No. | Heading | Section | Explanation and/or Source |
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| | | <p>expedient for removing the difficulty: Provided that no order under this section shall be made after expiry of three years from the date of commencement of this Act.</p> <p>(2) Every order made under this section shall, as soon as may be after it is so made, be laid before the House of State Legislature</p> | |

Schedule

[See Section 1(4)(ii) and Section 2(f)]

Services provided by aggregators

1. Ride sharing services.
2. Food and grocery delivery services.
3. Logistics services.
4. e-Market place (both marketplace and inventory model) for wholesale/retail sale of goods and/or services Business to Business /Business to Consumer (B2B/B2C).
5. Professional services provider.
6. Healthcare.

7. Travel and hospitality.

8. Content and media services.