



## An analysis of Rajasthan platform based Gig Workers (Registration and Welfare) Bill 2023: Providing social security to e-commerce platform workers

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### Abstract

Entries 23 and 24 of the List III—Concurrent List of Schedule VII of The Constitution of India deal with labour welfare. With Rajasthan Platform Based Gig Workers (Registration and Welfare) Bill 2023, Rajasthan Government has taken a leap to provide social security to hitherto-neglected gig workers engaged in e-commerce platforms. Present article aims to analyse the provisions of the Bill and its impact on Rajasthan gig workers' labour rights.

**Keywords:** Gig workers, social security, rajasthan bill 2023

### Introduction

The Constitution of India, 1949 envisages division of power between the Union and the States. Under its Schedule VII, "Labour" is in Concurrent List, which empowers both Union and States to enact legislation on the subject.

Entry 23, List III of Schedule VII is 'Social Security and insurance, employment and unemployment'; and Entry 24 is 'Welfare of labour including conditions of work, provident funds, employers' invalidity and old age pension and maternity'.

Rajasthan Government, which has always been on the forefront of the labour welfare has presented a bill called The Rajasthan Platform Based Gig Workers (Registration and Welfare) Bill (30/2023) <sup>[1]</sup> in the Rajasthan Legislative Assembly on July 21, 2023. It was discussed and passed on July 24, 2023. This Bill is a landmark in the history of Rajasthan as it aims to protect labour rights and provide social security to about 2.25-275 lakh gig workers <sup>[2]</sup> of Rajasthan. With this ground-breaking labour welfare bill Rajasthan has become the first State to lay down enabling statutory framework for gig worker welfare.

An important aspect of the Bill is that the State government has recognised the growing contribution of e-commerce in the economy of the state. Another notable aspect is that states like Karnataka, which has significant presence of information technology companies in the state has followed the steps of the Rajasthan to create a welfare corpus for social security of gig workers in the state.

### 1. Gig workers and Their Role in the Economy

The word "gig" is an informal word borrowed from the West, particularly from the US. It is used to denote short-term or single musical performance by artists <sup>[3]</sup>. This word has silently entered the E-Commerce industry to denote part-time and on-demand workers that are engaged as deliverymen, drivers etc. by platform companies like Zomato, Swiggy, Ola, Uber, Blinkit, Indriver etc.

According to a survey <sup>[4]</sup> by Boston Consulting Group, gig economy may potentially increase India's GDP by 1.25%. It is estimated that there are about 9 crore jobs that may be served by the gig economy.

### 2. Summary Provisions of the Bill and their Analysis

The bill has 25 sections divided into 9 Chapters with 1 schedule. It applies to aggregator or primary employer operating in Rajasthan. The Bill seeks to achieve the following for platform based gig workers (PGWs)

- To facilitate guarantee of social security
- To constitute a Welfare Board
- To setup a welfare fund

In addition to registration of PGWs, the Bill also mandates registration of aggregators and Primary Employers.

### 1. Important Definitions

**Gig Worker:** It is a person who works under an arrangement which is not a usual employer-employee relationship. He earns—whether lump sum or at piece-rate, under terms and conditions of a contract. {s. 2(f)}

This definition has partly been taken from the s. 2(35) Code on Social Security, 2020 <sup>[5]</sup> which is an Act of Parliament that received the assent of the President on the 28th September, 2020. Hence s.2(f) of the Bill provides a general definition of gig worker without reference to any digital platform.

**Aggregator:** It is a digital intermediary that connects buyer and sellers for goods or services. It also includes any entity that coordinates with one or more aggregators for providing such services. {s. 2(a)}

This definition has also partly been taken from the s. 2(2) Code on Social Security, 2020.

Thus, an aggregator must have a digital presence for business operations. In other words, any business operating with a brick and mortar model is not covered under the definition of aggregator, even if it employs temporary, part-time or short assignment workers.

**Primary Employers:** Those individuals or organizations who directly engage PGWs for a particular task against payment. {s. 2(i)}

This definition is not clear as to how aggregators and primary employers are different. One may also lead to think, although incorrectly, that it is the customer/ client because it is the customer/client who is seeking performance of certain task against payment.

Another incorrect interpretation of the primary employer can be explained through an example. Suppose a customer order food from a restaurant. The restaurant receives order from the aggregator and hands over the food packet to gig worker for delivery. It is easy to misinterpret the restaurant owner as primary employer as gig-worker is performing a task for restaurant owner for a payment. However, in reality, both gig worker and restaurant owner are connected through the aggregator.

Therefore, for the sake of avoiding ambiguity and misinterpretation, the definition of primary employer should be merged into the definition of aggregator. This will clearly put responsibility on the proper entity and avoid legal hassles for gig workers for their rights.

**Platform:** It is an online transaction based work arrangement that connects buyers and sellers for goods and services on payment. {s. 2(g)}

Any working arrangement to be called a platform should have following qualities

1. It must be online arrangement
2. It must be capable of execution of transactions- both monetary and non-monetary. (Non-monetary transactions may be e.g., taking or receiving orders, receiving customer complaints etc.)
3. It must connect buyers and sellers
4. Goods and services must be provided upon payment, i.e., any online transaction arrangement for voluntary donation is not a “platform” under the Bill.

## 2. Welfare Board for PGWs

Section 3 of the Bill contains provision for the constitution of Rajasthan Platform Based Gig Workers Welfare Board with Labour Minister of Rajasthan as the Chairperson and 18 members including representatives of gig workers, aggregators, primary employers and members of civil society.

The Board has wide ranging powers and duties (s.5) for the welfare of gig workers including registration of PGWs, aggregators, primary employers; to ensure deduction of welfare cess; to transfer monetary benefits to PGWs; to ensure rights of PGWs under the Bill are protected; to notify social security schemes for registered PGWs; to formulate various schemes like insurance, education and health for PGWs etc.

While it is commendable that a welfare board is envisaged under the Bill, its size and constitution may make it very difficult to take speedy action against the violator. The ex-officio members who are bureaucrats already have multiple other responsibilities. One cannot expect too much from them, given that population of gig workers are only about 3 lakhs and they do not constitute a significant political voice. Further, 12 nominated members out of 18 makes the Board another government department with general apathy towards the aim of the Bill and bureaucratic work-culture that hampers quick action.

The Board shall also administer and monitor Central Transaction Information and Management System (CTIMS) to map every transaction on platforms. It will also track cess collected and disbursed to PGWs. (s.16)

According to s.17, the Board has power to impose fine for violations of provisions of the Bill. It is Rupees ten thousand and five lakhs for first violation and two lakhs and fifty

lakhs for subsequent violations for primary employers and aggregators respectively.

The Board has to submit a report every year to the State Government. (s.19)

## 3. Registration

Section 9 of the Bill provides for the registration of the PGWs. It is the duty of the aggregator or primary employer to keep a database of PGWs with them and provide it to the Board. No time limit of engagement with the aggregator has been fixed, that means a PGW will be registered even if he engages with aggregator or primary employer for even a single day. Further such registration will never expire. A unique ID will be allotted to each gig worker.

According to section 10, the Board will register and display names of aggregators and primary employers on the web-site.

Making the registrations of PGWs for perpetuity may create problems of redundant data and directing benefits to the needy. In India, gig working is not taken as a serious regular-earning opportunity. Most of the PGWs take up such jobs during slack agriculture season in villages or till they find a suitable long term earning opportunity. Therefore, churning of PGWs in the platform based industry is very high. Further, a gig worker is identified with a mobile phone. An already registered gig worker may sub contract another person for his job but may continue to benefit from the welfare measures envisaged in the Bill. A database with redundant gig workers will affect the distribution of benefits to the existing PGWs. There is a need to include a provision for periodic revision of the database after certain fixed time interval.

## 4. Welfare Cess and Welfare Fund

Section 12 lays down that aggregator or primary employer is liable to pay a ‘The Platform Based Gig Workers Welfare Cess’ at a rate between 1%-2% on every transaction value excluding taxes. Section 16 lays down that any such cess, if not paid, shall be recovered as arrears of land revenue.

This cess will be collected in a fund created for the benefit of registered PGWs under section 11 of the Bill, called “The Rajasthan Platform Based Gig Workers Social Security and Welfare Fund” which will be managed by the Board created u/s 3.

In addition to the welfare cess u/s 12, contribution by gig workers, state government grants, voluntary contributions etc. also form the part of Welfare Fund.

The composition of welfare fund has only one significant contribution, i.e., cess collected from the aggregators or primary employer. It is worthwhile to note that liability of cess is on aggregator OR primary employer whereas the Bill defines the two separately and differently. Therefore, onus of paying cess is ambiguous and will lead to litigation.

Grants-in-aid by the state is next important contribution, but with increasing financial burden on the State Government, it seems unlikely that any good sum will be provided by the State as contribution to the fund. It would be better if the Welfare Fund is provided with an initial fund by the government before as it will take time before any significant collection happens though Welfare Cess.

## 5. Right of PGWs

One of the most compelling attributes of the Bill is laying down of rights of PGWs. Section 13 lays down the rights of PGWs who are registered.

- Right to get registered and get a unique ID
- Right to access to social security schemes under the Bill
- Right to be heard for any grievances through grievance redressal mechanism
- Participation in the Board through representatives

## 6. Grievance Redressal Mechanism

Another important feature of the Bill is provision of grievance redressal mechanism for PGWs (s.15).

Any aggrieved PGW may submit an appeal on web portal or before a designated officer in person. Such grievance must be related to any payment, entitlement or benefit provided in the Bill.

The Designated Officer, after enquiry shall pass an order and may issue directions to aggregator and primary employer for redressal and compensation to the PGW.

Any party aggrieved from such directions may prefer an appeal before the Appellate Authority within 90 days.

The Grievance Redressal Mechanism under the bill has a commendable provision of filing of complaints through web-portal. However, it is not clear who the Appellate Authority will be. One has to wait for the rules to be made in this regard.

## 7. Duties of Aggregators and Primary Employers

Section 16 lays down the duties of aggregators and primary employers. It enjoins the aggregators and primary employers to get registered and provide the data of gig workers to the Board within 60 day of enforcement of the Act. If there is any change in the strength of gig workers, it must be notified to the Board within 1 month of such change.

Aggregators and primary employers are required to deposit welfare cess and also file a return including information u/s 18 by fifth day of every calendar month.

## 8. Applicable Services of Aggregators and Primary Employers

Schedule to the Bill lays down specific services of aggregators and primary employers for the application of the Bill. These are

- Travel and hospitality- e.g., makemytrip, yatra
- Food and grocery delivery services- e.g., Zomato, Swiggy
- Healthcare- e.g., 1mg
- Ride sharing services- e.g., Ola, Uber
- Logistics services- e.g., Blue Dart, Delhivery
- Professional services providers - e.g., Magic Bricks
- Content and media services - e.g., onlineads

Platform based services are evolving day by day. It would be better if 'any other' category were included in the list to avoid need for a legislative amendment at a later stage.

## Conclusion

Digitisation has brought rapid changes in the way the business is done. Now more and more new businesses are unfolding with innovative ideas. With this, there has been an upheaval in the traditional labour markets. While new digital economy labour market is still very small compared

to traditional labour market, sheer growth in the labour force in digitised economy is mid-blowing. Therefore, there is an urgent need to address labour rights of workers in digital economy.

Central Government has already taken a step to changing needs of labour market and providing social security to workers of both organised and unorganised labour by enacting Code on Social Security 2020.

However, Rajasthan government has identified this rapid change in labour market that is moving towards digital economy. The State Government has led the country in proactively passing this piece of legislation for social security targeted towards PGWs. However, the Bill is not without flaws as noted above. There is an urgent need to make it more focussed towards providing social security to PGWs. The Bill uses terms- 'aggregators' and 'primary employers' interchangeably but their identification in a business set-up is difficult. This may delay the application of the provisions of the Bill, on the ground.

## References

1. <https://assembly.rajasthan.gov.in/Containers/Legislation/GovernmentBills.aspx>
2. The Gig Economy in India: Start-ups, Infrastructure and Resistance by Pradip Ninan Thomas; Routledge, 2024.
3. The Gig Economy: A Critical Introduction by Jamie Woodcock, Mark Graham; Wiley, 2019.
4. Riding for Deliveroo: Resistance in the New Economy by Callum Cant; Wiley, 2019.
5. <https://assembly.rajasthan.gov.in/hi/LegislationGovernmentBillsH.aspx>
6. <https://www.financialexpress.com/india-news/in-precarious-existence-the-vulnerable-human-underbelly-of-gig-workers-get-relief-in-rajasthan/3149831/>
7. <https://dictionary.cambridge.org/dictionary/english/gig>
8. <https://media-publications.bcg.com/India-Gig-Economy-Report.pdf>
9. [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_6\\_0\\_00036\\_202036\\_1623221080799&sectionId=54026&sectionno=2&orderno=2](https://www.indiacode.nic.in/show-data?actid=AC_CEN_6_0_00036_202036_1623221080799&sectionId=54026&sectionno=2&orderno=2)