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GIG WORKERS BILL: READING BETWEEN THE LINES

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Gig workers wait in line to collect their delivery order outside a mall in Mumbai. | Photo Credit: REUTERS

In a first of its kind, the Rajasthan government introduced the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Bill, 2023, with the aim of ensuring social security for gig workers. Despite its good intent and noteworthy features, the Bill appears wanting in important aspects. We identify four major issues that could possibly constrict the remit and reach of the Bill.

The first issue arises from the definitions of a gig worker and aggregator in the Bill. Drawing largely on the Code on Social Security, 2020, the Bill 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 relationships and who works on a contract that results in a given rate of payment’. It defines an aggregator as a ‘digital intermediary... and includes any entity that coordinates with one or more aggregators for providing the services’. These definitions are far from clear and binding in treating the aggregator as employers. This lacking has a crucial bearing, as gig workers would then be seen as contractors or self-employed and not as employees by the aggregator.

Whether a gig worker and aggregator can be considered an employee and employer, respectively, has been a thorny issue globally. In fact, whether a gig worker can be considered an employee and not an independent contractor is at the core of the ABC Test. Currently integrated into California’s labour code, the test was developed as a response to a case involving delivery drivers for a same-day delivery company called Dynamex. It states that the delivery people employed by the company shall be considered as employees rather than independent contractors unless the company demonstrates that the person is free from control by the company in terms of performance of work, in deciding working hours, etc. In case it fails to do so, all the benefits meted out to a full employee of the company should be extended to the delivery workers as well. Similarly, in 2021, the U.K. Supreme Court ruled that Uber drivers must be treated as workers, and not as self-employed. This definition has been integrated under Section 230(3)(b) of the U.K. Employment Rights Act, 1996. On the contrary, the Rajasthan Bill adopts equivocal definitions amenable for conflicting interpretations, which are not only out of sync with the global best practices, but also give rise to the second but crucial issue.

By not defining the gig workers as employees, the Bill is limited in its ability to integrate existing

labour laws into its ambit. Hence, the aggregators will continue to be insulated from complying with the mandates of the labour laws, and remain evasive from the responsibility of providing the gig workers with workplace entitlements. In 2022, leading platforms in India scored zero in the Fairwork India ratings. If a gig worker is not an employee, to what extent can the aggregator be held liable for medical expenses arising from accidents at work while carrying out the work?

Agreeably, a few platforms in India do have a provision on this. But such an approach runs the risk of converting crucial entitlements like occupational safety into benevolence on the part of the aggregator. In this regard, Australia and New Zealand have brought about key changes in their laws where the vocabulary no longer surrounds ‘employer’ or ‘employee’, but rather ‘a person conducting a business or undertaking (PCBU)’ and a ‘worker in their workplace’. The onus is on the PCBU to ensure the health and safety of the worker while at the workplace or anywhere else while working.

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Third, the Bill aims to create a database of gig workers wherein the details of all the workers onboarded or registered with a platform would be transferred to the proposed gig workers’ welfare board. Such a database maintained by the board does not withstand ‘the duration or time of engagement with app-based platforms’. In other words, whether the workers continue to be with the platform or not, the registration is valid for ‘perpetuity’. This progressive element might become an unintended impediment. A worker often works for two or more aggregators on a given day. Would a mandatory system of registration enable the aggregators to get to know about the worker’s details of employment with multiple aggregators and come out with mechanisms that impair the opportunity choices before the gig worker? The Bill has no preventive mechanism in this regard.

Fourth, the Bill at its core aims to guarantee social security to platform-based gig workers by constituting a representative welfare board and creating a welfare fund. It brings in eight aggregators or primary employers-based services under its remit. Yet, it neither defines categorically what constitutes social security nor specifies welfare measure that can broadly be construed as social security. Instead, it leaves this crucial aspect to the discretion of the welfare board, to ‘formulate and notify schemes for social security of registered platform-based gig workers and take such measures as it may deem fit for administering such schemes’. Though the board will have five gig worker representatives nominated by the State government, how much say they will have in the presence of vastly powerful representatives from the platforms, bureaucracy, and government is a moot question.

Thus, due to these shortcomings, whether the Bill can deliver what it promises appears doubtful.

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