

THE RAJASTHAN PLATFORM-BASED GIG WORKERS BILL, 2023 (REGISTRATION AND WELFARE) – AN OVERVIEW

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AIM AND OBJECTIVE OF THIS STUDY

This article aims to decipher “The Rajasthan Platform-Based Gig Workers Bill, 2023 (Registration and Welfare)” passed on 24th July 2023 by the State Legislature of Rajasthan. The legislation created is not only engrossed in acquiring performance-based gig workers’ social security but also plays a cardinal role in ensuring the welfare of such workers.

NEED FOR THE BILL?

A survey conducted by the International Labour Organization concluded that only 40% of workers on digital platforms have health insurance, and only 20% have access to disability insurance or retirement benefits. Even the percentage of gig workers having access to accidental insurance or unemployment benefits is as low as 15%. Gig workers remain unprotected due to ambiguous employment conditions and the absence of an employment contract allows the companies or clients to evade from providing protections and benefits to gig workers. Workers in the gig industry are easy to dismiss causing job insecurity. They are paid at low rates due to which the workers are often forced to undertake multiple jobs to secure a decent livelihood.

As a result, the need for authorities to act as facilitators and regulate such engagements emerged. The Rajasthan state legislature is the first in India to recognize the need for legislation regulating engagements in the and hence issued singular legislation “The Rajasthan Platform-based

Gig Workers (Registration and Welfare) Bill” (act), 2023, tabled on 21st July 2023 and passed on 24th July 2023.

CONCEPT OF GIG WORK

The term “Gig” emerged from the music industry, where musicians performed once with no expectations of future work. However, over time gig work emerged as an alternative arrangement to traditional employment in pre-capitalist Europe during the 1980s and 1990s, particularly with the increase in part-time employment. It emerged as a bridge between supply and demand factors in the industry.

Gig work redefined the meaning of labour and gained prominence because of flexibility in working hours, independence, and cost-effectiveness. It allows the workers to escape from the traditional employment structure and offers consumers fast service.

The gig industry expands to various sectors such as home services, professional services, manufacturing, technology, and e-commerce. The industry gained momentum after the creation of the first freelancing website “Craigslis” in the late 90’s and reached heights after the year 2000 with the development of app-based platforms such as Airbnb, Uber, Zomato, UrbanClap, Swiggy etc. Indian gig industry constitutes of approximately 7.7 million gig workers that are expected to grow in number to 23.5 million by 2029-30.

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Although there is no proper definition of gig work, however in its narrow sense gig work means labour supply being matched with labour demand by e-platforms. Gig work is often referred to as Crowd-work, on-demand work or temporary work. In the modern environment it can also be called electronically facilitated employment arrangement.

The optimistic approach of such engagements is to enjoy a certain degree of flexibility in employment as a gig worker can work remotely and determine their own working hours. This flexibility enables the workers to manage other commitments such as education along with work.

In contrast to the optimistic approach of gig work, it also has certain detrimental effects being a new variation of employment. It lacks job security and certainty of payment, benefits and protections extended to traditional employees. Often gig workers undertake multiple jobs with odd working hours to secure adequate means of livelihood. The gig industry is an unorganized sector that is not only difficult to measure but also to regulate due to ambiguous employment conditions.

The gig industry comprises of 3 main participants:

- A. Gig Worker: Engages in short-term projects with companies or clients, with flexible working hours and minimum intervention of clients or companies.
- B. Aggregator: Digital intermediary between gig workers and consumers.
- C. Consumer: End user who requires the services or goods for its consumption.

WHO IS A GIG WORKER?

Gig workers are those typically engaged in activities such as food delivery, traveling services, house help services, etc. They are free from traditional employment contracts and inflexible work environments. These workers enjoy autonomy in their work engagements without any supervision from clients or companies. The term gig worker was coined to describe workers who take up multiple jobs or are employed temporarily for short-term projects.

Gig workers are typically paid for the services rendered by them rather than fixed wages or salaries. The absence of an employment contract enables the

companies or clients to evade from providing social security, and other protections to gig workers, hence adding to their profits. Consequentially gig workers lack access to health, unemployment and disability insurance, pensions and other retirement benefits and they cannot indulge in collective bargaining as the population of gig workers is geographically dispersed.

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 the traditional employer-employee relationship and who works on a contract that results in a rate of payment based on terms and conditions laid down in such contract and includes piece-rate work.

CLASSIFICATION OF GIG WORKERS

Due to the recent downturn in the economy, full-time job seekers have been forced to take up contractual jobs (gig work) which can be broadly classified into the following:

1. FREELANCERS

Freelancing is rooted back to the 1970's and gained momentum since the 1980's. Freelancer is a self-employed person who engages in a certain primary skill such as web design, writing, software development, food delivery etc. and works with multiple clients on short-term projects. Such people take up multiple tasks in accordance with their working capacity. They have full control over the projects having pre-determined periods. Freelancers may charge clients hourly or lump sum for the entire project, e.g., food delivery partners, content writers, etc.

2. INDEPENDENT CONTRACTORS

An independent contractor is a separate entity that runs its own business and works with different companies or clients for a slightly long-term project. Unlike freelancers, independent contractors do not have control over the projects, they are required to perform the tasks assigned to them as per the guidelines of companies or clients. To appoint an independent contractor, it is necessary to enter into a valid contract and establish a hirer-independent

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contractor relationship, e.g., carpenters, house constructors etc.

3. CONSULTANTS

Consultants are professionals who advise their clients on matters relating to their field of expertise. The period of such services may vary from an hour to a year or more, depending upon the client's requirements. Consultants are of several types such as strategy consultants, financial consultants, legal consultants etc. They are hired for specific terms or to supervise specific projects e.g., lawyers, accountants, etc.

INGREDIENTS FOR BEING A GIG WORKER

After closely analyzing the definition of gig workers, it can be concluded that following are the essential characteristics to qualify for being a gig worker:

1. Absence of Traditional Employer-Employee Relationship:

There is no implicit or explicit contract of employment. A gig worker is someone who works independently, for clients or companies. These

workers are not considered employees by the companies, rather they are referred to as partners, e.g. the famous food delivery app Zomato refers to the delivery personnel as delivery partners rather than employees.

2. No Paid Wages or Salary

A gig worker is only paid in respect of the services rendered by him/her. They are not entitled to a fixed salary or wage by the company or client.

3. No Social Security and Protection

As they are not considered employees, benefits such as pensions, paid leaves, retirement benefits, and health insurance are not offered to them by employers.

4. Short-Term Work

Gig workers usually get engage with clients or companies on a short-term basis. They are employed temporarily or until the completion of a project.

5. Flexible Working Hours

Gig workers are free from the traditional 9-5 working hours notion. The gig industry offers flexibility to workers, they can work anytime, anywhere. Studies have shown how workers enjoy the flexibility and freedom that comes from determining working hours, where and when to work.

TABLE 1: Analysis Of The Eligibility Criteria For Gig Workers In Various Engagements.

Work Arrangement	Employment Contract	Social Security	Flexibility of Working Hours	Short-Term Employment	Gig Worker
Full Time Employee	Yes	Yes	No	No	No
Consultant	No	No	Yes	Yes	Yes
In House Consultant	Yes	Yes	No	No	No
One-Day-Labour	No	No	Yes	Yes	Yes
Freelancer	No	No	Yes	Yes	Yes
On Demand Worker	No	No	Yes	Yes	Yes
Independent Contractor	No	No	Yes	Yes	Yes

WHO ARE AGGREGATORS AND PRIMARY EMPLOYERS?

AGGREGATORS

The bill defines aggregators as digital intermediaries for buyers of services to connect with

the service providers including those entities which co-ordinate with one or more aggregators. These digital intermediaries are generally referred to as digital labour platforms.

The gig economy is vastly supported by technology such as digital platforms, playing a crucial role in transforming the economic landscape for gig

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workers. The gig industry is often referred to as electronically mediated employment arrangements where individuals have access to short-term tasks/projects through websites or mobile applications.

Digital platforms may have varied target markets but all of them serve as intermediaries between clients and service providers and while doing so, they do not control the communications between the two parties.

These platforms do not identify as employers of gig workers but they are mere agents who receive commissions from gig workers or clients. The main function of these platforms is to bridge the gap between labour demand and supply, hence reducing job search and lowering entry barriers.

Digital labour platforms can be broadly classified into two types:

1. **Location-Based Platforms:** Where services provided are dependent on the location and performed offline in local areas such as taxi services and food delivery services.
2. **Online Platforms:** Where the services provided are not dependent on the location hence, hirer and workers may be geographically dispersed such as coding and content writing.

Gig workers are required to register on these platforms to engage with clients through them however merely registered on these platforms is not

an implication of the activeness of the worker on the platform.

BENEFITS OF AGGREGATORS IN GIG ECONOMY

1. Reduces entry barriers in the gig industry as workers simply have to sign up on the platform to be matched with customers or companies.
2. Efficient in reducing job search as it quickly matches service providers to clients.
3. Reduced cases of discrimination in comparison to offline work.
4. Cost efficient as reduces the need for physical capital significantly.
5. Allows the gig worker to work independently with minimum intervention from the client or company.
6. Allows them to take on other commitments, along with work.

PRIMARY EMPLOYERS

Primary employers are those individuals or organizations who engage with gig workers directly for a particular task and in return gig workers are paid for their services. This is the traditional method of employing gig workers eliminating digital platforms as intermediaries.

TABLE 2: Comparative Analysis Between Aggregators and Primary Employers

Organization	Employee-Employer Relationship	Direct Contact with the Workers	Offer Short-Term Employment	Digitally Based	Aggregator/ Primary Employer
Easy Day	Yes	Yes	No	No	Primary Employer
Zomato	No	No	Yes	Yes	Aggregator
Uber	No	No	Yes	Yes	Aggregator
Retail Shops	Yes	Yes	No	No	Primary Employer
Swiggy	No	No	Yes	Yes	Aggregator

SALIENT FEATURES OF THE BILL

1. APPLICABILITY OF THE BILL

The Bill applies to aggregators or primary

employers in Rajasthan providing any one or more services mentioned in the schedule of the bill or any service or work that comes under the purview of the definitions of gig work and platform as per the bill.

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2. PLATFORM-BASED GIG WORKERS WELFARE BOARD

Aiming to curb the unfair treatment given to gig workers in the industry and to effectuate social security benefits, the bill provides for the establishment of a Platform-Based Gig Workers Welfare Board, (headquarters in Jaipur, Rajasthan) for addressing the grievances and recommendations of gig workers, aggregators, and primary employers under the chairmanship of the Minister in charge of the Department of Labour of Rajasthan. The board constitutes an equal number of representatives of gig workers and aggregators/primary employers, and at least 1/3rd of the members should be women. The board is to meet at least twice a year to address the grievances and concerns, additional meetings may be convened by the chairperson upon a written request from at least 6 members.

The board has been conferred various duties under the bill such as:

- a) Registering platform-based gig workers, primary employers, aggregators in the state.
- b) Formulate and notify schemes for the welfare of platform-based gig workers.
- c) Ensure that the workers have access to welfare schemes and measures taken for their upliftment.
- d) Ensure the rights of platform-based gig workers are not being violated.
- e) Engage with registered unions working with platform-based gig workers and hold regular consultations with them.
- f) Constitute committees to formulate, review and implement schemes.

3. REGISTRATION OF PLATFORM-BASED GIG WORKERS

Primary employers and aggregators are required to provide information about all the performance-based workers engaged with them within 60 days (about 2 months), enabling the board to register these workers and maintain a database for the same. Thereafter a Unique Identification Number is assigned to all the performance-based gig workers so registered for an indefinite period which helps

the concerned authorities to keep track of the gig industry.

4. REGISTRATION AND OTHER REQUIREMENTS FROM AGGREGATORS AND PRIMARY EMPLOYERS

Aggregators and primary employers are required to get registered with the board within 60 days (about 2 months) of the enforcement of the bill and update the board regarding any changes in the number of gig workers in the data provided within one month of such change. They are also required to deposit welfare cess and submit monthly returns by the 5th day of every month.

5. SETTING UP WELFARE FUND AND WELFARE SCHEMES

The Bill ensures the setting-up of a Platform-based Gig Worker's Social Security and Welfare Fund. It is utilized for the implementation of schemes formulated for workers lacking financial security, and other welfare schemes. Money received from welfare cess, by way of grants, gifts, donations, and contributions made by individual platform-based gig workers shall form part of this fund.

6. TRACKING AND MONITORING

The bill allows the Board to administer and monitor all the payments, including the breakup of commission charged, payments made to gig workers, GST deducted, and Welfare cess deducted on the platforms by mapping them through Central Transaction Information and Management System (CTIMS).

7. GRIEVANCE SETTLEMENT

The bill provides for the setting up of a grievance settlement mechanism to inquire into the grievances of the gig workers and accord redressals. The aggrieved gig worker may file a petition before the officer appointed by the state, online through the web portal.

Appeal against the order of the officer can be filed within 90 days (about 3 months) to the adjudicating authority, thereafter the adjudicating authority may

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take such action as it deems necessary.

8. PENALTIES

To procure the welfare of the gig workers and minimize contraventions, stringent penalties are imposed on offenders, i.e., up to two lakhs in the case of primary employers, up to 50 lakhs if the offender is an aggregator.

HURDLES UNDER THE BILL

1. LEVYING A 2% CESS ON AGGREGATORS

Levying of the welfare cess on primary employers and aggregators may cause them to revise the payments made to gig workers to adjust the additional cost of cess, shifting the burden of payment indirectly on gig workers.

Providing social security to these workers is the obligation of the government and employers, hence cannot be transferred to gig workers. It should be aided by the government from the taxes already levied on companies or individuals.

2. INDEFINITE TERM OF REGISTRATION

When a gig worker is registered with an aggregator, he/she will automatically be registered with the board and a unique identification (UIN) number will be issued to him/her. The UIN is valid for an indefinite period which may cause difficulty in determining active and inactive gig workers. Labour other than gig workers may register themselves on platforms to acquire UIN and to falsely avail the benefits of the welfare schemes implemented for gig workers.

3. INCLUSION OF PIECE-RATE WORK

The definition of gig workers in the bill includes piece-rate work, which may give rise to potential conflicts with other labour laws, as piece-rate work comes under the purview of other labour laws as well.

4. INCREASED COMPLIANCES

Companies and clients lean towards hiring gig workers because of the low compliance and profitability resulting from the absence of employment contracts. Hence, the regulations under the bill may cause them to refrain from engaging in gig work arrangements due to increased compliance and transparency.

CONCLUSION

Due to independence, flexibility, and low cost; a significant rise has been observed in short-term employment mediated by online platforms termed gig work rather than traditional employment. Companies also lean towards short-term, project-based or medium-term employment due to less compliance and increased profits. With the increased number of workers in the gig industry the need for stringent regulations has arisen.

Securing a decent standard of living, social and cultural opportunities for gig workers is becoming an emerging concern. In pursuance of this, the provisions put forward in the bill are aimed to curb any unjust or inhumane exploitation of the workers in the gig industry and uplifting the status of economically backward gig workers by way of various welfare schemes that are funded by the Platform-based Gig Workers Fund and welfare cess.

The enactment of this legislation is a positive step towards acquiring labour in the unorganized sector with social security and redefining the meaning of employee. If job availability and security are not provided to the gig workers, then the entire effort of introducing the legislation becomes futile. However, the actual impact of the bill cannot be apprehended just yet as details of the benefits and schemes to be introduced are still awaited.

This article is intended only as a general discussion of issues and is not intended for any solicitation of work and should not be regarded as legal advice.