LEGISLATIVE COMMENT

The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023: A Legal Appraisal

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In the last decade, the manifold growth of gig economy has changed the traditional employer-employee relationship and working conditions in the labour market in India. Most of the gig workers work independently at their workplace on the same terms and conditions as permanent employees, but they don't get all the benefits of social security as provided to latter. There are few schemes relating to social security as framed by the Central Government are mostly applicable to general workers, and inadequately to the gig workers. As per NITI Aayog report, 77 lakh workers were engaged as gig workers which may increase up to 2.35 crore in 2029-30. [1] Half of the population (around 47%) of gig workers are engaged in medium skilled work, nearly 22% gig workers are engaged in high skills and approximate 31% gig workers are engaged in low skilled jobs.[2] In India, the Rajasthan Government for the first time, enacted a separate legislation as *'The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023'*[3] (hereinafter referred as the RPBGW Act) relating to Platform Based Gig Workers (PBGW) on 24 July, 2023 which received assent of the Governor on 12 September, 2023.

The preamble of this Act provides its objective as 'to constitute a PBGW Welfare Board; to establish a PBGW Welfare Fund; register the PBGW and aggregators in the State; and to provide the guarantee of social security to PBGW.' Accordingly, it establishes PBGW Welfare Board, PBGW Welfare Fund and Welfare Fee ensures the registration PBGW and aggregators under this Act. It includes the provisions relating to the rights of PBGW, grievance, appeal, interest, penalties, recovery of welfare fee, account and audit. It provides tracking and monitoring through a digital platform of all transactions done by aggregators and PBGW, small

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[1] India's Booming Gig and Platform Economy Perspectives and Recommendations on the Future of Work, Policy Brief, June 2022; *available* at: https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_and_Platform_Economy_27062022.pdf (last access on 10 April 2024)

[2] *Ibid*

[3] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 [The RPBGW Act]

or big ones. This applies to aggregators operating in Rajasthan and any service or work being carried out by a person who falls under the definition of PBGW.

The RPBGW Act defines many terms which are mostly used in gig economy. Such as, 'Gig Worker' means 'a person who works outside the purview of traditional employer-employee relationship and earn on the basis of contract laying down the rate of payment.'[4] 'Aggregator' means 'one which connects the buyers of goods and services to seller of goods and services and also manage one or more coordinators who providing services.'[5] Besides, 'Platform' means 'arrangement of work of online transaction between the persons giving the goods and services and the person receiving the goods and services.'[6] However, RPBGW Act doesn't define the 'social security' as provided in the Code of Social Security (CSS), 2020. Overall, this Act has certain important features related to legal protection to gig workers and institutional mechanisms to support their welfare in the State of Rajasthan. The essential features are outlined herein as below:

Constitution of Platform Based Gig Workers Welfare Board: The State Government has to constitute a board, make provisions regarding meeting of the board, its powers, duties and functions, appoint officers and employees with salary and allowance. The State Government has to constitute a board known as 'Rajasthan PBGW Welfare Board'[7] which will consist of the Labour Minister as a chairperson, Secretary of the Labour Department as a convener and Secretaries of the IT Department, Social Justice and Empowerment, Department of Transport and Department of Finance as members. Besides, the State Government has to nominate two members from PBGW, two members from aggregators, two members, one from civil society and one from other field interested. The nominated members of the Board will hold their post as a member for three years. In this constitution of the Board, there should be at least two representatives from 'Union of Gig Workers'. In this context, it may be observed that such Board cannot work independently from the Government because of chairperson and convener of Board are part of Government.

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[4] *Ibid*, Sec. 2

[5] *Id.*

[6] *Id.*

[7] *Id*, Sec. 3

The Board will meet for transaction of business according to the rules laid down at such time and place as decided, but at least once in six months. All decisions will be taken by majority of members present and voting. In case of equality of votes, chairperson or presiding person will cast vote.[8] The quorum for meeting of the Board will be fifty percent. The power, duties and functions of Board are manifold and include, to: ensure registration of PBGW, aggregator; connect welfare fee deduction with functioning of aggregator's application; establish the system of deduction of fee; establish monitoring system for the welfare fee deducted duly from aggregators, monitoring the scheme for social security of registered PBGW and give policy suggestions,; ensure that the PBGW get benefits of social security; protect the rights of PBGW and time resolving the disputes; engage with Union working for the rights of PBGW and talk to them about the welfare of PBGW; establish a committee for formulation, review and implementation of schemes.

Registration of PBGW and Aggregators: All the aggregators will provide data to the State Government and all the PBGW registered on the different platform will automatically register with the State Government. The State Government will prepare a database that include the employment details with different aggregators. It does not matter how short period they engaged with aggregators. Any PBGW connected with different aggregators will be given them unique ID working in the State. Similarly, the State Government will prepare a register of aggregators working in the State by the officer appointed in this behalf by the State Government. The list of aggregators will be available on the portal. All PBGW will have the right to get them registered and then, a unique ID will be given to each of them. This will enable them to access the social security schemes based on contributions, along with opportunity to hear grievances and participate as a representative of PBGW in the Board.

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PBGW Fund and Welfare Fee: The RPBGW Act provides the constitution of fund[9], welfare fee[10] and 'account and audit'[11] in chapter IV. The State Government will constitute a fund known as 'RPBGW Social Security and Welfare Fund' for the welfare of PBGW and money

[8] *Id,* Sec. 4

[9] *Id,* Sec. 10

[10] *Id,* Sec. 11

[11] *Id,* Sec. 12

will be credited into the fund from welfare fee received under section 11, along with grants received from State Government and all other sources which applicable. The State Government will decide at what rate of percent the amount of welfare fee deducted from aggregators for each transaction related to PBGW and also in what manner the fee will be collected. The State Government will prepare annual statement of accounts and balance sheet and the accounts of the fund will audit by the Accountant General of State and forward the audit report to the State Government.

Grievances, Appeals and Recovery of Welfare Fee: The State Government will appoint a Grievance Redressal Officer (GRO) under this Act. Any PBGW aggrieved under this Act may file petition in regarding entitlements, payments and other benefits to GRO or file on portal their complaint. The GRO pass order of redressal after hearing parties. Any aggrieved person from appeal may file within ninety days. If any aggregator does not pay the welfare fee, it will be recovered as arrear of land revenue. If any aggregator fails to pay welfare fee, they will liable to pay simple interest at the rate of twelve percent per annum[12] on the money from the date it became due till the amount is paid. If any aggregator fails comply any provisions of this Act or contravenes it, the State Government may impose a fine up to five lakhs for first time and subsequent contravention up to fifty lakhs. If fine is not paid can recovered as Rajasthan Land Revenue Act, 1956. Further, all the transaction made by aggregator will be connected with the CTIMS (Central Transaction Information and Management System) which would be monitored by the Board and activities managed by the State Government. Each payment made to the PBGW and deduction of welfare fee will be recorded on CTIMS. Any money spent by the State Government on welfare activities of PBGW that should be available on the CTIMS. The Board will prepare report of its activities in a year and submit it to the State Government.[13] If there is any other law, provision of this Act will supplement that law, not in derogation. No suit, proceeding or other legal actions would lie, who acted in good faith. The State Government will have also power to make rules.

In sum, this is the very first legislation for PBGW by a State which is significant in many aspects. It provides some legal and institutional mechanism to protect the rights and benefits of the PBGW. The constitution of PBGW Board, social security and welfare fund, welfare fee,

[12] *Id,* Sec. 16

[13] *Id,* Sec. 19

audit by State accountant are good features of this Act. But at same time, there are many shortcomings in this Act as well. *Firstly,* the Board have only two representatives from PBGW which is very less. *Secondly,* the Board is not independent from Govt. officials majoritarian. *Thirdly,* the fine imposed on any aggregators will be decided by the State Government officials. The amount of fine imposed on any aggregators should be decided by the Board. *Fourthly,* the cost of audit should not be paid from PBGW Social Security and Welfare Fee. *Fifthly,* the social security to PBGW depend upon the frame of scheme but why the legislator does not make for social security provisions in the Act. Despite these all shortcomings, it is important that there is separate legislation for Gig workers, provisions for welfare fund and welfare fee which contributed by aggregators and the Government, but utilized for Platform based gig workers. Taking motivation from the State of Rajasthan, the other State Governments are also in process of making legislation for gig workers in their own States.

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