

Indian Labour Law Must Recognise Platform Workers' Rights

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Statement issued by an Alliance of Labour Unions and Civil Society Organisations

The Indian Parliament is currently in the process of overhauling the country's labour laws. Unfortunately, this exercise has sidestepped platform workers, a constituency whose needs and challenges have become especially stark and visible during the pandemic. It is eminently clear that platform-controlled work arrangements in several sectors – ride-hailing, food delivery, retail commerce, housekeeping, and personal services – render workers extremely vulnerable to precarity, depriving them of their right to organise, minimum wage guarantees, health and occupational safety, and social security cover.

Research from across the world reveals that the digital restructuring of the economy through platformisation is accompanied by increasing informalisation. Today, there are already three million platform workers in India. But this share is slated to increase rapidly. India's platform economy is growing at an annual growth rate of over 17 percent, and will soon generate over 56 percent of all new employment. Given this growth in the number of platform workers, it is crucial to ensure that such work is subject to adequate regulation.

Not only is there an urgent need to transpose existing labour rights and welfare mechanisms to the platform economy, but this new domain raises novel and unique issues of its own. Algorithmic work management practices of platform companies, including the non-stop surveillance of workers, have emerged as the next frontier for labour rights.

Internationally, there has been increasing recognition of the urgent imperative to address the question of labour protection in platform work relationships and avoid the misclassification of platform workers as “independent contractors”.^{*} This is particularly relevant in the Indian context where the vast majority of platform workers are embedded in the informal sector that makes up a major share of the Indian labour market, their work day at the mercy of algorithm-based controls of platform companies.

We, the undersigned, firmly believe that today's bleak economic landscape and the prevailing labour market informality in the country only reinforce the urgent need to protect and promote the rights of platform workers, taking on board the solid body of evidence generated by multiple organisations in the country, including worker unions.

Consequently, we make the following demands:

1. Extend labour rights to all platform workers.

The draft Code on Social Security, 2020 has defined “platform work” as a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an online platform to provide specific services, in exchange for payment. A platform aggregator is cast as a

“digital intermediary or a marketplace for a buyer or user of a service to connect with the seller or service provider”. This conceptualisation is inadequate as it fails to account for the significant control that platform aggregators exercise over workers, determining how work is assigned, performed, and compensated, without any corresponding obligations towards the latter. This presents a dual challenge for platform workers; neither do they enjoy the freedom and independence typically associated with self-employed workers, nor do they have any access to the benefits of a traditional employment relationship.

The overlapping definitions of platform work, gig work, and unorganised work in the draft Code on Social Security, 2020 result in ambiguities in the employment status of platform workers. To address this, we propose the following:

- All platform work arrangements should be subject to legal tests of employment. In all instances where the existence of an employment relationship is established, employer liability obligations must be placed on platform aggregators. This includes maternity benefits, employee provident fund arrangements, and other benefits as required under law.
- As the ILO Global Commission on the Future of Work has highlighted, all workers, regardless of their contractual arrangement or employment status, should enjoy fundamental workers’ rights and adequate living wages.

2. Make platform aggregators accountable for social security benefits of platform workers.

The draft Code on Social Security introduced in the Lok Sabha on 19th September 2020 empowers the central government to formulate and notify social security schemes for platform workers that are funded, including through contributions from platform aggregators and workers. Though this is an improvement over the previous draft, the fundamental problem of failing to impose mandatory legal obligations on platform aggregators to contribute towards workers’ social security still remains.

To that end, we make the following demands to strengthen the social security code vis-à-vis platform workers. These provisions must apply to all platform work arrangements regardless of the number of workers engaged by a platform.

The central government must implement social security schemes for platform workers providing life and disability cover, accident insurance, health and maternity benefits, creche, and old age protection, with mandatory contributions from platform aggregators. Platform workers should also be covered under EPFO schemes. The timeline within which the government has to frame such schemes must be clearly specified.

- Provision for levy and collection of cess for social security and welfare measures for platform workers must be introduced. Contributions to the cess may be collected from platform aggregators and customers.
- The finer details of the social security scheme for platform workers must be spelt out in the legislation itself, and not in the rules that may be framed at a later point, to lend certainty to platform workers’ social security.
- Platform aggregators must be mandated to contribute to social security schemes designed for workers in myriad subcontracting arrangements in the extended value chains they control – including fleet operators, third party logistics operators, etc.
- The onus of registration in order to gain access to social security schemes should not be placed on platform workers, individually. Instead, aggregators and platform companies must declare their roster of workers to the government, which can be used as a basis to develop a register of platform workers.
- A provision for registration of platform aggregators must be included with an appropriately

defined role in the administration of social security schemes.

3. Provide guarantees for occupational health, safety, and decent working conditions.

The draft Code on Occupational Health, Safety and Working Conditions, 2020 makes no reference to platform workers. The implications of lack of minimum protections in this regard came into sharp focus during the lockdown, when most platform workers found themselves completely vulnerable and exposed, their incomes dwindling to a pittance, without any assurance of minimum wages, health and safety insurance, or even an allowance for purchasing personal protection equipment. They also work long hours without breaks to meet incentive structures of platform companies, and many have developed severe health issues as a result.

With a view to protecting platform workers' occupational health and safety, we put forth the following demand:

- The draft Code on Occupational Health, Safety and Working Conditions, 2020 should also extend to platform workers. A definition of workplace and working hours for platform workers should be provided, and platform aggregators should be held accountable for the safety of platform workers while they are on the job, including in the case of harassment, accidents, and assault.

4. Ensure data rights for platform workers.

- There have been multiple complaints from platform workers about algorithmic manipulation by platform companies that prevent them from meeting targets that are linked to incentives. Furthermore, the extent of worker dataveillance remains unknown as currently, platform workers have absolutely no personal data protection rights (a lacuna that even the current draft of the Personal Data Protection Bill does not remedy). While aggregators leverage and use technology at every step to their benefit, workers are denied informational access and are shortchanged in the process.
- We put forth the following demands vis-à-vis data rights for platform workers:
- Recognition of the rights of platform workers over data generated by them, including rights of access, data portability, and right to explanation. The proposed Personal Data Protection Bill must include appropriate provisions for securing the data interests of platform workers.
- Algorithmic transparency and accountability safeguards mandating that the underlying code used by platform companies be made public, or subject to a public audit, to ensure that there are no implicit biases or manipulations in work management.
- Instituting a daily or weekly flat rate of pay for platform workers that meets minimum wage guarantees as opposed to a performance-based incentive structure that is tied to rankings data and can be manipulated by platform companies.
- Government-funded initiatives to explore data stewardship models for workers' data rights.
- Harmonising government policies and laws, including the proposed e-commerce policy, the Personal Data Protection Bill, 2019, etc., to ensure a coherent approach to platform workers' data rights.

Signed

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Focus on the Global South

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**Several countries have made efforts to address such misclassification, by incorporating a presumption in favour of employment status and extending social protection and other rights to platform workers. These include California Assembly Bill 5, the Directive of the European Parliament and of the Council on Transparent and Predictable Working Conditions in the European Union, the EU Council's Recommendation on Access to Social Protection for Workers and the Self-Employed, and the transport sector-specific El-Khomri law in France.*

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