Fairwork India's comments on the Karnataka Platform-based Gig Workers (Social Security and Welfare) Bill, 2024

Submission to Principal Secretary to Government and Commissioner of Labour
Labour Department, Government of Karnataka.

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Fairwork India welcomes The Karnataka Platform based Gig Workers (Social Security and Welfare) Bill, 2024. In addition to paving the way for a social security net for platform based gig workers, the bill has foregrounded issues around their working conditions, contracts, data transparency and grievance redressal, which have hitherto not been addressed by other legislation and were much needed. We would like to congratulate you on this pioneering effort to highlight these concerns and for this first step towards establishing measures to regulate and mitigate their consequences.

In response to your call for public comments on the draft bill, we have drawn on the research that Fairwork India has carried out over the past six years on the conditions of platform based gig workers, to present suggestions that we hope will further strengthen this draft bill. Our primary concerns and suggestions concern:

- the need for provisions pertaining to subcontractors
- the basis for calculating the welfare cess and ensuring regular disbursements from the welfare fund
- the composition and constitution of the welfare board
- pre-emptive disclosures of data to workers towards transparency
- the provision of task-specific equipment to workers free of cost
- expanding the list of disputes raisable by gig workers
- the timelines for registration and payments
- the easy availability of their contracts to workers.

We have detailed these concerns and other suggestions section wise in the table below.

Please do let us know if you require clarifications on these points, or if there is any further evidence we can help with.

Thank you once again for this opportunity to comment on this first-of-its-kind legislation and for your efforts to improve the working conditions and lives of gig workers.

Fairwork India

SI No	Provision	Concern	Suggested change
1.	Section 2(f) Definition of Platform	The definition of "**Platform**" as "*...involving the use of automated monitoring and decision-making systems"* may leave out platforms that do not use automated monitoring and decision-making system. Our fieldwork suggests that many platforms especially in e-Market and grocery delivery services continue to use manual monitoring and decision-making systems for work allocation. It is therefore important that the definition of 'Platforms' be broad enough to include such systems too within the ambit of this Act.	To add the word "manual or" after "involving the use of" in the definition of "Platform" under Section 2(f) of the Act. *'"Platform" means any arrangement providing a service through electronic means, at the request of a recipient of the service, involving the organisation of work performed by individuals at a certain location in return for payment, and involving the use of* ***manual or*** *automated monitoring and decision-making systems.*'
2.	Section 4(1) Composition of the Board	Our fieldwork suggests that the challenges faced by gig workers differ by gender. Especially because women continue to be marginalised in the gig workforce, it is critical that women's voices be present at the Welfare Board and that they be a part of the decision making undertaken by the Board. Towards this, we suggest that the composition of the Board must include at least 1/3rd women.	To add a proviso to Section 4(1) stating, *"Provided that the State Government shall ensure at least one third of the nominated members of the Board are women"*
3.	Section 4(1)(f) Composition of the Board	There is a need to ensure that gig worker representatives on the Board represent the collective concerns of gig workers in the State, and their selection remains uninfluenced by aggregators and stakeholders with vested interests.	To add a proviso to Section 4(1) stating, *"two representatives of the gig worker to be nominated by the State Government in consultation with gig workers and their collective bodies."*
4.	Section 7(a) Rights of platform-based gig worker	The said provision on the Right of platform-based gig worker to be registered with the State Government does not specify a time limit within which the worker will be registered. Our fieldwork suggests that gig workers may work on platforms for a limited period or seasonally. Providing a time limit within which workers are to be registered with the government will inspire confidence among gig workers that their registration	To add the term "within n* days," after "on any platform," in Section 7(a) of the Act *"(a) be registered with the State Government on being onboarded on any platform,* ***within n**** *days, irrespective of the duration of the work, and be provided a Unique ID applicable across all platforms;"*

		will take place in a timebound manner and that they would have the right to remedy in cases where registration is delayed. The time limit can be arrived at after further consultation with the workers. Ideally, this time period should be as short as possible, (in the range of 10 to 30 days, but no longer than 30 days).	
5.	Section 10 (2) Registration of gig workers	This subclause mandates that gig workers who are onboarded or registered with any platform be registered with the State Government, within a sixty -day time duration. Since a gig worker might be working seasonally and might change platforms within a sixty-day time duration, we suggest that this duration be shortened so workers are not deprived of their right to complete their registration as gig worker with the State. We suggest a time duration similar to our suggestion for Section 7 (a) (i.e., no more than 30 days).	To replace the words "within sixty days" with "within n* days" in Section 10(2) of the Act *"(2) All gig workers onboarded or registered with any platform after the commencement of this Act shall be electronically registered by the Board, **within n* days** of their being so onboarded or registered. The aggregators shall update the Board about any changes, i.e., increase or decrease in numbers of gig workers in the data provided under sub-section (1) as prescribed by regulations;"*
6.	Section 12 (1) Obligation to enter into fair contracts	Our fieldwork shows that a large section of platform-based gig workers is onboarded through subcontractors, vendors or agents of an aggregator and not by the aggregators directly. Section 12(1) in its current form leaves out such workers from the scope of this important provision. We suggest that the section be expanded to include gig workers hired indirectly through subcontractors and other agents.	To include the word "their subcontractors, vendors, or other affiliated agents" in Section 12(1) of the Act. *"All contracts entered into between aggregators, **their subcontractors, or vendors, and other affiliated agents** and gig workers shall comply with the provisions of this Act."*
		Explicitly provide that all contracts entered with platform-based gig workers shall comply with the Information Technology Act, 2000, in addition to this Act, and to the rules and regulations made thereunder. Our fieldwork finds that platforms sometimes sign contracts with gig workers which state that the worker waives and	To include the words "and the Information Technology Act, 2000 and the rules and regulations made thereunder" after "provisions of this Act" in Section 12(1) of the Act. *"All contracts entered into between aggregators, their subcontractors, or vendors, and other affiliated agents and gig workers shall comply with the provisions of this Act, and*

		releases the platform from all claims, liability or damages arising out of or in any way related to the platform's use of data and information collected from the worker. This goes against the data protection provision under the Information Technology Act 2000. An explicit mention of the IT Act under Section 12(1) (Obligation to enter into fair contracts) would ensure that the workers' personal data is protected by adherence to Section 43A (Compensation for failure to protect data), Section 67C (Preservation and retention of information by intermediaries), Section 72 (Penalty for breach of Confidentiality and Privacy), Section 72A (Punishment for disclosure of information in breach of lawful contract) and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 passed under the IT Act. The validly of any electronic contract as used by most platforms in India too rests on the Information Technology Act (Section 10-A).	***the Information Technology Act, 2000 and rules and regulations made thereunder."***
7.	Section 12 (2) Obligation to enter into fair contract	Our fieldwork suggests that where contracts exist, gig workers do not always have easy access to them To make contracts truly accessible and available to gig workers, we suggest this section explicitly mention that the contract shall be available to workers on their app interface at all times.	To add the words "on the platform interface at all times" after "shall be available" in Section 12(2) of the Act. *"(2) Contracts shall be written in simple language easily comprehensible and shall be available* ***'on the platform interface at all times'*** *in Kannada, English or any other language listed in the Eighth Schedule of the Constitution known to the gig worker."*
8.	Section 14 (1)(i), (ii), (iii) Transparency in respect of Automated Monitoring and	Section 14(1) lists information that workers can request from the aggregator. Instead of this, we suggest that details such as the main parameters affecting work allocation, the rating system and categorisation listed under Section 14(1)(i), Section 14(1)(ii) and, Section 14(1)(iii) be pre-emptively disclosed to the gig worker by the aggregator.	Section 14(1) must be reworded to state that the aggregator must pre-emptively disclose to the worker information about the main parameters of work, rating system and categorisation which are now listed under Section 14(1), Section 14(1)(ii) and Section 14(1)(iii) of the Act.

	Decision-Making Systems		
9.	Section 14(iv) Transparency in respect of Automated Monitoring and Decision-Making Systems	Following on the previous point, the list of personal data and sensitive personal data collected from the gig worker must be listed in the contract/privacy policy between the worker and aggregator, rather than be disclosed only when sought by the workers. Similarly, details about the collection, storage, use, retention and deletion of this data must also be disclosed in the contract/privacy policy document and subject to data protection provisions such as in the Information Technology Act 2000 (particularly Section 43A, Section 67C, Section72 and Section 72A and Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.	To convert Section 14(1)(iv) to a new Subsection under Section 14 which mandates that aggregators pre-emptively list the personal data and sensitive personal data collected from gig workers in the contract/privacy policy document. Further add a proviso which mandates that this data will be subject to protection under the Information Technology Act 2000 and Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 and other rules and regulations made thereunder.
10.	Section 16(2) Income Security	We suggest adding a proviso which states that in case of delays, workers shall be notified in advance, and provided notice on when they will receive their payments.	To add a proviso to Section 16(2) of the Act which states, "*In case of delay, workers shall be intimated in advance of the delay and of the date by which they will be paid.*"
11.	Section 17 (1) Reasonable working conditions	Considering the unsafe working conditions that platform-based gig workers encounter on a daily basis, we suggest mandating that platforms provide task-specific safety equipment[1] such as helmets, protective gears and harnesses, at no additional cost to the workers.	Add a proviso to Section 17(1) of the Act stating that *"where necessary, adequate protective equipment such as helmet, jackets, raingear and other task-specific protective equipment must be provided at no additional costs to workers in order to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health."*
12.	Section 20(2) Funds for gig workers	In order to ensure that gig workers' welfare needs are addressed systematically, we suggest that the Act include provisions that ensure and monitor that the welfare funds is being utilised regularly and effectively.	To add to section 20(2) a provision that the welfare fund shall be monitored for regular and effective utilization in the interest of gig workers and to ensure that it not remain unspent.
13.	Section 21(1)	Instead of providing a choice between a transaction-based cess and a percentage of	To remove the words "or on the annual State specific turnover" in Section 21(1) of the Act.

	Gig worker welfare fee	a platform's annual turnover as welfare fee, we suggest basing welfare fee unambiguously on transaction-based cess. This will avoid the need to determine accurate turnover figures and make it simpler for the value to be linked to individual workers, in cases where that might be required. Furthermore, the data required for instituting per-transaction cess is already readily available to platforms.	
14.	Section 24 (1) Resolution of disputes against aggregator	The legal maxim says, 'Where there is a right there is a remedy'. While Schedule II lists a list of disputes that the gig workers may raise in the Internal Dispute Resolution Committee under Section 24, it does not cover all the rights guaranteed to platform-based gig workers under this Act. If the list of eight disputes in the Schedule were to be treated as exhaustive, many guaranteed rights would be left without a remedy. For instance, Section 12(3) states that the gig worker can terminate a contract without any adverse consequence for their existing entitlements under the previous contract. However, when a gig worker loses their existing entitlement from the previous contract, the gig worker would have no means to raise it in the Internal Dispute Resolution Committee since this is not on the list. Similarly, there is also no pathway for gig workers to raise a dispute with regard to seeking information on the main parameters of work allocation (Section 14(1)(i), rating system (Section14(1)(ii)), categorisation of gig workers (Section 14(1)(iii)) and list of personal data (Section 14(1)(iii) before the Internal Dispute	To add a proviso to Section 24(1) stating that "*Schedule II is illustrative, and workers have the right to raise other disputes that arise from the provisions of the Act.*"

		Resolution Committee because this is not listed in Schedule II. Therefore, it is necessary to either specify that Schedule II is illustrative and does not cover all the disputes raisable by the gig worker, or to explicitly make provisions for the list in Schedule II to be added to.	
15.	Section 24(3) Resolution of disputes against aggregator	The proviso to Section 24(3) mentions that parties may take up the process of arbitration to resolve the dispute among themselves. It has already been the practice of some platform companies to include an Arbitration Clause in their contract with gig workers. An explicit mention that the arbitration is according to the Arbitration and Conciliation Act 1996 would provide further clarity to the proviso.	To add the words "under Arbitration and Conciliation Act 1996" after "process of arbitration" in the proviso to Section 24(3). *'Provided that either parties may take up the process of arbitration "**under The Arbitration and Conciliation Act 1996"** to resolve the dispute among themselves.'*