

Pathways of Regulation of Digital Labour Platforms -The Algorithmic Management Question in the Global South

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Introduction - 1

-This paper has been written in an independent capacity alongside a wider research study undertaken by the platform labour team at IT for Change in collaboration with the team at Centre for Labour Studies, NLSIU.

-We collaborated with Niti Aayog in August, 2022 to organise a one-day event titled 'Unlocking the Platform Dividend for the Indian Economy' discussing the potential for platform mediated employment generation in the Niti Aayog report released in June 2022.

-The framework of analysis that has been chosen has been that of ensuring a set of fundamental rights at the workplace, closely in alignment with decent work standards espoused by the ILO. We engaged through submissions for the tripartite meeting for the committee of experts on decent work in October of 2022.

Decent Work vis-a-vis Workers' Data Rights and Social Security Concerns in an Algorithmified Workplace

*For the ILO Meeting of Experts on Decent
Work in the Platform Economy*

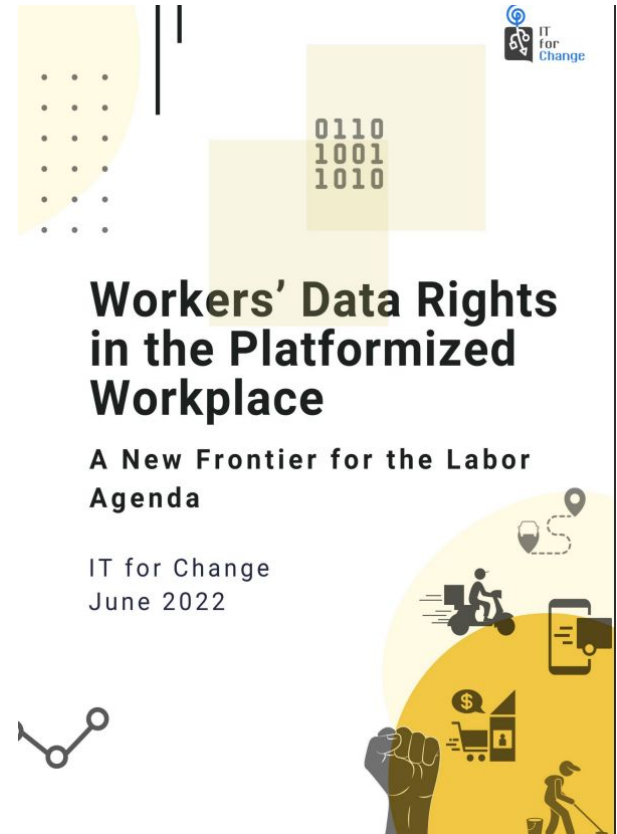
Policy Input from IT for Change

October 2022

Introduction - 2

In June 2022, we produced a report that aimed to capture a snapshot of data rights in the platformised workplace. It spotlighted four critical considerations, which are also broadly applicable to platformising workplaces such as ports and garment sectors:

- (a) recognition of algorithmic control as a key yardstick in the employment/workplace relationship,
- (b) workers' right to explanation in automated systems for workplace decision-making,
- (c) workers' data rights in social security programs, and
- (d) collective data rights of workers in their aggregate data commons.



Introduction - 3

For this present paper, it is recognised that specific contours of the decent work agenda on platforms is difficult to narrow down because these standards do not reflect the realities of a platform workplace. There are a few aspects of this workplace which are important to be recognised:

- (a) digital sectoral intelligence is highly centralised,
- (b) both platform rule making and consequently digital sectoral intelligence are constantly shifting in form and quality,
- (c) decision making outcomes are opaque and frequently unfair and discriminatory be it algorithmic, human or hybrid management,
- (d) close control is possible without any labour protections and where workers feel subjected to increased precarisation.
- (e) A different business model is possible through precise, fit-for-purpose legislation.

The Promise of Digital Labour Platforms - 1

-Digital Labour Platforms emerged around a decade ago on the global horizons in the aftermath of the financial crisis as a novel way to closely coordinate management functions while not being exposed to the workplace responsibilities and financial obligations of full time employers. In India, at the end of 2022 we have recognition in both law and policy about the central role in which platforms are viewed be it the Social Security Code of 2020, MVAG 2020, MVA Rules in various states and a number of state laws.

-A June 2022 report from NITI Aayog, predicts that this growth will be sustained and by 2030, 6.7% of the economy would rely on such work. The expansion of the digital workplace is being touted as the pathway to access benefits of digitalisation for the Global South, with nearly 67% of gig workers belonging to Asian countries on the top five platforms. (Gurumurthy, Zainab & Sanjay 2021) A Platform India initiative has also been suggested.

- A core feature of the platform business model is the fact that it can leverage general and sectoral digital intelligence to create Buffettian business moats to keep the competition out. Moats are insurmountable advantages that business can build to ensure that some value additive processes cannot be replicated by competing firms.

- An important part of this model hence becomes the digital infrastructures of sensors, large scale data collection and analysis in the entire value chain and deployment of algorithmic management at a mass scale.

-Even so, it makes sense to contextualise algorithmic management as socio-technical in nature and to see its partial applications in the platformising economy such as knowledge work including banking, IT and legal process outsourcing.

The Promise of Digital Labour Platforms - 2

-Digital platforms were seen as the site of a paradigm shift in governance through algorithms. Rapid expansion in user base as well as available capital was possible due to large regulatory gaps in employment law, tax laws, operational health and safety norms (including road safety). The process of plugging these gaps are underway globally through a number of models. India's regulatory approach is undergoing the flux not least because of the transitory nature of the current legal regime.

-Today while this form of management is ubiquitous in many sectors of the economy from online e-Sports communities, platformising workplaces like IT and ITeS sectors, traditional workplaces with varying levels of digitalisation in progress such as ports and garments sector: it is seen as the cause for a new phase of 'augmented exploitation'.

-Worker organisations are clear about the precarity workforces face from an expanding algorithmic boss- particularly on platforms where algorithmic management was introduced as a novel form of management without it suppressing or supplementing any existing mode of management.

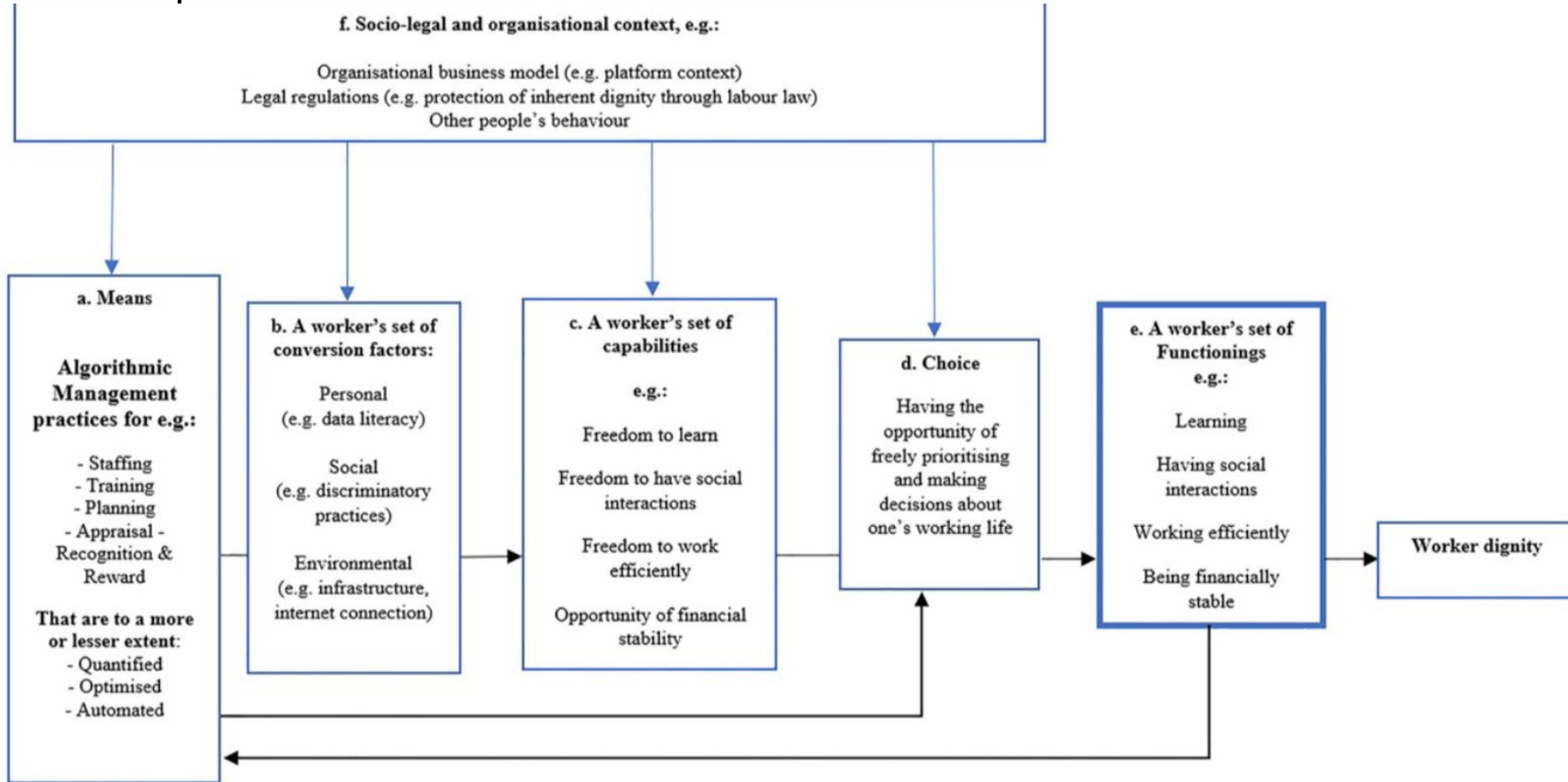
-Regulators and policymakers are focussed on algorithmic management through a lens of not only being able to generate a volume of jobs but also have an eye on building capability through skilling as well as being able to ensure decent work outcomes.

The Promise of Digital Labour Platforms - 3

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The Promise of Digital Labour Platforms - Capabilities



The Road to Regulation

Researchers have identified the broad drivers of novel value creation and transmission on platforms, which contribute to the need to evolve fresh tools to ensure a balance in industrial relations. These value drivers are- a maximalist approach towards workplace data collection and usage of data in speculative manners, non-classification of workers as employees to effect cost savings and algorithmic management to effectively direct a disparate and geographically distributed workforce and effect substantial re-organization of the workflows. This reorganisation of workflows, termed as Taylorism 2.0, requires an overhaul of thinking around labour legislation to remain capable of responding to the workers' needs.

Regulation must trace the workflows to be effective.

Algorithms as a socio-technical construct

-Algorithms are perceived in standard management narrative as objective and efficient decision making systems but research has shown how due to the training data and past performance, over time they demonstrably reflect a mixture of the biases inherent in their design or in the training data.

-One of the main narratives is the competing position that worker (and to an extent management) agency in workplace decision making is seen in relation to an algorithmic system.

The rapid proliferation of algorithmic management in the platform economy has impoverished the policy discourse of the full range of regulatory options. Specifically we can observe that a binary has been developed which pushes policy positions to an either-or situation or stated differently a replacement or substitution of the manager or the algorithm. Instead it is suggested that the regulatory approach follows a socio-technical model of viewing algorithmic management as a complex interlocking web of human actions, instructions and algorithmic inputs.

-Introduction of algorithmic management on digital platforms while deepening the control that managers have over their workers, have managed to also distance managers from overall control of the workplace and consequently the value generating processes of the hybrid production line.

Algorithms as a socio-technical construct

-Consequently, the rights based legislation has to zero in on value generation processes in the workplace and not just harm remedy or prevention for workers or the bottomline.

Legislation has to have a few characteristics in order to be effective:

- (a) be able to assess algorithmic systems in-situ for their specific characteristics
- (b) protect rights in a way that corresponds to each step of the algorithmically mediated production process
- (c) as well as to provide a common charter of hybrid workplace control between the workers and management. A set of para-algorithmic factors must be incorporated in the analysis before this common understanding can emerge.

Expectations from labour legislation

-Labour laws are not created solely for the purpose of enabling worker welfare or hard basking workplace right but that labour legislations primarily seek to legitimise employers' control over the production process and consequently over the workers' time.

-It is only after such control is crystallised and protected that rights enter the picture as a way to ameliorate the consequences of such control over the worker's body, mind and economic security.

-Thus when we assess instruments that seek to govern capital-labour relations, we should bear in mind the delicate balancing act that labour legislations perform - legitimising the control and profit interest of capital while attempting to protect the wage and workplace rights of workers.

-This dynamic remains true even in the face of regulating a workplace managed through algorithms - businesses and their management will seek the continuation or legitimization of diffused control of production through a mix of human and algorithmic inputs while workers will attempt to contain the pervasiveness of the control through workplace rights and seek compensation through protection of wages.

-Mandatory rules in the form of legislation, in most cases, offer workers the most direct route to bettering their working conditions even though the process may be arduous and beset by compromise solutions. Policymakers and stakeholders need to focus on the crucial part of the balancing act to ensure that the vehicle of economic justice, the law, itself does not transform into an instrument of further exploitation.

Limits of employment law and static contract model

A significant gap exists at the international policy level as the ILO Directive on data processing (1996) as well as the data access pathways under the GDPR (2018).

Further gaps show up in the decent work agenda when applicable to the national contexts which looks unfit for purpose when they have been based on a paradigm of a manufacturing shop floor.

Today, private governance through clear contract terms and fair negotiations backed by an effective legislation are not the typical outcomes observed in platform workplaces. What is required is a reframing of labour protections which are effective even in the face of contractual terms that can be bypassed by algorithmic rules and decision making.

Data and information rights are thus at the heart of the legislative basket of rights since precisely framed rights will open up the scope to access concomitant rights. For example, documentation of work history can be right in itself but also can help to access social security.

The Algorithmic Flow - from the Food Delivery workplace

1. On food delivery platforms, the first stage of the algorithmic intervention is at the point of accepting tasks/ orders. One of the main issues at this stage of the transaction is the opacity of the pattern matching algorithm.
2. Planning of the workday is the second intervention phase - work intensity, shift setting.
3. Picking up the order is the third space for intervention - routes.
4. Post delivery - ratings, payments and grievance redressal.

Review of legislations

International

Assembly Bill No 5. (AB5) (California)

European Union Proposal to improve working conditions in platform work (2021)

Digital Platform Workers' Rights Act (2022) (Ontario, Canada)

Chilean instrument

Spanish Workers Statute Agreement

Senate Bill No. 1373, or the Protektadong Online Workers, Entrepreneurs, Riders, at Raketera Act (Philippines)

India

Code on Social Security, 2020

Motor Vehicles Aggregator Guidelines, 2020

Rajasthan Platform Based Gig Workers (Registration and Welfare) Bill, 2023

Karnataka On Demand Transportation Technology Aggregators Rules, 2016

West Bengal On Demand Transportation Technology Aggregators Rules, 2022

Delhi Motor Vehicle Aggregator and Delivery Service Provider Scheme, 2023

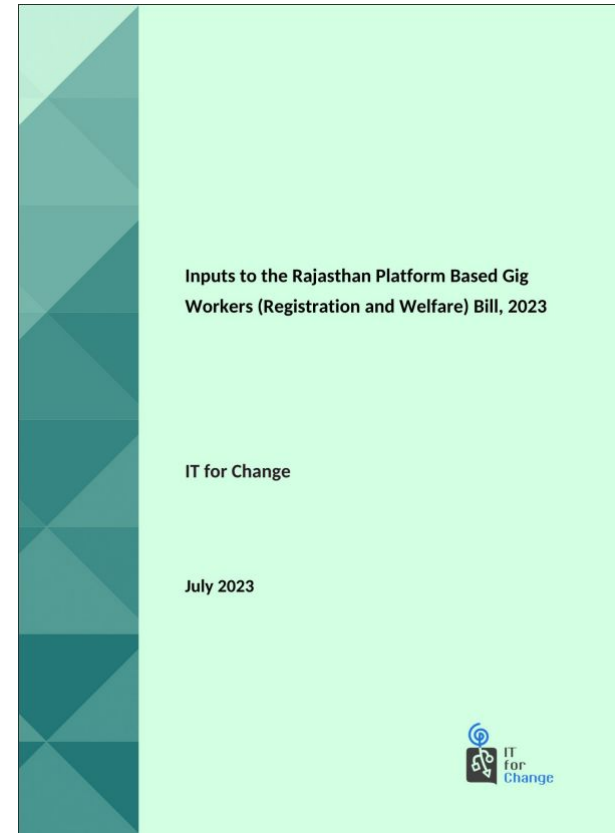
Proposed Maharashtra Motor Vehicles Aggregator Rules

Why India has focussed on “3rd way”?

There are broadly four ways in which regulators have responded:

1. Doing nothing to interfere with market dynamics and continue to monitor outcomes.
2. Pass legislation to accelerate platformisation by classifying workers as non -employees.
3. Pass/modify legislation to accelerate sustainable platformisation by classifying workers as employees.
4. Sidestep classification in order to aim to establish certain basic rights, sometimes with threshold limits. These rights are commonly focussed on workplace safety and social security. Again, some regulators take a sectoral approach (like regulation of specific atypical employment).

Each of these approaches have pros and cons and significance w.r.t. the relative state of maturity of the jurisdiction.



A common foundation of platform workplace rights

A number of rights can be put on the table for drafters of any law related to platform workers particularly for food delivery workers. In no particular order, these buckets of rights can be listed as below. We have noted algorithmic management as a socio-technical phenomenon and as such rights specific to the operation of algorithms will not be effective unless other concomitant rights are upheld at the workplace which reduce the steep inequality of bargaining power of the workers vis-a-vis the platform.

1. Presumption of employment; presumption of control through algorithmic management
2. Right of predictable access to the platform
3. Right to disconnect from the platform
4. Right to living wages pro-rated per transaction or monthly as the business model may support
5. Right to social security for platform workers, without exclusionary threshold limits
6. Right to information and data, including access to personal data, right to data portability as well as collective data intelligence
7. Right to tripartite negotiation about deployment of algorithmic tools such as dynamic pricing through representative bodies which may be modelled after existing sectoral wage boards
8. Right to explanation and remedy- automated monitoring and automated decision making
9. Right to have a human-in/above/after-the-loop for a review of automated decisions
10. Right against reprisal for legitimate collective activity including through registered trade unions