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SOCIAL SECURITY FOR DIGITAL PLATFORM WORKERS-ABA¹**ABSTRACT**

The advent of digitalization has created an unprecedented transformation of economies worldwide, with new platforms being created for various activities that could not have been conceived prior to the inception of this digital age. In the wake of this new era of opportunity-creation and job-creation, there has been an evident boom in the various formerly nuanced digital platform industries. These industries, usually condensed to ‘e-commerce’ however, have developed to include online food delivery, content creation, ride-hailing or online delivery services. With the emergence of these new forms of employment, it becomes necessary to understand that there exists an imminent need to update the present labor legislation to ensure inclusivity and equity, particularly with respect to social security schemes and measures. This paper looks at the various means of social security that may be provided to digital platform workers, and the various models from which such schemes may be drawn from. The paper further looks into the existing models of social security for digital platform workers, and how there exists lacunae which prevent adequate social security coverage. In attempting to gauge current models as well as plausible social security schemes, the paper envisions to create a comparative analysis of various international models of social security schemes for digital workers, and how India may infer plausible solutions from such models. Further, the question of whether there can exist feasible equity and equality in the provision of such social security measures in a country such as India, with its various social-economic intricacies also bears considerable relevance to the trajectory that this paper embarks upon.

SOCIAL SECURITY FOR DIGITAL PLATFORM WORKERS

The advent of various new and innovative forms of technology has created an unprecedented

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platform of new employment opportunities that may not fall under the traditional ambit of 'work'. Digital platforms occupy a position of great relevance in the present economy, with the commercial possibilities it possesses being indomitable. While some traditional forms of employment are finding themselves to be transformed into the wake of this new age digitalization, there is an increase in the creation of new forms of employment especially in the 'platform' sector. As the definition of the term 'work' evolves and expands to include these new possibilities, there is an understanding that existing schemes of employee benefits and protection may not prove adequate, for the fact alone that there now exists a disparity in what the words 'work' and 'workman' mean in themselves, therefore creating further lacunae in social security schemes that are fast becoming outdated and unable to cover the distance created by such digital technologies².

'Platform worker' refers to individuals who use 'apps' such as ride-sharing apps or e-commerce websites to match themselves with customers, in order to provide services in exchange for remuneration.³The emergence of such 'platform-work' implies that there exists a possibility to boost employment opportunities, flexibility for workers and other such advantages. At the same time, the flip side of this emerging field of employment is that employees may be faced with poorer working conditions, poorer career aspects and contribute to a segmented labor market.⁴ Further, pertaining to such disadvantages, self-employed platform-workers are not covered by the same set of social security measures and protections as full-time permanent employees, as statistical data directs.⁵ At present, there exists very little labor legislation that takes into account such data and lacunae in social security schemes.⁶ Platform-work is often found in employment that is constituted by a range of contractual arrangements that dealing from the standard open ended, full time employer-employee relationship, which forms the basis for most existing labor legislation and social security schemes.⁷

² ISSA. 2016. *Ten global challenges for social security*. Geneva, International Social Security Association.

³ Bureau of Labour Statistics (2018), "*Electronically mediated work: new questions in the Contingent Worker Supplement*", Monthly Labour Review, September 2018, www.bls.gov/opub/mlr/2018/article/electronically-mediated-work-new-questions-in-the-contingent-worker-supplement.htm

⁴ Mira d'Ercole, M. and M. MacDonald (2018), "*Measuring platform and other new forms of work: Issues paper*", 15th meeting of the Committee on Statistics and Statistical Policy (CSSP), OECD internal document, SDD/CSSP (2018)10, Paris

⁵ Broecke, S. (2018), "*Protecting workers from low pay in the future world of work: Are piece rate minimum wages part of the answer*", forthcoming.

⁶ *Supra* note 2

⁷ ILO. 2016a. *Non-standard employment around the world: Understanding challenges, shaping prospects*. Geneva, International Labour Office

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THE INDIAN OUTLOOK ON SOCIAL SECURITY

Currently, digital platform workers are not covered under the definition of ‘worker’ or ‘employee’ under Indian Labor legislation. However, it has been proposed to include such platform workers under the ambit of ‘gig workers’ under such definitions of worker and/or employee in the proposed *Draft Code on Social Security, 2019*⁸. This Draft Code has defined ‘gig worker’⁹ as any person who engaged in work or participates in such work arrangements and earns from such activities outside the traditional employee-employer relationship. Further, the definition of ‘platform- worker’ has also been recognized under this Code¹⁰, with the definition being any such person engaged in an employment form in which the organization or individual uses some online platform to access other such organizations or persons to engage in or participate in particular services that may be aimed at solving specific problems and providing specific solutions in exchange of some form of payment or remuneration.

Workers within the traditional organized workforce are considered eligible for certain social security measures or protection systems such as gratuity¹¹, maternity benefits¹², health insurance and so on. These benefits may be partially funded by the employer.

The proposed Draft Code on Social Security attempts at reconciling the differences in protection awarded to traditional employees and platform workers by specifying that these benefits shall be awarded for life, and shall include health and disability covers and any such benefit as may be prescribed by the government.¹³ The Draft Code however does not specify whether the employers have an obligation to provide towards the implementation of these provisions, and whether there are mandatorily obligated to provide monetary support for the same. Further, gig and platform workers have not been made eligible to come under the ambit of minimum wages as has been made available to traditional workers.

The Draft Code further provides that the Central Government may from time to time formulate and notify suitable welfare protection schemes and measures and that the creation of such

⁸ Code on Social Security, 2019

⁹ Section 2(xxvii), Code on Social Security, 2019

¹⁰ Section 2(xxxxvi), Code on Social Security, 2019

¹¹ Section 2, Payment of Gratuity Act, 1972 [As Amended by Payment of Gratuity (Amendment) Act, 2018]

¹² Section 5, Maternity Benefit Act, 1961 [As Amended by Maternity Benefit (Amendment) Act, 2017]

¹³ Section 110A, Code on Social Security

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schemes is left to the discretion of the government¹⁴. ‘Government’ here may also refer to State governments, who under this proposed Code have been directed to provide social security schemes pertaining to provident funds, housing benefits and educational schemes for the children of gig, platform and other unorganized workers¹⁵.

INTRODUCING AN INCLUSIVE SCHEME OF BENEFITS FOR DIGITAL PLATFORM WORKERS

The Global Commission for the Future of Work¹⁶ charts out that the future of work demands for the development of equitable and sustainable social security and protection schemes based on the principles of solidarity and ensuring that people’s needs over their entire life cycle are met. Therefore, providing equitable social protection in all forms of working conditions and means of employment ensure that the workers and their families are treated with fairness and are provided adequate means of protection¹⁷. Furthermore, it also extends a fair competition among various economic actors in both new and old economies and across the globe while facilitating labor market transitions and mobility of labor¹⁸.

One of the challenges posed by the new age digitalization of labor and increased self-employment associated with the same is that there exists a lack of resources that the self-employed digital platform worker may pool into his social protection schemes¹⁹. This limited coverage implies that self-employed digital platform workers are not covered by social insurance systems.²⁰ Even in the rare instance where such platform workers are covered by social insurance schemes, the coverage of risks are certainly less favorable than what may be provided to those who work on full time basis.²¹

The growth of the platform work economy currently displays a growth trend which may exacerbate the current gaps in the social security schemes in existence, thereby giving rise to growing insecurity of employment and inequitable social security measures.²² Furthermore in

¹⁴ *Ibid*

¹⁵ Section 107, Code on Social Security, 2019

¹⁶ Global Commission for the Future of Work. 2019. *Work for a brighter future*. Geneva, International Labour Office.

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ Eichhorst, W.; Braga, M.; Famira-Mühlberger, U. 2013. *Social protection rights of economically dependent self-employed workers*. Luxembourg, Office for Official Publications of the European Communities.

²⁰ ESIP. 2019. *Are social security systems adapted to new forms of work created by digital platforms?*. Brussels, European Social Insurance Platform.

²¹ *Supra* note 6

²² Spasova, S. et al. 2017. *Access to social protection for people working on non-standard contracts and as self-employed in Europe: A study of national policies*. Brussels, European Commission.

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case of social security protection schemes for workers engaged in digital work concerns are raised as to fair competition and equity regarding the financing of such security schemes.²³ Also, considering that the platform labor industry is still considerably small with a fast incremental growth rate, the challenges faced by social security policy workers are also to be read keeping in mind such status quo. Therefore, the challenges faced by digital platform workers based on online-web services cannot be the same as challenges faced by local app-based platform workers. The latter generally involves ride-sharing apps, delivery services and other locally based tasks, and this sector is very fast growing, which also means that the number of workers engaged in such employment also keep increasing. The downside of the same is that platform work may not provide certainty of income²⁴. While digital platforms have the potential to provide job opportunities and generate incomes for persons with limited capabilities to work in traditional employment schemes, serious concerns regarding their unclear legal status and job insecurity remain. This is perhaps made worse through practices such as the lack of concrete social protection schemes and such.

Therefore, it becomes crucial to solving such issues that social security measures are equitable, inclusive and largely sustainable in nature, to allow for maximum fairness in redistribution of and protection of all stakeholders.²⁵ Therefore certain principles must be inferred to while framing such schemes and measures as guided by the ILO social security standards. These principles are derived from core social security principles, and therefore they reflect principles laid down in human rights frameworks such as the UNCESCR and can help guide policy makers in strengthening such security schemes. These principles²⁶ include Adequacy, Transparency, Risk Sharing, Gender Equality, Good Governance, Portability and Universality of Protection and Access.

Additionally, in the process of creation of such policy, it becomes necessary to consider pieces of foreign literature and also other such national and internment legislation, and compare and contrast the same.

For instance, German labor legislation does not award mandatory social insurance to persons who are self-employed and instead provides it only to dependent employees. Employment is

²³ Berg, J. et al. 2018. *Digital labour platforms and the future of work: Towards decent work in the online world*. Geneva, International Labour Office.

²⁴ Conway, M.; Salon, D.; King, D. 2018. "Trends in taxi use and the advent of ridehailing, 1995–2017: Evidence from the US National Household Travel Survey", in *Urban Science*, Vol. 2, No. 3.

²⁵ ILO. 2017a. *Universal social protection to achieve the Sustainable Development Goals (World Social Protection Report 2017–19)*. Geneva, International Labour Office.

²⁶Supra note 6

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defined as dependent work in German legislation, and employment activities are taken care of or indicated by the presence of direction and integration into the work organization of the issuer of said directions.²⁷ Solo self-employed persons are awarded social security only if they receive directions from one single client.²⁸ However this requirement that has been laid down for provision of social security measures are not easily met and moreover, it becomes difficult to distinguish digital platform workers and traditional self-employed workers. Furthermore, digital workers have no influence on the amount of remuneration, because it is unilaterally determined either by the client or the particular digital platform.²⁹

CONCLUSION

There is an imminent need to provide a roadmap for an anthropocentric outlook or approach to ensure fairness of work. To provide for the same, enhanced social security measures or protection systems have been considered and suggested by the member states of the International Labor Organization through their *Declaration for the Future of Work* wherein the universal requisite for comprehensive and sustainable social protection that targets at assuring equity in security have been proposed.³⁰ This *Declaration* also aims at considering the various unequivocal challenges that may arise due to the sudden turn of the era of rigid and non-flexible employment, and how these may be particularly instigated by new age digitalization.³¹ Therefore, it becomes important for social security measures to be framed in such a manner that allows for continued protection of workers who may move between jobs and economic sectors, and at the same time ensure that rights and benefits remain universally accessible, and that platform workers have this right as well.³²

²⁷ Section 7, Sentence 1, The Fourth Book of the Social Security Code

²⁸ Section 2 sentence 1, Sixth Book of the Social Code (SGB VI)

²⁹ De Stefano, V. (2016) *The rise of the 'just-in-time workforce': On-demand work, crowd work and labour protection in the 'gig-economy'*. ILO. Conditions of work and employment, Series Nr.71, http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443267.pdf. [accessed 21 October 2017]

³⁰ ILO. 2016b. *Social contract and the future of work: Inequality, income security, labour relations and social dialogue* (The Future of Work Centenary Initiative: Issue Note series, No. 4). Geneva, International Labour Office.

³¹ ILO. 2018a. *Innovative approaches for ensuring universal social protection for the future of work* (Issue brief, No. 12). Geneva, International Labour Office.

³² *Supra* note 17

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