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 ISSN: 2582-6433

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PLATFORM WORK AND LABOUR RIGHTS: AN ANALYSIS OF EMPLOYEE CLASSIFICATION UNDER INDIAN LABOUR LAWS

AUTHORED BY - ARYAN MHASKAR[1]

Abstract

The rapid expansion of app-based platform work has transformed India's labour market. Millions of drivers, delivery riders, and home-service professionals now earn income through platforms like Uber, Ola (ride-hailing), Swiggy and Zomato (food delivery), and Urban Company (home services). A NITI Aayog report estimates that there were roughly 7.7 million gig workers in India in 2020–21, projected to rise dramatically in the coming decade[2]. Yet Indian labour statutes were drafted for traditional employer–employee relationships and have largely overlooked these new work models. As platform workers typically fall outside the legal definitions of "workman" or "employee" in existing law, leaving them without mandatory benefits like minimum wages, paid leave, provident fund, or insurance. They are generally treated as **independent contractors** who "sign up" for assignments on a need basis, rather than as employees with fixed contracts[3]. This doctrinal gap has provoked litigation and recent legislative reforms, but questions remain about whether the law's new categories e.g. "gig worker" and "platform worker" in the Social Security Code 2020 resolve the underlying issue of employee classification.

This paper examines how Indian law deals with platform work and the classification of such workers. First, it surveys the nature of platform work in India and highlights the legal void. Next it analyses how traditional labour statutes especially the **Industrial Disputes Act, 1947** (IDA) and the **Employees' Provident Funds and Miscellaneous Provisions Act, 1952** (EPF Act) have addressed (or failed to address) gig workers. We then compare the new **Code on Social Security, 2020** with its predecessor social-security laws, focusing on definitions of "gig" and "platform" workers and the coverage of labour rights. Throughout, recent cases and

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petitions are discussed: for example**, the Thane consumer-forum case** holding Uber liable for a driver's negligence (without calling the driver an employee)[4], and **the Karnataka High Court's finding that Ola drivers are "employees" under the 2013 POSH Act.** Finally, we explore doctrinal tests distinguishing employees from contractors and assess whether India's law is keeping pace with the gig economy.

The Indian Platform Economy: Scope and Features

Platform work in India is concentrated in a few sectors. **Ride-hailing platforms** like Uber and Ola connect commuters with driver-partners; **food-delivery apps** like Swiggy and Zomato link restaurants to delivery riders; and **home-services platforms** like Urban Company arrange for freelance professionals like cleaners, electricians, beauticians, etc to serve customers. These platforms rely on digital apps and algorithms to allocate jobs. Workers mostly own their tools cars, motorbikes, etc and sign "partnership" agreements with the company but have no fixed hours or guaranteed income. As these workers have "no traditional employer–employee relationship with the platform," instead getting "temporary assignments only on a need basis," signing up for work on the app when they choose. In practice, platforms exert significant control: they set fares, rate performance, assign jobs, and even suspend workers algorithmically for low ratings. The result is a hybrid model where workers have elements of both autonomy and control.

This hybrid nature blurs established legal categories. Gig and platform workers are often considered as independent contractors or self-employed partners. This classification has left them largely outside the ambit of older labour laws. As platform workers are not recognized under any existing laws" and "do not fall within the scope of the term's 'workmen' and/or 'employees'" as traditionally defined in the statutes. Consequently, drivers and riders have typically lacked statutory benefits such as minimum wage, provident fund, etc. available to regular employees. Industry commentators warn that India's formal labour protections crafted for steady jobs have "failed to address the fluid, transient and decentralized nature of platform work". In short, until very recently these workers were in a regulatory limbo.

[4] tcclr.com

 ISSN: 2582-6433

Traditional Labour Laws and Gig Work

Indian labour statutes like the **Industrial Disputes Act (IDA) 1947**, the **Payment of Wages Act 1936**, the **Employees' Provident Funds Act 1952**, and others were framed in an era of factories and offices. These laws generally hinge on an employer–employee relationship. For example, the IDA's definition of "workman" (now often called "employee") covers "any person employed in any industry to do any manual, technical, or clerical work for hire or reward". Similarly, the EPF Act 1952 defines an "employee" U/Sec. 2(f)) as a person employed for wages. Courts have traditionally distinguished a **contract of service** (employment) from a **contract for service** (hiring an independent contractor), using tests such as control over work, integration into the employer's business, and others. In a typical employer employee scenario, the employer pays a wage on a periodic basis, provides work, and is vicariously liable for the worker's acts. In contrast, an independent contractor runs their own business and is not in a master-servant relationship.

Platform companies have used these distinctions to argue that their drivers or riders are independent contractors, not employees. They label them "partners" in a partnership or simply service providers, and contracts emphasize that the worker can work for others and set their own hours. Under the IDA and related laws, this has generally meant that courts and tribunals do not treat gig workers as "workmen" entitled to IDA rights (such as industrial dispute resolution, retrenchment compensation, etc.). Indeed, one study points out that workers in ride-hailing and delivery platforms are **categorized as "independent contractors"**, and as a result have been excluded from benefits under the EPF and other Acts.

In effect, the "control test" often lets platforms off the hook for labour obligations. For example, even when an aggregator monitors every aspect of a ride or delivery, the supposed contractual label persists. Platforms argue that because they do not supervise the manner of work in the traditional sense (they merely provide an app and set the fare), their workers remain contractors. Courts and tribunals have sometimes accepted this. A recent analysis of the law notes that under general agency law an independent contractor's hirer is *not* liable for the contractor's negligence or entitled to give benefits, except in rare cases of bad faith or collusion[5].However, in some situation's platforms are still being held accountable for example, via consumer protection laws discussed below even while insisting the workers are not their employees.

[5] tcclr.com.

 ISSN: 2582-6433

To summarize: under pre-2020 labour law, platform workers in India largely fell outside statutory protections. They were not recognized as "employees" or "workmen" for IDA purposes, and so had no right to minimum wages, trade union rights, or IDA remedies. They also did not count as "employees" under the EPF Act and did not receive provident fund or pension contributions. As one commentary notes, many gig workers thus "lack access to the same labour benefits as regular employees" (PF, insurance, leave). In short, traditional labour statutes failed to accommodate the gig-economy reality.

Employee vs. Independent Contractor: Doctrinal Tests

At its core, the classification issue is a doctrinal one: is a platform worker an "employee" (entitled to labour rights) or an "independent contractor" (excluded from those rights)? In Indian law, this has historically been answered by examining the contract and the facts. Key tests include:

- **Control test**: how much control does the company exert over the worker's activities, hours, and manner of work as more control suggests employment Thane Dist. C. P. Forum, 2022[6], the court held Uber liable for the negligence of its driver because Uber effectively *appointed and managed* the driver for service factors that would suggest employee status. The forum emphasized Uber's control e.g. sets fares, collects payment, and directs rides. This is essentially an application of the control test.
- **Integration or business test**: is the worker integrated into the company's business or running an independent enterprise? Employees are usually an integral part of the employer's operations. Platform companies typically present drivers as running their own small businesses (owning vehicles, setting schedules), but critics point out that the platform often treats the worker as part of its service e.g., algorithms monitor and rate the worker, the platform customer interface is uniform, etc.
- **Economic reality test**: is the worker economically dependent on the company? Employees depend on wages from the employer; contractors rely on market competition and profit/loss. Many platform workers depend almost entirely on the platform for work. The "evasive contracting" problem, noted in a national law review, is that platforms present themselves as mere middlemen, claiming "partnerships" with workers, even though they exert significant control over work conditions. This leaves

[6] *Kavita S. Sharma v. Uber India*

 ISSN: 2582-6433

workers "outside the traditional definition of 'employee'," but arguably equivalent in practice.

- **Contractual intention vs. substance**: courts will look beyond labels. If a contract calls someone a "partner" but the reality looks like employment, a court may find a contract of service. However, courts are reluctant to redefine long-term business models. In India, no Supreme Court case has definitively ruled that drivers or riders on these platforms are employees under IDA or similar laws.

Overall, the doctrinal picture is that gig work often straddles the line. By contract, workers have freedom by practice, platforms control many aspects suggesting an employer. Thus far, India has largely treated them as contractors. Platforms enjoy the "twin benefit" of avoiding social-security contributions and vicarious liability. The net effect is that workers remain without labour rights even where the substantive conditions would merit them.

Code on Social Security, 2020 vs. Predecessors

In 2020 the Indian Parliament enacted four labour codes, including the **Code on Social Security, 2020**. This Code consolidates and replaces several older social security laws such as the Unorganised Workers' Act, the ESIC Act, and parts of the EPF Act etc. Significantly for gig workers, the Code explicitly recognizes new categories of worker: **"gig worker"** and **"platform worker." Under Section 2(35), a "gig worker"** is someone engaged in a work arrangement outside traditional employment, where payment is per piece or short-term tasks**. Section 2(60) of the Code defines "platform work"** as work procured via an online platform, and **Section 2(61) defines "platform worker"** accordingly [7].These definitions mirror global usage: e.g., Uber/Ola drivers and Swiggy/Zomato riders are prime examples.)[8] By contrast, the predecessor Unorganised Workers' Social Security Act, 2008 made no mention of these categories; it broadly empowered welfare boards for "unorganised workers" (home-based, self-employed, etc.) but never contemplated app-based platforms.

The Social Security Code introduces several measures aimed at gig/platform workers:

- **Registration and Identification**: Every platform worker age ≥16 must register with the government to obtain a unique identifier. This was not a feature of any earlier law. The registration enables the state to know who these workers are and target them for benefits.

[7] calj.in
[8] nyaaya.org.

 ISSN: 2582-6433

- **Social Security Schemes**: The Code mandates that the Central Government design welfare schemes for platform and gig workers covering life/disability insurance, health and maternity benefits, old-age protection, accident insurance, etc. A National Social Security Board (NSSB) is empowered to recommend such schemes for gig and platform workers, just as ESIC does for factory workers. Registered platform workers may then avail benefits from these schemes. The intent is to extend basic protections (pension, insurance, paid leave) to workers who were previously excluded.
- **Funding**: To finance this, the Code requires platforms aggregators to contribute a percentage (1–2%) of their annual turnover to a "Social Security Fund" for platform workers. This is a novel levy introduced by the Code.

These are positive steps: for the first time, Indian law singles out platform/gig workers for social security. The NITI Aayog and labour experts applaud the recognition as a step in the right direction. The Code on Social Security explicitly includes **Gig Workers (Section 2(35))** and **Platform Workers (Section 2(61))** for welfare coverage, whereas pre-2020 laws did not. State level developments echo this trend: e.g., the Rajasthan Platform-Based Gig Workers Registration and Welfare Act, 2023 defines "gig worker" similarly and mandates registration and social-security boards.

Comparison with Predecessors: Prior to the Code, social security for unorganised sector workers was governed by fragmented laws. The Unorganised Workers Act 2008 required states to constitute welfare boards and schemes for various unorganised workers, but implementation was patchy and did not explicitly cover gig platforms. Under that Act, a worker was "unorganised" if engaged in a home-based, self-employed, or contractual job (unregulated). Gig workers generally did not fall clearly within any category, allowing aggregators to argue they were outside the Act's ambit. In contrast, the new Code directly names them.

However, the Social Security Code is limited to welfare benefits; it does *not* convert gig/platform workers into conventional "employees." In particular, the Code on Social Security applies only to social-security and insurance issues and **does not amend** the definitions of "workman" or "employee" in labour relations laws. Critically, gig workers remain *excluded* from the new Industrial Relations Code (2020) and Code on Wages (2019). Legal analyses note that the labour codes of 2020/2019 cover only those in traditional employment. For instance, Tatva Legal observes that because platform workers are excluded from the Industrial Relations Code and Wages Code, they lack collective bargaining rights and minimum wage protections.

 ISSN: 2582-6433

One commentator notes: "Gig work finds reference only in the Code on Social Security," and workers remain excluded from vital benefits under the Wages Code (minimum wages, overtime, etc.) and Industrial Relations Code- right to form unions. In short, while the new Code ensures a welfare net, it does not fully address the core classification issue: platform workers are still not automatically treated as employees for labour-law purposes outside social-security schemes.

In practice, this has led to concerns. For example, even though the Code envisions funds and boards, implementation has been slow. Commentators warn that absent covering them under other codes, platform workers will largely continue to find themselves in a vulnerable position. Without a guarantee of minimum wages or union rights, many gig workers worry that the Code's provisions amount to a limited safety net rather than full inclusion. An article in The Wire[9] underscores that gig workers "continue to be denied protections" of traditional laws, and that only state initiatives like the Rajasthan Act are trying to fill the gap.

In sum, **compared to predecessor laws, the Social Security Code (2020) explicitly recognizes gig and platform workers and mandates social-security coverage**, which is a first. But it still draws a line: these workers are separate from the definition of "employee" in other labour legislation. Thus, the Code on Social Security extends welfare schemes to be funded by platforms and government, whereas the old laws provided no such targeted benefits. Yet the new Code does not fundamentally reclassify gig workers as employees it merely creates parallel categories for a limited set of purposes. As one legal analysis warns, the code's recognition of platform workers may improve welfare access, but the disparity with regular employees continues to remain in areas like wages and collective rights.

Recent Case Laws

While statutory reform has been the major development, courts have also begun grappling with gig work issues. To date, however, no Indian court has outright declared that ride-hailing or delivery drivers are employees under general labour laws. Instead, cases have often focussed on related questions (liability, statutory obligations, or specific statutes). Key recent examples include:

[9] m.thewire.inm.thewire.in

 ISSN: 2582-6433

- ***Kavita S. Sharma v. Uber India (Thane Consumer Forum, 2022)***: A passenger sued Uber after a driver caused a mishap. Uber argued it was not liable because the driver was an independent contractor. The forum rejected this, finding that Uber *"***appointed and managed***"* the driver and exercised significant control like setting fares, collecting payment. Uber was held liable for the driver's negligence under consumer-protection law. Critically, however, the forum did **not** hold the driver to be an employee. The judgment expressly continued to call the driver a "third party contractor," even as it imposed vicarious liability on Uber. In effect, the forum applied the control test to impose liability, but it refrained from extending employee status and thus did not require Uber to provide employee benefits. This case highlights how an impartial body can hold platforms accountable for user safety even while maintaining the contractor label.
- ***Ms. X v. Internal Complaints Committee, ANI Technologies (Ola) (Karnataka HC, Sept. 2024)***: A Karnataka High Court bench held that Ola's female passengers should be able to seek redress for sexual harassment against drivers through Ola's in-app Internal Complaints Committee (ICC) under the Sexual Harassment of Women at Workplace Act, 2013 (POSH Act). The court treated Ola's "driver subscribers" as employees (or effectively part of Ola's workforce) for the purposes of the POSH Act[10]. The court scrutinized Ola's own terms: it noted that Ola exercised "complete control over the activities performed by the driver subscribers" and could not in good faith call them independent contractors merely to avoid POSH obligations. Ola has appealed this decision and obtained a stay, but the single-judge's reasoning has been widely cited. This case is significant because it recognizes that platform drivers can be treated as employees under at least some statutes (here, sexual harassment prevention) when the statutory definitions are broad. It suggests courts may be willing to pierce the contractor label in favour of workers' rights, depending on context.
- ***Supreme Court – IFAT v. Union of India (W.P. (C) 1068/2021, pending)***: A writ petition by the Indian Federation of App-based Transport Workers (IFAT) seeks a declaration that gig and platform workers fall within the definition of "unorganised workers" under the Unorganised Workers' Social Security Act, 2008, entitling them to social security schemes. The SC Observer tracker reports that the petition raises questions under Articles 14, 21, and 23 of the Constitution (equality, right to

[10] indiacorplaw.in

 ISSN: 2582-6433

life/livelihood, and forced labour)[11]. The Supreme Court has not yet decided the case (next hearing Feb 2025), but its admission is notable. The government and platforms have been asked to respond. The IFAT petition underscores that workers are seeking classification under existing laws to claim benefits; if successful, it would be a major development, effectively recognizing that aggregators' contracts cannot exclude these workers from social-security schemes. This litigation is cited to highlight the pending question of whether gig workers can be shoehorned into older social-security statutes.

- ***Employees' Provident Fund (EPF) Litigation****:* In 2025, a group of gig workers filed a public interest petition urging the Supreme Court to extend EPF coverage to them. The petition notes that gig workers "do not have access to the same labour benefits as regular employees" and are excluded from the PF scheme because they are labeled independent contractors. It seeks Court intervention to include them in PF/Employee Pension Scheme benefits. This case is still pending at the time of writing, but it reflects growing demands to treat gig workers like employees for at least some statutory schemes. Notably, a Finance Ministry panel has also recently decided that from 2026 onwards EPF contributions will be mandatory for gig workers (though this may be implemented via rules rather than immediate law change)[12].
- **State Legislation**: While not judicial, the Rajasthan Platform-Based Gig Workers Act, 2023 (passed July 2023) is worth mentioning. It defines "gig worker" similarly to the Code, mandates registration of platforms and workers, and provides for a state welfare board and minimum contributions. It is the first state law explicitly addressing gig workers' rights. The Rajasthan Act ensures gig workers get social security and registration, though it too stops short of declaring them employees.

These cases and developments illustrate a fragmented approach. In *Kavita Sharma*, Uber's liability was enforced without granting employment status. In *Ms. X*, a court leaned towards calling drivers "employees" under POSH. The IFAT and EPF petitions, and state laws, all seek to fold gig workers into certain legal categories. But as of now, there is **no definitive Supreme Court or high court ruling in India** declaring that Ola/Uber/Zomato/Swiggy workers are employees under labour statutes. The struggle has shifted partly to social-security categorization rather than classic "contract of service" disputes.

[11] scobserver.inscobserver.in
[12] business-standard.com

 ISSN: 2582-6433

Theoretical Analysis of Classification

From a doctrinal perspective, the employee/contractor divide in the gig context is contested on several grounds. Theoretically, an *employee* is usually someone who works under a contract of service, receiving wages for time spent and subject to employer control. An independent contractor has a contract for services, is paid per job, and retains autonomy. Gig work often features contracts that claim "partnership" or "contractor" status, but the reality is mixed. As one analysis explains, though platforms frame workers as independent, the workers actually face rigorous control via algorithms and rules. For example, Zomato riders cannot simply take any break; if they log out for too long, they risk deactivation. Similarly, Uber and Ola drivers must follow detailed app instructions and are bound by fare-setting and cancellation policies. These facts cut in favour of employment status under the classic **control test** and the **integrated-bargaining test**.

Courts also consider the **economic reality** of the relationship. **In Ram Singh v. Union Territory of Chandigarh** (1995), for example, the Supreme Court listed factors like intention of parties, method of payment, control, and other indicia. Gig workers' contracts often emphasize flexibility and lack of fixed salary, but critics argue they do not truly have the independence of a contractor: they cannot set their own rates or accept competing business. On the other hand, platform companies point out that workers can (in theory) reject jobs and work for multiple platforms, implying independent status. Thus each gig worker must be examined on facts.

From a doctrinal view, two problematic features stand out in India's current position: **"legal fiction"** and **"statutory gap."** The Social Security Code creates new categories that blur the line: platform workers are neither entirely inside nor entirely outside the labour law family. One commentator observes that by defining platform workers Sec. 2(60) SSC as engaged in a "form of employment" on an online platform, the law conceptually places them in a separate orbit. Yet because other laws do not redefine "employee", platforms effectively enjoy a legal fiction: they can be liable for negligence as agents without being obligated as employers. Academics term this a divergence of liability and employment. The gig worker's status is thus ambiguous: nominally an independent contractor but at the same time sometimes treated as an "agent" of the platform for purposes like taxation or consumer law.

 ISSN: 2582-6433

One theoretical concern is whether this divergence violates workers' rights. The IFAT petition argues it does, **invoking Article 21 (right to livelihood) and Article 23 (no forced labour)**. It claims that excluding gig workers from labour protections amounts to exploitation. Critics of the status quo indeed warn that platform workers are the new "precariat," lacking security. On the other hand, firms argue that forcing gig relationships into traditional employment molds would stifle innovation and choice. The doctrinal tension is clear: should the contract's labels of partnership/contracting prevail, or should courts look to the substance of control and dependency to classify these workers as employees with entitlements?

At present, India's courts are divided or silent. The *Kavita Sharma* forum sided with practical control to impose liability but stopped short of reclassification. The *Ola POSH* case suggests courts can adapt broad definitions where the statute's purpose demands it. Much will depend on how the Supreme Court ultimately views the issue. Until then, theoretically, Indian labour law has begun to acknowledge gig workers (especially via the 2020 Code) but still defaults to the contractor paradigm in most contexts.

Conclusion

In sum, platform work in India has grown immensely but outpaced the labour law framework. Traditional acts like the IDA and EPF Act did not account for app-based gig models, and thus platform workers have largely been treated as contractors, excluded from employee rights. The new **Code on Social Security, 2020** partially fills this gap by explicitly defining "gig" and "platform" workers and mandating welfare measures for them. This is a welcome recognition and provides a basis for social security coverage through registration and contributions. However, these reforms do **not** equate to making gig workers full-fledged "employees" under labour laws: crucial codes on wages, industrial relations, and dispute resolution still exclude them. Consequently, platform workers remain in a kind of legal limbo—formally independent but practically dependent on the platform.

Recent court decisions reflect the tension. On one hand, a consumer forum imposed liability on Uber for a driver's act by treating the driver as Uber's agent. On the other hand, the courts have been cautious in labelling drivers as employees; only in limited contexts (like POSH) have they been treated as such. The pending IFAT petition suggests that litigation will continue to push for broader inclusion of gig workers in labour protections. Academics and advocates argue that without substantive reclassification, gig workers will remain vulnerable – earning low wages and facing job insecurity despite the ostensible flexibility of gig platforms.

 ISSN: 2582-6433

From a doctrinal standpoint, the debate turns on how one applies age-old tests of "master-servant" to a modern, digital-mediated economy. The law's recent turn to create new categories (gig/platform) is a step, but not a full answer. As one commentator lamented, "new labour codes lack adequate mechanisms to address the various issues faced by such platform workers". In effect, India's approach so far has been providing social security via the 2020 Code, but leave primary labour-law status unresolved.

Going forward, India may see further cases or legislation to clarify the status of gig workers. Some have suggested explicitly amending IDA/IR Code definitions to include gig workers or guaranteeing minimum wages to all. Others note that some foreign courts e.g. the UK Supreme Court in ***Uber BV v. Aslam*** have taken a more expansive view of "worker" status. India's mix of new codes, pending litigation, and even state laws (like Rajasthan's) indicate a piecemeal evolution. Until and unless Parliament or the Supreme Court provides a clear rule, platform workers' classification will remain contested.