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KREA UNIVERSITY



# Digital Platforms & Labour Laws in India

STATUS & RIGHTS OF WOMEN WORKERS



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## ACKNOWLEDGMENTS

This report has been authored by **Bhavya Gupta**, Legal Consultant, DP-WEE, as part of the Digital Platforms and Women's Economic Empowerment (DP-WEE) Project.

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This report is an elucidation of the labour laws and legal frameworks of platform workers and their employers in India. It has been curated based on secondary sources.

## EXECUTIVE SUMMARY

- Platform and gig workers are categorised as unorganised workers under Indian labour laws, including those belonging to organised sector platforms like Swiggy and Zomato.
- They are often classified as independent contractors, self-employed individuals or under other categories of unorganised workers and are not 'employees.'
- Employees are entitled to certain benefits such as minimum wages, paid leaves, and social security benefits, while workers have a broader definition and may or may not have access to these benefits.
- The new labour codes define platform and gig workers for the first time in Indian labour law. However, these labour codes are yet to come into force.
- As per this definition, under the Code on Social Security, 2020, platform and gig workers fall outside the traditional employer-employee relationship and are intentionally denied the rights and benefits enjoyed by employees in the organised sector.
- The definition of gig and platform worker uses a new term, 'work arrangement', instead of the traditional terms 'establishment' or 'industry'.
- The term 'work arrangement' is used without definition in the new labour codes, but it impliedly refers to an establishment. This anomaly creates a legal vacuum in which gig workers may be considered employees in appropriate cases.
- The Indian government has initiated schemes like the PM-SYM Yojana and ESIC to provide platform and gig workers with social security coverage, pension benefits, and health insurance.
- Regulating and protecting platform and gig workers effectively remains a challenge, with issues like job security, low wages, limited access to grievance redressal mechanisms, and inadequate representation.

- For women workers, the Social Security Code of 2020 includes provisions for expanding paid maternity leave from 12 to 26 weeks and mandating crèche facilities in businesses with 50 or more employees. It also ‘allows’ women to perform night shifts with proper safety precautions.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, intends to protect women from sexual harassment at work and to prevent and address complaints about it applies to all unorganised workers, including those involved in platform and gig work. In such cases, the Local Complaints Committee in each district is authorised to accept complaints since there is no Internal Complaints Committee. However, there needs to be more awareness among the workers and members of such committees in reporting, accepting and addressing complaints.
- The legal review of platform and gig workers in India requires a comprehensive and balanced approach that considers worker protection and the flexibility and innovation of the gig economy.
- Continued dialogue among stakeholders, including the government, platform operators, and workers’ representatives, is necessary to address legal gaps and ensure the well-being of platform and gig workers.

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## 1. INTRODUCTION

Digital Labour Market is a virtual space or marketplace that enables users to connect, interact, and exchange goods or services through the internet or other digital channels. It is thus a new form of workforce engagement that uses digital labour platforms. These platforms can be websites, mobile applications, or software solutions that provide access to online marketplaces, social networks, communication tools, and other digital services. They serve various purposes, such as e-commerce, social networking, content sharing, online booking, and digital payments. Digital platforms facilitate interactions between multiple users, such as buyers and sellers, service providers and customers, or content creators and consumers. Examples of digital platforms include e-commerce websites like Amazon and Alibaba, social networking sites like Facebook and Twitter, ride-sharing apps like Uber and Lyft, and online payment platforms like PayPal and Stripe.

As more people use the internet and mobile devices for a wide range of activities, digital platforms have gained popularity. In recent years, the rise of digital platforms has transformed the nature of work globally, including in India. They have disrupted traditional business models and created new opportunities for job seekers, entrepreneurs, developers, and investors across various sectors in India. These platforms are either geographically concentrated or dispersed. Gig platforms are location-based, like Swiggy, Uber, and Airbnb. Whereas web-based or online platforms not confined to a specific location or area, such as Amazon, Twitter and BookMyShow, cater to a geographically scattered crowd.

A digital labour platform is also a specific way of mediating 'work' that leverages digital resources to control interactions between consumers and service-providing workers. They typically provide access to various digital services, including web design, software development, data entry, graphic design, content creation, and digital marketing. They also offer a flexible and cost-effective way for businesses to access specialised skills and talent without needing physical infrastructure or hiring full-time employees. For instance, platforms like Upwork, Freelancer, Fiverr, and WorkNHire allow businesses and individuals to post job listings or project requirements and receive proposals or bids from

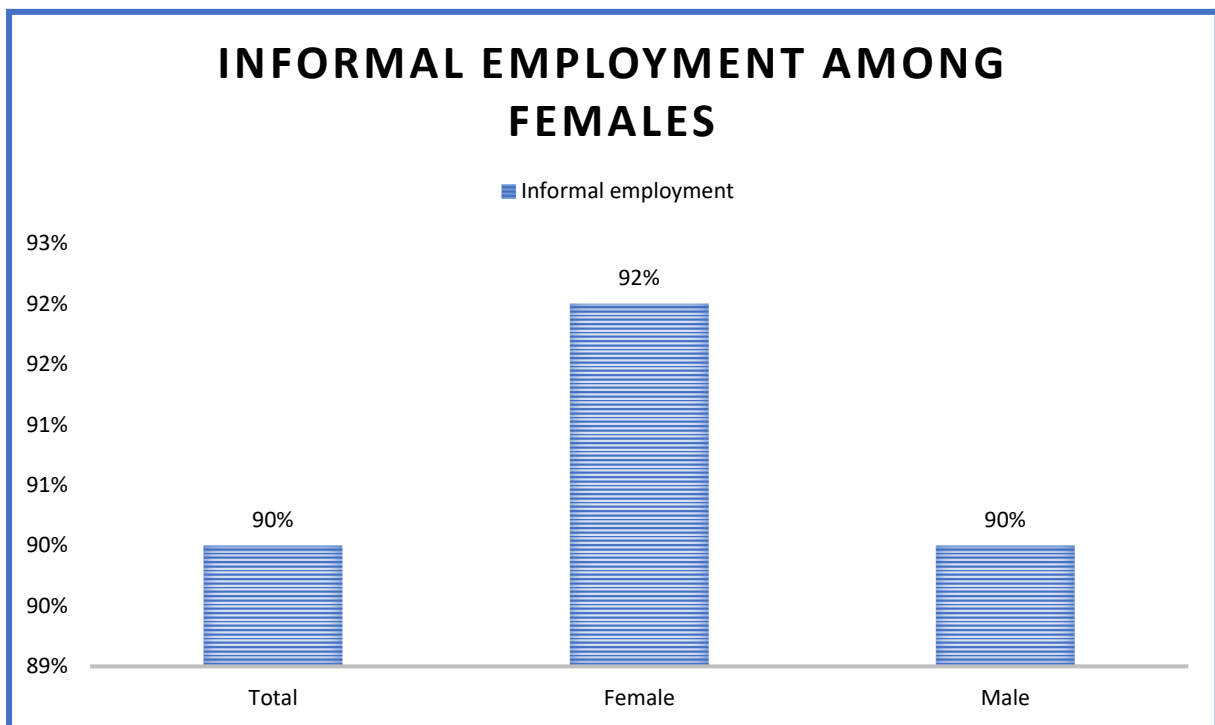
qualified freelancers or independent contractors worldwide. This has, in turn, enabled the growth of the gig economy and remote work as more and more people seek flexible work arrangements and businesses increasingly rely on digital services to stay competitive. They have also created new opportunities for individuals to monetise their skills and earn income through online work.

Digital Labour platforms have proliferated from 142 to over 777 in the last decade and are primarily in the United States, followed by India and the United Kingdom (ILO 2021). The US and Europe seek to reclassify gig workers as "employees" by redefining the "employer-employee" relationship. The UK recognises gig workers as "workers" entitled to most rights and protections available to "employees". In 2020, new labour codes were enacted by the Parliament of India to consolidate numerous labour laws and ensure better compliance by removing inherent contradictions and repetitions. The Code on Social Security ("SS Code") defines gig and platform workers as "outside of traditional employer-employee" relationships. However, the new labour codes are yet to be notified.

In India, 7.7 million workers are engaged in the gig economy, which is expected to expand three times by 2030 (NITI Aayog 2022). However, under Indian law, gig workers lack the 'employee' status, which has several consequences, including the inability to form unions to represent their interests, exploitative contracts, etc. Under Indian labour laws, employees are typically classified based on their position, salary, and other factors, whereas workers are classified based on the type of work they perform. For instance, an employee may be a manager or a professional, while a worker may be a construction worker or a factory worker. This classification of an individual as an employee or a worker has significant legal implications, such as entitlements to minimum wages, benefits, and legal protections.

Furthermore, more than ninety percent of women in paid employment work in the informal sector in India (See Figure 1). Still, due to the non-recognition of unpaid care at home as work, they make up less than one-third of the informal sector labour force. It is now internationally recognised by developed states and international economic and financial institutions that reducing the gender gap in labour force participation has positive economic impacts. In India, women significantly contribute to the economy by

working in companies and fields, as workers or freelancers, or providing unpaid care at home with digitalisation, technology must be leveraged to avoid the digital divide and gain access to work through skilling without being confined to a particular location. As a result, there has been a growing need to address the legal framework surrounding women in platform and gig work.



**Figure 1: Informal employment as percent of total employment in India during 2017-18**

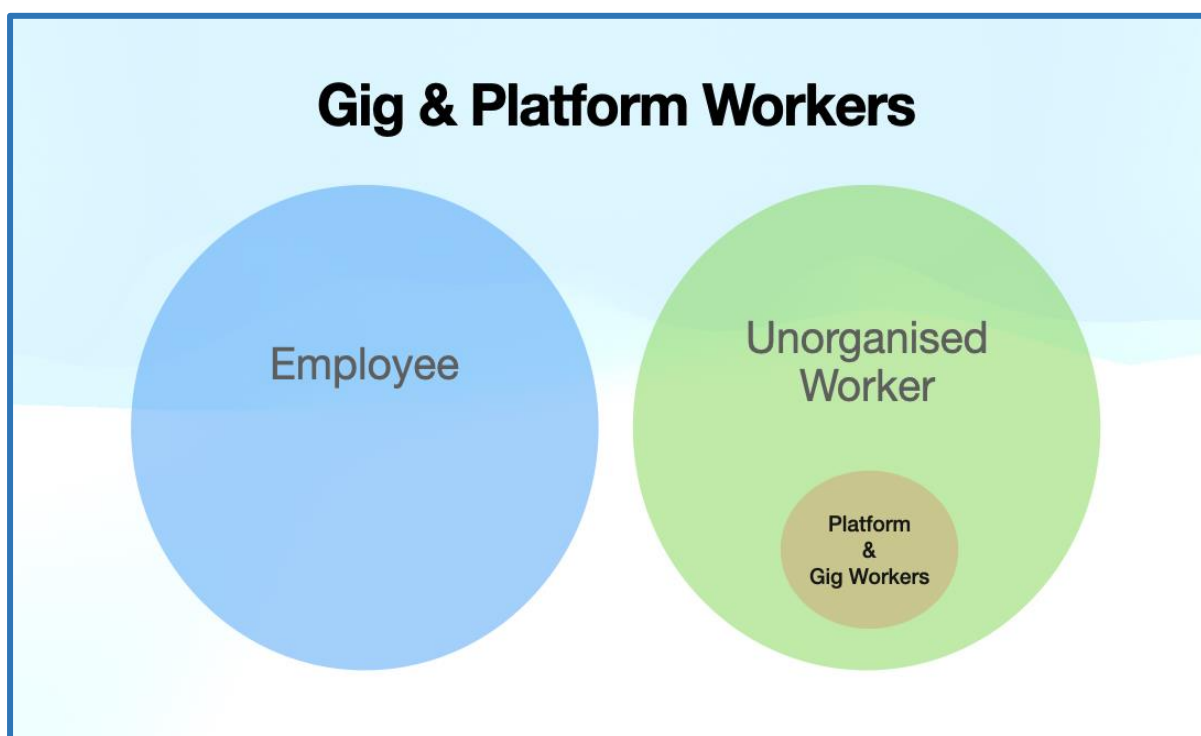
*Source: In reply to Lok Sabha Unstarred Question No. 584, asked by Mr. Rahul Gandhi on Female Labour Participation (18th November 2019), on computation from PLFS (2017-18) unit-level data on Employment and Unemployment.*

In light of the above, the study will give a detailed analysis of the laws governing the labour markets in India. It will review the existing laws and the new labour codes that are yet to be implemented. The first section outlines the crucial issue of misclassification of Platform and Gig Workers by analysing existing categories of workers. Legislative developments concerning defining platforms and gig workers will be assessed in the *second* section. The *third* section examines the rights and benefits available to women in digital labour markets.



## 2. CLASSIFICATION OF PLATFORM AND GIG WORKERS

In India, platform and gig workers are often classified as independent contractors, self-employed individuals, or other categories of workers but are not employees. This classification has significant implications for their employment rights and benefits because, in the Indian legal system, the terms 'employee' and 'worker' often have different legal meanings and belong to organised and unorganised sectors.



**Figure 2: Gig and Platform workers are unorganised workers, not employees.**

The organised sector provides formal employment opportunities where workers receive regular salaries or wages along with benefits like health insurance, a provident fund, and other social security provisions. The employment contracts in this sector often adhere to labour laws and regulations. The unorganised sector is characterised by informal employment arrangements. Workers in this sector often lack job security, receive lower wages, and have limited access to social security benefits. They may be self-employed or work as daily wage labourers without written contracts or employment protection. This section examines each category to contextualise the classification of gig and platform workers.

## 2.a. Organised and Unorganised Sector

The organised sector refers to those industries or establishments that employ a significant number of workers and operate in a structured and regulated manner. The definition and coverage of the organised sector under Indian labour laws can vary based on the specific legislation. The Factories Act 1948 applies to factories employing ten or more workers with the aid of power or 20 or more workers without the aid of power. This act covers various aspects such as working hours, health and safety measures, welfare provisions, and employment conditions in factories. The Industrial Disputes Act of 1947 governs the resolution of industrial disputes, including matters related to layoffs, retrenchments, and industrial conflicts. It generally applies to industrial establishments employing 100 or more workers but may apply to a lower threshold if specified by the state government. The Minimum Wages Act of 1948 sets the minimum wage rates that must be paid to workers employed in scheduled employment. The act applies to both the organised and unorganised sectors and aims to protect workers from exploitation and ensure fair remuneration.

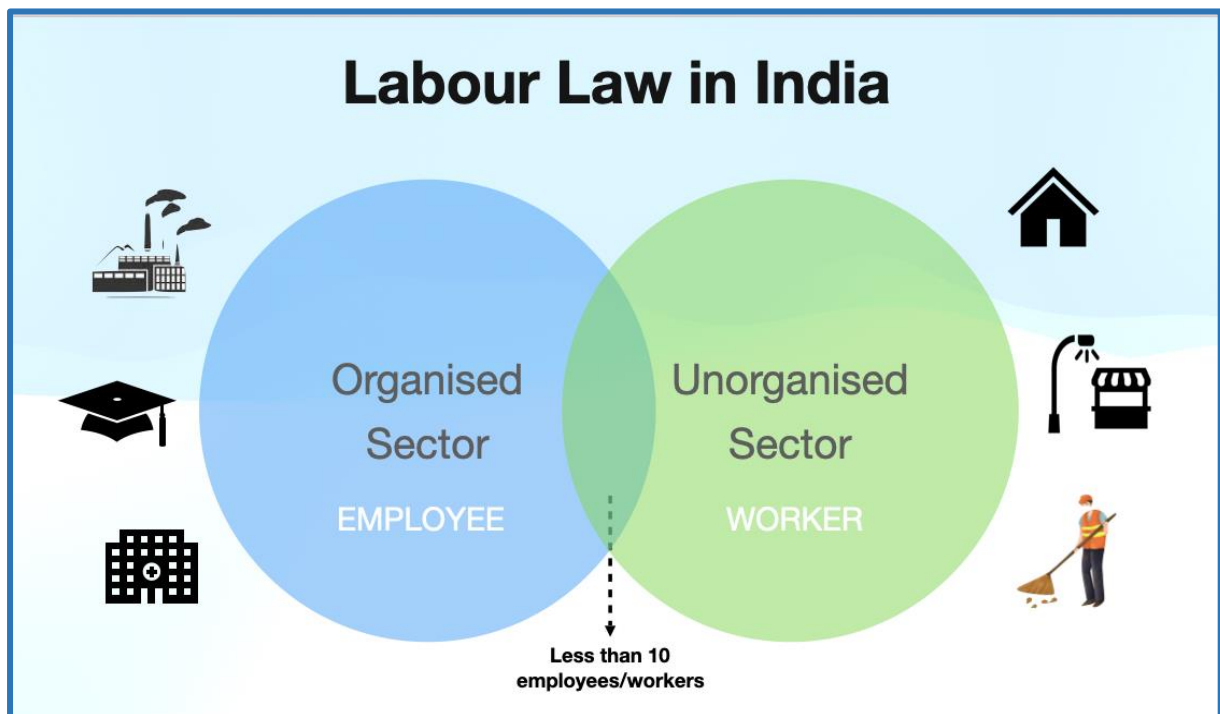


Figure 3: Organised and Unorganised Sectors as per the Indian Labour Laws

The unorganised sector, on the other hand, refers to “an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten” (S. 2(l) of Unorganised Workers’ Social Security Act, 2008). Therefore, any enterprise having less than ten workers falls under the ambit of the unorganised sector. The term enterprise differs from ‘establishment’, which requires at least ten workers. Consequently, most labour laws, including the Minimum Wage Act of 1948, do not apply to any industry, factory, or occupation with less than ten workers.

Examples of vocations in an unorganised sector include street vendors, shopkeepers, home-based workers, domestic workers, and sanitation workers. Any activity usually undertaken in the organised sector, such as manufacturing, teaching, farming, and treating patients, belongs to the unorganised sector when the number of people employed, if any, is less than 10. However, if any such enterprise undertakes a hazardous or life-threatening activity, then even a sole worker will get the protection of the law. A worker in an organised sector is distinguished by calling her an employee.

However, it is interesting to note that as of 2019-20, 44 crores, or 82.2% of the population in India, work in the informal or unorganised sector (See Figure 4). Yet, they are denied the rights accrued solely to employees.

| Years          | Organised Sector |         | Unorganised Sector |         | Total Number<br>(in crores) |
|----------------|------------------|---------|--------------------|---------|-----------------------------|
|                | In crores        | % share | In crores          | % share |                             |
| <b>2017-18</b> | 9.1              | 19.2    | 38.1               | 80.8    | 47.2                        |
| <b>2018-19</b> | 9.5              | 19.4    | 39.3               | 80.6    | 48.8                        |
| <b>2019-20</b> | 9.6              | 17.8    | 44.0               | 82.2    | 53.6                        |

**Figure 4: Number of employees in the organized and unorganized sector during 2021-22**

Source: Annexure referred to in reply to part (a) of the Lok Sabha Unstarred Question No. 911 for 12.12.2022 raised by Shri Girish Chandra regarding ‘Reform Labour Laws/Contract Labour Act’ and data computed from PLFS (2021)

## 2.b. Employee and Workers

An employee is “any person employed on wages by an establishment, either directly or through a contractor, to do any skilled, semi-skilled, or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical, or any other work, whether the terms of employment be express or implied” (S. 2(k) of the Code on Wages, 2019; S. 2(26) of the Code on Social Security, 2020; and S. 2(1)(t) of Occupational Safety, Health, and Working Conditions Code, 2020).

| <b>Employee</b>   |  |   |
|---|--|---|
| <b>New Code</b>   | <b>Existing Act</b>  | <b>Comparison</b>                             |
| S. 2(k) of Code on Wages, 2019  | S. 2(13) of Payment of Bonus Act, 1965                                       | <i>Scope widened under the new Code.</i>      |
| S. 2(26) of Code on Social Security, 2020                                   | S. 2(f) of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 |   |
|   | S. 2(9) of Employees' State Insurance Act, 1948                              |   |
|   | S. 2(e) of Payment of Gratuity Act, 1972                                     |   |
|   | S. 2(1) (dd) of Employees' Compensation Act, 1923                            |   |
| S. 2(1)(t) of Occupational Safety, Health and Working Conditions Code, 2020 | S. 2(f) of Beedi and Cigar Workers (Conditions of Employment) Act, 1966      | <i>Uniform definition in all three Codes.</i> |

**Figure 5: Comparison of definition of the 'Employee' in existing and new legislations**

A worker, on the other hand, is “any person employed in an industry to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward,

whether the terms of employment be express or implied” (S. 2(z) of the Code on Wages, 2019; and S. 2(l) (zsl) of Occupational Safety, Health and Working Conditions Code, 2020). These elaborate definitions replace existing definitions. (See Figures 5 & 6 for comparison).

| <b>Worker</b>   |   |  |
|---|---|--|
| <b>New Code</b>   | <b>Act</b>                              | <b>Comparison</b>  |
| S. 2(z) of Code on Wages, 2019  | S. 2(i) of Equal Remuneration Act, 1976 | Scope widened under the new Code.<br><br>Uniform definition in three Codes.                                    |
|   | S. 2(i) of Minimum Wages Act, 1976      |  |
| S. 2(zr) of Industrial Relations Code, 2020                                   | <i>No corresponding definition</i>      | The Code on Social Security 2020 does not define a worker although it defines different categories of workers. |
| S. 2(l)(zsl) of Occupational Safety, Health and Working Conditions Code, 2020 | S. 2(l) of Factories Act, 1948          |  |
|   | S. 2(k) of Plantation Labour Act, 1951  |  |

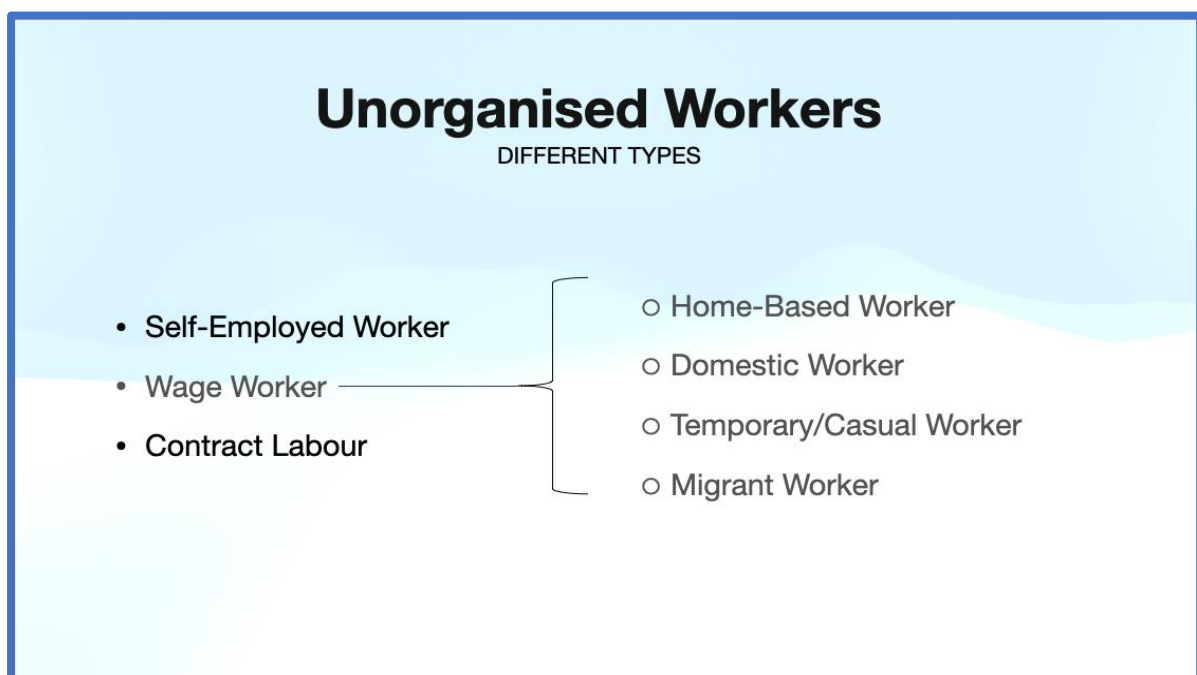
**Figure 6: Comparison of definition of the ‘Worker’ in existing and new legislations**

A careful examination of the two definitions reveals that the difference between an employee and a worker is not so much in the nature of their work as in the place of employment. Both may be employed for any skilled or unskilled, manual or operational, administrative, clerical, or even technical work, yet legal fiction operates between them depending on whether they are employed in an organised or unorganised sector. Another legal fiction creating a hierarchy is that a person performing managerial, administrative or supervisory tasks earning more than fifteen thousand rupees per month is an employee, not a worker. Further, an employee’s compensation is termed as wages whereas the worker should work on hire or reward. This corresponds to the permanent and temporary nature of labour contracts for employees and workers, respectively.

Thus, an employee is a person who works under an employer and is entitled to certain benefits, such as minimum wages, paid leaves, and social security benefits. On the other hand, a worker is a broader term that includes employees and individuals engaged in manual labour, such as contract labourers, casual labourers, and daily-wage workers. Workers may or may not be entitled to the same benefits as employees, depending on their employment status and the nature of their work.

## 2.c. Unorganised Workers

Unorganised workers include building workers, construction workers, contract labour, gig workers, home-based workers, platform workers, self-employed workers, unorganised workers, and wage workers. These can be broadly categorised into self-employed, wage, and contract labour.



**Figure 7: Different categories of Unorganised Workers in the Indian Laws**

Since an overwhelming majority of the workers in India are employed in the unorganised sector, separate legislation, the Unorganised Workers' Social Security Act ("UWSS Act"), was enacted in 2008 to provide them with minimum safeguards and social security. It defines an unorganised worker as "a home-based worker, self-employed worker, or wage worker in the unorganised sector" (S.2 (m), UWSS Act). This definition also includes

workers in the organised sector provided they do not benefit from the protection of the Workmen's Compensation Act, 1923; the Industrial Disputes Act, 1947; the Employees' State Insurance Act, 1948; the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; the Maternity Benefit Act or the Payment of Gratuity Act, 1972; (Schedule II, Unorganised Workers' Social Security Act, 2008).

|  |   |   |  |  |
|--|---|---|--|--|
| The Employees Compensation Act, 1923                                 | The Industrial Disputes Act ,1947                     | The Payment of Bonus Act, 1965                            | The Beedi and Cigar Workers (Conditions of Employment) Act, 1966   | The Dangerous Machines (Regulation) Act, 1983  |
| The Employees Provident Funds and Miscellaneous Provisions Act, 1952 | The Industrial Employment (Standing Orders) Act, 1946 | The Payment of Gratuity Act, 1972                         | The Trade Unions Act, 1926.  | The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993   |
| The Employees State Insurance Act, 1948                              | The Maternity Benefit Act, 1961                       | The Payment of Wages Act, 1936                            | The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 | The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 |
| The Equal Remuneration Act, 1976                                     | The Minimum Wages Act, 1948                           | <b>The Unorganised Workers' Social Security Act, 2008</b> | The Contract Labour (Regulation and Abolition) Act, 1970   | The Motor Transport Workers Act, 1961  |

|                         |  |                                  |   |   |
|-------------------------|--|----------------------------------|---|---|
| The Factories Act, 1948 | The Bonded Labour System (Abolition) Act, 1976 | The Plantations Labour Act, 1951 | The Child Labour (Prohibition and Regulation) Act, 1986 | The Sales Promotion Employees (Conditions of Service) Act, 1976 |
|-------------------------|--|----------------------------------|---|---|

**Figure 8: Main Legislations for unorganised workers, purported to be replaced by the new labour codes**

Thus, a platform and gig worker belonging to the organised sector with more than ten workers would still be an unorganised worker as none of the Acts covers her. The new labour Codes also endorse this anomaly, though the Code on Social Security, 2020, provides more benefits than the UWSS Act.

### *2.c.i. Self-Employed Workers*

A Self-employed or own account worker refers to an individual who works for themselves and operates their own business or profession (S. 2(75), SS Code). Unlike employees with a formal employer-employee relationship, self-employed workers work independently and do not have a traditional employment relationship with another person or entity. They may enter into contracts or agreements with clients or customers for their services, but these are typically not employment contracts. They are not entitled to a fixed salary or wages from an employer but rather earn income based on the services they provide, the products they sell, or the contracts they secure.

Under the proposed labour codes, specifically the Occupational Safety, Health, and Working Conditions Code (“OSH Code”) and the Code on Social Security (“SS Code”), a self-employed worker in India generally refers to an individual who works for themselves and does not fall under the definition of an employee. As per the OSH Code, a self-employed worker is an individual who engages in an occupation, trade, or profession on their own account without hiring any other workers. Self-employed workers under the OSH Code are generally excluded from the provisions related to employee welfare, safety, and working conditions since they work independently without employees. The SS Code



covers the social security aspects of workers, including self-employed workers. Self-employed workers under the SS Code are those individuals who work for themselves and do not qualify as employees, whether they operate a business or practice a profession. The SS Code introduces social security schemes for self-employed workers, including providing benefits such as life and disability coverage, health and maternity benefits, and old-age pensions.

### *2.c.ii. Home-Based Workers*

A home-based worker is defined as an individual who performs work or provides services, including in the production of goods or provision of services, within their own home or other premises of their choice other than the workplace (S. 2(36), SS Code). The work done by home-based workers may be for an employer or a contractor.

Home-based workers may engage in various types of work, such as handicrafts, assembly work, packaging, sorting, data entry, and other tasks that can be performed at home. The work may be done using the worker's own equipment and materials or provided by the employer/contractor. Home-based workers are typically considered to be in an employment relationship with the employer or contractor for whom they perform the work. The specific terms and conditions of the employment relationship, such as wages, working hours, and other benefits, would be subject to negotiation and agreement between the worker and the employer or contractor.

The proposed OSH Code aims to ensure the safety, health, and welfare of home-based workers. It includes provisions to ensure that home-based workers are provided with appropriate safety measures, training, and access to necessary information regarding occupational hazards and risks associated with their work.

### *2.c.iii. Domestic Workers*

A domestic worker is an individual employed to perform domestic chores or provide domestic services in a household and engaged in domestic work such as housekeeping, cooking, cleaning, caregiving, gardening, or other household tasks. The work is typically

performed within a private household and may be carried out on a live-in or live-out basis.

Domestic workers are considered to be in an employment relationship with the household or the employer for whom they provide services. The specific terms and conditions of the employment relationship, such as wages, working hours, leave entitlements, and other benefits, would be subject to negotiation and agreement between the worker and the employer. The proposed SS Code includes provisions for social security benefits and welfare measures for domestic workers. It aims to provide social security coverage, including life and disability coverage, health and maternity benefits, an old-age pension, and other benefits, to eligible domestic workers.

#### *2.c. iv. Temporary and Casual Workers*

Temporary workers are individuals engaged in work for a limited duration, typically to meet seasonal or short-term requirements of an establishment. They are classified based on their employment arrangements and the nature of their work. They may be hired directly by an establishment or through a contractor. The Industrial Relations Code (“IR Code”) includes provisions related to the conditions of employment, wages, and other benefits for temporary workers.

Casual workers are individuals engaged on an irregular or intermittent basis and do not have a regular employment relationship with an establishment. They may be engaged for specific tasks or assignments as the establishment requires. The IR Code includes provisions related to the conditions of employment, wages, and other benefits for casual workers.

#### *2.c.v. Contract Workers*

A contract worker is an individual hired by an establishment (the principal employer) to perform work or provide services through a contractor. The work performed by contract workers is usually related to the core activities of the establishment. A contractor employs contract workers, providing their services to the principal employer. The contractor is

responsible for recruiting, hiring, managing, and paying the contract workers. The principal employer exercises supervision and control over the work the contract workers perform.

The IR Code includes provisions related to employment conditions, wages, and other benefits for contract workers. It aims to ensure that contract workers receive fair and equal treatment, including protection against unfair practices and termination. Both the contractor and the principal employer have specific responsibilities towards contract workers. The principal employer is responsible for ensuring contract workers receive wages, social security benefits, and other entitlements prescribed under labour laws.

Gig and platform work can thus fall into the above categories of unorganised workers, provided it satisfies the definition of platform and gig workers in the new labour codes. This will be analysed in the next section in light of the ongoing debates about their appropriate classification, with calls for greater recognition and protection of their worker rights.

### 3. DEFINING PLATFORM AND GIG WORKERS

The legal landscape for platform and gig workers in India has undergone several notable developments. In 2020, the Ministry of Labour and Employment introduced the Code on Social Security, which aimed to extend social security benefits to gig workers, including access to health and maternity benefits, life and disability coverage, and old-age protection. Additionally, the Code on Occupational Safety, Health and Working Conditions was enacted to regulate the working conditions of workers, including those engaged in the gig economy.

As per the 2002 recommendation of the Second National Commission on Labour, the Parliament consolidated twenty-nine labour laws into four Labour Codes: the Code of Wages, 2019; the Code on Social Security, 2020; the Industrial Relations Code, 2020; and the Occupational Safety, Health, and Working Conditions Code, 2020. For the first time, the Code on Social Security (“SS Code”) has specifically recognised and defined platform and gig work under the Indian legal framework.

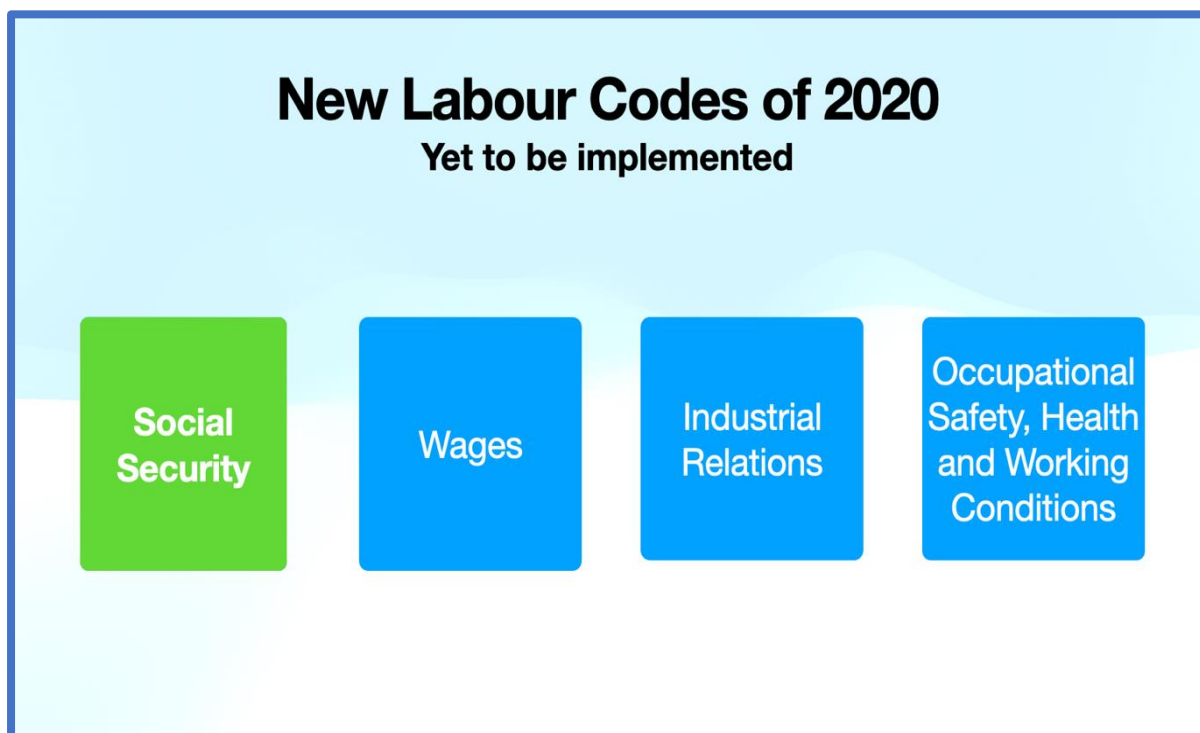


Figure 9: Four Labour codes passed by both the houses of the Parliament of India

The SS Code defines a ‘gig worker’ as:

*“a person who performs work or participates in a work arrangement and earns from such activities outside of a traditional employer-employee relationship”. (Section 2(35), the Code on Social Security, 2020)*

and a ‘platform worker’ is a person engaged in:

*“a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government in exchange for payment”. (Sections 2(60) and (61), the Code on Social Security, 2020)*

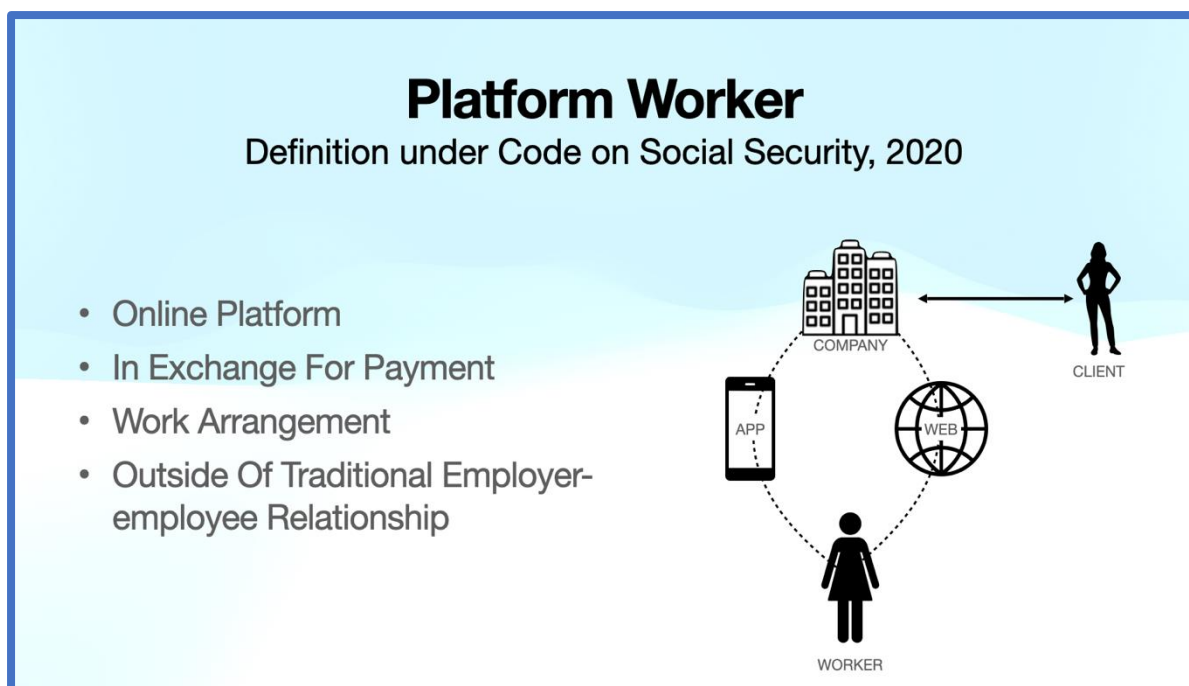
**Gig Worker**  
Definition under Code on Social Security, 2020

- Performs work or participates in a work arrangement
- Earns
- Outside of traditional employer-employee relationship

- ✓ Self-employed Worker
- ✓ Contract Worker
- ✓ Home-Based Worker
- ✓ Temporary/ Casual Worker

**Figure 10: Definition of Gig Worker under the Code on Social Security**

The definition of gig and platform worker uses a new term, ‘work arrangement’, instead of the traditional terms ‘establishment’ or ‘industry’. Nevertheless, the definition of worker and employee continues to refer to establishment and industries. The establishment is a wider genus, of which industry is a species.



**Figure 11: Definition of Platform Worker under the Code on Social Security**

The new definition of an establishment is more comprehensive in scope and covers “any place where (a) any industry, trade, business, manufacture, or occupation is carried on; or (b) a factory, motor transport undertaking, newspaper establishment, audio-visual production, building and other construction work, or plantation; or (c) a mine, port, or vicinity of the port where dock work is carried out” (S. 2(m) of the Code on Wages, 2019; S. 2(29) of the Code on Social Security, 2020; & S. 2(1)(v) of Occupational Safety, Health, and Working Conditions Code, 2020).

| <b>New Labour Codes</b>                                       | <b>Establishment</b> | <b>Industry</b>    |
|---|----------------------|--------------------|
| Code on Wages, 2019   | S. 2(m)              | <i>Not defined</i> |
| Industrial Relations Code, 2020                               | <i>Not defined</i>   | S. 2(p)            |
| Code on Social Security, 2020                                 | S. 2 (29)            | <i>Not defined</i> |
| Occupational Safety, Health and Working Conditions Code, 2020 | S. 2(1)(v)           | S. 2(1) (zd)       |

**Figure 12: Comparing definitions of ‘Establishment’ & ‘Industry’ in the labour codes**

The term 'occupation' in the definition of new labour codes vastly increases the ambit of an establishment compared to existing legislation. Generally, such a place must have at least ten workers, but an exception has been carved out for undertaking a hazardous or life-threatening activity. Therefore, even a place where there is only one employee or worker employed can be established in such cases (S. 2(1)(v) of the Occupational Safety, Health, and Working Conditions Code, 2020).

The term 'industry' has been redefined under the new labour codes. The litmus test governing the determination of an establishment as an industry was first laid down in 1978 by a seven-judge bench of the Supreme Court in *Bangalore Water Supply & Sewerage Board v. Rajappa*. The judgement gave a more expansive interpretation of the term 'industry' than what was prescribed under the legislation. It prescribed a 'triple test', whereby three conditions have to be satisfied: (1) There is a systemic activity, (2) organised by cooperation between employer and employee, and (3) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (AIR 1978 SC 548). It was also held that a profit motive or a desire to generate income is unnecessary. Thus, many hospitals, educational institutions, universities, charitable institutions, welfare organisations, professions, clubs, cooperatives, and research institutes stand to benefit under the legislation applicable to Industries. The new labour codes have endorsed this inclusive definition (S.2(p) of the Industrial Relations Code, 2020 and S. 2(1) (zd) of the Occupational Safety, Health, and Working Conditions Code, 2020). However, 'institutions owned or managed by organisations wholly or substantially engaged in any charitable, social, or philanthropic service' and the government undertaking 'sovereign functions' have been excluded (S.2 (p) of the Industrial Relations Code, 2020).

Therefore, while platform or gig workers are workers and not employees in the 'traditional employer-employee' sense, their 'work arrangements' corresponds to the traditional set-up of an enterprise. In appropriate cases, such 'work arrangement' may even withstand the triple test of an industry. In other words, in defining platform and gig workers, the legislators have used an undefined term, 'work arrangement', that impliedly refers to an establishment. This leads to the further inference that platform and gig workers can be employees even though they are specifically intended to be workers not entitled to benefits enjoyed by employees in an organised sector.

## 4. RIGHTS OF PLATFORM & GIG WORKERS

Indian labour and employment laws recognise three main categories of employees: government employees, employees in government-controlled corporate bodies known as Public Sector Undertakings (PSUs), and private sector employees who may be managerial staff or workmen. All these employees are guaranteed certain working conditions, such as minimum wages under The Minimum Wages Act 1948, a set number of work hours, compensation for termination, etc. However, these laws have focussed mainly on the organised sector even when more than eighty percent of the current labour force of India is engaged in the unorganised sector (Lok Sabha 2022). Therefore, the rights of unorganised workers emanate from the constitution of India and the Unorganised Workers' Social Security Act 2008. The Code on Social Security, 2020, will replace social security measures under the 2008 Act when it enters into force.

### 4.a. Rights & Directives under the Constitution of India

Labour is a concurrent list topic under the Indian Constitution. So, both the central and state governments are competent to pass laws, subject to specific issues reserved for the Centre (Entry Nos. 55, 61, and 65 of List I; Entry Nos. 22, 23, and 24 of List III). It includes various clauses in the form of fundamental rights and state policy direction principles. All employees in digital labour marketplaces who are citizens of India are entitled to fundamental rights under Articles 14, 15, 19, 21, 23, 24, 38-39, 41, 43, and 43A in particular. Non-citizen workers can also use Articles 21 and 23.

The fundamental rights are enshrined under Part III of the Indian Constitution and are also available to platform and gig workers. Article 14 guarantees the fundamental rights of equality and non-discrimination. However, this right is not absolute and will apply only within the legal distinction. In other words, there can be no discrimination between unorganised workers, but discrimination between organised and unorganised workers is permissible. Article 19 confers fundamental freedoms to form an association or union and to practice any profession, occupation, trade, or business (Article 19(1)(c) and (g)). Thus, workers in an unorganised sector have a fundamental right to organise themselves into unions for redressal and collective bargaining, even though the legislations regulating labour unions applies to organised workers only. Article 23 prohibits forced labour, and



Article 24 prohibits child labour in any hazardous occupation for anyone under the age of 14.

Article 21 mandates that the government find instances of bonded labour and take all necessary steps to fully rehabilitate the workers to ensure that their labour rights are not violated. The Supreme Court ruled in *Bandhua Mukti Morcha v. Union of India* that the right to life includes protection of workers' health and strength, protection of children from abuse, all-round development of children, educational facilities, just and humane working conditions, and maternity relief (AIR 1984 SC 802). This case included debt-bond-based informal bonded work. The issue of uneven remuneration was also raised in the *State of Madhya Pradesh v. Pramod Bhartiya*. The Supreme Court ruled that Article 14 is the source of the right to equal remuneration regardless of the circumstances. The apex court ruled that the right to equal compensation stems from Article 14, irrespective of technical specifics or worker identification. Ours is a socialist state, and we must safeguard society's underprivileged or weaker segments (AIR 1993 SC 286).

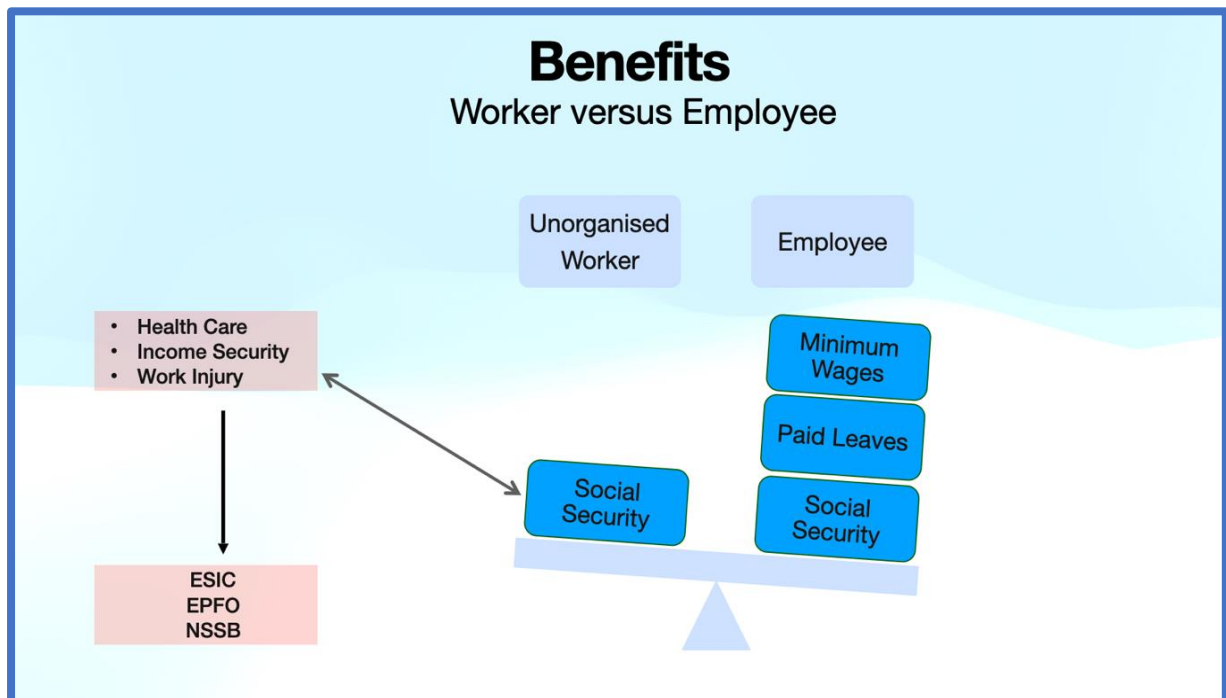
The Constitution also provides guiding principles that the legislature and government must strive for in policy-making. These are called directive principles of state policy and are enshrined under Part IV of the Constitution. The directive under Article 38 (2) enjoins the state to minimise inequalities in income, status, facilities and opportunities among individuals. According to Article 39(d), the state must provide equal pay for equal work for all. The health and strength of workers must not be exploited or abused for work (Article 39(e)). They must be given just and human conditions of work. This includes the provision of sick leaves and maternity benefits (Article 42). The state must also ensure that workers are given a living wage, and their working conditions must ascertain a decent standard of living (Article 43).

#### **4.b. Right to Social Security**

In addition to the constitutional protections, the Unorganised Employees' Social Security Act of 2008 has established specific rights and benefits available to all unorganised employees. In general, "social security" refers to a social welfare programme focusing on social protection from socially accepted situations, including unemployment, old age, disability, and poverty. The "measures of protection afforded to employees, unorganised

workers, gig workers, and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity, or loss of a breadwinner through rights conferred on them and schemes framed, under the Code on Social Security" are included (Section 2(78) of the Code on Social Security, 2020).

Specific social security measures have been explicitly conferred upon the platforms and gig workers under Chapter IX of the Code on Social Security, 2020. The standards under Chapter IX of the Code on Social Security, 2020, primarily entail registration by the workers independently with the government, following which they would have access to specific social security schemes, including access to health care, income security, work injury, etc. These are to be provided through government schemes, the implementation of which will be supervised by a National Social Security Board, which is to meet three times in a year, has recommendatory powers, and is entrusted with ensuring the implementation of government welfare schemes for all unorganised workers, including gig and platform workers.



**Figure 13: Contrasting the benefits accruable to gig or platform worker with an employee**

The Employee State Insurance Corporation's (ESIC) scope has also increased. A provision has been made that its coverage will now be in all 740 districts of the country. In addition,

the option of Employee State Insurance (ESI) will also be available for plantation workers, unorganised sector workers, gig and platform workers, and institutions with less than ten workers. If there is risky work in an institute, that institute will inevitably be brought under the purview of ESIC, even if it is the sole labourer. The provisions of ESIC will apply to establishments employing even one worker if the establishment is engaged in hazardous and life-threatening activities.

The institution's schedule has been abolished to broaden the reach of the Employees' Provident Fund Organisation (EPFO), and institutions with 20 or more employees will now fall under its purview. There is also the option of EPFO, but it is optional for organisations with less than 20 employees and independent contractors. In the case of a pandemic, endemic illness, or severe calamity, the central government may postpone or cut the employer's PF and ESI contributions for up to three months.

Inspector Raj can be reduced by randomly choosing which establishments to examine, but there can be no surprise inspections. Many crimes now have provisions for fines rather than imprisonment. Prison time is typically offered for repeat offenses. In other situations, incarceration has been provided, but the length of imprisonment has been shortened. The crime can often be compounded. As a result, the offender can avoid a criminal court prosecution by paying a compounding charge. Overall, this means that criminal courts will only be used exceptionally and that civil courts have no jurisdiction.

#### **4.c. Special Measures for Women Workers**

The labour laws have incorporated certain protective provisions for equal opportunity and a friendly work environment for women workers. These include strengthening constitutional and legal frameworks such as progressive rules for maternity leave which have been increased, prohibition of sexual harassment of women in the workplace, equal pay for equal work, and other initiatives to ensure that women can work in the best possible circumstances.

The 2020 Social Security Code includes provisions for expanding paid maternity leave from 12 to 26 weeks and mandating crèche facilities in businesses with 50 or more

employees. It also 'allows' women to perform night shifts with proper safety precautions. The Code on Occupational Safety and Health 2020 makes provisions for women to work in technical, managerial, and supervisory positions in aboveground mines, including opencast workings, between 7 p.m. and 6 a.m., and in underground mines between 6 a.m. and 7 p.m. A continuous presence is not necessary.

According to the 2019 Wage Code, there shall be no gender discrimination among workers in a workplace or any subdivision thereof in matters related to pay by the same employer, with reference to the same work or labour of a similar nature done by any employee. Furthermore, unless women's employment in such work is prohibited or limited by or under any current legislation, no employer shall discriminate based on gender in the terms of employment when recruiting any employee for the same or comparable work.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, intends to protect women from sexual harassment at work and to prevent and address complaints about it. The Act applies to all women, regardless of age, job position, or kind of labour, whether in the public or private sector, organised or unorganised. The Act imposes a responsibility on all employers, public or private, to create a safe and secure working environment free of sexual harassment. Every business must form an internal committee if the number of employees exceeds ten. Similarly, the Appropriate Government is authorised to form Local Committees in each area to accept complaints from firms with less than ten employees or against the employer himself. The Act has sufficient measures to address many facets of the subject, including criminal sanctions for individuals who violate the Act's requirements, including employers.

Employers must hold seminars and awareness programmes at regular intervals to familiarise staff with the requirements of the Act, as well as orientation sessions for members of the Internal Committee in the manner stipulated. The State Government is in charge of keeping track of how the Act is being implemented at the District and State levels as well as keeping track of the number of cases that have been filed and how many have been successfully resolved concerning all instances of sexual harassment at work

that are established, owned, controlled, or wholly or substantially financed by funds that are provided by the State, either directly or indirectly.

## 5. CONCLUSION

Platform and gig workers are classified as unorganised under Indian labour laws. Even those belonging to the organised sector, like Swiggy and Zomato which have more than ten workers, would still be unorganised workers as they are not covered by any of the legislation applicable to the organised sector. This exacerbates the marginalisation of unorganised workers in the labour laws of India.

A careful examination of the definitions provided for the first time in the new labour codes leads to the conclusion that the legal distinction between an employee and a worker is further advocated to the detriment of the platform and gig workers. The analysis of legal terms employed across various legislations shows that the difference between these silos of 'worker' and 'employee' is a legal fiction. Both may be employed for any skilled or unskilled, manual or operational, administrative, clerical, or even technical work, yet the legal invention operates between them. While an employee's compensation is wages, the worker should work for hire or reward. This corresponds to the permanent and temporary nature of labour contracts for employees and workers, respectively. Another legal fiction creating a hierarchy is that a person performing managerial, administrative, or supervisory tasks earning more than fifteen thousand rupees per month is an employee, not a worker.

Thus, an employee is a person who works under an employer and is entitled to certain benefits, such as minimum wages, paid leave, and social security benefits. On the other hand, a worker is a broader term that includes employees and individuals engaged in manual labour, such as contract labourers, casual labourers, and daily-wage workers. Workers may be entitled to the same benefits as employees, depending on their employment status and the nature of their work. Therefore, a platform or gig worker outside of a "traditional employer-employee relationship" is intentionally denied the rights and benefits an employee accrues.

Further, the term 'work arrangement' is used for platform or gig workers in the new labour codes without definition. However, legal interpretation of other defined terms leads to the conclusion that the undefined term 'work arrangement' implies an

establishment. This leads to the further inference that platform and gig workers can be employees even though they are specifically intended to be workers not entitled to benefits enjoyed by employees in an organised sector.

Recognising the need for social security coverage, the Indian government has initiated various schemes to support platform and gig workers. For instance, the Pradhan Mantri Shram Yogi Maan-dhan (PM-SYM) Yojana provides pension benefits for workers in the unorganised sector, including gig workers. Similarly, the Employees' State Insurance Corporation (ESIC) offers health insurance coverage to eligible platform and gig workers.

Despite these legislative and judicial developments, effectively regulating and protecting platform and gig workers remains a challenge. Issues such as lack of job security, low wages, limited access to grievance redressal mechanisms, and inadequate representation in decision-making processes continue to pose challenges.

The legal review of platform and gig workers in India is evolving. It requires a comprehensive and balanced approach that balances the need for worker protection with the flexibility and innovation the gig economy offers. Going forward, there is a need for continued dialogue among stakeholders, including the government, platform operators, and workers' representatives, to address the legal gaps and ensure the well-being of platform and gig workers.

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(\*indicates a primary source)

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