
GIG WORKER OR EMPLOYEE? INTERPRETING THE EMPLOYMENT BOUNDARY IN THE CODE ON SOCIAL SECURITY 2020

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ABSTRACT

The Code on Social Security 2020 recognises gig and platform workers through definitions that place their work outside a traditional relationship between an employer and an employee. This raises a question: does statutory recognition merely extend protection to persons who are not employees, or does it prevent persons working through platforms from establishing employee status? This paper argues for the former construction. The actual relationship must be examined before the person is placed in a category outside employment. A contractual description or welfare registration cannot, by itself, resolve that enquiry. The paper examines the interaction between the employee definition, the gig work definitions and Chapter IX. It draws on the Supreme Court's employment status decisions, including *Silver Jubilee Tailoring House*, *Shining Tailors*, *Workmen of Nilgiri Cooperative Marketing Society* and *Balwant Rai Saluja*. It also considers how far courts can interpret the Code without adding to its provisions. The proposed approach preserves both the separate welfare framework and the possibility of proving disguised employment. It does not presume that every platform worker is an employee or that employee status automatically establishes every statutory entitlement.

Keywords: statutory interpretation, gig workers, platform work, employment status, contract of service, social security.

1. INTRODUCTION: RECOGNITION AND ITS POSSIBLE CONSEQUENCES

Consider a hypothetical delivery worker whose agreement calls him an independent partner. The platform fixes the payment for each delivery, allocates assignments and restricts access when specified performance conditions are not met. The worker supplies his motorcycle and chooses when to log in. If he claims an employment related benefit, can the platform answer that Parliament has already recognised his work as gig work and therefore placed him outside employment? The difficulty lies in the order of reasoning. Calling the arrangement gig work assumes the very absence of an employment relationship that the worker seeks to contest.

The Code's definitions make this a question of statutory interpretation rather than only a policy debate about desirable protection. Section 2(35) requires that gig work occurs outside a traditional relationship between an employer and an employee. Section 2(60) contains a corresponding limitation in its definition of platform work, while section 2(61) identifies a platform worker by reference to that work.¹ The phrase has to be given effect. The issue is what must be established before it can be applied.

The argument is that these provisions define the boundary of a welfare category. They do not finally determine the status of every relationship commercially described as a gig. A person who satisfies the governing employee definition should be assessed under that definition, subject to the conditions of the particular benefit claimed. A person outside employment may qualify for the separate welfare framework. The distinction survives, but the platform does not determine which side of it a worker occupies simply by choosing a contractual label.

This is a doctrinal paper confined to the central Code and Indian interpretive authorities. It uses hypothetical working arrangements to test competing constructions and makes no empirical finding about any named platform. The Ministry records the Code's commencement on 21 November 2025.² Commencement must be distinguished from the operation of each scheme or contribution obligation. The argument does not depend on an assumption that every contemplated benefit has already become available.

¹ Code on Social Security 2020, ss 2(35), 2(60) and 2(61).

² Ministry of Labour and Employment, 'Social Security Measures for Gig and Platform Workers' (Press Information Bureau, 4 December 2025) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2198746>> accessed 8 September 2026.

2. RESEARCH QUESTION, METHOD AND CONTRIBUTION

The paper asks whether sections 2(35), 2(60) and 2(61), read with section 2(26) and Chapter IX, bar an individual working through a digital platform from proving an employment relationship. This requires answers to three related questions. What does the adjective traditional mean? How far can earlier employment status decisions guide interpretation of the Code? Can access to a welfare mechanism settle status beyond that mechanism?

The method is to compare the provisions within the same enactment, examine relevant judicial reasoning, present the strongest competing construction and distinguish interpretation from proposed legislative reform. The earlier cases are used as analogous authorities on identifying employment. None is presented as a judgment interpreting the Code's gig worker definition. The argument is an interpretation advanced in this paper, rather than a reported holding on these definitions.

Misclassification is already an established subject of scholarship. Esha Gupta's article, for example, rejects a blanket classification of gig and platform workers as independent contractors and discusses the use of employment tests.³ This paper does not claim to discover that problem. It focuses on the order in which the definitions should be applied and the consequences of welfare registration. The proposed interpretation must remain defensible even where the legislature deliberately provides a separate framework for persons outside employment.

3. READING THE DEFINITIONS TOGETHER

Section 2(26) supplies a broad employee definition, including employment on wages through express or implied terms and engagement directly or through a contractor. The definition also contains qualifications for particular chapters. Sections 2(35) and 2(60) describe arrangements outside traditional employment. Chapter IX then provides the framework for unorganised, gig and platform workers. Sections 113 and 114 address registration and schemes.⁴

There are two possible ways to connect these provisions. Under the first, the existence of a digital platform and a gig work agreement establishes statutory gig status, which then excludes employee status. Under the second, the court or authority first examines whether an

³ Esha Gupta, 'Understanding Gig and Platform Workers & Addressing the Global Issue of "Misclassification"' (2021) 4(5) International Journal of Law Management & Humanities 453, 457–59, 461–63.

⁴ Code on Social Security 2020, ss 1(4), 2(26), 113 and 114 and First Schedule.

employment relationship exists in substance. The definition of work outside employment becomes relevant if its conditions are satisfied. The second reading gives the word outside a legal function without treating the parties' description as authoritative.

An ordinary employee does not cease to be one because work is assigned through an application. Equally, an independent service provider does not become an employee merely because the intermediary operates digitally. The method of connecting work and demand is relevant evidence, but cannot by itself establish whether the relationship falls within the employee definition. Otherwise, an administrative feature would replace the enquiry required by the statute.

The adjective traditional creates a further ambiguity. It might refer to the legal relationship recognised by employment law, or only to its familiar outward form: fixed hours, physical supervision and a conventional workplace. The latter construction could allow a person to be outside conventional employment arrangements yet remain an employee in law. However, it risks uncertainty about overlap between statutory categories. A narrower reading is that the absence of conventional features cannot conclusively establish the absence of legal employment. Existing doctrine already recognises that employment can take varied forms.

This reading does not remove traditional from the provision. It rejects the assumption that the word freezes employment into one historical model. Nor does it require simultaneous recognition as employee and statutory gig worker for the same relationship and period. Its immediate concern is whether a person has been assigned to the correct category at all.

4. CONTRACTS OF SERVICE AND CONTRACTS FOR SERVICES

A contract of service is a relationship of employment. A contract for services involves an independent provider undertaking work for another person. Both involve the supply of work, so the distinction cannot be drawn merely from the existence of an agreement or payment. The real question is whether the person works as an employee or carries on an independent business. Control, integration into the business and financial risk help answer that question.⁵

The Indian Contract Act 1872 provides the general framework. Section 2(h) identifies a contract as an agreement enforceable by law. Section 10 sets out the conditions for

⁵ *Sushilaben Indravadan Gandhi v New India Assurance Co Ltd* [2020] 9 SCR 32, paras 24–25.

enforceability, including competent parties, free consent and lawful consideration and object. These provisions do not define a contract of service or a contract for services. A valid agreement may create either relationship.⁶

Section 23 is relevant where the consideration or object is forbidden by law or would defeat a legal provision. It does not make every independent contractor agreement unlawful. A challenge must identify the law allegedly defeated and explain how the agreement has that effect.⁷ Contractual validity and statutory employment status are therefore related but separate questions. Calling a worker an independent partner cannot replace the enquiry required by the applicable employee definition.

In *Sushilaben Indravadan Gandhi v New India Assurance Co Ltd*, the Supreme Court considered this distinction in an insurance dispute involving a surgeon. It explained that control is one of several relevant factors. The terms of engagement, integration, ownership of assets and the allocation of profit and loss must also be considered. On the facts, the Court found a contract for service. It also recognised that the statutory or contractual context affects the enquiry.⁸

The case should therefore be applied with care. It did not determine the status of platform workers under the Code. Its relevance is that neither the heading of an agreement nor one feature of the work settles every case. For a platform worker, freedom to log in is relevant, but so are the practical consequences of refusing assignments and the extent of control over continuing access to work. These circumstances must be proved. Contract law supplies the agreement, while the governing labour statute determines whether that agreement and the actual working arrangement attract employment protection.

5. EMPLOYMENT STATUS DECISIONS: ASSISTANCE AND LIMITS

Silver Jubilee Tailoring House v Chief Inspector of Shops and Establishments concerned tailors paid by the piece, with flexibility in attendance and some work for other establishments. The employer disputed the relationship. The Supreme Court upheld employee status under the applicable shops legislation, assessing the circumstances cumulatively. Control was relevant

⁶ Indian Contract Act 1872, ss 2(h) and 10.

⁷ Indian Contract Act 1872, s 23.

⁸ *Sushilaben* (n 5) paras 24–28.

but not an exclusive formula. Equipment, rejection of work and the ability to withhold further work also mattered.⁹

The decision shows why flexibility alone cannot rule out employment. There is also a limit to this analogy. The Court interpreted the particular statutory expression before it. A platform dispute cannot be resolved merely by substituting an application for the tailoring shop. Ownership of a vehicle, freedom to negotiate, the nature of assignments and the actual allocation of business risk may point in different directions. The judgment supplies a method of enquiry, not an automatic classification.

Shining Tailors v Industrial Tribunal II directly rejected the proposition that payment by the piece necessarily indicates independent contracting. The Court found the employer's preliminary objection untenable, relying on the evidence of control, rejection and refusal of further work.¹⁰ Applied to the hypothetical delivery worker, this prevents payment per task from deciding the issue alone. It does not establish that every transaction based payment is a wage. The statutory and factual basis for employment still has to be demonstrated.

Workmen of Nilgiri Cooperative Marketing Society v State of Tamil Nadu provides a necessary counterweight. It treated the enquiry as dependent on the facts, rejected reliance on a single decisive test and placed the burden of establishing employment on the party asserting it. The workers did not prove that they were employees of the society, and the appeals failed.¹¹ A protective interpretation therefore does not eliminate proof. The paper's proposed sequence preserves an opportunity to establish employment. It does not presume success.

Balwant Rai Saluja v Air India further cautions against treating commercial connection as employment. The dispute concerned canteen workers engaged through another company. The Court examined appointment, remuneration, dismissal, disciplinary power, continuity and control, and rejected the claim to employment with Air India for the wider purposes sought.¹² In platform litigation, contractual quality standards may be evidence of supervision, but their legal significance must be assessed. A market intermediary can impose legitimate service

⁹ *Silver Jubilee Tailoring House v Chief Inspector of Shops and Establishments* [1974] 1 SCR 747, 750, 756–59.

¹⁰ *Shining Tailors v Industrial Tribunal II*, UP (1983) 4 SCC 464, para 5.

¹¹ *Workmen of Nilgiri Coop Mkt Society Ltd v State of Tamil Nadu* (2004) 3 SCC 514, paras 32–38, 47–50 and 95–102.

¹² *Balwant Rai Saluja v Air India Ltd* (2014) 9 SCC 407, paras 53–61, 74–75 and 87–88.

conditions without necessarily becoming the employer of every provider.

Taken together, these decisions support an enquiry that is open to unconventional employment while remaining attentive to genuine independent business. *Silver Jubilee* and *Shining Tailors* resist formal shortcuts. *Nilgiri* and *Balwant Rai Saluja* prevent economic connection or worker vulnerability from becoming a substitute for the required relationship. The Code should be interpreted with both sides of that reasoning in view.

6. THE COMPETING CASE FOR STATUTORY EXCLUSION

The strongest contrary argument begins with Parliament's express language. Gig work and platform work are located outside traditional employment, and Chapter IX gives them a distinct welfare framework. If courts bring the same workers into employee provisions, the argument runs, they collapse a distinction deliberately enacted. The specific gig work definitions should govern over the general employee definition, especially where the work matches the activities contemplated for aggregators.

This objection cannot be answered merely by invoking social justice. A beneficial purpose does not authorise deletion of an express limitation. Nor does the existence of algorithmic management by itself establish employment. The exclusionary interpretation has a legitimate core: persons who truly fall outside employment are not entitled to employee benefits solely because a court considers those benefits desirable.

Its difficulty is the additional inference that all persons working through a platform necessarily belong to that category. Before a specific definition can control, its conditions must be satisfied. The condition that the work occurs outside the relevant employment relationship is not established by pointing again to the platform or its agreement. Treating the definition as conclusive on that basis produces circular reasoning.

The provisions can instead operate coherently without displacing either category. A platform business may have ordinary employees, independent providers, and persons whose contractual description is disputed. Different relationships may properly receive different legal treatment. Recognising this possibility does not invalidate the special framework. It allows that framework to operate for the persons to whom its definition actually applies.

This also answers the argument that an individual's choice of flexible work conclusively

determines status. Flexibility is evidence that must be assessed alongside the other circumstances. The question is whether it represents meaningful business autonomy within the arrangement, not simply whether the contract contains a clause allowing the worker to choose working hours.

7. TEXT, PURPOSE AND THE PROHIBITION ON SUPPLYING OMISSIONS

The Code's long title identifies an objective of extending social security across sectors.¹³ As an internal aid, that purpose supports a reading that adds protection without silently extinguishing an otherwise sustainable employment claim. However, the long title cannot independently establish a right absent from the operative provisions. It helps choose between plausible constructions. It does not replace the conditions for coverage.

The Constitution Bench decision in *Padma Sundara Rao v State of Tamil Nadu* supplies the relevant interpretive discipline. In a land acquisition dispute, the Court refused to create a fresh limitation period after an earlier declaration had been quashed. It stressed the statutory wording, the need to read the enactment as a whole, and the narrow limits on supplying an omission through interpretation.¹⁴ The case is relevant here for that method, not its land acquisition holding.

Applied to the Code, the discipline operates in both directions. A court should not invent an employee status for every independent provider merely to improve protection. But it should also hesitate before inserting an immunity under which anyone described as a gig worker is prevented from proving employee status. Neither categorical rule follows simply from the recognition of gig work.

The distinction between interpretation and amendment becomes clearer through three propositions. Applying the existing employee definition to proven facts is interpretation. Giving outside effect after that enquiry is also interpretation. Creating a new universal minimum payment, reversing the legal burden of proof, or imposing a comprehensive deactivation procedure on genuinely independent providers requires a separate legal foundation. Such measures cannot be treated as already enacted by stretching a definition.

¹³ Code on Social Security 2020, long title.

¹⁴ *Padma Sundara Rao (Dead) v State of Tamil Nadu* (2002) 3 SCC 533, paras 12–15.

Harmonious construction is therefore useful only if it preserves the operative content of both sets of provisions. It must not become a formula under which every claimant receives whichever classification produces the greater benefit. This approach requires the classification to follow the evidence and accepts the possibility that some workers will remain outside employment despite their need for stronger protection.

8. WELFARE REGISTRATION AND THE RISK OF CIRCULAR CLASSIFICATION

Section 113 links registration to Chapter IX and includes a self declaration mechanism.¹⁵ The Ministry also describes e-Shram registration as based on self declaration.¹⁶ These features raise a practical issue: if a person registers as a gig worker to access protection, may the registration later be treated as conclusive evidence that the person is not an employee?

The better interpretation is that registration serves its statutory welfare purpose. A description given by the worker may be relevant evidence, particularly where it records specific facts about the arrangement. It should not automatically become a binding legal adjudication of employment status. The distinction is between evidence of how a person works and the legal conclusion to be drawn from that evidence. An administrative category cannot sensibly be assumed to have resolved a contested relationship without an enquiry into it.

The contrary argument is that a claimant should not obtain benefits on one asserted status and later deny it. That concern deserves attention, but it does not justify treating every registration as an informed waiver of employment related claims. Any overlap in benefits must be addressed under the governing scheme and applicable law. The need to prevent duplication does not itself establish that the original classification was correct.

The period of work also matters. A person may undertake independent assignments during one period and later work under materially different conditions. The same person may maintain separate relationships with different entities. A registration system organised around the individual should not obscure the fact that employment status concerns a particular relationship during a particular period. This is an interpretive implication advanced by the paper, rather than

¹⁵ Code on Social Security 2020, s 113(1)–(3).

¹⁶ Ministry of Labour and Employment (n 2). The portal is an administrative example and is not treated as identical to every registration process under section 113.

a holding located in a judgment on section 113.

Section 114's distinct funding framework does not require a different conclusion.¹⁷ An aggregator's contribution under a welfare arrangement and its potential obligations as an employer arise from different statutory conditions. Whether both become relevant in a particular case requires examination of those conditions. Neither liability should be presumed to discharge the other without a legal basis.

9. APPLYING THE INTERPRETATION AND IDENTIFYING REFORM

A court or authority should begin by identifying the precise benefit claimed, the relationship in dispute and the relevant period. The governing employee definition and the requirements of the relevant chapter must then be applied to the evidence. Only after examining the relationship should the exclusionary element of the gig or platform definition be used to determine whether the category outside employment fits. This is a sequence for resolving a contested classification, not a requirement that every applicant litigate employment status before receiving welfare assistance.

In the hypothetical delivery arrangement, useful evidence would include who fixes or negotiates remuneration, whether assignments can be refused without adverse consequences, who controls continuing access, whether personal performance is required, and whether the worker can develop an independent customer base. These are proposed evidentiary applications of the employment enquiry. A performance score matters because of the consequences attached to it, not because an algorithm generated it. Likewise, ownership of a motorcycle may indicate investment but does not answer every question about commercial independence.

A contrasting hypothetical helps test the proposal. A professional who negotiates prices directly, maintains an independent clientele and uses a platform only to advertise services may have a stronger claim to independent business status. The same interpretation can therefore recognise employment in one arrangement and independence in another. Its consistency lies in the enquiry, rather than a uniform result across all digital work.

Legislative clarification would still be useful. An express provision could state that welfare registration, receipt of a benefit or aggregator contribution does not by itself determine the

¹⁷ Code on Social Security 2020, s 114(3)–(5).

existence or absence of employment under the applicable law. It could also authorise procedures for correcting classifications and managing overlapping benefits. These are recommendations for reform. They are not descriptions of provisions already located in the Code.

Further reform could address access to relevant work allocation and deactivation records, because a worker may otherwise struggle to prove how the relationship operates. Any statutory presumption or altered burden should be enacted expressly and designed with an opportunity to rebut it. The interpretive argument advanced here does not silently create such a presumption.

10. CONCLUSION

The Code's recognition of gig and platform workers should be understood as protection for a category whose defining conditions must first be established. The words placing work outside traditional employment have legal significance, but they cannot finally determine the status of an arrangement merely because a platform uses the language of partnership or independent contracting.

Reading the definitions together supports an enquiry into the actual relationship before the category outside employment is applied. The Supreme Court's decisions assist that enquiry by rejecting isolated indicators while insisting on proof and attention to the governing statute. This approach leaves genuine independent work within the separate welfare framework and preserves the possibility of establishing disguised employment. It also respects the limits of interpretation: access to stronger protection for persons who remain outside employment requires an appropriate legislative or other lawful foundation.