

## WHEN ALGORITHMS HARM: TORT REMEDIES FOR GIG- WORKER INJURIES IN INDIA

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### **Abstract**

The rapid growth of platform-mediated gig work in India has transformed labour relations, introducing new forms of control and risk that fall outside traditional legal frameworks. Digital platforms govern workers through algorithmic systems while classifying them as independent contractors, thereby distancing themselves from legal responsibility for workplace injuries. This shift has exposed significant gaps in India's tort law, which remains anchored in conventional notions of employment and direct supervision. As a result, doctrines such as vicarious liability, non-delegable duties, and occupiers' liability often fail to provide meaningful remedies for injured gig workers. Against this backdrop, the paper examines how tort law can evolve to address the structural risks and harms embedded in platform work. Using a doctrinal and socio-legal methodology, it explores how contractual design and algorithmic oversight enable platforms to avoid liability, creating an accountability vacuum. Drawing on Indian case law, including recent interpretations under the POSH Act, 2013 and emerging control-based tests, the paper highlights the judiciary's struggle to keep pace with digital forms of labour. It then evaluates emerging tort doctrines, such as negligent algorithmic design and platform-specific non-delegable duties to inform reform proposals. Finally, the paper advocates for statutory interventions, presumptive employment status, algorithmic transparency mandates, and specialised dispute resolution forums, to realign tort law with its core principle, ensuring that those who create and manage risk are held accountable for its consequences.

**Keywords:** Gig economy, Tort liability, Platform work, Algorithmic control, Worker misclassification, Legal accountability, Digital labour regulation

### **1. INTRODUCTION:**

Digital platforms have significantly reshaped India's labour market, offering flexible gig work to millions. In fact, app-based tasks such as ride-hailing, food delivery and online freelancing have transformed labour markets globally. A World Bank analysis estimates that platform-mediated work now accounts for approximately 12 percent of the global labour market.<sup>1</sup> However, the flexibility associated with such work often comes at the cost of worker safety and well-being, as gig workers remain exposed to physical and psychological risks without the protections typically afforded to formal employees. While platform work provides new opportunities, it also raises serious economic and legal concerns. Many gig workers perform roles comparable to those of employees but are classified as independent contractors, leaving them without income stability, social security or basic employment rights. This classification results in a liability gap, particularly in cases of workplace injury.<sup>2</sup> Although India's Social Security Code, 2020 introduces certain protections for gig workers, their legal status as independent contractors remains unchanged. As a result, despite the sector's rapid growth, meaningful social safeguards remain limited.<sup>3</sup> This paper explores the extent to which digital platforms in India can be held accountable for worker injuries under tort law.

Platform work refers to a form of employment in which organisations or individuals use online interfaces to connect with service providers who address specific problems or deliver defined services.<sup>4</sup> In India, this sector is expanding rapidly. According to a 2022 Report by the NITI Aayog, approximately 7.7 million Indians were engaged in gig work in 2020-21, a number projected to rise to 23.5 million by 2029-30. These workers already represent a significant share of India's 625 million-strong labour force.<sup>5</sup> However, Indian law is yet to fully ensure safe and stable working conditions for gig workers. The Code on Social Security, 2020 marked a foundational step by legally defining 'gig' and 'platform' workers and mandating the creation of social-security schemes, including provisions for health care, pensions and insurance. Despite this progress, most platform work in India remains informal and insecure. A recent survey shows that full-time delivery drivers earn, on an average, Rs. 18,800 per month after expenses, while working long hours with little to no job security.<sup>6</sup>

From a labour-economics perspective, such working conditions contribute to income volatility and irregular labour supply, as many workers engage with multiple platforms or follow unpredictable schedules. From a socio-legal standpoint, these trends reveal critical gaps in India's labour laws and social-protection mechanisms, as platform workers continue to lack the guaranteed rights and benefits enjoyed by formal employees.<sup>7</sup> In contrast, advanced economies have adopted varied approaches to regulating platform work. In the European Union, over 28 million people were engaged in platform work as of 2022, a figure projected to reach 43 million by 2025. In response, the EU enacted its first Platform Work Directive in 2024, introducing a legal presumption of employee status for many gig workers and mandating greater algorithmic transparency.<sup>8</sup> In the United States, around 16 percent of adults earned income through gig platforms in 2021. However, policy responses have largely remained at the state level, with initiatives such as California's AB 5 and Proposition 22, and ongoing legal challenges, in the absence of comprehensive federal legislation.<sup>9</sup> The United Kingdom has seen comparable developments, where recent court rulings have recognised certain drivers and couriers as 'workers' entitled to minimum protections.<sup>10</sup>

This paper explores the legal challenges faced by gig workers in India's growing platform economy, with particular attention to how tort law addresses injuries sustained in the course of platform-mediated work. Taking an interdisciplinary approach, it blends labour-economic analysis, examining wage structures, labour supply dynamics and structural precarity, with a socio-legal critique of applicable laws, regulatory gaps and patterns of enforcement. Rather than undertaking a broad comparative survey, the analysis focuses on India's doctrinal and institutional context, drawing selectively on foreign jurisprudence to illuminate or contrast key legal principles. The aim is to deepen the understanding of the regulatory shortcomings in India's gig economy and to develop a grounded framework for reforming tort-based protections for platform workers.

<sup>1</sup> 'Demand for Online Gig Work Rapidly Rising in Developing Countries' (*World Bank*, 7 September 2023) <<https://www.worldbank.org/en/news/press-release/2023/09/07/demand-for-online-gig-work-rapidly-rising-in-developing-countries>> accessed 1 July 2025.

<sup>2</sup> Tammy Katsabian and Guy Davidov, 'Flexibility, Choice, and Labour Law: The Challenge of on-Demand Platforms' (2023) 73 *University of Toronto Law Journal* 348.

<sup>3</sup> Code on Social Security, 2020.

<sup>4</sup> 'EU Rules on Platform Work' <<https://www.consilium.europa.eu/en/policies/platform-work-eu/>> accessed 1 July 2025.

<sup>5</sup> 'India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work: Policy Brief' <[https://www.niti.gov.in/sites/default/files/2023-06/Policy\\_Brief\\_India%27s\\_Booming\\_Gig\\_and\\_Platform\\_Economy\\_27062022.pdf](https://www.niti.gov.in/sites/default/files/2023-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf)>.

<sup>6</sup> Valentina Brailovskaya, Pratibha Joshi and Jenny Susan John, 'The Changing Landscape of Work: Insights into India's Delivery Platform Gig Workforce' (*IDinsight*, 24 March 2025) <<https://www.idinsight.org/article/the-changing-landscape-of-work-insights-into-indias-delivery-platform-gig-workforce/>> accessed 1 July 2025.

## II. METHODOLOGICAL APPROACH AND SCHOLARLY FOUNDATIONS:

This research study has adopted a doctrinal and socio-legal research methodology to examine how Indian tort law can evolve to address workplace injuries in platform-mediated gig work. The doctrinal analysis has focused on statutes, case laws and common law principles concerning tort liability, employment classification, and platform governance. To situate this legal inquiry within its broader economic and technological context, the paper has also drawn on literature from labour economics and platform studies. These interdisciplinary sources have helped explain how algorithmic control reshape traditional employment relationships and undermine established tort doctrines. The research has relied on academic scholarship, policy reports, regulatory documents and judicial commentary to triangulate legal analysis with empirical insights into risk distribution in the gig economy. By combining doctrinal reasoning with a socio-legal critique, the paper has made an attempt to expose the structural shortcomings of current tort law in addressing gig-worker injuries and proposed reforms grounded in the realities of digital labour. Normatively oriented, the methodology has been adopted with an aim to not only interpret existing law but to also advocate for a recalibration of legal responsibility, in light of technological and economic change.

### Literature Reviewed:

While the gig economy has been widely studied across disciplines, legal scholarship on tort remedies for gig-worker injuries in India remains limited. Most existing research focuses on employment classification, wage entitlements and platform regulation, with relatively little attention to how tort law should address the algorithmic distribution of risk. This literature review situates the present inquiry within broader academic and policy debates by drawing on key contributions from tort theory, employment law and platform governance. It compares dominant perspectives, critiques doctrinal limitations, and integrates interdisciplinary insights to identify the conceptual and normative gaps this paper seeks to address.

The ILO's 2023 report on *The Algorithmic Management of Work* provides a global overview of how algorithmic systems are reshaping workplace governance. It highlights major concerns such as opaque decision-making, increased surveillance and declining worker autonomy, while emphasising regulatory shortcomings worldwide.<sup>11</sup> This aligns with NITI Aayog's 2022 report on India's gig economy, which, though optimistic about platform-driven growth, raises critical issues around worker classification, lack of social protections, and the need for stronger platform accountability.<sup>12</sup> Both reports call for safeguards to promote fairness in algorithmic work environments, though they differ in orientation, the ILO focuses on labour rights, while NITI Aayog adopts a policy-driven, state-centric perspective.

<sup>7</sup> Amit Joshi, Saharsh Jain and Puneet Kumar Gupta, 'Challenges and Impact of the Gig Economy' (2024) 2 Sustainable Economies 96.

<sup>8</sup> 'Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work - Analysis of the Final Compromise Text with a View to Agreement' <<https://data.consilium.europa.eu/doc/document/ST-7212-2024-INIT/en/pdf>>.

<sup>9</sup> Monica Anderson Gelles-Watnick Colleen McClain, Michelle Faverio and Risa, 'The State of Gig Work in 2021' (Pew Research Center, 8 December 2021) <<https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/>> accessed 1 July 2025.

<sup>10</sup> Sarah Butler, 'Uber Drivers Entitled to Workers' Rights, UK Supreme Court Rules' *The Guardian* (19 February 2021) <<https://www.theguardian.com/technology/2021/feb/19/uber-drivers-workers-uk-supreme-court-rules-rights>> accessed 1 July 2025.

From a doctrinal lens, *David Neild* (2013) argues that vicarious liability should remain rooted in the traditional employer-employee relationship, warning against judicial expansion that could dilute its conceptual coherence.<sup>13</sup> In contrast, reformist scholars like *Jeremias Prassl* (2018) and *Valerio De Stefano* (2016) critique these formal categories as ill-suited to the structural realities of gig work. *Prassl* reveals how platforms mask managerial control behind claims of worker autonomy and calls for employment presumptions to counteract this imbalance. *De Stefano* situates platform work within broader patterns of casualisation and argues for universal labour protections to address issues of misclassification and exclusion. These differing perspectives reflect the broader tension between doctrinal continuity and the need for legal adaptation in response to changing work structures.<sup>1</sup>

Expanding on this critique, *Katsabian and Davidov* (2023) challenge the narrative of flexibility often associated with platform work. They argue that legal systems frequently misinterpret algorithmic control as worker choice and advocate for a hybrid regulatory model that combines genuine autonomy with enforceable rights.<sup>15</sup> Similarly, *Sarah Levine* (2025) critiques the emergence of ‘third-category’ legal statuses, contending that they legitimise misclassification and facilitate corporate risk-shifting. Her historical analysis links these developments to earlier models of precarious labour, reinforcing the call for laws that reflect worker’s economic dependence and lack of control. Empirical studies further enrich this analysis.<sup>16</sup> *Vili Lehdonvirta* (2018), drawing on interviews with gig workers across platforms like Mechanical Turk and CloudFactory, shows how structural and cognitive constraints undermine their control over working time. His findings reveal that flexibility is often illusory, shaped by platform design, task scarcity and informal discipline strategies.<sup>17</sup> By focusing on actual conditions rather than formal labels, *Lehdonvirta’s* work adds a practical dimension to the normative critiques advanced by *Prassl*, *Levine* and others.

In the Indian legal context, the pending case of *Indian Federation of App-based Transport Workers v. Union of India* (2021) challenges the contractual classification of gig workers as “partners,” arguing this violates constitutional protections under Articles 14, 21, and 23. By seeking recognition under the Unorganised Workers’ Social Security Act, 2008, the petition highlights how contractual design is used to exclude gig workers from legal protections. Though undecided, the case has prompted significant policy responses, including Supreme Court notices and the inclusion of gig workers in the e-Shram portal, signalling growing judicial and administrative recognition of the precarious nature of platform labour.<sup>18</sup>

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<sup>11</sup> ‘The Algorithmic Management of Work and Its Implications in Different Contexts’ <<https://www.ilo.org/publications/algorithmic-management-work-and-its-implications-different-contexts>>.

<sup>12</sup> ‘India’s Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work: Policy Brief’ (n 5).

<sup>13</sup> David Neild, ‘Vicarious Liability and the Employment Rationale’ (2013) 44 Victoria University of Wellington Law Review 707.

<sup>14</sup> Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (OUP Oxford 2019); Valerio De Stefano, ‘The Rise of the “Just-in-Time Workforce”: On-Demand Work, Crowd Work and Labour Protection in the “Gig-Economy”’ (Social Science Research Network, 28 October 2015) <<https://papers.ssrn.com/abstract=2682602>> accessed 2 July 2025.

<sup>15</sup> Katsabian and Davidov (n 2).

<sup>16</sup> Sarah M. Levine, ‘Gig-Economy Myths and Missteps’ (2025) 134 The Yale Law Journal 331.

<sup>17</sup> Vili Lehdonvirta, ‘Flexibility in the Gig Economy: Managing Time on Three Online Piecework Platforms’ (2018) 33 New Technology, Work and Employment 13.

<sup>18</sup> *The Indian Federation of App-based transport workers and others v Union of India and others*, WP (Civil) No 1068/2021.

Together, these sources critique prevailing legal frameworks, assess cross-jurisdictional policy developments, and highlight the limitations of tort law in addressing the risks faced by gig workers. They bridge doctrinal analysis with empirical and socio-legal perspectives, offering a multidimensional understanding of why platform-mediated injuries remain legally unaddressed, and how tort law might evolve to fill that void. This methodological and theoretical foundation sets the stage for the next segment, which turns to conceptual frameworks for assigning liability in the gig economy. These frameworks provide the analytical tools necessary to evaluate both existing doctrines and proposed reforms in a labour market increasingly shaped by digital platforms and algorithmic control.

## **I. CONCEPTUAL FRAMEWORKS FOR ASSIGNING LIABILITY IN THE GIG ECONOMY:**

To develop and conduct an effective analysis, it is important to define key concepts and outline the tort law doctrines through which responsibility for gig-worker injuries may be assigned. By situating negligence, vicarious liability, occupiers' liability and non-delegable duties along a 'digital-actor liability spectrum', the paper shall illustrate how platforms' algorithmic control and contractual design influence the distribution of risk. This theoretical framework, supported by labour-economic theory on risk externalization and socio-legal perspectives on access to justice, shall serve as the foundation for evaluating current and emerging liability regimes.

According to India's Code on Social Security, 2020, a 'gig worker' is defined as a "*person who performs work or participates in a work arrangement and earns from such activities outside the scope of a traditional employer-employee relationship*".<sup>19</sup> Platform work is similarly described as a form of employment in which organisations or individuals use an online platform to access others who solve specific problems or provide services in exchange for payment.<sup>20</sup> Building on this statutory framing, this paper adopts a working definition of digital platforms as algorithm-driven intermediaries that match service providers with customers, while exerting varying levels of control over pricing, performance benchmarks and disciplinary measures, often through automated management systems.<sup>21</sup> This view aligns with the European Union's Platform Work Directive, which highlights the role of algorithmic governance in shaping working conditions.<sup>22</sup>

Within tort law, several doctrines provide pathways for assigning liability in cases of injury or harm. The most foundational is negligence, which arises from the breach of a legal duty of care. Liability in negligence is established when three elements are met i.e. the existence of a duty, a breach of that duty through unreasonable conduct, and harm that is both foreseeable and causally linked to the breach.<sup>23</sup> Vicarious liability is a strict, secondary form of legal responsibility under which an employer (or principal) can be held accountable for the wrongful acts of an employee (or agent), as long as those acts were committed in the course of their employment. This doctrine rests on the idea that the employer exercises control over the

<sup>19</sup> Code on Social Security, 2020 s 2(35).

<sup>20</sup> *ibid* 2(60).

<sup>21</sup> 'The Algorithmic Management of Work and Its implications in Different Contexts' <file:///C:/Users/Nidhi/Downloads/wcms\_849220%20(5).pdf>.

<sup>22</sup> 'The EU Platform Work Directive' (European Trade Union Institute, 2024) <<https://www.etui.org/publications/eu-platform-work-directive>> accessed 2 July 2025.

<sup>23</sup> David Owen, 'The Five Elements of Negligence' (2007) 35 Hofstra Law Review <<https://scholarlycommons.law.hofstra.edu/hlr/vol35/iss4/1>>.

worker's actions and is better positioned to bear the associated risks or losses.<sup>24</sup> Occupiers' liability imposes a duty of care on those who control premises, ensuring lawful visitors are not exposed to dangers arising from the condition of the premises or the activities conducted on them. This duty may be enforceable even in the absence of direct negligence.<sup>25</sup> Finally, the doctrine of non-delegable duties holds that certain obligations cannot be outsourced and that the principal remains liable, even when the performance of a task is entrusted to an independent contractor, especially in contexts involving inherent risks, such as those exemplified in *Honeywill & Stein Ltd v. Larkin Bros*, (1934)<sup>26</sup> and *Municipal Corporation of Delhi v. Subhagwanti*, (1966).<sup>27</sup>

Although tort doctrines have traditionally been anchored in standard employment relationships, they are increasingly relevant to platform work, where gig workers are routinely classified as independent contractors. This classification enables platforms to shift the burden of workplace injuries, such as medical expenses, wage loss and insurance, onto workers, effectively externalizing risk while retaining significant operational control.<sup>28</sup> The result is a textbook case of *negative externality*, wherein platforms reduce labour costs and scale efficiently, while the broader society absorbs the social costs of accidents and economic precarity.<sup>29</sup> Exercising *monopsony power*, many platforms unilaterally influence wages, working conditions and disciplinary measures, without incurring the legal obligations associated with formal employment.<sup>30</sup> This asymmetry in risk and control distorts the conventional principal-agent relationship and exacerbates income volatility for workers.<sup>31</sup> Furthermore, by avoiding liability for on-the-job injuries, platforms have little incentive to

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<sup>24</sup> Neild (n 13).

<sup>25</sup> Michael Hwang, 'Basic Definitions in the Law of Occupiers' Liability' (1968) 10 Malaya Law Review 68.

<sup>26</sup> *Honeywill & Stein Ltd v Larkin Bros Ltd*, [1934] 1 KB 191. The Court held that an employer may be held liable for the acts of an independent contractor where the work is inherently dangerous and likely to cause harm unless special precautions are taken. This decision carved out an important exception to the general rule that principals are not liable for the negligence of independent contractors. Indian courts have drawn on this principle in cases involving hazardous activities, recognising that certain duties of care remain non-delegable even when work is outsourced.

<sup>27</sup> *Municipal Corporation of Delhi v Subhagwanti*, [1966] AIR 1750.

<sup>28</sup> 'India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work: Policy Brief' (n 5).

<sup>29</sup> David S Evans, 'Governing Bad Behavior by Users of Multi-Sided Platforms' [2012] SSRN Electronic Journal

<<http://www.ssrn.com/abstract=1950474>> accessed 2 July 2025.

<sup>30</sup> Lina Khan, 'The Separation of Platforms and Commerce' (2019) 119 Colum. L. Rev. 973.

<sup>31</sup> 'World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work'

<[https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_771749.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_771749.pdf)>.

invest in safety infrastructure or training, thereby perpetuating a cycle of risk exposure, under-insurance, and financial insecurity.<sup>32</sup>

From a socio-legal standpoint, classifying gig workers as independent contractors denies them access to specialised labour forums, leaving them outside the protections of laws like the Industrial Disputes Act, 1947 and the Employees' Compensation Act, 1923. Consequently, they must pursue claims in ordinary civil courts, which are slower, costlier and ill-suited to the complexities of platform work.<sup>33</sup> Civil litigation imposes high evidentiary burdens, requiring workers to prove duty, breach, causation and harm, often necessitating technical disclosures and access to platform algorithms that courts are hesitant to mandate.<sup>34</sup> Some workers have tried reframing their claims under consumer-protection laws, but this mischaracterises the worker-platform relationship and offers only limited monetary relief, failing to address deeper issues like safety, insurance or algorithmic control.<sup>35</sup>

Consequently, there is a pressing need to reassess and adapt tort law doctrines to reflect the evolving realities of algorithmic control, economic dependence, and the hybrid nature of platform-mediated work. Such reforms are essential to ensure meaningful access to justice and legal accountability within the digital labour economy. However, before proposing legal adaptations, it is crucial to first examine the specific challenges faced by gig workers and to critically assess how existing legal frameworks respond to these issues in practice.

#### **I. LEGAL AND INSTITUTIONAL GAPS IN ADDRESSING GIG-WORKER INJURIES:**

Beyond the classification and liability concerns outlined earlier, platform workers in India are increasingly exposed to a range of work-related harms, both physical and psychological. As the gig economy expands across urban and semi-urban regions, workers in ride-hailing, food delivery and logistics routinely face risks such as road accidents, repetitive strain injuries, chronic fatigue and even assault. Despite their prevalence, such harms remain largely undocumented and underreported, with limited recognition in the formal legal and

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<sup>32</sup> Lena Simet, 'The Gig Trap' [2025] Human Rights Watch  
<<https://www.hrw.org/report/2025/05/12/the-gig-trap/algorithmic-wage-and-labor-exploitation-in-platform-work-in-the-us>> accessed 2 July 2025.

<sup>33</sup> Dina Maria (Denine) Smit and Grey Stopforth, 'An Overview of Categories of Vulnerability among On- Demand Workers in the Gig Economy (Part 2)' (2023) 27 Law, Democracy and Development 149.

<sup>34</sup> Anjana Karumathil, 'Gig Workers and Algorithmic Exclusion' (*Economic and Political Weekly*, 25 May 2024)  
<<https://www.epw.in/journal/2024/21/letters/gig-workers-and-algorithmic-exclusion.html>> accessed 2 July 2025.

<sup>35</sup> 'Consumer Protection for Gig Work?' 136 Harvard Law Review 1628.

policy landscape. India's principal social-security frameworks for workplace injury, the Employee's Compensation Act, 1923 and the Employees' State Insurance Act (ESI), 1948, are structured around traditional employer-employee relationships. Under section 2(1)(n) of the Employee's Compensation Act, 1923, only 'workmen,' typically engaged in manual or clerical roles, are eligible for compensation in cases of disability or death. Independent contractors, including most platform workers, are expressly excluded.<sup>36</sup> Similarly, ESI benefits such as medical care, sickness and maternity cover, and disablement compensation apply only to establishments employing at least 10 workers (or 20 in some states), and are contingent on regular contributions by employers and employees.<sup>37</sup>

In practice, digital platforms circumvent these obligations by classifying workers as 'partners' or 'independent service providers.' The consequences of this legal design are evident in several cases. In 2023, a Swiggy courier in Hyderabad died after being attacked by a pet dog during a delivery. His family was denied compensation under both statutory schemes on the grounds that he was not a formal employee and had not been enrolled in ESI.<sup>38</sup> The exclusion of platform workers from statutory benefits is further exacerbated by the gig economy's piece-rate, task-based remuneration structure. Because earnings are irregular and not reflected in formal payroll systems, platforms face administrative challenges in calculating premiums, further discouraging voluntary compliance. As a result, millions of gig workers remain outside the scope of both compensation and contributory insurance frameworks.<sup>39</sup>

As mentioned earlier, in the absence of labour protections, some gig workers have turned to consumer protection law for redress. Under section 2(42) of the Consumer Protection Act, 2019, digital platforms qualify as 'service providers,' allowing injured workers or their customers to claim compensation for a 'deficiency of service' under section 2(11).<sup>40</sup> In *Kavita Sharma v. Uber India* (2021), the forum held Uber liable for a missed flight caused by driver misconduct, rejecting the platform's defence that the driver was an independent contractor. The court found that Uber had undertaken a contractual service obligation that could not be evaded

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<sup>36</sup> The Employee's Compensation Act, 1923 s 2(1)(n).

<sup>37</sup> *ibid* 39–45.

<sup>38</sup> Paul Oommen, 'Hyderabad Food Delivery Agent's Death: Family Unlikely to Get Compensation' (*The News Minute*, 17 January 2023)

<<https://www.thenewsminute.com/telangana/hyderabad-delivery-agent-s-death-swiggy-refused-provide-compensation-say-kin-172077>> accessed 2 July 2025.

<sup>39</sup> 'Providing Adequate and Sustainable Social Protection for Workers in the Gig and Platform Economy: Technical Paper Prepared for the 1st Meeting of the Employment Working Group Under the Indian Presidency' <<https://www.ilo.org/media/366091/download>>.

<sup>40</sup> The Consumer Protection Act, 2019 s 2(42) r/w s 2(11).

through legal formalities.<sup>41</sup> Similarly, in a 2024 case before the Karnataka High Court, the Court, while rejecting Ola's claim that its drivers are independent contractors and therefore beyond its legal responsibility, held ANI Technologies (the parent company of Ola) liable for an incident involving the sexual harassment of a passenger by one of its drivers in Bengaluru. The Court ordered the company to pay ₹5 lakh in compensation and ₹50,000 in litigation costs, and directed its Internal Complaints Committee to conduct an inquiry under the POSH Act, 2013 within 90 days and submit its findings to the District Officer.<sup>42</sup>

These rulings show a growing readiness among consumer forums to impose liability based on the platform's functional role, even in the absence of a formal employment relationship. However, the remedies available through consumer law are narrow. Relief is generally limited to monetary compensation, such as refunds or damages, and is constrained by jurisdictional thresholds.<sup>43</sup> Such forums do not provide access to long-term disability benefits, social insurance or structural reforms. Procedural barriers, including proof of service deficiency and short limitation periods, further reduce their effectiveness as a systemic remedy. Still, it cannot be denied that Indian courts have shown a growing willingness to creatively interpret existing legal doctrines. These judicial responses, though inconsistent and fragmented, reflect an emerging doctrinal shift. By reconceptualizing algorithmic management and platform control as actionable elements of service provision, courts and forums are beginning to extend accountability to platform operators, even in the absence of conventional employment ties.

Nonetheless, substantial procedural and evidentiary barriers continue to obstruct effective redress for injured gig workers. Most lack standing before labour tribunals, which restrict jurisdiction to individuals classified as 'workmen' or 'employees' under statutes such as the Industrial Disputes Act, 1947 or the Employee's Compensation Act, 1923. As a result, gig workers are often forced into ordinary civil litigation, where they must independently establish the platform's duty of care, breach, causation and damages, a burden made heavier by contractual disclaimers that deny any employment relationship.<sup>44</sup> The challenges are not

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<sup>41</sup> *Kavita S Sharma v Uber India Systems Pvt Ltd*, Consumer case no 61/2021.

<sup>42</sup> 'Ola Ordered To Pay Rs 5 Lakh Compensation In Sex Harassment Case Involving Cab Driver' (*Press Trust of India*, NDTV, 30 September 2024)

<<https://www.ndtv.com/india-news/ola-ordered-to-pay-rs-5-lakh-compensation-in-sex-harassment-case-involving-cab-driver-6687065>> accessed 2 July 2025.

<sup>43</sup> 'Centre Notifies Rules for Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021' (*PIB*, 30 December 2021)

<<https://www.pib.gov.in/www.pib.gov.in/Pressreleaseshare.aspx?PRID=1786342>> accessed 2 July 2025.

<sup>44</sup> Atrijo Banerjee, 'Gig Workers Should Be Included under the Industrial Disputes Act' (*The Leaflet*, 22 April 2023) <<https://theleaflet.in/commercial-law/gig-workers-should-be-included-under-the-industrial-disputes-act>> accessed 2 July 2025.

only legal but also practical. Many gig workers operate without formal contracts, wage slips or documented work histories. Injuries often go unreported due to fear of job loss or lack of institutional support. Even when documentation is available, workers, particularly women, migrants or those based in smaller towns, may struggle to access police records, medical reports or legal assistance. Legal costs can be prohibitive, and many platforms include restrictive clauses in their contracts, such as mandatory arbitration or class-action waivers, which further impede access to justice.<sup>45</sup>

These cases reveal the significant legal and institutional voids that leave gig workers without effective recourse for injuries sustained in the course of their work. In the absence of statutory presumptions of employment or recognition of hybrid work arrangements, classification loopholes and procedural constraints continue to obstruct access to justice. Addressing this invisibility requires urgent reform, both through the adaptation of tort doctrines to reflect the realities of platform control, and through the extension of social-security protections to encompass all gig workers. The following sections examine how tort liability traditionally operates within the employer-employee framework under Indian law, and analyse the reasons due to which its foundational principles have not been able to respond to the distinct risks posed by platform-mediated labour.

## **II. THE TORT FRAMEWORK FOR WORKPLACE INJURIES - LIMITS OF THE EMPLOYEE-CENTRIC MODEL:**

This section examines how traditional tort doctrines have historically grounded responsibility in the employer's control over workers. By analysing key judicial decisions, it highlights the protections afforded to formal employees and exposes how those protections are routinely denied to gig workers due to classification loopholes. This doctrinal analysis reveals a growing mismatch between tort law's foundational assumptions and the realities of platform-mediated work, particularly when considered alongside statutory compensation schemes. Establishing this baseline is essential to understanding where tort law must evolve to address the risks posed by algorithmic control and flexible labour arrangements.

Under Indian tort law, vicarious liability holds an employer liable for the wrongful acts of an employee committed in the course of employment. The doctrine rests on the traditional

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<sup>45</sup> Aditi Jha, 'Gig Workers in India: The Story of a Relentless Struggle -' (*The Dialogue Box*, 27 October 2024)

<<https://thediologuebox.com/the-struggles-of-gig-workers-in-india/>> accessed 2 July 2025.

‘master-servant’ framework and the control test, focusing on whether the employer had the right to direct both the result and the manner of the work.<sup>46</sup> In *State of Rajasthan v. Vidhyawati* (1962), the Supreme Court held the government vicariously liable for an employee’s negligent act during the course of duty, even without direct authorisation.<sup>47</sup> Similarly, in *State of Maharashtra v. Kanchanmala Vijaysingh Shirke* (1995), the Court affirmed that when an authorised act is carried out improperly but still within the course of employment, liability attaches to the employer.<sup>48</sup> These decisions affirm that fault is not necessary, liability stems from the employer’s right to control and benefit from the work. This framework is especially relevant in the gig economy. Platforms such as Uber and Swiggy label workers as ‘independent contractors,’ yet exercise significant algorithmic control over key aspects of the job, such as task assignments, pricing, customer ratings and deactivation. In substance, this level of supervision resembles traditional employment.<sup>49</sup> However, because tort law continues to link vicarious liability to formal employment status, platforms can escape responsibility despite exercising effective control.

Beyond vicarious liability, tort law also recognises an employer’s direct duty of care towards workers and the public. This duty is breached when an employer negligently fails to ensure a safe working environment. In *Municipal Corporation of Delhi v. Subhagwanti* (1966), the Supreme Court held the Corporation liable for fatalities caused by the collapse of a poorly maintained clock tower. The Court reasoned that liability arose not from any subordinate’s act but from the institution’s failure to prevent foreseeable harm.<sup>50</sup> Similar reasoning could apply to platforms that, for example, impose unsafe delivery deadlines, neglect safety training, or fail to implement basic protections such as SOS alerts or vehicle standards. However, Indian courts have yet to extend this doctrine to digital platforms, in part because tort law remains closely tied to conventional employment and public duty contexts. This reflects an outdated understanding of how risk is structured and managed in contemporary labour systems.

Further, the doctrine of occupiers’ liability imposes a duty of care on those who control physical premises, requiring them to ensure that the space is reasonably safe for lawful visitors.

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<sup>46</sup> MP Ram Mohan and Sai Muralidhar K, ‘In Pursuit of Balance: Vicarious Liability Doctrine in the United Kingdom and in India’ (Social Science Research Network, 15 December 2022)

<<https://papers.ssrn.com/abstract=4303751>> accessed 2 July 2025.

<sup>47</sup> *State of Rajasthan v Vidhyawati*, [1962] AIR 933.

<sup>48</sup> *State of Maharashtra v Kanchanmala Vijaysingh Shirke*, [1995] AIR SCW 3684.

<sup>49</sup> Naina Bhargava and Madhumita Sharma, ‘The Plight of Gig Workers in India’ (*The Wire*, 1 May 2025)

<<https://thewire.in/labour/the-plight-of-gig-workers-in-india>> accessed 2 July 2025.

<sup>50</sup> *Municipal Corporation of Delhi v. Subhagwanti*, (n 27).

In *P.A. Kulkarni v. State of Karnataka* (1999), municipal inaction over known hazards resulted in liability for structural collapse and injuries.<sup>51</sup> Although this duty typically applies to physical space, its underlying logic i.e. controls and foreseeability, could extend to gig contexts also. Platforms may require workers to use facilities such as dark stores, pickup hubs or inspection centres. Where platforms exercise control over these spaces, they arguably assume the status of occupier. However, platforms often deflect responsibility by designating these as third-party locations. This deflection may not hold when the platform mandates attendance or controls operational procedures at such sites.

Another doctrine under tort law i.e. the doctrine of non-delegable duties refers to responsibilities so critical or inherently hazardous that they cannot be outsourced without liability. The doctrine holds a party strictly liable if it fails to ensure due care, even where an independent contractor is involved.<sup>52</sup> In *M.C. Mehta v. Union of India* (1986), the Supreme Court expanded this principle in the context of hazardous industries, imposing an absolute duty on those who benefit from inherently risky operations.<sup>53</sup> This principle also has direct implications for gig work. Platforms often delegate high-risk tasks, such as night-time ride-hailing or navigating congested areas, to workers they label as independent contractors. By doing so, they shift both the risk and legal liability.<sup>54</sup> Yet if the tasks are inherently hazardous or if the platform maintains functional control, a non-delegable duty should arguably arise. Indian courts, however, have not yet applied this principle to gig work, reserving it for contexts like hospitals, schools or industrial operations.

The Employees' Compensation Act, 1923 was designed as a no-fault mechanism to offer prompt relief for workplace injuries. However, it excludes gig workers because they do not meet the definition of 'workmen.'<sup>55</sup> Although the scheme aims to reduce the litigation burden, it includes exclusivity clauses that bar common-law suits if statutory compensation is accepted.<sup>56</sup> Gig workers thus face a paradox; they are excluded from statutory protection but also struggle to meet the conditions required to claim under tort law. This exclusion is compounded by platform contracts that often contain waivers of liability, arbitration clauses

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<sup>51</sup> *PA Kulkarni v State of Karnataka*, [1999] ILR 869 (Kar).

<sup>52</sup> Aaron Yoong, 'Challenges in the Evolution of the Doctrine of Non-Delegable Duty' (Social Science Research Network, 24 December 2018) <<https://papers.ssrn.com/abstract=4551413>> accessed 2 July 2025.

<sup>53</sup> *M C Mehta v Union of India*, [1986] AIR 1086 (SC).

<sup>54</sup> A Raja and others, 'The Gig Economy and Road Safety Outcomes' (Waka Kotahi NZ Transport Agency 2023) Research Report 709.

<sup>55</sup> The Employee's Compensation Act, 1923 s 2(1)(e).

<sup>56</sup> *ibid* 3(5).

and limitations on damages, effectively creating private regimes that restrict both statutory and common-law remedies. In the absence of legal recognition of their employment status, gig workers find themselves in a double bind, wherein they are not only denied protection under labour law but are also unable to pursue claims under tort law due to doctrinal limitations.

To address this dual exclusion, tort doctrines must evolve. One approach is to reinterpret vicarious liability based on functional control rather than formal status. Recognising algorithmic management as a contemporary form of employer supervision shall bring tort law into alignment with modern work structures. Likewise, courts should also adopt a broader reading of the duty of care, especially where platforms create or exacerbate foreseeable risks. This would allow for claims rooted in negligence even without a formal employment relationship.<sup>57</sup> Further, expanding occupiers' liability to include platform-controlled environments, whether physical sites or digital interfaces, would also modernise tort law. For example, app features that pressure workers to take risks or distract them while navigating could form the basis of platform liability. Such a shift would focus on risk and control, rather than contractual status.<sup>58</sup> Finally, courts should revisit the narrow application of non-delegable duties. In the gig economy, digital platforms structure and allocate hazardous work while disclaiming responsibility. Recognising non-delegable duties in these contexts would ensure that the entities benefiting from risky labour also bear responsibility for its consequences. It would restore tort law's foundational purpose i.e. allocating responsibility for harm in proportion to control and benefit.<sup>59</sup>

Although these doctrines have historically shaped how tort law attributes responsibility for workplace injuries, but their applicability remains bound to formal employment, from which gig workers are excluded not because platforms lack control, but because of how that control is legally framed. To understand how platforms construct this exclusion, the next section turns to the contractual strategies and jurisprudence that underpin the misclassification of gig workers.

### III. THE COLLAPSE OF TORT LAW IN PLATFORM MEDIATED WORK:

At the core of the gig economy lies a legal fiction i.e. platforms maintain operational control over workers while classifying them as independent contractors. This allows companies to shift risks, medical costs, income loss and legal liability, onto workers, while avoiding statutory obligations such as social-security contributions or minimum-wage guarantees.<sup>60</sup> This section examines how contractual design and algorithmic management are used to manufacture independence, how Indian courts have applied legal tests to such relationships, and why this structure has led to a systemic breakdown in tort accountability. Platforms typically use standardised click-wrap agreements that workers must accept to access the app. These contracts include clauses expressly denying employment, agency or partnership status, and often contain waivers of liability, indemnities and mandatory arbitration provisions. Together, these terms construct a barrier to tort claims.<sup>61</sup> Even when platforms exercise extensive control over workers' conduct and outcomes, the formal structure of the contract precludes liability.

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<sup>57</sup> 'The Algorithmic Management of Work and Its implications in Different Contexts' (n 11).

<sup>58</sup> 'Beyond Slip-and-Fall: The Digital Age Raises New Issues in Tort Law' (*NYU School of Law News*, 9 January 2024) <<https://www.law.nyu.edu/news/ideas-torts-digital-age-Sharkey-Geistfeld-Schultz>> accessed 2 July 2025. <sup>59</sup> Navneel Sharma, 'Examining the Legal "Relationship" Between the Taxi Owner and the Taxi Driver in Fiji: A Case for Reform' (School of Law and Social Science, The University of the South Pacific 2023) LW750 <<https://repository.usp.ac.fj/id/eprint/14014/>> accessed 2 July 2025.

Yet the independence conferred by these contracts is more formal than real. Platforms set performance standards, track compliance via algorithms, and impose penalties, amounting to a digital form of managerial control. Workers are ‘free’ to log in or out, but once online, their tasks, timelines, earnings and even job security are governed by opaque data-driven systems. The result is a controlled and subordinated work environment masked by contractual autonomy.<sup>62</sup> This structure disables traditional tort doctrines, like vicarious liability and non-delegable duties, which assume a clear employer-employee relationship. Indian courts have applied the control test, the integration test and a multifactor economic dependency test to assess employment status. While no single test is decisive, courts are generally willing to look beyond formal contracts to assess substance. In the case of *Indian Federation of App-based Transport Workers v. Union of India* (2021), the Court held that Ola drivers fell within the scope of the POSH Act, focusing on operational controls like route-setting and dress codes.<sup>63</sup>

These divergent rulings reflect a growing tension in Indian jurisprudence. Courts are more willing to identify functional employment in protective contexts, but still defer to formal classification in others. This fragmentation leaves tort law unable to respond consistently to the

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<sup>60</sup> Sarah M. Levine (n 16).

<sup>61</sup> Sharon Shea, ‘What Is Click-Wrap Agreement (Click-Through Agreement)?’ (*Tech Target: Search Cloud Computing*, 1 July 2024) <<https://www.techtarget.com/searchcloudcomputing/definition/clickwrap-agreement-clickthrough-agreement>> accessed 2 July 2025.

<sup>62</sup> Emma McDaid, Paul Andon and Clinton Free, ‘Algorithmic Management and the Politics of Demand: Control and Resistance at Uber’ (2023) 109 *Accounting, Organizations and Society* 101465.

<sup>63</sup> *The Indian Federation of App-based transport workers and others v. Union of India and others*, WP (Civil) No. 1068/2021 (n 18).

realities of platform work, particularly where workers face risks that are created, and could be mitigated, by the platforms themselves. Economically, the contractor model is framed as essential for efficiency and flexibility. Platforms argue they are merely intermediaries, not employers, and claim that gig work empowers individuals with autonomy. In practice, however, gig workers are often economically dependent on one platform, lack bargaining power, and work under conditions of deep precarity. The classification is not just a business strategy but rather a mechanism of legal risk-shifting that excludes workers from both social protection and civil remedies.<sup>64</sup>

This structure also creates legal invisibility. Tort law, particularly doctrines like vicarious liability and non-delegable duties, generally presumes an employment relationship. By avoiding that relationship through contract, platforms also avoid responsibility for injuries caused during work. The economic logic of misclassification thus directly undermines the reach of tort law, converting what should be employer accountability into worker vulnerability.<sup>65</sup> Algorithmic control further destabilises the traditional employee-contractor distinction. Platforms like Uber and Swiggy do not supervise workers through human managers, but through real-time data systems that allocate tasks, set prices, enforce deadlines, and deactivate non-compliant workers. While this form of control lacks visibility in legal tests developed for industrial-age employment, its effects are functionally equivalent to traditional supervision, if not more intensive. Courts risk overlooking this digital authority when they rely on outdated tests that privilege formal discretion over actual subordination.<sup>66</sup>

The combined effect of contractual design, judicial reliance on formal classifications, and the legal invisibility of algorithmic control has produced a systematic erosion of tort-based protections for gig workers. Although these workers face significant risks while performing digitally managed tasks, they remain excluded from traditional liability regimes due to the legal fiction of independence. This breakdown of responsibility within tort law underscores a deeper failure to adapt to the structural realities of platform work, where control is exerted without corresponding accountability, and harm is routinely disowned by design.

#### **IV. FIXING THE ACCOUNTABILITY GAP IN ALGORITHMIC LABOUR:**

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<sup>64</sup> Lehdonvirta (n 17).

<sup>65</sup> Neild (n 13).

<sup>66</sup> Riyaj Isamiya Suraiya Shaikh, *The Work Practice of Platform-Mediated Food Delivery: An Ethnographic Study of Bridging Algorithmic Workflows and Situated Action* (Department of Computer and Systems Sciences, Stockholm University 2025).

As traditional tort doctrines falter under the pressures of contractual misclassification and algorithmic control, it becomes essential to reimagine legal responsibility in the platform economy. This section examines emerging tort frameworks that move beyond formal employment status and focus instead on the functional role platforms play in creating, managing and profiting from risk. These include doctrines of negligent selection and oversight, non-delegable duties in digital contexts, algorithmic design liability, and evolving theories of co-employer and essential-actor responsibility. Together, they offer doctrinal pathways for attributing liability even in the absence of a recognised employment relationship.

Digital platforms exert considerable influence over how work is structured, determining who can access tasks, how performance is measured, and how sanctions are applied. Tort law must therefore adapt its negligence principles to account for this role. Under the doctrine of negligent selection and oversight, an entity may be liable for failing to screen or monitor individuals performing potentially dangerous work. Applied to platforms, this translates into a duty to vet workers, track risk indicators like complaints or poor ratings, and intervene where harm is foreseeable. Courts in other jurisdictions have affirmed this duty, such as in *Doe v. Uber Technologies* (2018),<sup>67</sup> while UK courts in cases like *Cox v. Ministry of Justice* (2016)<sup>68</sup> have extended liability to entities that control key aspects of task execution, even outside conventional employment contexts. Beyond negligence, tort law recognises non-delegable duties in scenarios involving inherently risky operations. Platforms like Uber and Swiggy deploy time-sensitive and high-exposure services via algorithmic systems, yet seek to avoid liability by treating workers as independent contractors. Drawing on *Woodland v. Swimming Teachers Association* (2013)<sup>69</sup> and Indian jurisprudence such as *M.C. Mehta v. Union of India* (1986),<sup>70</sup> it is arguable that platforms should bear non-delegable duties to ensure worker safety.

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<sup>67</sup> *Doe v Uber Technologies, INC LLC CA LLC* (2024). In this case, the California Court of Appeal held that Uber could be held liable for failing to adequately screen its drivers, rejecting the platform's attempt to avoid responsibility by claiming it was merely an 'intermediary.' The court emphasised that the inherent safety risks of ride-hailing services create a duty to ensure proper vetting of drivers.

<sup>68</sup> *Cox v Ministry of Justice*, [2016] UKSC 10. The UK Supreme Court, in this case, upheld vicarious liability for a prison employer after an inmate was assaulted by a prison employee. The Court emphasised that an organisation may be held responsible for wrongful acts committed by individuals it has the authority to select and supervise. While not directly related to gig work, this judgement affirms the broader principle that entities cannot delegate high-risk tasks without remaining ultimately accountable for negligent oversight.

<sup>69</sup> *Woodland v Swimming Teachers Association*, [2013] UKSC 66. In the *Woodland* case, the UK Supreme Court set out a structured test for determining when non-delegable duties arise. It held that such a duty exists where there is a relationship of dependence, the task involves an inherent risk, and the defendant retains control over the activity or the selection of third parties, making it impermissible to avoid liability through delegation.

<sup>70</sup> *M C Mehta v. Union of India*, (n 53).

Given gig worker's limited control over workplace conditions and heightened vulnerability, courts should treat these duties as personal and inalienable.

An important contemporary development is the recognition of an algorithmic duty of care. Platforms now manage labour through algorithmic tools that allocate tasks, rate performance and impose penalties, often encouraging behaviours like speeding or avoiding rest breaks. When such systems create foreseeable risks, tort law demands that those who design and profit from them take reasonable care. This includes testing, auditing and redesigning algorithms to minimise harm. Global regulatory trends, such as the EU's proposed *AI Liability Directive*, reflect this logic.<sup>71</sup> Indian courts too, though in different contexts, have acknowledged the constitutional and tort-based duties of actors whose systemic choices endanger others. Theories of co-employer and essential-actor liability are also gaining traction. Co-employer doctrines recognise shared responsibility where multiple entities exert joint control over working conditions. This could apply to platforms that shape workflows, monitor compliance and impose penalties, despite denying formal employment.<sup>72</sup> Essential-actor liability goes further, asserting that platforms cannot escape blame when they are the central facilitators of labour transactions and the primary beneficiaries of the associated risks.<sup>73</sup> Indian courts, such as in the case of *Meru Travel Solutions Pvt. Ltd. (Meru) v. Uber India Systems Pvt. Ltd. And Others* (2021), have already acknowledged platforms as market-shaping actors; tort law must extend this recognition to the allocation of responsibility for harm.<sup>74</sup>

Together, these emerging doctrines respond to the accountability vacuum left by the erosion of employer-based liability. As platforms consolidate control while distancing themselves from legal responsibility, tort law must evolve to re-anchor liability in the realities of risk creation and economic power. The final segment of this paper turns to how these doctrinal developments can be institutionalised through statutory reform and judicial innovation.

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<sup>71</sup> 'AI and Digital Tools in Workplace Management and Evaluation: An Assessment of the EU's Legal Framework' (European Parliamentary Research Service 2022)

<[https://www.europarl.europa.eu/RegData/etudes/STUD/2022/729516/EPRS\\_STU\(2022\)729516\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/729516/EPRS_STU(2022)729516_EN.pdf)>.

<sup>72</sup> 'What Is Co-Employment?' (*Velocity Global*) <<https://velocityglobal.com/glossary/co-employment/>> accessed 2 July 2025.

<sup>73</sup> 'Liability of Online Platforms' (European Parliamentary Research Service 2021) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/656318/EPRS\\_STU\(2021\)656318\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/656318/EPRS_STU(2021)656318_EN.pdf)>.

<sup>74</sup> *Meru Travel Solutions Pvt Ltd (Meru) v Uber India Systems Pvt Ltd And Others*, CCI Case No 96 of 2015.

## **V. PROPOSALS FOR A NEW TORT FRAMEWORK FOR PLATFORM ACCOUNTABILITY:**

In light of the doctrinal gaps and enforcement challenges discussed above, this final segment proposes a set of legal reforms tailored to India's regulatory context. While judicial evolution remains important, it is insufficient on its own. Legislative intervention is essential to realign tort law with the realities of platform-mediated work, where legal responsibility is often fragmented or displaced. The proposals outlined here aim to rebalance risk, clarify platform obligations and enhance redress mechanisms, regardless of how workers are contractually classified. They are grounded in principles of fairness, accountability and worker safety, and seek to create a tort framework that is both conceptually sound and practically effective.

India's existing tort doctrines are rooted in traditional assumptions of employment and control. These assumptions are ill-suited to the architecture of platform work, which is deliberately designed to displace responsibility through algorithmic systems and contractual misclassification. As earlier analysis has shown, despite exercising significant control over working conditions, platforms routinely deny liability by classifying gig workers as independent contractors. Courts, in turn, have often hesitated to look beyond contractual form, leading to a collapse of tort-based protections.<sup>75</sup>

While new legal theories, such as algorithmic duties of care, non-delegable digital responsibilities, and essential-actor liability, offer promising alternatives, yet they remain underdeveloped in Indian law. Without legislative support, these doctrines are difficult for most workers to invoke due to information asymmetries, high litigation costs, and the absence of effective enforcement mechanisms. In this context, reform is not merely a matter of legal doctrine, but a normative necessity.<sup>76</sup> As tort law has historically adapted to changing modes of production, it must now adapt to digitally distributed but centrally controlled labour systems, where harm is real but responsibility is obscured.

### **Statutory Recognition of Platform Responsibility:**

A key step toward addressing the accountability gap in the gig economy is legislative recognition that digital platforms, though often not the direct employers of gig workers,

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<sup>75</sup> De Stefano (n 14).

<sup>76</sup> Martha Alter Chen, Roopa Madhav and Kamala Sankaran, 'Legal Reforms for the Self-Employed: Three Urban Cases' (2014) 50 *Indian Journal of Industrial Relations* 133.

nonetheless exercise substantial control over how work is structured, performed and remunerated. Indian tort law, however, continues to struggle with assigning liability to these platforms because it remains tethered to formal categories of employment. To bridge the gap between legal form and functional reality, statutory intervention is essential.<sup>77</sup> The law must expressly acknowledge the responsibilities of platforms toward those who operate under their algorithmic systems and standardised contracts. This can be done through adoption of the following mechanisms:

i. Statutory Presumption of Employment:

One promising reform is the introduction of a rebuttable presumption of employment status for individuals performing core functions for digital platforms, such as delivery, transportation or on-demand services. Under this model, the default legal position would treat such workers as employees, or at minimum, dependent contractors, for the purposes of tort liability, social protections and insurance coverage. The burden would then fall on the platform to prove genuine independence. This approach has already been adopted in jurisdictions such as California through the ABC test, which is designed to prevent worker misclassification from being used as a tool to displace risk.<sup>78</sup> In the Indian context, such a presumption could be incorporated either into a new Digital Labour Code or through amendments to existing tort-relevant statutes, such as the Employees' Compensation Act, 1923 or the Motor Vehicles Act, 1988. This reform would significantly reduce the evidentiary burden on gig workers who, due to contractual opacity, often lack access to the information necessary to prove elements like control or integration.<sup>79</sup>

ii. Intermediate or Hybrid Worker Category:

Alternatively, the legislature could establish a third legal category i.e. 'platform workers' mirroring the 'worker' status. This hybrid category would apply to those who are neither entirely independent nor fully employed, but who nonetheless deserve certain baseline protections. It would reflect the distinct realities of algorithmic labour while avoiding the rigidity of binary classifications.<sup>80</sup> Currently, the Code on Social Security, 2020 defines 'platform workers' and 'gig workers,' but it stops short of imposing meaningful liability on

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<sup>77</sup> *ibid.*

<sup>78</sup> *Dynamex Operations West, Inc v Superior Court*, 4 Cal5th 903 (Cal 2018).

<sup>79</sup> International Labour Office, *World Employment and Social Outlook 2021: The Role of Digital Labour Platforms in Transforming the World of Work* (International Labour Organisation (ILO) 2021).

<sup>80</sup> Prassl (n 14).

platforms for harms experienced during work. For this framework to support tort accountability, these definitions must be expanded to impose affirmative duties on platforms, such as ensuring safe working environments, vetting clients or users, and designing systems that do not expose workers to unreasonable risks.

iii. Doctrinal Implications:

Recognising platform responsibility through legislation would have significant doctrinal implications. First, it would help restore tort law's foundational purpose i.e. holding those who create, manage and benefit from systemic risks accountable for their consequences. Second, it would encourage courts to move beyond rigid employment-control tests and adopt a more functional inquiry, focusing on who structures the work environment and who is best positioned to prevent harm. Third, it would enhance legal clarity and predictability for both workers and platforms, reducing litigation costs and encouraging safer practices by design.<sup>81</sup>

**Platform-Specific Duties of Care:**

In the gig economy, digital platforms exert significant control over how work is organised and executed, often through algorithmic systems, while simultaneously distancing themselves from traditional employment obligations. Given their central role in structuring the conditions under which labour is performed, platforms function as architects of risk. This makes it necessary to impose platform-specific duties of care that apply irrespective of employment classification. These duties should arise from the platform's structural position in managing work-related risks and must not be circumvented through contractual disclaimers.<sup>82</sup> A key reform is the imposition of statutory non-delegable duties on platforms, particularly in relation to core operational risks such as accidents, client misconduct, and health harms arising from algorithmic pressures. These duties would require platforms to vet high-risk client interactions, provide adequate training and safety modules to workers, and ensure that app-based incentives or prompts do not encourage unsafe practices, such as speeding, denial of rest breaks or overwork. Crucially, such duties must be strict and non-transferable, consistent with tort law's long-standing principle that certain responsibilities cannot be outsourced when the party retaining control is best positioned to prevent harm.<sup>83</sup>

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<sup>81</sup> Mark Geistfeld, 'Efficiency, Fairness, and the Economic Analysis of Tort Law' (Social Science Research Network, 29 April 2009) <<https://papers.ssrn.com/abstract=1396691>> accessed 2 July 2025.

<sup>82</sup> 'Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work - Analysis of the Final Compromise Text with a View to Agreement' (n 8).

<sup>83</sup> Mark Rothstein and Lance Liebman, *Employment Law* (Foundation Press 2011).

In the Indian context, these non-delegable duties could be codified through amendments to the Occupational Safety, Health and Working Conditions Code, 2020, or introduced via a dedicated statute regulating digital labour platforms. In addition, platforms should be subject to a duty of algorithmic oversight. Many of the risks in platform-mediated work stem from opaque, automated systems that determine task allocation, performance ratings, and worker deactivations. To mitigate such harms, platforms must conduct regular safety audits of algorithmic processes, incorporate mechanisms for human oversight, particularly in critical decisions like suspensions, and ensure transparency around performance metrics and earning logic. This duty reflects a broader legal principle i.e. those who design and profit from complex systems must take reasonable care to prevent foreseeable harm, especially in contexts marked by unequal access to power and information.<sup>84</sup>

These obligations could be enforced through sector-specific guidelines issued by the Ministry of Labour or a Data Protection Authority, ideally developed in consultation with technical experts and worker representatives. Doctrinally, platform-specific duties of care are well-aligned with tort law's foundational concepts of foreseeability, proximity and reasonableness. Platforms have real-time visibility into worker conduct, control key aspects of workflow, and are in a far better position than individual workers to anticipate and mitigate risks. They also have the capacity to implement preventive measures, such as algorithmic redesign or improved training, at relatively low cost. Recognising such duties is therefore not just a means to prevent individual harm, but a necessary step towards accurately reflecting the extent of platform power. Tort law must move beyond the fiction of platforms as passive intermediaries and treat them as active organisers of risk, responsible for the systems they create and control.<sup>85</sup>

### **Mandatory Risk-Sharing Mechanisms:**

A core challenge in the gig economy is the systematic externalisation of risk onto workers, who are routinely denied employment protections despite operating under significant platform control. To address this imbalance, the legal framework must incorporate mandatory risk-sharing mechanisms that require platforms to contribute directly to the costs associated with workplace injuries and long-term economic insecurity. These mechanisms are not

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<sup>84</sup> The Occupational Safety, Health and Working Conditions Code, 2020; Prassl (n 14).

<sup>85</sup> Veena Dubal, 'The Drive to Precarity: A Political History of Work, Regulation, & Labor Advocacy in San Francisco's Taxi & Uber Economies' (Social Science Research Network, 21 February 2017) <<https://papers.ssrn.com/abstract=2921486>> accessed 2 July 2025.

intended to replace tort liability, but to complement it by offering baseline protections that reflect the platforms' role as both economic beneficiaries and architects of risk.<sup>86</sup> One central proposal is the introduction of compulsory, platform-funded insurance schemes for gig workers. Such insurance should cover accidents, disabilities and fatalities occurring in the course of platform-mediated work, and must be automatically triggered by a worker's engagement with the platform, regardless of their contractual classification. The coverage should include medical treatment, income loss and rehabilitation expenses, and should be financed entirely or at least substantially by the platform. While some companies have experimented with voluntary insurance offerings, these schemes are often discretionary, limited in scope, and lack transparency. A statutory framework would ensure consistent, enforceable and transparent protections across the industry.<sup>87</sup>

In addition to accident insurance, platforms should also be required to make mandatory contributions toward social security. Although the Code on Social Security, 2020, contemplates the creation of a welfare fund for gig and platform workers, its implementation has been partial and uneven. For such a fund to be meaningful, contributions must be mandatory, proportional to the platform's revenues or profits, and subject to independent regulatory oversight. This would allow gig workers to access essential protections such as healthcare, old-age pensions and income support during periods of illness, injury or inactivity, thereby fostering long-term economic resilience. To ensure compliance, these risk-sharing obligations should be operationalised through amendments to existing labour and social welfare legislation or through a new statute specifically tailored to the realities of digital labour.<sup>88</sup> Oversight could be entrusted to a central digital labour commission or a tripartite regulatory board that includes representation from workers, platforms and the government. Crucially, these protections should not be viewed as substitutes for tort claims. Instead, they must function as minimum guarantees,

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<sup>86</sup> Ewan McGaughey, 'Uber, the Taylor Review, Mutuality, and the Duty to Not Misrepresent Employment Status' (Social Science Research Network, 14 August 2017) <<https://papers.ssrn.com/abstract=3018516>> accessed 2 July 2025.

<sup>87</sup> Miriam A Cherry, 'Beyond Misclassification: The Digital Transformation of Work' (Social Science Research Network, 18 February 2016) <<https://papers.ssrn.com/abstract=2734288>> accessed 2 July 2025.

<sup>88</sup> Jyoti Banthia, 'Union Budget 2025: Gig Workers to Get Health Insurance, but Stakeholders Demand Stronger Protections' (*BusinessLine*, 3 February 2025) <<https://www.thehindubusinessline.com/economy/union-budget-2025-gig-workers-to-get-health-insurance-but-stakeholders-demand-stronger-protections/article69176260.ece>> accessed 2 July 2025; Code on Social Security, 2020 s 2(35), s 114.

ensuring that platform workers are not left without recourse simply because responsibility has been contractually outsourced or obscured through algorithmic opacity.<sup>89</sup>

### **Dispute Resolution and Enforcement:**

A central obstacle to enforcing tort-based protections for gig workers is the lack of accessible and effective dispute resolution mechanisms. Traditional civil courts are often procedurally complex, time-consuming and financially burdensome, especially for gig workers who typically lack legal representation and bargaining power. To bridge this access-to-justice gap, there is a strong case for introducing fast-track adjudication systems specifically designed to address platform-mediated injuries.<sup>90</sup> These could take the form of dedicated labour benches, specialised tribunals, or a digital ombudsman empowered to hear injury claims, investigate platform practices and impose penalties where appropriate. An essential procedural reform would involve rebalancing the burden of proof and improving access to platform-held data. In many tort claims, gig workers struggle to substantiate their cases due to a pronounced information asymmetry, platforms control crucial evidence such as location histories, user complaints and algorithmic activity logs.<sup>91</sup>

To correct this imbalance, platforms should be legally obliged to disclose relevant data, and adjudicatory bodies should be authorised to draw adverse inferences where platforms fail to cooperate. In situations where harm results from algorithmic prompts, opaque suspensions or other automated decisions, the burden should shift to the platform to demonstrate that no fault occurred. Beyond individual cases, a broader regulatory oversight framework is needed to address systemic risks and ensure consistent enforcement.<sup>92</sup> A statutory authority, such as a Digital Labour Commission, should be established to monitor platform compliance with duties of care, supervise insurance and social security schemes, publish safety and performance data, and investigate patterns of harm. Such an institutional mechanism would enable tort law to move beyond reactive adjudication and towards proactive governance, capable of addressing the structural conditions under which platform-related injuries arise.<sup>93</sup>

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<sup>89</sup> 'India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work: Policy Brief' (n 5).

<sup>90</sup> Dubal (n 85).

<sup>91</sup> Seth D. Harris and Alan B. Krueger, 'A Proposal for Modernizing Labor Laws for 21st Century Work: The "Independent Worker"' <<https://www.brookings.edu/articles/a-proposal-for-modernizing-labor-laws-for-21st-century-work-the-independent-worker/>> accessed 2 July 2025.

<sup>92</sup> 'The Artificial Intelligence Liability Directive' <<https://www.ai-liability-directive.com/>> accessed 2 July 2025.

<sup>93</sup> 'Regulating Platform Work in the Digital Age' <[https://www.oecd.org/en/publications/regulating-platform-work-in-the-digital-age\\_181f8a7f-en.html](https://www.oecd.org/en/publications/regulating-platform-work-in-the-digital-age_181f8a7f-en.html)>.

### **Political and Economic Feasibility:**

Any meaningful reform of tort law to better protect gig workers must contend with issues of political will, regulatory capacity and economic impact. Critics often warn that imposing liability or legal duties on digital platforms could stifle innovation, increase operational costs, or deter investment in India's fast-growing tech sector. However, these objections rely on a limited view of economic efficiency, one that ignores the broader social costs of injury externalisation, the persistent precarity of informal work, and the moral obligation to hold risk-generating businesses accountable.<sup>94</sup> From a political standpoint, the feasibility of reform hinges on how legal change is framed. It need not be presented as a threat to innovation, but rather as a means of ensuring accountability in an increasingly digitised economy. Gig platforms benefit substantially from public infrastructure, such as roads, telecommunications and traffic enforcement, while also gaining access to large pools of flexible labour. Many enjoy regulatory leniency in their early growth stages. In this context, it is both fair and necessary for the state to require them to assume a reasonable share of the risks they help create. Recent incidents involving rider deaths, app-based suspensions, and platform-linked violence have also drawn public and media attention, creating political momentum for reforms that prioritise worker safety and dignity.<sup>95</sup>

Economically, although new liability rules or insurance mandates may increase compliance costs in the short term, these measures are unlikely to undermine the viability of major platforms. Several leading companies already offer limited safety features or voluntary insurance schemes in certain jurisdictions, suggesting that such protections can coexist with platform-based business models. Indeed, the introduction of uniform and enforceable standards could reduce litigation costs, improve brand reputation, and prevent a '*race to the bottom*' in worker protections, benefiting both workers and responsible firms. To ease the transition, reforms can be phased in gradually. Duties may be scaled based on platform size or the number of active workers, while initial costs could be offset by state-matched contributions or transitional subsidies. Incentives such as tax rebates for exceeding safety standards or public

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<sup>94</sup> Chris Deeming, 'Guy Standing (2011), *The Precariat: The New Dangerous Class*. London: Bloomsbury Academic. £19.99, Pp. 198, Pbk.' (2013) 42 *Journal of Social Policy* 416.

<sup>95</sup> Steven Vallas and Juliet B Schor, 'What Do Platforms Do? Understanding the Gig Economy' (2020) 46 *Annual Review of Sociology* 273.

recognition for adopting responsible design practices can also help align business interests with legal responsibility.<sup>96</sup>

Finally, the feasibility of reform must be assessed in light of existing institutional capacities. India already has relevant legal and administrative infrastructure, including compensation regimes under the Motor Vehicles Act, 1988 and the Employees' Compensation Act, 1923 as well as social insurance boards, which offer ready models for contributory schemes and quasi-judicial enforcement. Rather than creating entirely new systems, reforms can build on these established mechanisms, thereby expanding the reach of tort law while minimising administrative complexity and cost.<sup>97</sup>

Thus, tort law must evolve to reflect the structural realities of platform labour, where control is algorithmic but responsibility is often denied. By introducing presumptions of employment, codifying platform duties, mandating risk-sharing mechanisms and reforming enforcement procedures, Indian law can ensure that innovation is matched by accountability. These reforms neither aim to stifle technological progress nor should they be seen as doing so; rather, they seek to embed justice, safety and dignity within the digital economy.

## **VI. CONCLUSION:**

This research paper has examined the ways in which India's current tort law framework fails to address the structural harms experienced by gig workers. Traditional doctrines, such as vicarious liability, direct negligence, occupiers' liability and non-delegable duties, remain anchored in outdated assumptions about employment and control. These frameworks are poorly equipped to respond to the realities of platform-mediated work, where responsibility is displaced through contractual structuring and algorithmic opacity. As a result, gig workers are often left without effective avenues for compensation or accountability when harm occurs. To address this gap in liability, the paper has proposed a doctrinal reorientation that recognises the functional role of platforms as architects of risk. Legal reforms should include statutory presumptions of employment, strict non-delegable duties tailored to digital work, algorithmic safety obligations, and mandatory risk-sharing mechanisms such as insurance. These must be complemented by fast-track dispute resolution systems and robust regulatory oversight to ensure that such obligations are not merely symbolic, but enforceable in practice.

Importantly, these proposals do not reject technological innovation and rather, demand that the legal system keep pace with changing forms of labour organisation. Grounded in tort law's foundational principles of deterrence, corrective justice and responsibility for harm, the reforms advocated here are a call for fairness in the digital age. Drawing from law, labour economics and socio-legal analysis, the paper underscores that algorithmic control represents a new locus of power, one that must be accompanied by a corresponding framework of legal accountability. Courts and legislators must act with urgency, not only to close existing legal gaps but to ensure that the future of work does not come at the expense of worker safety and dignity. Thus, tort law must evolve, not to resist technological change, but to make the future of work just.

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<sup>96</sup> OECD, *OECD Employment Outlook 2020: Worker Security and the COVID-19 Crisis* (OECD 2020)

<[https://www.oecd.org/en/publications/oecd-employment-outlook-2020\\_1686c758-en.html](https://www.oecd.org/en/publications/oecd-employment-outlook-2020_1686c758-en.html)> accessed 2 July 2025.

<sup>97</sup> 'India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work: Policy Brief' (n 5).