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Gig Workers Should be Treated as Workmen or Employee in the Insolvency Waterfall

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Abstract

The origins of gig economy can be traced to 19th century. The advent of internet, mobile, and platforms coupled with the deregulation in the developed world during the 1970s and 80s, along with globalisation accelerated the gig-economy. America's truck drivers and railroad workers were hugely affected by this phenomenon. India's urban economy relies heavily on gig workers. Delivery riders, couriers, drivers, beauticians and domestic help are ubiquitous, all working on behalf of digital platforms that ostensibly call them "partners" but in reality, treat them as anything but. Yet if a platform collapses, gig workers may discover that their place in the insolvency queue is at the bottom of the pyramid alongside operational creditors and far from that of formal workers. By 2030, India may have 90m gig workers, according to one estimate. Their legal status remains ambiguous, and in insolvency proceedings they risk losing unpaid dues, incentives, or social-security contributions. In India the ranks of gig workers swell partly because of high youth unemployment. The lived reality is grim; harassment, musculoskeletal injuries and extreme conditions are common. Platforms can deactivate accounts based on opaque ratings, with little recourse. Half-hearted steps have been taken to address the matter. The Code on Social Security 2020 (COSS), though not yet notified, defines gig and platform workers. Yet crucially, the COSS places gig workers outside the traditional employer–employee framework. A few states i.e., Rajasthan, Karnataka, and Telangana have gone further. Further, COSS grants priority to claims relating to provident fund, insurance, gratuity, etc. during insolvency, but it specifically excludes Chapter IX, which covers social security for unorganised, gig, and platform workers. Indian courts have long interpreted "workman" broadly, piercing the corporate veil when companies hid behind contractors. Supreme Court rulings suggest that gig workers could well be considered employees under a functional test of control and integration. In some parts of the world, momentum is clear. The European Union, Mexico, British Columbia and Ontario in Canada have taken steps that treat gig workers favourably in an insolvency. Some legal precedents from insolvencies abroad too are instructive. The anomaly of gig-workers in insolvency needs to be addressed and reforms need to be undertaken. The key being to amend the IBC to recognise gig workers as "workmen," revise the COSS to ensure their claims are prioritised and institute appropriate regulations so that information memorandum exhibits gig workers as a separate class.

Keywords: Gig-workers, insolvency, bankruptcy, code on social security, ILO

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INTRODUCTION

The term "gig" originated in the early 20th century when musicians used it to describe performances in pubs or other venues. These engagements were typically one-off, with no guarantee of future work unless the musician's gained popularity or delivered exceptional performances [1]. This model of temporary, performance-based work parallels the modern gig economy, characterized by unpredictable tasks, a non-permanent workforce often referred to as "partners," and payment contingent on task completion. Unlike traditional employment, however, gig workers typically engage with a digital platform.

The gig economy is not a novel phenomenon. Throughout the 19th and early 20th century, many individuals relied on a series of temporary jobs to sustain their livelihoods. The post-World War II era, marked by prolonged peace, international cooperation, and stable employer-employee relationships, represents an anomaly in human history. In recent decades, however, this post-war order has begun to erode, giving rise to employment structures reminiscent of earlier, less secure arrangements.

A historical example of such precarious employment is the experience of dockworkers in 19th-century London. Ships arriving from British colonies required large numbers of workers to unload commodities, but the demand for labour fluctuated with the frequency of ship arrivals. Consequently, approximately two-thirds of dock labour was casual, with no assurance of work from one week to the next [2]. Most labourers were hired or fired daily, a reality echoed in classic literature, such as Charles Dicken's *Hard Times*, Victor Hugo's *Les Misérables*, George Orwell's *Down and Out in Paris and London*, and Upton Sinclair's *The Jungle*.

The contemporary gig economy can be broadly categorized into two types: geographically tethered work and cloud work. Geographically tethered work requires spatial proximity and temporal synchronicity, necessitating that tasks be performed at specific locations and times. In contrast, cloud work is unbound by physical location, allowing tasks to be completed remotely [3]. This paper focuses on geographically tethered work, as the intermediation of digital platforms has undermined labour rights achieved over the past century. Platforms often position themselves as mere providers of matching infrastructure, classifying workers as self-employed "partners" rather than employees.

However, platforms exert far greater control than a simple matching mechanism implies. They facilitate payments, establish work procedures, impose penalties for non-performance, offer incentives based on time, work volume, ratings, or shift duration, track workers via GPS, provide customer incentives based on usage, and set rates for both customers and workers, often opaquely, as seen during surge pricing periods. In effect, platforms exercise significant dominance over their "partners." Interactions with workers in Bangalore, for instance, reveal that one platform unilaterally halved delivery drivers' pay rates in two stages without negotiation. Workers' attempts to organize through strikes or unionization have failed to secure concessions, underscoring the platforms' control and the challenges workers face in advocating for fair treatment [4].

This paper does not seek to address all challenges faced by geographically tethered gig workers, in platform-mediated work. Instead, it focuses on a specific issue: safeguarding gig workers in the event of platform insolvency under The Insolvency and Bankruptcy Code (IBC), particularly given the projected exponential growth of India's gig workforce.

However, before exploring potential safeguards, this study briefly examines the factors driving the rise of the gig economy globally and in India, the impact of automation on gig workers, the legal status of gig workers across different jurisdictions, and jurisprudence of gig workers affected by insolvency.

WHY THE GIG ECONOMY CAME INTO BEING

The natural progression of technology, from the internet to the mobile apps, and the consequent Schumpeterian creative destruction have been key drivers behind the rise of the geographically tethered gig economy. While this technological shift was anticipated, its precise contours were not entirely clear. Enabling factors, such as the deteriorating macroeconomic environment in the United States (US) and subsequent deregulation, accelerated the advent of the gig economy.

Blown to Bits [5], published in 1999, proved remarkably prophetic in describing the transformative impact of technological change. The authors argue that every business is, fundamentally, an information business, and in this new landscape, companies will either become monopolies or cease to exist, embodying a "winner-takes-all" dynamic.

They further predicted that the deconstruction of traditional business models would give rise to "navigators", independent entities serving as the fulcrum of competitive advantage. These navigators would command a significant portion of value creation, eroding incumbent firms' control over profit sources. Additionally, disintermediation would eliminate middlemen, enabling direct transactions between suppliers and consumers. This shift was not merely a reconfiguration of industries but a fundamental transformation. They envisioned a future characterized by ubiquitous connectivity, universal information standards, infinite consumer choice, negligible search and switching costs, and unprecedented market fluidity.

The authors outline the formulae for successful navigators. "The new navigators will compete on three dimensions: reach, agency affiliation and richness. Reach means the size of universe across which it can navigate. The bigger the better. Agency affiliation means the closeness with which the navigator identifies with the interests of the clients and serves as an agent for the clients' interests. Richness means the quality and customization of the information that the navigator delivers" [6]. The aforesaid characteristics closely mirror those of modern digital platforms, which now form the backbone of the gig economy.

DEREGULATION ACTED AS AN IMPETUS TO THE GIG ECONOMY

The gig economy's emergence was further enabled by widespread deregulation in the US. Raghuram Rajan [7] succinctly captures this shift, noting that postwar economic growth, sustained for nearly three decades, stalled in 1970s due to inflation arising from the Vietnam War, OPEC oil price shocks, and the collapse of the Bretton Woods system. Rising deficits, driven by escalating healthcare costs, pension obligations, unemployment insurance and relief spending exacerbated the crisis.

The panacea for the aforesaid was thought to be deregulation including privatizing public sector and revoking labour retrenchment laws. This trend took hold in both the US under Presidents Jimmy Carter and Ronald Reagan and the UK under Prime Minister Margaret Thatcher [8]. Over time, unbridled deregulation fostered an exclusive focus on shareholder value maximization, in exclusion of broader social responsibilities. Management incentives were accordingly realigned, while automation and relentless cost-cutting, primarily through retrenchments, further marginalized the labour force.

The pursuit of higher profits led to the offshoring of manufacturing to China, particularly after its accession to the WTO. Between 1991 and 2013, China's share of global manufacturing exports surged from 2.3% to 18.8%. The resulting job losses in the US created a surplus labour pool with limited alternatives. Citing *The China Shock* by Autor, Dorn, and Hanson, Nobel laureates Abhijit Banerjee and Esther Duflo highlight how regions competing with Chinese imports suffered severe manufacturing employment declines, without commensurate job creation in new sectors. The ripple effects extended beyond direct job losses, as reduced consumer spending further depressed wages and economic activity [9].

Rajan, referencing the same study, notes that between 1999 and 2011, Chinese exports accounted for the loss of roughly 10% of US manufacturing jobs. When accounting for indirect losses among supplier firms, the figure rises to 18% [10]. Automation compounded this displacement, pushing many moderately skilled workers into minimum-wage service roles [11].

EFFECT OF DEREGULATION: WORKERS MORPH INTO GIG WORKERS

The deregulation and technology-induced shift toward a gig economy, initially remained confined to select sectors and was therefore not widely reported. Peter S Goodman [12] captures this phenomenon in his book, introducing the conceptual tool used: a distorted application of the lean management philosophy inspired by Toyota's manufacturing model. Originally aimed at minimizing inventory, eliminating waste, and responding flexibly to demand, the approach was taken to extremes by consultants who stripped it of contextual nuance and applied it to labour. This obsession with "Just-in-Time" (JIT) principles led to on-call scheduling, shift reductions, and highly unpredictable work hours, ultimately resulting in increased burnout among workers.

Goodman cites examples from various industries, two of which are described below for greater clarity: railroad workers, who though not officially classified as gig workers, were treated as such in certain respects; and truck drivers, who were designated as independent contractors.

Railroad Workers [13]

The railroad industry continues to employ permanent staff, albeit in significantly reduced numbers. In pursuit of lower operating ratios favoured by Wall Street, freight companies enacted aggressive cost-cutting measures by use of Precision Scheduled Railroading (PSR), an adaptation of the JIT logic to rail freight. The result was longer trains operated with fewer personnel. Despite rising demand for freight services, around 45,000 jobs were eliminated between 2016 and 2022. The influx of retrenched workers into the labour market created an oversupply, driving down wage levels. Remaining workers were subjected to on-call schedules, akin to gig-workers, with as little as 90 minutes' notice, leaving them unable to plan meals, childcare, or even sleep.

Truck Drivers [14]

In contrast to railroad workers, truck drivers were reclassified as gig workers. Prior to the 1980s, trucking jobs in the United States were stable, unionized, and well-compensated, with predictable hours. However, the Motor Carrier Act of 1980 led to the dismantling of union power, leaving truckers fragmented, isolated, and economically insecure; many operating as so-called "independent contractors."

New drivers often enter the industry through lease-to-own arrangements, enticed by promises of autonomy and high earnings. In reality, they frequently earn less than minimum wage after deducting expenses related to trucks, fuel, maintenance, and insurance; essentially financing the companies for which they work. Waiting time is not compensated, and although drivers may work up to 70–80 hours per week, they are only paid for the miles driven. Electronic logging devices and algorithms enforce micromanagement, subjecting drivers to constant surveillance and eroding their dignity.

These workers endure harsh conditions with no overtime pay and are excluded from benefits such as health insurance, retirement plans, and sick leave. Liability and operating costs are transferred entirely to them. While some eventually exit the profession, others remain trapped by debt, family obligations, or lack of viable alternatives.

This precarious existence described above by Goodman bears a striking resemblance to the plight of delivery drivers, who, despite powering our daily lives, often navigate similarly exploitative working conditions.

AUTOMATION AND GENAI WILL DEPRESS WAGES OF GIG WORKERS

Robotics and autonomous systems have been linked to a reduction in employment opportunities for the workforce, as their adoption has grown at an annual rate of 5–7% since 2020. In 2023, the global average robot density reached 162 units per 10,000 employees, double the figure recorded seven years prior, with installations concentrated in China, Japan, the United States, the Republic of Korea, and Germany [15].

However, generative artificial intelligence (GenAI) and agentic AI are expected to exacerbate this trend. Research by the International Labour Organization (ILO) suggests that employment losses will primarily affect clerical support workers, including professions such as customer service representatives, receptionists, and secretaries, which have already experienced declining employment levels over the past 10–15 years. Overall, 2.3% of global employment (equivalent to 75 million jobs) is at high risk of automation due to exposure to generative AI technologies [16].

Other studies also support this conclusion. One study project that by 2030, 41% of employers anticipate workforce reductions as AI capabilities replicate existing roles [17]. A second study estimates that activities accounting for up to 30% of hours worked in the US economy could be automated [18], while a third suggests that employers in the US may require 20–25% fewer workers, equivalent to 30–40 million jobs [19].

Effects of automation are no longer in the realm of imagination, can be evidenced and have resulted in redundant workforce becoming part of the gig workforce for an increasingly shrinking pool of gig activities. Driverless Ubers vehicles operate in multiple locations, robots are delivering food in US college campuses [20], and Zipline, Alphabet and Amazon utilize drone for deliveries [21].

Consequently, it is inevitable that gig workers' wages will decline due to automation and GenAI, with recovery potentially taking decades. For context, the Industrial Revolution displaced countless artisans, and real blue-collar wages in Britain fell by half between 1755 and 1802, only returning to 1755 levels in 1820, 65 years later [22].

Following a brief introduction to the gig economy and the factors contributing to its rise, this paper next evaluates the constituents of the gig economy in India and the associated legal developments.

GIG ECONOMY IN INDIA

The presence of geographically tethered gig economy workers has become an unmistakable feature of India's urban and semi-urban landscapes. From delivery personnel in their distinctive uniforms swiftly navigating thoroughfares to beauticians and domestic helpers, and the pervasive presence of ride-hailing services, these workers are ubiquitous, sustaining essential services even amidst Covid-19.

The expansion of India's gig economy is marked by substantial growth projections. A 2022 report estimated that in 2020-21, approximately 7.7 million workers were engaged in the gig economy. This figure is projected to burgeon to 23.5 million workers by 2029-30[23] and 61.6 million by 2047[24]. Complementing this, another report forecasts the gig workforce to approach 90 million by the end of the decade [25]. The growth rate exhibits a clear urban-rural divide, with a median increase of 30% in large metropolitan areas, 20% in Tier 2 cities, and 10% in Tier 3 cities [26]. The rapid acceleration in this sector is further evidenced by a 92% year-on-year surge in blue-collar gig job or freelance opportunities in the past year, as highlighted by a WorkIndia report [27].

The aforementioned growth rates in gig employment are intrinsically linked to broader shifts within India's job and labour markets. Mechanization has rendered production processes increasingly capital-intensive, leading to a deceleration in job creation. Between 2000 and 2019, fewer workers were employed compared to the 1990s, with economic growth becoming progressively decoupled from employment and instead driven by technological advancements and productivity gains [28].

This dynamic has contributed to elevated youth unemployment rates, particularly among the educated demographic. Unemployment figures are notably higher for individuals with greater educational attainment, peaking among those holding graduate degrees [29]. Annually, over three million graduates enter the job market, yet only about half are deemed employable. Consequently, youth unemployment in India stands at an alarming 44.5% for individuals aged 20–24[30]. Recent findings from an Unstop report, based on a survey of 30,000 Gen Z professionals and 700 HR leaders, reveal that 83% of engineering students and 50% of MBA students graduated without a job or internship offer. Furthermore, the report indicates a concerning trend of unpaid internships, with one in four graduates undertaking such roles last year, a significant increase from one in eight in 2023[31].

Since 2019, employment growth has been predominantly characterized by poor-quality work within the informal sector. India's employment landscape is largely dominated by self-employment and casual labour, with approximately 82% of the workforce engaged in the informal sector and nearly 90% informally employed [32].

The confluence of factors, including the potential for automation to reduce the absolute number of gig jobs (as discussed in an earlier section) and the prevailing high rates of unemployment and underemployment, is likely to intensify competition for the remaining gig opportunities, thereby

depressing wage rates further. While platform and gig work have undoubtedly expanded, this growth largely represents an extension of informal work, frequently offering minimal or no social security provisions [33]. The following section explores the precarious realities of gig work, making a strong humanitarian case for including gig workers in the IBC waterfall when they are most vulnerable.

PRECARITY OF THE GIG WORKERS WITHIN THE ECONOMY

Despite the notable growth of the gig economy, direct interactions with geographically tethered gig workers reveal a significant disparity between their designated roles, often termed "delivery partners," and the reality of their relationship with platform companies. Conversations indicate a pervasive lack of dignity and equality [34]. This observation is corroborated by the Fairworks 2024 report on Labour Standards in the Platform Economy, which assesses platforms across six critical parameters: fair pay, fair conditions, fair contracts, fair management, and fair representation. The report found that only four platforms achieved a score of 6 out of 10, highlighting systemic shortcomings.

Field evidence further underscores the precarious working conditions. In Lucknow, during the scorching northern Indian summer of 2025, a strike by delivery workers demanding essential provisions such as cotton clothing, drinking water, and respite during peak afternoon hours resulted in the suspension of workers and the deactivation of their platform applications [35]. Similarly, in Hyderabad, a coordinated strike by the Telangana Gig and Platform Workers' Union (TGPWU) saw delivery workers demanding fair pay, decent working hours, social security, and dignity. In response, platforms asserted their status as mere technology providers, disclaiming responsibility for vendor hiring and payment [36].

The situation is particularly aggravated for women engaged in feminized gig roles, such as cleaning or beauty services. These workers face not only intrusive platform surveillance but also customer harassment and domestic violence. The Gig & Platform Workers Union (GIPSWU), a women-led grassroots organization, highlights extreme instances where even taking a bathroom break could jeopardize employment [37].

Irrespective of their initial motivations for joining the gig workforce, the demands on most geographically tethered gig workers resemble those of a full-time occupation in terms of workload. Many workers are often primary breadwinners, with platform work serving as their main source of livelihood [38]. A 2023 study from P.E.S. Modern College of Physiotherapy in Pune, focusing on e-commerce delivery workers, revealed a high prevalence of musculoskeletal ailments, specifically low back pain (69.06%) and shoulder pain (59.36%). These conditions were attributed to prolonged hours of biking, carrying heavy loads, and maintaining static postures [39].

Despite these hardships, workers face a continuous decline in effective income due to increased commission charges and the unilateral withdrawal of incentives by platforms. A critical issue is the pervasive absence of written, comprehensive contracts between workers and platforms, which complicates the establishment of an employer-employee relationship. Consequently, despite their digital native origins, platforms largely operate within the informal economy, thereby forfeiting an opportunity to formalize a significant segment of the Indian workforce.

Given that India's economy is predominantly informal, with 81% of all employed persons working in this sector, the current operational model of platforms does little to improve this metric. While acknowledging that some platform workers may genuinely prefer self-employment status, a clear mechanism for segregating these categories is imperative. Furthermore, platforms increasingly transfer the responsibility for investing in capital assets and covering operational costs to the workers, thereby shifting significant financial risks to them.

The algorithmic management of workers creates conditions of significant control and potential domination. Even a single refusal of a task can negatively impact worker ratings. In many instances, low

ratings lead to automatic deactivation from the platform without any explanation [40]. This systemic power imbalance often compels workers to tolerate abuse, as the alternative is unemployment [41].

Examples of stringent algorithmic control are evident in platform terms of service. One, financially stressed platform's terms explicitly stated that it "may monitor, track and share workers' geo-location... for safety, security, technical, marketing and commercial purposes." In another instance, workers who cancel more than three jobs within three months face ID blocks. Similarly, refusing work outside designated areas or taking breaks can lead to account deactivation [42].

Recognizing these issues, the Indian Federation of App-Based Transport Workers (IFAT) has engaged with the Secretary of the Ministry of Labour and Employment, advocating for algorithmic transparency for gig workers. This demand includes making the algorithms used for evaluating work, determining pay, assigning tasks, calculating working hours, and deactivating accounts fully transparent [43].

The precarious nature of gig work, characterized by falling incomes and dominant platforms that often abdicate responsibility towards their workers, necessitates a critical evaluation of the legal status of gig workers and the broader jurisprudence surrounding employer-employee relationship which underpins their potential inclusion in the IBC waterfall.

LEGAL STATUS OF GIG WORKERS IN INDIA

Few legal cases have been initiated to clarify the relationship between gig workers and digital platforms in India, and none have reached a definitive conclusion. In 2017, the Delhi Commercial Drivers Union filed a lawsuit against Uber and Ola in the Delhi High Court, seeking a ruling on whether drivers were independent contractors or employees. The case was withdrawn, leaving the employment status of gig workers unresolved [44].

In 2021, advocate Nupur Kumar, representing IFAT, filed a petition under Article 32 of the Indian Constitution, urging the Supreme Court to recognize gig workers as "workmen" under the Unorganised Workers' Social Security Act (UWSSA) of 2008. The petition argued that the broad definition of "unorganised workers" in the UWSSA encompasses gig workers and that classifying them as independent contractors deprives them of essential social security benefits, violating their fundamental rights under Articles 14 and 21 of the Constitution [45]. The respondents, alongside the Union of India, included ANI Technologies Pvt. Ltd. (Ola), Uber India Systems Pvt. Ltd., Bundl Technologies Pvt. Ltd. (Swiggy), and Zomato Ltd [46]. The Supreme Court expressed concern over the government's claim that the matter involves complex policy decisions requiring additional time for resolution [47].

Meanwhile, the government has taken preliminary steps to address the issue, notably through the Code on Social Security, 2020 (COSS), the first legislation to formally define "gig worker," "platform work," and "platform worker." However, COSS explicitly places gig workers outside the traditional employer-employee framework. Under Section 2(35), a gig worker is defined as an individual who performs work or participates in a work arrangement outside a traditional employer-employee relationship, earning from such activities. Section 2(60) defines platform work as a work arrangement facilitated by an online platform to solve specific problems or provide services for payment. Section 2(61) defines a platform worker as a person engaged in such work. Notably, other labour laws in India lack provisions for gig workers or platforms. When notified, COSS will subsume the UWSSA.

COSS mandates measures for gig workers' welfare. Section 6 establishes a National Social Security Board to recommend welfare schemes for gig workers, while Section 141 requires the Central Government to create a Social Security Fund for unorganised workers, including gig and platform workers. Section 113, read with Rule 50(2), mandates gig workers to register on a portal to access benefits.

In her budget speech of February 2025, the finance minister had stated that "Gig workers of online platforms provide great dynamism to the new-age services economy. Recognising their contribution,

our government will arrange for their identity cards and registration on the e-Shram portal. They will be provided healthcare under PM Jan Arogya Yojana. This measure is likely to assist nearly 1 crore gig-workers".

The Ministry of Labour and Employment began testing the e-Shram portal [48] even prior to the budget announcement, and recent reports indicate that over 20 lakh gig workers have registered, with plans to issue unique identification numbers linked to welfare benefits under Pradhan Mantri Jan Arogya Yojana (PM-JAY) [49]. However, the implementation of COSS and the announced benefits are still to see the light of the day.

Several states have indicated an intention to address gig workers' welfare including Delhi [50] and Maharashtra [51]. Meanwhile, Rajasthan, Karnataka, and Telangana have introduced or are developing targeted legislation. Rajasthan's 2023 law, the first of its kind, mandates aggregators to register with the state, maintain a database of gig workers, and submit employment details. It imposes a welfare fee on each transaction and grants gig workers' rights to registration, access to social security schemes, grievance redressal, and representation on the welfare board [52].

Karnataka's May 2025 ordinance establishes the Karnataka Platform Based Gig Workers Welfare Board, requiring platforms to pay a welfare fee of 1% to 5% based on work categories, provide worker databases, ensure fair contracts, and establish grievance redressal mechanisms [53]. Platforms also need to establish a procedure for information on algorithmic monitoring parameters and ensure reasonable working conditions [54]. The state government released draft rules for the Gig Workers' Welfare Board that allows aggregators and gig-work platforms to self-declare their contributions [55]. Also, the government constituted two working groups tasked with estimating the quantum of welfare fee. The working group includes all relevant stakeholders; representatives from gig economy platforms, think tanks, tech companies and policymakers [56].

Telangana's proposed bill [57] aims to create Telangana Gig and Platform Workers' Social Security and Welfare Fund, charging platforms a fee of 1% to 2% per transaction, and is similar to the Rajasthan law and Karnataka ordinance.

Despite these developments, the legal status of gig workers remains ambiguous. By defining gig workers outside the employer-employee relationship, COSS excludes them from protections under the IBC waterfall, which prioritizes workers claims. Thus, a broader examination of Indian jurisprudence is necessary, beyond the four-walls of COSS.

JURISPRUDENCE ON EMPLOYEE-EMPLOYER RELATIONSHIP

Hon'ble Supreme Court has pronounced a number of judgements articulating with clarity what constitutes an employee or a worker.

In *Dharangadhara Chemical Works Ltd. vs. State of Saurashtra [58]*, the Court examined whether seasonal labourers known as *agarias*, engaged in salt manufacturing, qualified as workmen under Section 2(s) of the Industrial Disputes Act, 1947. The *agarias* worked on the same land annually, without fixed attendance or leave requirements, though company officials frequently inspected their work.

The Court ruled that the *agarias* were workmen because the employer exercised control and supervision. The decisive test was the employer's right not only to assign tasks but also to oversee their execution, though the degree of control varies across industries. The fact that *agarias* could employ family members for assistance did not negate their status as workers.

In *Silver Jubilee Tailoring House vs. Chief Inspector of Shops and Establishments* [59], concerning tailors, the Court held that while control remains a key factor in determining employment relationships,

it is not the sole criterion. No single test can conclusively establish such a relationship; instead, courts must evaluate the totality of circumstances in each case.

This judgment though from a different era has implications for the gig economy, as the Court observed that.

- The use of an employer's machinery may indicate employment, but no definitive conclusion can be drawn if workers customarily use their own equipment.
- The right to terminate employment or withhold work reflects control and supervision.
- Working for multiple employers does not automatically disqualify an individual from being classified as an employee.

In *Hussainbhai, Calicut vs Alath Factory Thozhilali* [60], the Court emphasized that intermediary contractors do not negate an employment relationship when, "on lifting the veil …. courts discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor". "Dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond". The court must ascribe to social justice proclaimed in the Preamble of the Constitution. This ruling is particularly relevant to the gig economy, where platforms often claim workers are employed by third-party vendors rather than directly by them.

In *Messrs. P.M. Patel & Sons vs. Union of India* [61], the Court held that home-based *beedi* rollers were employees, even if they worked remotely. The workers received raw materials, manufactured beedis at home, and delivered them to the employer, who retained the right to reject substandard products. This arrangement demonstrated sufficient control and supervision to establish an employer-employee relationship. The Court clarified that employment includes both direct hires and those engaged through contractors, even if work is performed outside a traditional workplace.

In *Ram Singh vs. Union Territory, Chandigarh* [62], the Court adopted a holistic approach, stating that while control is a significant factor, it is not the only determinant of an employment relationship

The "integration test" was introduced, examining whether the worker was fully integrated into the employer's operations or remained independent. Other relevant factors include.

- Authority to hire and dismiss
- Responsibility for payment of wages
- Deduction of insurance contributions
- Provision of tools and materials
- Nature of mutual obligations between parties

Thus, Indian jurisprudence adopts a broad definition of a worker/employee, with the Industrial Disputes Act, 1947 serving as a key reference, including under the IBC. The judiciary has consistently emphasized that formal contractual labels do not override substantive employer-worker relationships.

The next sections examine international jurisprudence on gig workers and their treatment in insolvency proceedings involving digital platforms. Thereafter, we embark upon suggestions for treatment of gig workers under IBC.

INTERNATIONAL JURISPRUDENCE ON GIG WORKERS

International jurisprudence concerning the employment status of gig workers has exhibited significant variability. The European Union remains at the forefront, proposing full employee status for gig economy participants. Similarly, California, United States, has introduced legislation to grant such status, albeit with exceptions for rideshare and delivery drivers. In contrast, jurisdictions such as Australia and Singapore have adopted intermediate models, conferring "employee-like" legal protections without full employment status.

United States

The State of California has emerged as one of the most progressive jurisdictions in the United States in addressing worker classification issues. A previous section of this paper detailed the conditions faced by truck drivers, whose legal status became central to the landmark case *Dynamex [63]*.

The Dynamex case marked a fundamental shift in California's approach to worker classification. Initially employing its drivers, Dynamex reclassified them as independent contractors in 2004, transferring all operational costs and imposing equipment and branding requirements, while retaining significant control over their work. Two drivers, on behalf of a broader class, challenged this as misclassification.

The California Supreme Court, revisiting precedents such as *Borello* [64], *Martinez*, and relevant U.S. Supreme Court rulings [65], underscored that worker protections serve a public interest and cannot be waived through contractual arrangements [66]. To resolve ambiguities in employment status, the court adopted the ABC Test, placing the burden on the hiring entity to prove that: (A) the worker is free from its control, (B) the work lies outside its usual business, and (C) the worker operates an independent enterprise.

Applying this framework, the court found that Dynamex drivers performed work integral to its business and lacked independent trade engagement, making them employees. The ruling, described by Justice Hugo Black as the broadest approach to extending statutory protections [67], was codified through California's Assembly Bill 5 (2020) [68], compelling gig platforms to classify drivers as employees. Subsequent decisions, including *People v. Uber Technologies, Inc.* [69] and *Vazquez v. Jan-Prov [70]*, reinforced and retroactively applied *Dynamex*, significantly impacting platform-based transportation and delivery services.

In response, Proposition 22 was introduced in the November 2020 California ballot. This measure, known as the "Protect App-Based Drivers and Services Act," classified app-based rideshare and delivery drivers as independent contractors, contingent on specific non-control criteria; do not set work times, require acceptance of specific requests, or restrict working for other platforms. Also, it guaranteed.

- 120% of minimum wage for engaged time.
- Vehicle expense compensation.
- Limited healthcare subsidies.
- Occupational accident and liability insurance.
- Anti-discrimination and safety policies.
- Mandatory background checks, rest breaks and training.
- Allows the state to appoint independent legal counsel [71].

Importantly, Proposition 22 restricted local government interventions and required a 7/8 legislative supermajority to amend its provisions. Companies including Uber, Lyft, DoorDash, Instacart, and Postmates invested over $205 million in support, making it the costliest ballot initiative in California's history. Allegations surfaced regarding coercive tactics directed at workers to support the measure [72].

Proposition 22 passed with 58.6% voter approval, enacting Sections 7448–7467 of the Business and Professions Code. Although the California Supreme Court did not invalidate the measure, thus creating an exception for ride hailing and delivery companies, however, questions remain, leaving the potential for future litigation.

Europe

Professor Christina Hießl of KU Leuven has conducted a comprehensive analysis of 800 judicial and administrative decisions concerning platform workers across eighteen European countries, offering invaluable insights into prevailing trends [73].

Her research reveals a discernible inclination towards the reclassification of drivers and couriers as employees or similarly situated workers [74]. Significantly, courts of last instance have overwhelmingly favoured employee classification [75].

Ride-hailing platforms demonstrate a clear propensity towards employee or similar classifications across eight countries with established case law, with Turkey being the sole exception [76].

Similarly, for food delivery platforms, the widespread trend, with only two exceptions, is to qualify riders as employees. All final court decisions in France, Ireland, Italy, the Netherlands, Spain, and Switzerland have affirmed employee status, while the Hungarian and UK Supreme Courts have maintained self-employed status [77].

Decisions pertaining to parcel and grocery delivery platforms largely mirror those of food delivery platforms. In contrast, sectors such as cleaning, household/handyman services, caregiving platforms, and business-to-business services like mystery shopping have generated very few judicial precedents [78].

A synthesis of the 800 judgments highlights several critical factors influencing the reclassification of platform workers as employees.

- *Direction and Control:* This is the paramount criterion. Indicators of control include the use of non-negotiable standard contracts, platform-determined pricing and remuneration, algorithmic management, GPS tracking, prescribed routes, task-specific instructions, and the imposition of sanctions. Further standardization of service, encompassing vehicle requirements, itineraries, waiting times, safety features, mandated equipment (e.g., backpacks), entry protocols, maximum delivery times, item verification during pickup, and delivery confirmation, all signify a controlling relationship.
- *Contractual Designation / Will of the Parties:* Courts frequently disregard formal contractual labels of "self-employed" when the actual working conditions suggest subordination, prioritizing the substance of the relationship over its form. However, in Belgium, the parties' stated intent, and in France, self-registration in a business register as self-employed, have presented significant hurdles to overcoming self-employed status.
- *Contract Duration and Number of Working Hours:* The duration of work is a crucial factor in Swedish, Swiss, and Austrian judgments. While the intermittent nature of work is often considered counter-indicative of employee status, it is not a decisive factor in most rulings, with the exception of a Turin court decision that referred to it as *lavoro eteroorganizzato*, signifying a third category of worker.
- *Personal Work Performance:* The requirement for mandatory personal performance with limited substitution rights generally points towards employee status, unless there is an unfettered right to substitute, as was a key reliance in a UK judgment.
- *Obligation to work (defined or minimum time):* Platforms frequently cite the lack of a formal obligation to work. However, courts increasingly consider de facto expectations, performance-based incentives, and sanctions for non-compliance as indicators of an underlying work obligation. One court even characterized algorithmic management in this context as a "modern form of subordination."
- *Exclusivity / Non-Compete Clauses:* Both formal and functional exclusivity (e.g., prohibitions on picking up passengers while connected to the app or exchanging personal details) support employee classification. Conversely, a lack of exclusivity has been a basis for rejecting employee status in several jurisdictions.
- *Organisational Integration vs. Independent entrepreneurial activity:* Workers integrated into the platform's structure, evidenced by wearing uniforms, using platform branding, and lacking direct client relationships, are often deemed employees. Truly independent entrepreneurs, by contrast, operate under their own distinct identity.
- *Economic Dependence:* While not always determinative on its own, a worker's substantial or sole reliance on a platform for income strongly reinforces a claim of employment.

LEGISLATIVE AMENDMENTS IN DIFFERENT JURISDICTIONS FOR GIG WORKERS

Beyond judicial pronouncements, several nations have enacted their own legislation to enhance protections for platform workers.

Australia

In August 2024, Australia's Fair Work Commission (FWC), through the Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024, significantly amended its laws for gig workers. These workers will now be referred to as "regulated" or "employee-like" workers. A regulated worker is defined as someone engaged by a digital labour platform, including road transport contractors, who, while not formally classified as an employee, is considered "employee-like" and thus entitled to minimum pay and safe working conditions.

To qualify as "employee-like," a regulated worker must satisfy at least two of the following conditions: low bargaining power, remuneration at or below the rate for comparable work, a low degree of authority over their work, or other characteristics as prescribed by regulation [79].

The new regulations encompass a range of protections including, fair and transparent payment terms, additional compensation for work performed under specific conditions, compensation for time spent waiting between tasks, setting minimum durations for worker engagement on gig platforms, eligible deductions, insurance coverage, mandatory consultation regarding changes to working conditions and right to challenge unfair deactivations and terminations by platforms[80].

Furthermore, the FWC is empowered to register collective agreements, make model agreements, and establish a new dispute resolution function, including a mechanism for resolving "unfair contracts" and disputes for independent contractors (below a high-income threshold). The legislation also grants workplace delegates' rights to regulated workers [81].

Singapore

Singapore has opted to create a novel category of workers, distinct from traditional employees and the self-employed, recognizing the unique relationship between Platform Operators and Platform Workers [82]. Effective January 1, 2025, new protections for platform workers came into force, aiming to ensure adequate financial protection for platform workers in case of work injury, improve platform workers' housing and retirement adequacy by way of CPF contributions, and enhance representation by allowing platform workers and platform operators to form their own platform work associations [83].

Italy

Italy implemented Law Decree No. 101/2019, subsequently confirmed by Conversion Law No. 128/2019 (known as the Riders' Decree), which came into effect in November 2019. This legislation guaranteed platform workers working conditions equivalent to permanent employees, mandated service contracts, established minimum wages, ensured fair treatment without discrimination, and created a mechanism for amendments based on labour market changes [84].

Spain

Similarly, Spain legislated the Riders' Law [85], which guarantees labour rights to individuals engaged in distribution via digital platforms. It introduces a presumption of employment for delivery workers when the employer exercises direction and control, whether directly, indirectly, or implicitly, through an algorithm via a digital platform. Importantly, this presumption does not extend to other forms of digital platform work [86].

Both the Italian and Spain laws will undergo further change on the basis of European Union Directive described below.

European Union

The most far-reaching legislative change, however, is the European Union Directive (EUD) on improving working conditions of platform workers, effective from December 2, 2026 [87]. This directive introduces several pivotal provisions:

- *Presumption of Employment:* Articles 4 and 5 establish that, irrespective of contractual arrangements, employment status will depend on the work performed and the use of automated monitoring and decision-making systems. Crucially, it will be legally presumed that platform workers are employees unless the digital labour platform can prove otherwise.
- *Data Protection and Transparency:* Article 7 prohibits the processing of platform workers' personal data, whether current or future, based on predictive algorithms. Articles 9, 10, and 11 mandate full transparency regarding automated monitoring and decision-making systems, ensuring human oversight and review. This includes prior notification of any significant proposed system changes and the provision of a concise summary to workers detailing how these systems operate, particularly concerning decisions that restrict, suspend, or terminate accounts, or refuse payments.
- *Right to Organize:* Article 20 stipulates that platforms must provide a digital infrastructure enabling workers to contact and communicate privately and securely with each other and their representatives, free from platform intervention.
- *Applicability in Legal Proceedings:* Most importantly, Articles 5 and 19 confirm that the directive's provisions shall apply in all relevant administrative or judicial proceedings. Insolvency proceedings are judicial proceedings.

Mexico

On 24 December 2024, Mexico enacted reforms to its Federal Labour Law under Chapter IX Bis, introducing regulations for platform work. The law establishes a one-year implementation period, effective from 22 June 2025 [88].

The Key Provisions of Chapter IX Bis [89] (Article 291 A – 291U) are as follows.

- Article 291A specifies applicability to geographically tethered platform work.
- Article 291C reclassifies platform workers as employees (rather than independent contractors) if their monthly earnings exceed the minimum wage, granting them access to insurance and social security benefits. Employment contracts are automatically terminated after 30 consecutive days of inactivity, with the employment relationship reassessed upon re-engagement.
- Article 291D clarifies that the employment relationship is limited to the hours actually worked by the digital platform worker.
- Article 291F stipulates that wages must be fixed per task and include proportional holiday pay, while tips are excluded from social security contribution calculations.
- Articles 291G & H mandate a written contract specifying terms of engagement.
- Article 291J requires algorithmic transparency, ensuring all parties understand decision-making processes.
- Articles 291K & L outline the obligations of platforms and workers, including record-keeping, data provision, and work performance standards.

Under the Mexican Commercial Insolvency Law (CIL), all enforcement proceedings are suspended during insolvency, except for labour authorities' orders to liquidate company assets to settle unpaid wage claims, covering up to two years prior to insolvency and labour claims, including unpaid wages, hold first priority in the distribution hierarchy [90].

By reclassifying platform workers as employees (albeit conditionally), Mexico has effectively elevated their standing in insolvency proceedings, ensuring they rank above most other creditors.

Canada

Two of the progressive provinces of Canada i.e., Ontario and British Columbia have amended their laws for the benefit of platform workers.

Ontario

Ontario has introduced the Digital Platform Workers' Rights Act, 2022 (DPWRA) [91] which defines digital platform work as ridesharing, delivery, courier, or other prescribed services where work assignments are offered by an operator through a digital platform. The Act defines a worker as an individual who performs digital platform work, including former workers, while an operator refers to an entity that facilitates such work via a digital platform.

Under the DPWRA, workers are entitled to several key rights, including:

- Minimum wage guarantees,
- Transparent pay calculations,
- Specified payment intervals,
- Clear policies on tips and gratuities,
- Fair work assignment allocation criteria,
- A structured performance rating system,
- Communication regarding ratings and their consequences, and
- Advance notice of any changes to these terms.

Additionally, the Act imposes joint and several liability on the directors of an operator for any undisputed compliance orders related to workers' unpaid entitlements. Notably, in cases of insolvency, directors are liable for workers' unpaid claims, though liability is capped at six months of the worker's earnings.

British Columbia

In September 2024, British Columbia amended its Employee Standards Act [92] to include provisions for online platform workers, defined as individuals who perform prescribed work accepted through an online platform.

The amendment presumes that an online platform worker is an employee, regardless of their classification under other laws and the platform operator is deemed their employer. Consequently, platform workers are entitled to the same insolvency protections as traditional employees, ensuring equitable treatment in cases of employer insolvency.

The aforesaid global legislative and judicial trends collectively demonstrate a growing recognition of the need to provide enhanced protections and clearer classifications for platform workers, moving beyond traditional binary distinctions to address the specific challenges and characteristics of gig economy employment.

Moreover, European Union, Mexico, and two provinces of Canada will treat platform workers as regular workers in an insolvency. To elucidate further the next section examines jurisprudence from other countries specific to insolvency.

International Jurisprudence on Treatment of Gig Workers in Insolvency

While no definitive judicial precedent exists specifically addressing the rights of gig workers in insolvency proceedings, emerging case law of bankruptcies across multiple jurisdictions provide valuable insights into potential future legal developments.

Canada: The Foodora Precedent

In April 2020, Foodora Inc [93]. filed for bankruptcy protection under the Bankruptcy and Insolvency Act, subsequently ceasing operations in May 2020 and terminating the employment of over 2,000 workers [94]. The case resulted in a significant settlement whereby Foodora Canada, alongside its parent company Delivery Hero, agreed to compensate affected couriers with CAD $3.46 million through negotiations with the Canadian Union of Postal Workers (CUPW) [95].

The legal foundation for CUPW's successful intervention stemmed from a landmark ruling by the Ontario Labour Relations Board [96], which determined that despite contractual designations as "independent contractors," Foodora couriers functioned as "dependent contractors" under Canadian law. The Board's analysis revealed that couriers lacked genuine entrepreneurial autonomy and remained economically dependent on Foodora's operational framework. Critically, Foodora exercised comprehensive control over essential employment elements including shift allocation, compensation structures, performance standards, technological tools (the proprietary application), and continued engagement decisions. This determination established the couriers' right to collective bargaining, even absent traditional employee classification.

THE NETHERLANDS: THE HELPLING SUPREME COURT DECISION

Helpling Netherlands B.V. was declared insolvent on January 10, 2023, following its operation as an online platform facilitating domestic cleaning services. The company's business model evolved significantly throughout its operation: initially charging commission-based fees for bookings made through its platform until June 2022, subsequently transitioning to a one-time connection fee structure wherein agreements were concluded directly between households and service providers, bypassing platform mediation, though a one-time fee was charged on the first introduction [97].

The legal challenge initiated by FNV, a prominent trade union, in 2021 contested Helpling's characterization of cleaners as independent contractors, arguing instead for recognition as either employees or temporary agency workers entitled to comprehensive employment protections, including sick leave and redundancy compensation. Helpling maintained its position as merely a facilitating platform without employer obligations.

The Dutch Supreme Court's pivotal ruling on April 11, 2025, classified Helpling cleaners as temporary agency workers, establishing Helpling as the legal employer with corresponding statutory obligations. The Court's reasoning emphasized Helpling's comprehensive organizational control, encompassing worker selection, administrative processing, service mediation, and operational oversight [98].

This judicial determination secured cleaners' entitlement to full employment rights under Dutch labour law which implies that cleaners' have a standing as creditors in Helpling's bankruptcy proceedings and can claim their entitlement from bankruptcy trustee, in case the estate has funds.

UNITED STATES OF AMERICA: THE HOMEJOY CAUTIONARY TALE

Homejoy Inc. [99], an early entrant in the on-demand home services sector, filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Northern District of California (San Jose Division) in 2015. Founded by siblings Adora and Aaron Cheung in 2013, the company offered house cleaning services at $25 per hour across five countries while expanding into adjacent services including home repairs and carpet cleaning [100].

The company's collapse resulted from multiple converging factors. Founder statements attributed the bankruptcy to worker misclassification litigation, as professionals challenged Homejoy's contractor designations, asserting legitimate employee status. However, structural operational deficiencies proved equally detrimental: the company's 25% commission structure either attracted inexperienced service providers or incentivized established professionals to circumvent the platform through direct client arrangements, resulting in substantial revenue leakage [101]. Additionally, unsustainable customer acquisition strategies through aggressive discounting yielded poor retention rates, with only 10% of customers utilizing services beyond six months due to inconsistent service quality and reliability concerns [102].

The legal ramifications materialized through class action litigation filed by DHKL and Browne Labour Law in California, accompanied by a California Private Attorney General Act lawsuit. Plaintiffs

alleged systematic misclassification of cleaners as independent contractors, seeking compensation for unpaid overtime, unreimbursed business expenses, wages for all hours worked, premiums for missed meal and rest periods, and associated penalties [103]. While public records indicate some form of class action settlement, specific monetary terms remain undisclosed [104].

These cases collectively demonstrate the increasing judicial scrutiny of gig economy employment relationships during insolvency proceedings. The trend toward recognizing substantive employment relationships despite contractual classifications as independent contractors suggests that platform workers may increasingly be recognized as legitimate creditors in bankruptcy proceedings, entitled to priority treatment alongside traditional employees. The final section suggests the treatment of gig workers under IBC.

RECOGNITION OF GIG WORKERS AS EMPLOYEES IN IBC WOULD BE IN CONSONANCE WITH ITS PREAMBLE

The gig economy has transformed employment dynamics, particularly for platform workers whose earnings may not be given primacy in an insolvency waterfall if a platform goes insolvent. Insolvency, especially liquidation, poses a significant threat to gig workers' financial stability, if the unpaid dues are not recovered. This paper argues that India should recognize geographically tethered platform workers as "workmen" under the IBC, aligning with the broad interpretation of "workman" under the Industrial Disputes Act, 1947, Indian and global jurisprudence, and the emerging international legal frameworks.

As said, Industrial Disputes Act defines workers in the widest possible way: *"workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute".*

Indian courts have consistently interpreted the definition of worker expansively. As stated earlier, in *Hussainbhai v. Alath Factory Tezhilali Union* (1978), the Supreme Court emphasized that the judiciary must uphold social justice as enshrined in the Preamble of the Indian Constitution, advocating for a liberal interpretation of "worker" to include those in non-traditional employment arrangements. Furthermore, the COSS, in principle, acknowledges gig workers' vulnerabilities by mandating their registration and establishing a Social Security Fund, reinforcing the need for their welfare.

Globally, there is a growing trend toward recognizing gig workers as employees or "employee-like" for labour protections. The European Union's Directive on Platform Work (2022) establishes a presumption of employment for platform workers, shifting the burden to platforms to prove otherwise. A similar stand has been taken by Mexico and two provinces of Canada. These developments reflect a global shift toward ensuring fair treatment for gig workers, particularly in precarious employment contexts.

Indian jurisprudence aligned with the aforesaid international trend prior to the advent of platform-work. The limited jurisprudence on platform workers in insolvency proceedings also suggests a inclination toward a fairer treatment. IBC case law has not yet addressed gig workers, irrespective of their geographical tethering; we therefore turn to adjacent precedents to infer the probable course of legal interpretation.

CURRENT STATUS OF GIG WORKERS

Two platforms, Dunzo Digital and Blu-Smart have been recently admitted to insolvency. The compilation of claims by the Resolution Professional (RP) may clarify whether gig workers are owed unpaid dues. Dunzo Digital, despite raising USD 450 million (with Reliance holding a 25% stake and Google 19% [105]) faced insolvency. Reports indicate unpaid salaries for employees, though it remains unclear whether gig workers' dues are similarly affected [106].

Courts Have Divergent Opinion on Workers Employed by the Subcontractors

The IBC's treatment of workers employed by subcontractors provides insight into how gig workers might be classified. In *Amit Kumar Pandey [107]*, workers of a subcontractor filed claims using forms meant for operational creditors other than workmen. The court noted that, had the correct forms been used, these workers might have been treated as full-time employees. The court referenced the statutory definition of "workman" under Section 3(36) of the IBC but could not resolve the issue due to procedural errors.

"There can be no dispute with the submission with regard to statutory definition of workmen as given in Industrial Dispute Act and adopted by Section 3(36) of the IBC but the question is as to whether when the claim has not been filed in the CIRP as workmen by the Appellant and the claim which can be referable by them is the claim filed by sub-contractor as operational debt, can it be treated at par with the workmen dues".

In contrast, *Balaji Associates [108]* involved a corporate debtor, Sai Wardha Power Generation Ltd., outsourcing various activities including labour intensive ones. The contracts were categorized into two groups: those for operational services and those primarily for supplying skilled and unskilled workers. The first group had contracts of round the clock operation and maintenance of electrical and instrumentation systems, pest control, transportation of wet ash and fly ash, upkeep of water pipelines, and handling of coal which were *prima facie* not contracts for supply of labour. The latter group had contracts for gardening, housekeeping, repair and other miscellaneous work[109], providing semi-skilled/skilled/unskilled workers round the clock for operations and maintenance of CHP/Boiler and in the electrical field [110], provisions for supply of security manpower [111], and provision for providing technicians at its Warora Plant for the purpose of meter reading, operation and maintenance break down purposes [112]. The latter group primarily was for supply of labour. The court declined to treat subcontracted labour as employees.

"The 'Tribunal' is of the earnest view that this is a contractual relationship which is commercial in nature and hence the services rendered by the workmen cannot be treated at part with the employees of 'Corporate Debtor'".

Temporary or Non-Standard Employees Have Been Designated Other Operational Creditors

The case of *Sevenhills Healthcare Private Limited [113]* (SHPL), admitted to insolvency on March 13, 2018, further illustrates the challenges faced by non-traditional workers. SHPL employed visiting consultant doctors alongside full-time doctors. When claims were collated, these consultants were classified as "other operational creditors" rather than employees, despite providing regular services at the hospital. This classification underscores the IBC's tendency to exclude temporary or non-standard workers from employee status, potentially leaving gig workers vulnerable in insolvency proceedings.

However, some other laws have treated platform workers as employees, an argument that bolsters the case for treating such platform workers as employees in IBC too.

Other Laws Deem Geographically Tethered Gig Workers and Casuals as Employees

Existing legislative and judicial frameworks increasingly recognize geographically tethered gig workers and casuals as employees or agents under certain circumstances. Notably, precedent exists for the treatment of platform workers as employees under specific legislation, such as the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act),* as well as agents under the *Consumer Protection Act, 2019*. While these rulings do not universally establish an employer-employee relationship in all cases, they provide vital direction, particularly under the POSH Act, where courts have discussed the principle of piercing the corporate veil. Furthermore, though Hon'ble Supreme Court has not pronounced any judgement on the subject of platform workers, the thinking of the Hon'ble court can be inferred on the basis of remarks in a related matter discussed hereinafter.

Ms. X v. ANI Technologies Private Limited 2019 [114]

In this case, a female passenger filed a complaint against ANI Technologies Pvt. Ltd. (Ola Cabs) in the Karnataka High Court after experiencing sexual harassment by an Ola driver. Ola's Internal

Complaints Committee (ICC) did not give cognizance to the complaint, contending that the driver was an independent contractor, not an employee.

The court held that the definition of "employee" under Section 2(f) of the POSH Act, 2013 is notably broad and includes "*a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name*".

Furthermore, the court pointed out that "employer" encompasses any person responsible for managing, supervising, and controlling the workplace, applying the "control test" to Ola Cabs. Ola imposed strict requirements on drivers, from device usage to service delivery, maintained the ability to terminate agreements without cause, and retained control over key aspects of the business, including fare regulation and operational procedures of device and service.

The court added that OLA cabs mandated 32 items that a driver had to strictly follow. These included restriction on driver on booking, deciding the route, having any conversation with passenger, prohibition on personal mobile usage while rendering the service etc. The revenue generated from the business was controlled by Ola cabs; the ride rates, payment/receipts, commission sharing, deduction, enhancement, change in rates, payment of statutory dues, disputes and payment of incentives.

The court reasoned that labels such as "driver-partner," "driver-subscriber," or "independent contractor" could be a façade designed to obscure the actual nature of the relationship which is required to be lifted and pierced. Ingenious drafting of deeds and documents as that of Subscription Agreement in this case will have to be viewed in the light of objectives of the POSH Act. This judgment is currently under appeal before the Division Bench.

Kavita S. Sharma v. Uber India Systems Pvt. Ltd. [115]
The complainant booked a cab via Uber Apps to travel to airport. The booking was confirmed, and a cab was allotted but due to the driver's delays and negligence she missed her flight. In the first instance the driver arrived late, delayed start by wasting time on a phone call, stopped for an unscheduled fuelling, and took a different route than specified.

The court awarded compensation to the complainant, finding Uber India liable for providing deficient services through its agent (the driver), whose negligence resulted in the loss. The driver, in this instance, was regarded as acting as Uber India's agent.

Hon'ble Supreme Court on Employment Practices
The Hon'ble Supreme Court has further addressed issues pertaining to the employment status of gig and casual workers in the case of *Jaggo vs. Union of India* [116] and *Bhartiya Kamgar Karamchari Mahasangh vs*. *Jet Airways* [117].

In this recent Supreme Court judgment of *Jaggo*, the Central Water Commission (CWC) engaged *Safaiwalis* and a *Khallasi/Mali* on a part-time basis for over a decade but refrained from making them permanent employees despite their long-standing and indispensable contribution. The Supreme Court sided with the workers, holding that such practices violate international labour standards, constitute unfair employment practices, and undermine justice and fairness. Though, gig workers were not part of the litigation, Court's remarked mentioned them while elucidating on temporary work practices.

"The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards".

The judgement in the *Bhartiya Kamgar* case was delivered post admission of Jet Airways into insolvency. Here, 169 workers engaged on fixed-term contracts as loaders, drivers, and operators contended that, after completing 240 days of service as per the Model Standing Order under Bombay Industrial Employment (Standing Orders) Rules, 1959, they were entitled to permanency, especially since the nature of their work was regular and permanent. The Trade Union, Bhartiya Kamgar Sena, had earlier given up the demand for grant of permanency by a settlement dated 2nd May 2002, wherein workers were given benefits *in lieu*. Jet Airways thus claimed that the workers are not entitled to permanency.

Hon'ble Supreme Court said that "*a workman who has worked for 240 days in an establishment would be entitled to be made permanent, and no contract/settlement which abridges such a right can be agreed upon, let alone be binding. The Act being the beneficial legislation provides that any agreement/contract/settlement wherein the rights of the employees are waived off would not override the Standing Orders*".

COSS PRECLUDES AN EMPLOYMENT RELATIONSHIP AND IS PRECARIOUS VIS-À-VIS SOCIAL BENEFITS

The COSS represents one of the recent legislative developments in India's labour law framework, though it remains pending notification. While the legislation appears, at first glance, to adopt a progressive stance towards gig economy workers, closer examination reveals provisions that systematically disadvantage this vulnerable workforce segment.

Section 151 of COSS establishes a hierarchical framework for claim priorities during insolvency proceedings, stating that "notwithstanding anything contained in any other law for the time being in force, any amount due under Chapters referred to in sub-section (1) shall constitute a charge on the assets of the establishment to which it relates and shall be paid in priority in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016."

The chapters encompassed within sub-section (1) include:

- *Chapter III:* Employee Provident Fund.
- *Chapter IV:* Employee State Insurance Corporation.
- *Chapter V:* Gratuity.
- *Chapter VI:* Maternity Benefit.
- *Chapter VII:* Employee Compensation.

Critically, this prioritisation framework deliberately excludes Chapter IX, which specifically addresses social security provisions for unorganised workers, gig workers, and platform workers. This exclusion constitutes a departure from global developments and jurisprudential principles and creates a two-tiered system of workers.

The Supreme Court of India has consistently maintained through multiple landmark judgments that workers possess fundamental entitlements to provident fund, pension fund, and gratuity benefits, which are expressly excluded from the definition of liquidation estate under insolvency proceedings. The position under IBC is codified in Section 36(4)(iii), which categorically states that "all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund" are excluded from liquidation estate calculations.

The COSS framework's departure from the established precedent, particularly evident in cases such as *Jet Airways Maintenance Engineers Welfare Association v. Ashish Chhawchharia & Ors* [118], and *State Bank of India vs. Moser Baer Karamchari Union & Anr.* [119], represents a concerning legislative regression that appears oblivious to the broader socio-economic implications of such discriminatory treatment.

GOVERNMENT STANCE ON GIG WORKERS IS CONTRARY TO OTHER NATIONS

The International Labour Organisation (ILO), during its 347th Session in March 2023, adopted a resolution to include standard-setting provisions for platform workers on the agenda of the 113th Session Conference scheduled for June 2025. In preparation for this initiative, the ILO distributed a

comprehensive preliminary report and questionnaire to member states on 31st January 2024, requesting responses by 31st August 2024. The consultation process yielded responses from 141 member states, 116 employers' organisations, and 195 workers' organisations [120].

The questionnaire comprised 81 comprehensive questions addressing various aspects of platform worker rights and protections. However, for the purposes of this analysis, i.e., granting the same status as workers in insolvency waterfall, the most pertinent questions relate to the recognition of employee status for platform workers and the establishment of robust social security frameworks to safeguard their interests as tabulated below in Figure 1.

Relevant Questions for Employee Status in Bankruptcy	**Indian Government**	**Aggregate Response from Members State**				**Indian Union Bodies**	
		Yes	**No**	**Other**	**Blank**	**INTUC**	**HMS**
Should the international labour Conventions and Recommendations apply to all workers, including digital platform workers, unless otherwise provided?	Other	113	24	3	1	Yes	Yes
Should each Member undertake measures to ensure the adequate classification of digital platform workers in relation to the existence of an employment relationship, based on the primacy-of-facts principle as set out in the Employment Relationship Recommendation, 2006 (No. 198), taking into account the specificities of work on or through digital labour platforms?	No	130	7	1	3	Yes	Yes
Should the measures adopted by Members concerning the determination of the existence of an employment relationship should not interfere with true civil and commercial relationships, while at the same time ensuring that digital platform workers in an employment relationship have the protection they are due?	No	128	8	3	2	Yes	Yes
Should the Members review at appropriate intervals and, if necessary, clarify and adapt the scope of relevant laws and regulations, in order to ensure the adequate classification of digital platform workers in relation to the employment relationship in the changing world of work?	No	124	16	0	1	Yes	Yes
Should each Member take measures to ensure that the remuneration payable to digital platform workers is adequate and includes, as appropriate, fair piece rates	Other	116	16	6	3	Yes	Yes
Should each Member take measures to ensure that the remuneration payable to digital platform workers is paid regularly, in legal tender and in full, in accordance with contractual obligations, national laws, regulations and collective agreements, and not unduly withheld?	Other	125	10	4	2	Yes	Yes
Should each Member take measures to ensure that digital platform workers enjoy social security protection on terms not less favorable than those applicable to workers generally?	No	127	9	2	3	Yes	Yes
Where the coverage of the national social security protection system is limited, should Members endeavor to progressively extend its scope so that it covers all digital platform workers in respect of the nine categories of benefits included in the Social Security (Minimum Standards) Convention, 1952 (No. 102)?	No	119	13	3	6	Yes	Yes

Figure 1. Extract from the questionnaire of the International Labour Organisation distributed to the member states in preparation for the 113th session of the conference.

A comparative analysis of responses reveals that India's governmental position significantly diverges from the mainstream international consensus among member states. This divergence becomes particularly concerning when contextualised within India's demographic dividend and the exponential growth trajectory of the gig economy workforce.

The failure to provide fundamental protections for gig workers during platform insolvency proceedings poses substantial risks to economic stability and social cohesion. Moreover, this approach fundamentally contradicts one of the core principles enshrined in the IBC's preamble: the imperative to "balance the interests of all stakeholders." The current legislative framework's exclusion of gig workers from priority protection mechanisms represents a failure to achieve this essential balance.

A LOWER PECKING ORDER IN CREDITOR HIERARCHY FOR GIG WORKERS WILL BE DETRIMENTAL TO THE INDIAN ECONOMY

As discussed earlier in this paper, projections for gig economy employment range from approximately 60 million workers by 2047 (lower estimate) to around 90 million workers by the end of this decade (upper estimate). Given the data-set anomalies underpinning the lower estimate, it is highly probable that actual figures will align more closely with the higher projection [121].

The rapid proliferation of digital labour platforms is likely to follow a predictable trajectory: initial expansion and heightened competition, followed by consolidation, with some platforms eventually facing insolvency [122]. As noted earlier, only about half of the graduates entering the labour market each year secure employment, and unemployment rates remain significant even among engineering and management graduates. The advent of artificial intelligence is expected to exacerbate this challenge, further reducing entry-level opportunities for educated youth. Concurrently, certain forms of existing gig work will likely be automated, intensifying wage pressures within the gig economy.

In such circumstances, the insolvency of a platform could have far-reaching implications if gig workers, positioned low in the creditor hierarchy, lose access to unpaid wages and social benefits. This would not only affect the workers directly but also generate broader economic repercussions. When platform workers are forced to deplete their personal savings due to non-payment in insolvency scenarios, the adverse effects can ripple through the wider economy. Evidence of such dynamics is already visible today, with wage levels in the sector remaining suppressed; these pressures would only worsen if even these diminished earnings go unpaid.

While it is acknowledged that the broader economic slowdown cannot be attributed solely to depressed wages, there is no direct causal relationship, wage suppression would remain as one of several contributing factors. Other factors include global macroeconomic headwinds, sluggish private sector capital expenditure [123], decelerating net foreign direct investment, and various additional structural challenges.

Although establishing a definitive cause-and-effect relationship is challenging, several potential adverse consequences of economic pressures at the lower end of the income pyramid can be identified:

- *Defaults on unsecured loans:* Elevated Gross Non-performing Assets (GNPA) and Special Mention Accounts (SMA) ratios negatively impact the banking sector and, by extension, the broader economy [124]. Micro unsecured loans are typically availed by the lowest-earning segments of society, which include a large proportion of gig workers. Defaults in this category are likely to increase in periods when gig workers are deprived of their rightful earnings in the event of a platform's insolvency.
- *Slowdown in consumption:* Recent reports indicate that most high-frequency economic indicators are showing single-digit growth, including sluggish performance in core sectors, slower growth in GST collections, and a deceleration in bank credit offtake [125].
- In the absence of rights to overdue wage payments, for gig workers, in a platform's insolvency, the consequent reduction in disposable income will reverberate through the economy, depressing demand for goods consumed by this segment and eroding profitability in associated manufacturing sectors.
- *Adverse State Finances:* Economic distress in society including gig workers often compels governments to resort to pre-election subsidies or "freebies" as a compensatory measure. While politically expedient, such measures exacerbate budget deficits, crowd out productive public investment, and contribute to deteriorating state finances and infrastructure [126].

- *Regression to agriculture:* There exists a critical threshold or an equilibrium point in a gig worker's livelihood; when expected earnings fall below this level, workers may opt to return to rural areas and engage in agriculture. Without adequate protections for workers in insolvency scenarios, this trend is likely to intensify. Even without factoring any insolvency effects, according to the Periodic Labour Force Survey (PLFS) 2023–24, the share of agriculture in total employment has increased whereas manufacturing and services employment has declined [127].

CONCLUSION

In August 2025, a bill to amend the IBC was introduced in the Lok Sabha. However, it does not include any provisions for platform workers and platform employees which would have benefited a large segment of India's workforce.

The broad definition of "workman" under the Industrial Disputes Act, coupled with the judiciary's commitment to social justice, provides a solid foundation for recognising geographically tethered gig workers as employees. International developments further strengthen this argument. To ensure equitable treatment, the IBC should explicitly recognise geographically tethered platform workers as "workmen," especially those demonstrating economic dependency on a single platform. This would involve:

- *Amending the IBC:* Incorporate a presumption of employment for platform workers, aligned with the EU Directive.
- *Judicial Guidance:* Courts should issue clear rulings affirming that gig workers performing regular, tethered services qualify as workmen. Moreover, rulings should lay guidelines to move beyond formal contract definitions and focus on substantive control and the nature of work performed.
- *Amending COSS:* The legislative stance warrants an immediate reconsideration to ensure equitable protection for all categories of workers in India's rapidly evolving labour market. The existing non-obstante clause in the legislation, will ensure priority over any conflicting provisions.
- *Amending the Corporate Insolvency Process Regulations:* Information Memorandum under Regulation 36 seeks to present data on workers, company & business overview, key contracts and value drivers. Changes may be made to compile such information after including the gig workers.
- *Clarifying Claim Processes:* Ensure gig workers can file claims as workmen, avoiding procedural errors like those in *Amit Kumar Pandey*.
- *Align with international trends:* UNCITRAL Model Law on Cross Border Insolvency (Model Law) was issued in 1997 [128]. At the time of writing this paper Model Law has been adopted by 60 jurisdictions. Though, platform economy is a recent phenomenon, in contrast, by end of 2026, at least 30 jurisdictions, if not more, would be treating platform workers at par with other workers.

Further, the responses from ILO member states for their 113th session showed that about 120 member states are in favour of granting equivalent status. India, historically, a leader in social justice, should not stand as an outlier in the international community's evolving consensus on platform worker rights.

Granting equivalent right to platform workers is in India's interest given its youthful workforce and growing dependence on the gig economy.

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