UNDEFINED, YET BOUND: FORCED ARBITRATION AND THE INDIAN GIG WORKER'S VANISHING DAY IN COURT

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ABSTRACT

This paper is about a clause, not a category. Its subject is the forced arbitration clause that platforms bury in the electronic, take-it-or-leave-it contracts they hand to gig workers, and the rigged procedure that clause unlocks. The worker's missing legal definition is the doorway, not the destination: because the Code on Social Security, 2020 names the "gig worker" and the "platform worker" without calling either an employee, the platform can recast a labour dispute as an ordinary contract dispute and route it into an arbitration the worker never meaningfully agreed to. The article's core claim is that this arbitration is not a neutral private court but a structurally biased one. It dissects the bias vector by vector, namely manufactured consent, the platform's unilateral appointment of its own arbitrator, the class-action waiver that forces every worker to fight alone, the repeat-player advantage that bends outcomes toward the platform, prohibitive cost, and a confidentiality that buries the platform's pattern of wrongdoing and kills precedent. It then asks whether such a clause lawfully ousts the jurisdiction of civil courts and labour fora when the dispute is, in substance, a labour dispute. Drawing on the United States, Canada, and the United Kingdom, and on the Uber and Lyft litigation record, the article advances an original claim it calls the enforceability paradox: India offers, on paper, the strongest doctrinal weapons of any compared jurisdiction against these clauses, yet its gig worker is the least protected in practice, because, undefined and without a collective remedy, the worker can never reach the shields the law already holds out. The article proposes a statutory definition that closes the doorway, a prohibition on pre-dispute forced arbitration that removes the abuse at its source, and a fair, opt-in, online dispute-resolution architecture for the disputes that remain.

Key Words: *- Gig economy; forced arbitration; misclassification; class-action waiver; Section 12(5); ouster of jurisdiction; Code on Social Security 2020; platform workers; access to justice; online dispute resolution.*

1. Introduction

The popular story of the gig economy is a story about freedom. New technology, it is said, has freed the worker from the rigid cage of employment and handed them the keys to flexible, autonomous work performed in "gigs."[1] Platforms repeat this narrative, and legislators, courts, and workers often believe it. In India the figures are striking. NITI Aayog counted 7.7 million gig workers in 2020-21 and projects 23.5 million by 2029-30,[2] while the Boston Consulting Group sees room for as many as 90 million such jobs over a decade.[3] Behind the optimism sits a colder reality. The same worker who is told they are an independent entrepreneur is also told, in the fine print of an electronic contract, that they may never sue the platform in a court of law.

This article is about that fine print. Its central concern is a worker who has been named but not defined, and who is nonetheless bound to arbitrate. The Code on Social Security, 2020 recognises the "gig worker" and the "platform worker" without conferring the status of employee on either.[4] That definitional silence is not a drafting accident; it is the hinge on which the whole problem turns. Because the worker is not an employee, the protective architecture of labour law does not reach them, and the platform is free to write the rules of dispute resolution as it pleases. The rule it writes, almost invariably, is forced arbitration coupled with a waiver of collective action.[5]

Three questions organise the analysis. First, how does the absence of a statutory definition of the gig worker as an employee allow platforms to impose forced arbitration through adhesion contracts, and how should India close that gap? Second, once a dispute reaches arbitration, how is the process biased against the worker, and does it impermissibly oust the jurisdiction of civil courts and labour fora? Third, what should India borrow from the United States, Canada, and the United Kingdom to regulate or prohibit forced arbitration against gig workers? Each question is answered, and each answer carries a concrete proposal. The article also defends an original

[1] Sarah M. Levine, Gig-Economy Myths and Missteps, 134 Yale L.J.F. 331, 331-32 (2025).
[2] NITI Aayog, India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work 3 (June 2022).
[3] Boston Consulting Grp., Unlocking the Potential of the Gig Economy in India (2021).
[4] Haini Tayal, Regulating the Gig Economy in India: How Secure Are Gig Workers?, 28 Supremo Amicus 1, 5-6 (2022).
[5] Charlotte Garden, Disrupting Work Law: Arbitration in the Gig Economy, 2017 U. Chi. Legal F. 205, 205-06 (2018).

thesis, the enforceability paradox, developed in Part 8: India holds the most powerful legal tools of any compared jurisdiction yet leaves its gig worker the least able to use them.

2. The Undefined Worker: Who Is the Indian Gig Worker?

2.1. Anatomy of the gig workforce

A gig worker, in plain terms, is a person who performs short, task-based work arranged through a digital platform, outside the traditional employer-employee relationship.[6] The Code on Social Security, 2020 captures this in three separate definitions. A "gig worker" is a person who earns from a work arrangement outside the conventional employer-employee relationship.[7] A "platform worker" is one who works through an online platform that connects them to customers,[8] and an "unorganised worker" is a home-based, self-employed, or wage worker in the unorganised sector.[9] The riders of Swiggy and Zomato, the drivers of Ola and Uber, and the home-service agents of Urban Company all live somewhere inside these overlapping labels.

The work is sold as liberation, namely the freedom to choose one's hours, routes, and rest days. For many that freedom is real and welcome. But it comes bundled with insecurity, namely volatile pay set unilaterally by an algorithm, long hours, the absence of paid leave or safety cover, and the ever-present threat of "deactivation" without notice or hearing.[10] The worker who is free in the morning may find their account switched off by evening, with no forum in which to ask why.[11]

2.2. The misclassification problem: "partners," not employees

The platform's favourite word is "partner," and the word performs legal work. By styling the rider a "delivery partner" rather than an employee, the platform places them outside statutes that speak only to employees, and so escapes the duties of minimum wage, provident fund, and the

[6] Bhanu Pratap, Arbitration Agreements in the Gig Economy: Protecting the Rights of Workers, 12(2) Indian J. Arb. L. 64, 64-65 (2024).
[7] Code on Social Security, No. 36 of 2020, § 2(35) (India).
[8] Id. § 2(61).
[9] Id. § 2(86).
[10] Atrijo Banerjee, Gig Workers Should Be Included Under the Industrial Disputes Act, The Leaflet (Apr. 22, 2023).
[11] Ananya Sharma, ADR in the Gig Economy: India's Forgotten Workers, Indian Legal Wing (Feb. 5, 2026).

rest.[12] The four new Labour Codes deepen, rather than dissolve, the difficulty. The Industrial Relations Code, 2020 applies to workers in an industrial establishment and does not reach the platform worker who has no fixed place of work.[13] The Occupational Safety, Health and Working Conditions Code, 2020 does not cover them,[14] and the Code on Wages, 2019 does not guarantee them a minimum wage.[15] Only the Code on Social Security names them, and even there it offers discretionary welfare rather than enforceable rights.[16]

Indian courts have long looked past labels to substance. The early test was one of supervision and control,[17] later widened into an integration or economic-reality inquiry that asks whether the worker is woven into the fabric of the enterprise and depends on it for their livelihood.[18] The holistic test in Workmen of Nilgiri Cooperative weighs control, tenure, the paymaster, the power of dismissal, and the nature of the work together.[19] Applied honestly, these tests would catch most platform workers, who depend on a single app for income, cannot freely refuse work without penalty, and are disciplined by the platform's rating machinery.[20] Other jurisdictions have done exactly this, namely the Californian ABC test in Dynamex[21] and the United Kingdom's purposive reading in the Pimlico Plumbers line.[22]

2.3. Why the vacuum matters for arbitration

The definitional vacuum is the platform's first and best line of defence, because it converts a labour question into a contract question. If the worker is merely a counterparty to a commercial contract, then the dispute-resolution clause in that contract governs, and the clause says arbitration.[23] The Ola partnership terms, for instance, refer disputes to a sole arbitrator appointed by Ola, seated in Bengaluru.[24] The worker who never bargained for that clause, and could not

[12] Tayal, supra note 4, at 4-5.
[13] Industrial Relations Code, No. 35 of 2020 (India); see Tayal, supra note 4, at 5.
[14] Occupational Safety, Health and Working Conditions Code, No. 37 of 2020 (India).
[15] Code on Wages, No. 29 of 2019 (India).
[16] Code on Social Security, No. 36 of 2020, §§ 109, 114 (India); see Tayal, supra note 4, at 5-6.
[17] Dharangadhara Chem. Works Ltd. v. State of Saurashtra, AIR 1957 SC 264 (India).
[18] Hussainbhai v. Alath Factory Thozhilali Union, (1978) 4 SCC 257 (India).
[19] Workmen of Nilgiri Coop. Mktg. Soc'y Ltd. v. State of T.N., (2004) 3 SCC 514, ¶ 38 (India).
[20] Ram Singh v. Union Territory, Chandigarh, (2004) 1 SCC 126 (India); Haldia Refinery Canteen Emps. Union v. Indian Oil Corp. Ltd., (2005) 5 SCC 51 (India).
[21] Dynamex Operations W., Inc. v. Superior Court, 416 P.3d 1, 35-40 (Cal. 2018).
[22] Pimlico Plumbers Ltd. v. Smith [2018] UKSC 29 (UK); see Banerjee, supra note 10.
[23] Garden, supra note 5, at 206.
[24] Ola Partners – Terms and Conditions, Ola Cabs, cl. on Governing Law & Dispute Resolution, quoted in Pratap,

have, is nonetheless bound by it. The undefined worker is thus a bound worker, and the binding happens through the very status ambiguity that the law has refused to resolve.

3. The Shield: Why Courts Are Out of Reach and Arbitration Steps In

3.1. The adhesion contract and manufactured consent

The platform contract is the paradigm adhesion contract, namely a standard form offered on a take-it-or-leave-it basis, with no scope for negotiation.[25] Two features of the electronic setting hollow out consent. First, the worker, often clicking through a dense agreement on a phone, may never notice the arbitration clause at all. Second, even a worker who reads it may lack the schooling to grasp that they are surrendering the right to a court.[26] Consent, in such conditions, is a fiction dressed as a signature.

Indian contract law is not blind to this. In Brojo Nath Ganguly, the Supreme Court struck down an unconscionable clause in a contract between parties of unequal bargaining power, holding that a party with no real choice cannot be held to the dotted line.[27] In Texco Marketing, the Court recently condemned one-sided standard-form contracts where freedom of contract is lost to the weaker party.[28] And Vidya Drolia accepts that where a contract is non-negotiated and party autonomy is weak, the legislature may step in to shield the weaker side.[29] Voluntariness is the bedrock of arbitration,[30] and a clause that lacks it sits on sand.

3.2. The cost and access barrier

Even setting consent aside, litigation is simply out of reach for a worker whose claim may be worth a few thousand rupees. To fight a deactivation or a clawback of wages through the civil courts is to spend more than the claim is worth, in money one does not have, over years one cannot wait. The empirical record from the United States, where this experiment is older, is sobering. Employees win only about one in five mandatory arbitrations, far below their rate in

supra note 6, at 66 n.2.
[25]Pratap, supra note 6, at 71-72.
[26]Jean R. Sternlight, Creeping Mandatory Arbitration: Is It Just?, 57 Stan. L. Rev. 1631, 1635 (2005).
[27]Central Inland Water Transp. Corp. v. Brojo Nath Ganguly, (1986) 3 SCC 156, ¶ 89 (India).
[28]Texco Mktg. Pvt. Ltd. v. TATA AIG Gen. Ins. Co. Ltd., (2023) 1 SCC 428, ¶ 10 (India).
[29]Vidya Drolia v. Durga Trading Corp., (2021) 2 SCC 1, ¶ 72 (India).
[30]Gary Born, International Commercial Arbitration § 1.02[A][2] (3d ed. 2021).

court,[31] and recover far less when they do win.[32] Arbitration, in this light, is less a faster path to justice than a quieter path away from it.

4. Inside the Black Box: How Forced Arbitration Is Biased Against the Worker

Suppose the worker surmounts every barrier and actually reaches arbitration. The forum that receives them is not a neutral private court; it is one the platform has designed, named, and paid for, and a forum built by one party tends to favour that party. The bias here is not incidental but engineered, and it operates at six joints, namely the appointment of the arbitrator, the waiver of collective action, the repeat-player relationship, the seat and its costs, the veil of confidentiality, and the cumulative effect by which the claim simply disappears. The abuse lies in their sum. This Part takes each joint in turn, because to call platform arbitration "biased" is easy, and to show exactly where and how it tilts is the harder and more useful task.

4.1. Unilateral appointment and Section 12(5)

The platform contract typically lets the platform choose the sole arbitrator, and Indian law treats that arrangement with deep suspicion. Section 12(5) of the Arbitration and Conciliation Act, 1996, read with the Seventh Schedule, makes a person whose relationship with a party falls within the listed categories ineligible to act as arbitrator, and the ineligibility cannot be waived except by an express agreement in writing after the dispute has arisen.[33] In TRF, the Supreme Court held that a person who is himself statutorily ineligible to act as arbitrator, there the managing director of a party, cannot validly nominate one either.[34] Perkins Eastman carried the logic to its conclusion, holding that any clause vesting the power of appointment in one interested party offends Section 12(5).[35] Bharat Broadband reaffirmed TRF and set aside an

[31] Katherine V.W. Stone & Alexander J.S. Colvin, The Arbitration Epidemic, Econ. Pol'y Inst. Briefing Paper No. 414, at 21-22 (Dec. 7, 2015) (reporting a 21.4% employee win rate in mandatory arbitration against 36.4% in federal court and 57% in state court).
[32] Id. at 22 (mean recovery, including zeros, of US$23,548 in arbitration against US$143,497 in federal court).
[33] Arbitration and Conciliation Act, No. 26 of 1996, § 12(5) & sch. 7 (India) (an arbitrator whose relationship with a party falls within the Seventh Schedule is ineligible; the bar may be waived only by an express post-dispute agreement).
[34] TRF Ltd. v. Energo Eng'g Projects Ltd., (2017) 8 SCC 377, ¶ 53 (India) (a person ineligible under § 12(5) cannot nominate the arbitrator).
[35] Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760, ¶¶ 20-28 (India) (a sole party's unilateral power to appoint the arbitrator is impermissible).

arbitrator the respondent's managing director had appointed.[36] A brief detour in Bhayana Builders, which had carved out an exception where parties, in their "commercial wisdom," agree to such a clause,[37] has since been overtaken; in 2024 a Constitution Bench held that unilateral appointment clauses in public-sector contracts violate the equal treatment of parties.[38] The gig contract is a weaker case still than the public contracts in this line. As Pratap shows, the cases that upheld asymmetric appointment, such as Voestalpine, at least offered the other side a broad panel to choose from, whereas the platform clause offers the worker nothing but the platform's nominee, and rests on a consent that is vitiated from the outset.[39] A clause that lets Ola pick Ola's judge is therefore, on its face, voidable; the difficulty, examined in Part 6, is that the worker can rarely afford to reach a court to say so.

4.2. The class-action and representative-action waiver

The deadliest term is the class-action waiver, which forces every worker to arbitrate alone. Its logic is pure arithmetic. When claims are small and victims many, the only rational way to sue is together; strip away aggregation and the claims do not shrink, they vanish, because, as Judge Posner observed, the realistic alternative to a class action is not many small suits but no suit at all, since only a lunatic or a fanatic sues for thirty dollars.[40] United States doctrine shows where this leads. AT&T Mobility v. Concepcion held that the Federal Arbitration Act preempts a state rule treating class-action waivers as unconscionable, even for small-value consumer claims.[41] American Express v. Italian Colors went further, enforcing a waiver even though the cost of proving the claim individually far exceeded any possible individual recovery, and narrowing the "effective vindication" doctrine to near nothing.[42] Epic Systems v. Lewis then shut the last door, holding that even federal labour law does not save a worker's right to proceed collectively

[36]Bharat Broadband Network Ltd. v. United Telecoms Ltd., (2019) 5 SCC 755, ¶ 20 (India) (reaffirming TRF and invalidating a unilaterally appointed arbitrator).
[37]Bhayana Builders Pvt. Ltd. v. Oriental Structural Eng'rs Pvt. Ltd., 2018 SCC OnLine Del 7634, ¶ 32 (India) (Delhi High Court permitting unilateral appointment by commercial agreement).
[38]Central Org. for Ry. Electrification v. ECI-SPIC-SMO-MCML (JV), 2024 SCC OnLine SC 3219 (India) (Constitution Bench: unilateral appointment clauses offend the equality of the parties).
[39]Bhanu Pratap, supra note 6, at 67-71 (distinguishing the panel cases such as Voestalpine and arguing that the Ola clause, which simply names the platform's appointee, is hit by § 12(5) and void for vitiated consent).
[40]Carnegie v. Household Int'l, Inc., 376 F.3d 656, 661 (7th Cir. 2004) (Posner, J.) (without aggregation, low-value claims are not litigated individually but abandoned).
[41]AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 350-52 (2011) (FAA preempts California's unconscionability rule against class waivers).
[42]Am. Express Co. v. Italian Colors Rest., 570 U.S. 228, 233-39 (2013) (a class waiver is enforceable even where individual arbitration is economically irrational).

against such a waiver.[43] Garden's study of fourteen gig contracts exposes the real motive. Platforms do not even want class arbitration; they prefer class litigation to it, and draft anti-severability clauses so that any surviving collective claim is pushed back to court rather than aggregated before an arbitrator.[44] That ranking gives the game away: the waiver is not a quest for arbitral efficiency but a device to destroy aggregation itself. For the Indian worker the wound is deeper, because India has no representative-action mechanism of the kind that lets American workers sue on the state's behalf, so the only collective route is the very labour machinery the clause is built to bypass.[45]

4.3. The repeat-player tilt, the closed door, and the vanishing claim

Three further joints are best seen together, because together they make the worker's defeat statistical. First, the platform is a repeat player. It appears before the same roster of arbitrators again and again, while the worker appears once, if ever, and the numbers track the imbalance precisely. In a study of 2,802 mandatory employment arbitrations decided between 2003 and 2014, the employee's chance of winning fell from 17.9 percent at an employer's first appearance before a given arbitrator to 4.5 percent after that employer had appeared before the same arbitrator twenty-five times.[46] The arbitral bench compounds the tilt, being drawn disproportionately from the employer's side of the bar; the same study found that a large majority of employment arbitrators are men, almost all are white, and most have at some point acted as counsel for employers.[47] Second, the door to the public is closed. Arbitration is private by design, its awards are unpublished and bind no one beyond the parties, and the twin harms of the system, as Sternlight puts it, are the absence of real consent and the absence of public scrutiny.[48] Because awards set no precedent, the disciplining sunlight of the open court never falls on the platform's conduct, and a company may lose quietly a hundred times yet keep its

[43]Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612, 1632 (2018) (the National Labor Relations Act does not render class-action waivers in employment arbitration unenforceable).
[44]Charlotte Garden, supra note 5, at 213-15 (gig agreements rank individual arbitration first, class litigation second, and class arbitration last, using anti-severability clauses to bar aggregated arbitration).
[45]Pratap, supra note 6, at 66-67 (the only collective recourse for Indian gig workers lies in the labour fora the arbitration clause seeks to avoid).
[46]Katherine V.W. Stone & Alexander J.S. Colvin, supra note 31, at 23 (employee win rate falling from 17.9% to 4.5% as the same employer reappears before the same arbitrator).
[47]Id. at 19-20 (74% of employment arbitrators male, 92% white, and a majority having represented employers).
[48]Jean R. Sternlight, supra note 26, at 1635 (mandatory arbitration is objectionable for two reasons, lack of consent and lack of public scrutiny).

clause, since no precedent forms and no class can assemble; the confidential forum thus lets the firm hide its pattern of wrongdoing and dodge accountability.[49] Third, these features compound into disappearance. Because lawyers work on contingency, and because arbitration depresses both win rates and recoveries, plaintiffs' attorneys accept arbitration-bound cases at roughly half the rate of court-bound ones, 8.1 percent against 15.8 percent.[50] The consumer data are starker still: the Consumer Financial Protection Bureau found that consumers filed only a few hundred arbitrations a year against tens of millions eligible for class relief, and that arbitration coupled with class waivers eliminated up to ninety-eight percent of claims that would otherwise have been brought.[51] The bias, in the end, is not merely that the worker is likely to lose the arbitration, but that the rational worker, knowing all this, never files at all. The clause does not defeat the claim; it disappears it.

5. Case Studies and the Evidence

5.1. The American laboratory: Uber, Lyft, and the discounted claim

The United States has run this experiment longest, and its docket is a warning. In Berwick v. Uber, a California driver who persuaded the Labor Commissioner that she was an employee recovered just US$4,152 in expenses, a sum that captures how small the individual stake usually is.[52] The larger battles were fought as class actions precisely because individual claims were too small to matter. In Cotter v. Lyft, about 163,000 California drivers alleged misclassification; the first settlement of US$12.25 million was rejected as too low, and even the approved US$27 million, roughly US$150 a driver, reclassified no one.[53] In O'Connor v. Uber, some 385,000 drivers shared an US$84 million proposed fund, about US$218 each, of which a token US$1 million was earmarked for public-enforcement penalties the plaintiffs valued near US$1 billion; the court refused the deal.[54]

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[49]Note, The Market Participant Doctrine and Forced Arbitration, 137 Harv. L. Rev. 1359, 1362 (2024) (confidential arbitration enables firms to suppress claims, escape public accountability, and eliminate precedent).
[50]Stone & Colvin, supra note 31, at 24-25 (attorneys accept 8.1% of arbitration-bound cases against 15.8% of litigation-bound cases).
[51]Note, supra note 49, at 1362 (CFPB data: roughly 411 consumer arbitrations a year against more than 30 million eligible for class relief, with up to 98% of claims eliminated).
[52]Berwick v. Uber Techs. Inc., No. 11-46739 EK (Cal. Lab. Comm'r 2015); see Garden, supra note 5, at 211.
[53]Cotter v. Lyft, Inc., 193 F. Supp. 3d 1030, 1033 (N.D. Cal. 2016); see Garden, supra note 5, at 222-24.
[54]O'Connor v. Uber Techs., Inc., 201 F. Supp. 3d 1110, 1116, 1133-35 (N.D. Cal. 2016).

The lesson is not in any single number but in the mechanism. Individual arbitration clauses depress the settlement value of even strong class claims, because everyone knows a court will probably enforce the clause and scatter the class into solitary, sub-economic arbitrations.[55] The aggregate evidence confirms what the settlements suggest. Comparing 1,213 arbitrations with court data, Stone and Colvin found that employees won 21.4 percent of mandatory arbitrations against 36.4 percent in federal court and 57 percent in state court, that the median arbitral award was a fraction of the judicial one, and that the mean recovery across all cases, wins and losses together, was US$23,548 in arbitration against US$143,497 in federal court and US$328,008 in state court.[56] The worker's claim, in short, is not denied so much as discounted into insignificance, and the discount is the whole purpose of the clause.

5.2. The Indian frontline: pay cuts, deactivation, and the courthouse queue

India's frontline tells the same story in a different accent. Zomato cut its per-delivery incentive from twenty rupees to eighteen, and then to fifteen during the pandemic, without consulting the riders who absorbed the loss.[57] Ola and Uber drivers have struck repeatedly over collapsing fares and unsafe hours, having no forum in which to be heard short of the street.[58] When the workers turned to court, they came collectively. In Indian Federation of App-Based Transport Workers v. Union of India, a petition asks the Supreme Court to recognise gig workers as unorganised workers entitled to social security, an effort to win through public adjudication the status the contract denies.[59] And in Shripal v. Nagar Nigam, Ghaziabad, the Court protected long-serving daily-wagers from precarious, fictitious contracts, reasoning that travels easily to platform work.[60]

The contrast is the point. The American worker had a forum and found it discounted; the Indian worker often has no forum at all, because the arbitration clause stands between them and the labour courts, while the strike stands in for the hearing they cannot get. The most disquieting

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[55]Garden, supra note 5, at 222-25; see Mohamed v. Uber Techs., Inc., 836 F.3d 1102 (9th Cir. 2016) (enforcing Uber's clause).
[56]Stone & Colvin, supra note 31, at 21-22 (win rates of 21.4% in arbitration, 36.4% in federal court, and 57% in state court; mean recovery including zeros of US$23,548, US$143,497, and US$328,008 respectively).
[57]Tayal, supra note 4, at 3-4.
[58]Pratap, supra note 6, at 66 (recording indefinite strikes over long hours and meagre incomes).
[59]Indian Fed'n of App-Based Transp. Workers (IFAT) v. Union of India, W.P. (C) No. 1068 of 2021 (India).
[60]Shripal v. Nagar Nigam, Ghaziabad (India) (decided Jan. 31, 2025); see Sharma, supra note 11.

cases involve the most vulnerable users of platform services, namely children and the elderly transported by app-based drivers, whose safety disputes would be buried in confidential arbitration.[61]

6. Ouster of Jurisdiction: Does Forced Arbitration Close the Courthouse Door?

If the worker is in truth an employee, a deeper objection arises: the arbitration clause may be trying to oust a jurisdiction that the parties were never free to contract away.

6.1. The non-arbitrability of labour disputes

Not every dispute may be sent to arbitration. Booz Allen held that rights in rem, and disputes reserved by law to special fora, fall outside the arbitral domain,[62] and Vidya Drolia refined the inquiry into a four-fold test that excludes matters the sovereign has reserved for public adjudication.[63] Labour disputes have repeatedly been held to be such matters. In Kingfisher Airlines, the Bombay High Court held that disputes under the Industrial Disputes Act, 1947 are not arbitrable, because the Act creates special labour fora for strong public-policy reasons.[64] The Karnataka High Court reached the same conclusion in Rajesh Korat, treating the Industrial Disputes Act as a self-contained code the Arbitration Act cannot displace.[65] The Act reserves adjudication to conciliation officers, labour courts, and tribunals,[66] a scheme a private clause cannot rewrite.[67]

Here lies the irony. If platform workers are employees, their disputes are non-arbitrable, and the clause is void from the start. The platform's defence is precisely to deny that they are employees, which loops back to the definitional vacuum of Part 2. The ouster of jurisdiction thus succeeds only because the status question is left unanswered.

6.2. The kompetenz-kompetenz trap, and a way around the ouster

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[61]Levine, supra note 1, at 333-35; Note, supra note 49, at 1374-77.
[62]Booz Allen & Hamilton Inc. v. SBI Home Fin. Ltd., (2011) 5 SCC 532, ¶¶ 35-38 (India).
[63]Vidya Drolia, supra note 29, ¶¶ 42-47.
[64]Kingfisher Airlines Ltd. v. Capt. Prithvi Malhotra, 2013 SCC OnLine Bom 150, ¶¶ 28-33 (India).
[65]Rajesh Korat v. Innoviti Embedded Solutions Pvt. Ltd. (Kar. H.C. 2017) (India); see Nankee Arora, Mandatory Arbitration Clauses: A Threat to Labour in India?, IndiaCorpLaw (Aug. 7, 2023).
[66]Industrial Disputes Act, No. 14 of 1947, §§ 7, 7A, 10, 10A (India).
[67]Arora, supra note 65 (two High Courts holding labour disputes non-arbitrable on public-policy grounds).

There is a procedural sting in the tail. Under Section 16 of the Act, the tribunal rules on its own jurisdiction,[68] and Article 5 of the Model Law counsels that courts should not intervene except where the law allows.[69] So the worker who protests, "I am an employee and cannot be made to arbitrate," is often told to make that very argument to the arbitrator, namely to the forum whose authority they dispute, after paying to get there. That is the trap: the cheapest way to test the clause is the one the clause forecloses. Yet the trap is not airtight. As Sharma argues, minimal intervention must be balanced against equity, and a court should set aside a clause that causes manifest prejudice rather than rubber-stamp it.[70] Vidya Drolia supplies the doctrinal key, holding that a court may refuse reference at the threshold where the arbitration agreement or claim is, on a prima facie view, non-arbitrable or void.[71] For the gig worker, that gatekeeping is the whole ballgame, the difference between a real remedy and an illusory one.

Comparative law offers a second, more creative escape from the ouster. In the United States, where the Federal Arbitration Act preempts most state attempts to limit arbitration,[72] scholars have revived the market-participant doctrine, under which the State, when it acts as a buyer rather than a regulator, may decline to contract with firms that force arbitration on the workers who deliver public services.[73] The doctrine turns on a clean line between the State as sovereign and the State as market actor.[74] For India, where governments increasingly procure transport and delivery through platforms, the lesson transfers cleanly: a State can refuse, through its purchasing power, to subsidise forums that close the courthouse door, and it can do so without ever fighting a constitutional preemption battle.

7. The Comparative Mirror: United States, Canada, United Kingdom

7.1. The United States: a cautionary tale

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[68]Arbitration and Conciliation Act, No. 26 of 1996, § 16 (India) (the arbitral tribunal may rule on its own jurisdiction).

[69]UNCITRAL, Model Law on International Commercial Arbitration art. 5 (1985, amended 2006) (no court shall intervene except as provided).

[70]Udian Sharma, Independence and Impartiality of Arbitral Tribunals, 9(1) Indian J. Arb. L. 121, 128 (2020) (minimal judicial intervention must be balanced against equity).

[71]Vidya Drolia, supra note 29, ¶ 72 (courts may decline reference where the agreement is ex facie void or the dispute non-arbitrable).

[72]Katherine V.W. Stone & Alexander J.S. Colvin, supra note 31, at 7-9 (the Supreme Court's expansive reading of the FAA preempts state efforts to restrict arbitration).

[73]Note, supra note 49, at 1374-77 (states may use procurement to bar forced arbitration by their service providers).

[74]Id. at 1359-61; see Wis. Dep't of Indus., Lab. & Human Rels. v. Gould Inc., 475 U.S. 282, 289-90 (1986) (a State acting as a market participant is not subject to the same preemption as a regulator).

The United States is the warning, not the model. A 1925 statute meant for merchant disputes has been read, decade upon decade, into a sweeping policy favouring arbitration.[75] The Court has pushed employment and civil-rights claims into arbitration,[76] upheld class waivers in Concepcion[77] and Italian Colors,[78] and, in Epic Systems, held that labour law does not save the worker's right to proceed collectively.[79] The National Labor Relations Board's contrary D.R. Horton rule was ultimately overridden.[80] Reform has come only in slices, namely the 2022 Act ending forced arbitration of sexual-assault and harassment claims,[81] while the broader Forced Arbitration Injustice Repeal Act remains stalled.[82] The American experience teaches India what to avoid, namely a judicially manufactured policy that swallows worker protection whole.

7.2. Canada: Heller and the unconscionability brake

Canada shows the brake. In Uber Technologies Inc. v. Heller, the Supreme Court of Canada refused to enforce an arbitration clause that required an Ontario driver to arbitrate in the Netherlands at a filing cost of about US$14,500, a sum dwarfing any realistic claim.[83] The Court found the clause unconscionable, citing the gross inequality of bargaining power and the practical impossibility of access.[84] Heller is the comparative high-water mark, because it lets a court refuse a clause at the threshold rather than sending the worker into the very forum they challenge.

7.3. The United Kingdom: substance over form

The United Kingdom attacks the root, namely classification. In Uber BV v. Aslam, the Supreme Court looked past the contract's label and held Uber drivers to be "workers" entitled to the minimum wage and paid leave, stressing that the very inequality which lets an employer dictate

[75]Southland Corp. v. Keating, 465 U.S. 1, 15-16 (1984).
[76]Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 23 (1991); Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 109 (2001).
[77]Concepcion, supra note 41, at 352.
[78]Italian Colors, supra note 42, at 233-39.
[79]Epic Sys. Corp. v. Lewis, supra note 43 (the NLRA does not defeat class-action waivers in employment arbitration).
[80]D.R. Horton, Inc., 357 N.L.R.B. 2277, 2277-80 (2012); see Garden, supra note 5, at 226-28.
[81]Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, Pub. L. No. 117-90, 136 Stat. 26 (2022) (codified at 9 U.S.C. §§ 401-402).
[82]Forced Arbitration Injustice Repeal Act, H.R. 963, 117th Cong. (2022).
[83]Uber Techs. Inc. v. Heller, 2020 SCC 16, ¶¶ 1-5 (Can.).
[84]Id. ¶¶ 70-98.

terms is the reason statutory protection exists.[85] Pimlico Plumbers applied the same substance-over-form reasoning.[86] Parallel rulings in the Netherlands, Spain, and Italy confirm a European drift toward protection.[87] If the worker is correctly classified at the outset, the forced-arbitration problem shrinks, because protective statutes and their dedicated fora come back into play.

8. The Enforceability Paradox: India's Hollow Shield

This article's central and original claim can now be stated. Place the jurisdictions side by side and a paradox appears. On paper, India offers the strongest doctrinal protection of any of them. A unilateral-appointment clause is voidable under Section 12(5), TRF, and Perkins Eastman.[88] A labour dispute may be wholly non-arbitrable under Kingfisher Airlines and Rajesh Korat.[89] The United States, by contrast, enforces the very clauses India would void,[90] and even Canada and the United Kingdom protect the worker only after hard-fought litigation.[91]

Yet the Indian gig worker is, in practice, the least protected of the lot, and the reason is the definitional vacuum. Being undefined as an employee, the worker cannot invoke the non-arbitrability of labour disputes; being unfunded and without a class mechanism, they cannot afford to challenge the clause at all; and being routed first to the tribunal by kompetenz-kompetenz, they must argue their case to the forum they dispute.[92] Heller at least reached a Canadian court; Aslam at least litigated his status to the United Kingdom Supreme Court.[93] The Indian worker, holding the sharpest legal sword, has no arm free to lift it. India's shield is not weak; it is hollow, powerful in theory and unreachable in fact. That, this article submits, is the problem reform must solve, namely not the absence of doctrine but the absence of access.

9. The Way Forward: Define the Worker, Disarm the Clause

9.1. Define the worker

[85] Uber BV v. Aslam [2021] UKSC 5, ¶¶ 71-87 (UK).
[86] Pimlico Plumbers, supra note 22.
[87] Tayal, supra note 4, at 6.
[88] Pratap, supra note 6, at 67-69; see Perkins Eastman, supra note 35; TRF, supra note 34.
[89] Kingfisher Airlines, supra note 64; Rajesh Korat, supra note 65.
[90] Concepcion, supra note 41; Italian Colors, supra note 42; Epic Sys., supra note 43.
[91] Heller, supra note 83; Aslam, supra note 85.
[92] IFAT, supra note 59 (status question still pending before the Supreme Court).
[93] Heller, supra note 83, ¶ 4; Aslam, supra note 85, ¶ 76.

Every thread leads back to definition, so reform must begin there. Parliament should give the gig and platform worker a substantive statutory status, not the hollow nomenclature of the Code on Social Security.[94] The cleanest path is a rebuttable presumption of employment, displaced only if the platform proves the worker's independence through a codified test on the lines of the ABC test in Dynamex,[95] or a purposive "worker" category on the Aslam model that sits between employee and contractor.[96] Once defined, the worker inherits the protective fora that make non-arbitrability bite, and the platform's first line of defence falls.

9.2. Prohibit pre-dispute forced arbitration; allow post-dispute opt-in

India should prohibit pre-dispute arbitration agreements imposed on gig workers, much as the United States now bars them for one category of claim and as the stalled Forced Arbitration Injustice Repeal Act would do generally.[97] A clause signed before any dispute exists, by a party with no power to refuse it, carries no real consent and should be unenforceable per se, a conclusion Heller's unconscionability analysis supports.[98] Arbitration should remain available, but only after a dispute arises and only if the worker freely opts in. Pairing prohibition with a rights floor, namely a minimum wage, notice before deactivation, and a right to reasons, ensures the worker has something worth vindicating.

9.3. Neutral appointment, online dispute resolution, and a standing forum

Where post-dispute arbitration does occur, three safeguards should be mandatory. First, neutral appointment, so that no platform ever picks its own judge; Section 12(5) and the Schedules already supply the standard.[99] Second, transparency and reasoned, accessible awards, with opt-out and delegation clauses regulated so arbitrability is not weaponised against the worker.[100] Third, online dispute resolution, now recognised by the Mediation Act, 2023, which can deliver fast, low-cost, location-neutral hearings suited to a worker who cannot travel or wait.[101] A

[94]Code on Social Security, No. 36 of 2020, §§ 2(35), 2(61) (India).
[95]Dynamex, supra note 21; see Tayal, supra note 4, at 7.
[96]Aslam, supra note 85.
[97]Forced Arbitration Injustice Repeal Act, supra note 82.
[98]Heller, supra note 83, ¶¶ 70-98.
[99]Arbitration and Conciliation Act, No. 26 of 1996, § 12(5) & schs. 5, 7 (India).
[100]Jill I. Gross, The Uberization of Arbitration Clauses, 9 Y.B. on Arb. & Mediation 43, 60-61 (2017); see Pratap, supra note 6, at 75-76.
[101]Mediation Act, No. 32 of 2023 (India); see New Era ADR, The Gig Economy Needs a New Era of Arbitration

standing tripartite body, on the model of the United Kingdom's ACAS, Singapore's tripartite mechanism, or Australia's Fair Work Commission, could host these proceedings and monitor platform conduct.[102]

9.4. The states have moved first

The most hopeful signals come from the states. Rajasthan's Platform Based Gig Workers (Registration and Welfare) Act, 2023 was the first in India to register platform workers and create a welfare board and fund,[103] and Karnataka has followed with its own gig-worker welfare measure,[104] with Telangana and others drafting along similar lines. These laws still focus on welfare rather than dispute resolution, and none yet tackles forced arbitration head-on. They are, however, proof that the political will exists, and the natural next step is to fold a prohibition on forced arbitration and a neutral, opt-in forum into this emerging state architecture, learning from the transparency duties of the European Union's platform-work reforms.[105]

10. Conclusion

The Indian gig worker stands at a strange crossroads. The law has noticed them enough to name them, but not enough to define them, and into that half-light the forced arbitration clause has quietly moved, closing the courthouse door before the worker even knows it was open. This article has tried to show that the clause is not a neutral choice of forum but a structurally biased instrument, namely one built on manufactured consent, unilateral appointment, class waivers, the repeat-player advantage, and a secrecy that buries wrongdoing, and that, where the worker is truly an employee, it attempts an ouster of a jurisdiction the parties could never lawfully surrender.

The deeper finding is the enforceability paradox. India already holds the strongest doctrinal tools of any compared jurisdiction yet leaves its gig worker the least able to use them. The cure is not to import new doctrine but to make the existing shield reachable, by defining the worker, prohibiting pre-dispute forced arbitration, and building a fair, opt-in, online forum on the

(Aug. 24) (online dispute resolution as a fairer, lower-cost forum).

[102]Sharma, supra note 11; Tayal, supra note 4, at 7.

[103]Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (India).

[104]Karnataka Platform Based Gig Workers (Social Security and Welfare) Ordinance, 2025 (India).

[105]Sharma, supra note 11 (EU Platform Work Directive and the Fairwork India ratings).

foundation the states have begun to lay. The United States warns of what happens when courts let arbitration swallow rights;[106] Canada and the United Kingdom show that classification and unconscionability can hold the line;[107] and India's own courts, in Vidya Drolia and IFAT, have left the door ajar.[108] Millions of workers are waiting on the other side of it. The task now is to let them in.

[106] Stone & Colvin, supra note 31, at 30-31.
[107] Heller, supra note 83; Aslam, supra note 85.
[108] Vidya Drolia, supra note 29; IFAT, supra note 59.