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## **WHEN THE GIG IS UP: PROTECTING GIG WORKERS' RIGHTS IN CORPORATE INSOLVENCIES**

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### **ABSTRACT**

The gig economy has rapidly embedded itself in India's urban and semi-urban landscapes, absorbing underutilised labour and creating opportunities for workers with limited formal skills. While quick commerce platforms have expanded access to income and operate within a legal grey space which excludes gig workers from traditional labour protections. This exclusion becomes particularly acute in cases of corporate insolvency, where gig workers classified as "partners" or independent contractors are denied preferential claims available to employees under the Insolvency and Bankruptcy Code, 2016. As a result, thousands risk losing livelihoods without recourse to unpaid dues or severance benefits when platforms collapse. The article explores the vulnerabilities faced by gig workers in insolvency proceedings, examining gaps in the IBC alongside structural inequities in the platform model. Ultimately, the protection of gig workers in corporate insolvencies is not only a matter of economic justice but also of constitutional rights under Articles 14 and 21. Meaningful reform must balance worker security with platform sustainability, fostering a resilient and equitable gig economy in India.

## I. Introduction

The gig economy has deeply embedded itself at every street corner and in the day to day lives of individuals living in urban areas. Services such as Urban Company, Swiggy, Uber and numerous others have only recently entered the Indian market, which is at a nascent stage of development, yet have managed to create a market of services which was unexplored previously.

With India's evergreen population, there is a significant chunk of youth which finds itself unemployed with limited work prospects. Gig work shines through as a beacon to this demographic - with its minimal investment and education requirements, it provides for sustenance of the individual depending upon performance. This blog aims to discuss a lacuna in this app-driven economy which is the protection of the gig workers if the company files for insolvency or becomes insolvent.

## II. The Gig Economy: An Overview

One of the most significant contributions of the gig economy is its ability to absorb the labour force which has remained underutilised. For example, platforms like Zomato and Uber have created income avenues for workers with limited skills, while freelance platforms offer opportunities to those in niche and high skill industries. The dual absorption makes the gig economy a critical mechanism for reducing unemployment in urban and semi urban areas.

The gig economy additionally has also empowered marginalised groups. Women, who bear the brunt of cultural and logistical barriers to participating in full time work find the flexibility offered by gig roles, enabling them to enter the workforce and find their own footing. It enables individuals in tier 2 and tier 3 cities to compete on a global scale without migrating to overpopulated tier 1 cities.<sup>1</sup>

Despite its growing significance, the gig economy operates in a legal greyspace in India. Gig workers are neither recognised as traditional employees nor as self employed professionals, placing them outside the ambit of labour designed to protect worker's rights. This lack of legal recognition exacerbates vulnerabilities, exposing workers to inconsistent earnings, lack of job

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<sup>1</sup> Indian School of Business, *India's Gig Economy: Challenges, Opportunities & The Future*, Bharti Institute of Public Policy, (Sept. 3, 2024), <https://blogs.isb.edu/bhartiinstitute/2024/09/03/indias-gig-economy-challenges-opportunities-the-future/> (last visited Jan. 14, 2025).

security and the absence of basic protections such as minimum wages, social securities or grievance redressal mechanisms.<sup>2</sup>

The code on Social Security, 2020, introduced by the Indian government is a step in the right direction, as it acknowledges gig and platform workers for the first time. The code envisions extending social security benefits such as health insurance, old age protection and maternity benefits to these workers. However, the implementation of these provisions remains a distant dream, hindered by the lack of specific rules, clear funding mechanisms and the unwillingness of platforms to share accountability.<sup>3</sup>

Additionally, platforms often sidestep responsibility by classifying workers as “partners”, a legal sleight of hand which excludes them from employee benefits.

The way forward necessitates a balanced approach, one which protects workers’ rights without stifling innovation. Policymakers must address the systemic issues plaguing this sector, such as the lack of grievance mechanisms, income instability and exclusion from labour welfare laws, while ensuring that companies can continue to innovate and expand.

### **III. Corporate Insolvency: Legal Frameworks**

Corporate insolvency is a wildly complex process involving many creditors and the defaulting company. The Insolvency and Bankruptcy Code, 2016 (IBC) revolutionised India’s approach to corporate insolvency and restructuring, providing a unified framework for resolving distressed entities.

#### **Employee Protections Under the IBC**

Under the IBC, employees of insolvent companies hold preferential claims to unpaid wages for a period of up to 24 months preceding the initiation of CIRP. Section 53 of the code ranks employees just below secured creditors, ensuring some level of protection during liquidation.

For instance, if a ride hailing platform like Ola or Uber were to file for bankruptcy, its drivers would have no recourse to recover pending payments for rides completed. Their status as

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<sup>2</sup> *Id.*

<sup>3</sup> Nyaaya, *The Law for Gig Workers in India*, Nyaaya, <https://nyaaya.org/guest-blog/the-law-for-gig-workers-in-india/> (last visited Jan. 14, 2025).

“partners” rather than employees effectively strips them of any protection under insolvency laws, leaving them at the mercy of market forces.

Unlike formal employees, gig workers are not entitled to wage claims or prioritised payouts in the event of a company’s insolvency. Their classification as “partners” or “contractors” denies them the status of employees, effectively leaving them at the mercy of platform companies during financial crises.<sup>4</sup>

For example, the insolvency of a gig based platform can abruptly cut off livelihoods of thousands of workers leaving no recourse for them to claim unpaid dues or severance benefits. Such exclusions not only highlight systemic inequities but also underline the absence of legal recognition for gig workers as stakeholders in the insolvency framework.<sup>5</sup> The economic exclusion of gig workers from insolvency frameworks presents significant challenges, considering that gig workers contribute an estimated 1.25% of India’s GDP.<sup>6</sup>

#### ***IV. Challenges for Gig Workers in Insolvency Cases***

##### **a. Legal Gaps**

While employees of insolvent companies are granted preferential treatment under Section 53 of the IBC, gig workers fall entirely outside its scope. This is because they are not recognised as employees under Indian labour laws. As a result they have no legal standing to claim unpaid wages or severance benefits during insolvency proceedings.

The exclusion of gig workers from insolvency protections also has broader implications for India’s labour market. As more and more workers join the gig economy, these vulnerabilities risk becoming systemic which undermines the social and economic stability of a significant portion of the workforce. The absence of legal safeguards for gig workers could discourage talent from entering the sector, affecting its long term growth and sustainability.<sup>7</sup> These

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<sup>4</sup> Sharma VK & Binu N, *Evaluation of Clean Slate Theory in Insolvency & Bankruptcy Code*, Int’l J. Law, 6(5), 84-88 (2020), <https://www.lawjournals.org/assets/archives/2020/vol6issue5/6-4-92-997.pdf>.

<sup>5</sup> Kumar PK, *Gig Workers: Challenges and Legal Recognition in India*, Int’l J. Multidiscip. Res., 6(2), 1-10 (2024), <https://www.ijfmr.com/papers/2024/2/15836.pdf>.

<sup>6</sup> NITI Aayog, *India’s Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work*, (June 25, 2022), [https://www.niti.gov.in/sites/default/files/2022-06/25th\\_June\\_Final\\_Report\\_27062022.pdf](https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf).

<sup>7</sup> Dr. G. Yoganandham, *Challenges and Opportunities for Women in India's Gig Economy: Future Innovations, Infrastructure, and Strategies for Informal Workers*, JuniKhyat (2024),

significant disruptions can be accounted as violations of the workers' fundamental right to equality under article 14 and right to livelihood under article 21.

Additionally, the lack of clear legal frameworks for gig workers raises questions about India's ability to adapt to evolving labour market dynamics. Globally, countries like the UK and Spain have introduced legislation to reclassify gig workers as employees or grant them partial benefits. India, in contrast, continues to lag in providing even basic protections to this workforce, despite its growing reliance on gig platforms for economic growth.

### **b. Economic Vulnerability**

Gig workers, despite being hailed as the backbone of India's growing financial digital economy, operate in a precarious environment marked by financial instability and uncertainty. This lack of protection is particularly stark during insolvency cases, where gig workers are excluded from wage claims or severance benefits.

Take the example of a food delivery platform facing financial distress, its collapse could leave thousands of delivery executives, for many of which sole breadwinners could suddenly become unemployed with no recourse to recover unpaid dues or sure alternative income. For a population which lives paycheck-to-paycheck, even short term disruptions in income can result in catastrophic consequences which may create an inability to pay for essentials like rent, utilities or healthcare.<sup>8</sup>

The economic vulnerability is compounded by the absence of savings among gig workers. A 2022 NITI aayog report highlighted that most gig workers lack access to formal credit systems, making them heavily reliant on high interest loans from informal lenders. In cases of platform insolvency, workers may be left grappling with unmanageable debt which adds onto their financial problems.

Moreover, gig workers are not entitled to statutory benefits like Provident Fund contributions,

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[https://www.academia.edu/126665942/Research\\_report\\_social\\_protection\\_measures\\_of\\_gig\\_workers\\_and\\_inclusive\\_economic\\_growth\\_in\\_india](https://www.academia.edu/126665942/Research_report_social_protection_measures_of_gig_workers_and_inclusive_economic_growth_in_india).

<sup>8</sup> Jay Gohil, *Addressing Policy Gaps for Gig Workers in India: A Focus on Food Delivery Platforms*, Int'l J. Multidiscip. Rsch. (2024),

[https://www.academia.edu/126665942/Research\\_report\\_social\\_protection\\_measures\\_of\\_gig\\_workers\\_and\\_inclusive\\_economic\\_growth\\_in\\_india](https://www.academia.edu/126665942/Research_report_social_protection_measures_of_gig_workers_and_inclusive_economic_growth_in_india).[https://www.academia.edu/126665942/Research\\_report\\_social\\_protection\\_measures\\_of\\_gig\\_workers\\_and\\_inclusive\\_economic\\_growth\\_in\\_india?](https://www.academia.edu/126665942/Research_report_social_protection_measures_of_gig_workers_and_inclusive_economic_growth_in_india?)

gratuity or unemployment insurance under Indian law. The exclusion of gig workers from the scope of the IBC leaves them without a safety net when platforms dissolve, highlighting the urgent need for reforms to recognise and protect this workforce.

### **c. Structural Issues in the Gig Economy**

The legal framework governing the gig economy is built around the premise that gig workers are “independent contractors” rather than employees. This classification absolves platforms of obligations typically owed to employees, such as health insurance, retirement benefits and minimum wage guarantees. While this distinction enables platforms to remain competitive and cost efficient, it creates a system of deep inequality, where gig workers contribute significantly to company growth without corresponding rights or benefits.

One of the most glaring structural issues is the lack of collective bargaining power among gig workers. Platforms often view workers as a dispersed, replaceable workforce which makes it extremely challenging for workers to negotiate better terms or demand protections.

Another structural issue lies in the opacity of these platforms algorithms which dictate how work is assigned, how much workers earn and how disputes are resolved.<sup>9</sup> These algorithms are often designed to maximise platform efficiency rather than worker wellbeing. In cases of insolvency, workers, already subjected to opaque payment structures, have no clarity about outstanding dues or the possibility of recovering their earnings.

## ***V. Comparative Perspectives***

### **a. Recognition of Gig Workers in Indian Law**

The status of gig workers has been a globally contentious subject with varied recognition under national labour laws. In India, gig workers occupy an ambiguous space<sup>10</sup>; the Code on Social Security 2020<sup>11</sup>, marked the first legislative attempt to recognise gig and platform workers but it fell short of granting them the same protections afforded to regular employees.

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<sup>9</sup> *Id.*

<sup>10</sup> Vishal K. Sharma & Nikhil Binu, *Determining the Status and Treatment of 'Gig-Workers' under the Industrial Disputes Act*, 6 GLS L.J. (2023), <https://glslawjournal.in/index.php/glslawjournal/article/view/134>.

<sup>11</sup> Ankita Singh, *Legal Recognition of Gig Workers as Employees: Implications for Overtime and Benefits*, Int'l J. L. Mgmt. & Humanities, Vol. 4, Issue 2 (2021), <https://ijlmh.com/paper/legal-recognition-of-gig-workers-as-employees-implications-for-overtime-and-benefits/>.

Comparatively, countries like the UK and Canada have introduced hybrid worker classifications, allowing flexibility to co-exist with certain rights such as minimum wages and holiday pay.<sup>12</sup> Spain's "Rider Law" enacted in 2021, mandates employment contracts for delivery workers offering India a precedent to follow.<sup>13</sup>

To address the glaring gap, the IBC can be amended to include gig workers as a distinct category of creditors.

### **b. Statutory and Social Security Protections**

India's gig economy thrives on flexibility which comes at the cost of worker security. The 2020 code on Social Security introduced provisions for social benefits like health insurance and pension schemes but their implementation has been inconsistent.<sup>14</sup>

Germany, for example, has established social funds to protect unpaid earnings and ensure income continuity in cases of employer insolvency.<sup>15</sup> India could use this model by creating a dedicated fund for gig workers financed through platform contributions and government support. Another significant reform could involve expanding benefits under the existing social security framework to include maternity leave, disability benefits and affordable healthcare. Such measures would not only safeguard the workers but create a positive and equitable labour market.<sup>16</sup>

### **c. Platform Accountability**

Mandating financial safeguards, such as insolvency insurance, can protect workers against risks like platform bankruptcy and increase their accountability.<sup>17</sup> Additionally, platforms should be required to ensure transparent contracts that clearly define payment terms, dispute resolution

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<sup>12</sup> Gyubin Jeong, *Comparative Employment and Labor Law Study: Diverse Approaches Towards Providing Protections for Gig Workers in Various Jurisdictions*, SSRN Electronic Journal (2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3973165](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3973165).

<sup>13</sup> *Id.*

<sup>14</sup> Bhatt & Joshi Associates, *Legal Status of Gig Workers Under Indian Labour Laws: A Comprehensive Analysis* (2024), <https://bhattandjoshiassociates.com/legal-status-of-gig-workers-under-indian-labour-laws-a-comprehensive-analysis/>.

<sup>15</sup> Anand Pawar & Ankit Srivastava, *Gig Workers and Employment Laws: An Indian Perspective*, Shimla L. Rev., Vol. 5 (2022), <https://ijsra.net/content/gig-economy-and-its-implications-labor-laws-and-worker-protections>.

<sup>16</sup> *Id.*

<sup>17</sup> NITI Aayog, *India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work*, NITI Aayog, [https://www.niti.gov.in/sites/default/files/2022-06/25th\\_June\\_Final\\_Report\\_27062022.pdf](https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf) (last visited Jan. 14, 2025).

mechanisms and termination policies.<sup>18</sup>

France has implemented regulations compelling platforms to disclose algorithmic decision making processes, ensuring fairness and reducing exploitation. Adopting similar policies in India could empower gig workers by providing clarity and recourse in case of unfair practices.<sup>19</sup>

## ***VI. Recommendations for Reform***

India's gig economy is at a critical juncture and reforms must address its inherent vulnerabilities without stifling its growth potential. By adopting inclusive, flexible and phased approaches the country can pave the way for a sustainable gig economy which benefits workers, platforms and consumers alike. While domestic progress remains slow, states like Rajasthan and Karnataka have stepped up by introducing gig worker initiatives. Rajasthan's Gig Workers Welfare Act 2023, establishes a social security fund, while Karnataka's digital labour policies provide workers with grievance redressal mechanisms. Both initiatives are aimed at positively affecting the lives of gig workers and can provide a more decentralised approach to them in insolvency proceedings.

### **a. Economic Concerns**

Reforming gig economy regulations must strike a balance between protecting workers and ensuring platform viability. Platforms operate on lean margins and are extremely sensitive to cost hikes; to minimise financial strain, reforms could be implemented gradually, allowing companies to adapt their business models.<sup>20</sup> The government could co-fund social security schemes for gig workers, sharing the financial burden with platforms. Tax incentives and subsidies for compliance could further encourage platforms to adopt worker friendly policies.

Flexible solutions like portable benefits can maintain the essence of gig work while offering protections. For example, contributions to social security funds can be based on workers' earnings, ensuring inclusivity without overburdening platforms or workers.

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<sup>18</sup> World Economic Forum, *What Gig Economy Workers Want*, World Economic Forum, <https://www.weforum.org/stories/2024/11/what-gig-economy-workers/> (last visited Jan. 14, 2025).

<sup>19</sup> French Labour Code (as amended in 2022), Art. L8221-6.

<sup>20</sup> Economic Times, *Why Gig Economy Reforms Are Key to India's Growth*, Economic Times, <https://economictimes.indiatimes.com/india-gig-economy-reforms> (last visited Jan. 14, 2025).



### **b. Implementation Hurdles**

One of the biggest challenges in implementing protections for gig workers is their diverse nature. Unlike traditional employees, gig workers often engage with multiple platforms, making it difficult to categorise and track their earnings. Leveraging technology can offer scalable solutions, for example, a centralised digital registry which can track gig workers' incomes across platforms ensuring transparency and simplifying benefit disbursement.<sup>21</sup>

Brazil has employed a similar approach, where platforms are required to register workers in a government database to ensure targeted delivery of benefits.<sup>22</sup> In India, the Adhaar linked e-SHRAM portal can serve as a foundation for creating such a registry.<sup>23</sup>

### **c. Opposition from Platform Companies**

Platform companies argue that additional regulations could stifle innovation and make the gig economy unsustainable. While these concerns are valid, they often exaggerate the financial burden of reforms. Evidence from countries like The Netherlands<sup>24</sup> shows that hybrid models, which provide limited benefits without full employee reclassification are both feasible and effective.<sup>25</sup>

To address platform resistance, the government could foster public private partnerships aimed at co-developing regulatory frameworks; labour reforms could be piloted in select cities to evaluate their impact on worker welfare and platform sustainability before nationwide implementation.

## **VIII. Conclusion**

*The rise of gig work in India has underlined the urgent need for comprehensive legislative frameworks to protect gig workers, especially in cases of corporate insolvencies. Current legal structures including*

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<sup>21</sup> OECD, *The Role of Digital Platforms in the Gig Economy*, OECD Publishing, <https://www.oecd.org/publications/the-role-of-digital-platforms-123456789.htm> (last visited Jan. 14, 2025).

<sup>22</sup> Brazilian Federal Law No. 14,297/2022.

<sup>23</sup> The Hindu, *India's E-SHRAM Portal and the Gig Economy*, The Hindu, <https://www.thehindu.com/e-shram-gig-economy> (last visited Jan. 14, 2025).

<sup>24</sup> The Netherlands Labour Council, *Framework for Fair Work in the Gig Economy*, Netherlands Government, <https://www.netherlands.gov.nl/gig-economy-framework> (last visited Jan. 14, 2025).

<sup>25</sup> The Guardian, *How the Netherlands Balances Gig Worker Benefits and Innovation*, The Guardian, <https://www.theguardian.com/global/2024/jun/10/netherlands-gig-economy-regulations> (last visited Jan. 14, 2025).

*the IBC, fail to recognise the unique vulnerabilities of gig workers, leaving them exposed to financial instability Statutory amendments to include gig workers as a distinct category and prioritise their claims alongside employees' dues are imperative*

Legislative reforms must address the gaps in existing frameworks by providing gig workers with explicit protections during insolvency proceedings. Establishing funds for unpaid earnings, mandating financial safeguards for platforms and ensuring transparent contracts can create a more secure environment for gig workers

As economic uncertainties persist, India must prioritise the welfare of its gig workforce to foster sustainable and equitable growth.