ARBITRATION AGREEMENTS IN THE GIG ECONOMY: PROTECTING THE RIGHTS OF WORKERS

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Abstract

Over the past decade, there has been a significant rise in what is commonly referred to as the 'gig economy.' This term describes a growing sector of the workforce made up of individuals who work on a temporary or freelance basis, often through online platforms that connect them with clients or customers. The gig economy has also raised concerns about worker rights and protections. Many gig workers are classified as independent contractors rather than employees, which means that they are not entitled to benefits such as health insurance, paid time off, or minimum wage protections. Moreover, the contractual relationship between gig workers and the platforms they work for can be opaque and difficult to navigate, raising questions about the fairness of these arrangements. This paper primarily analyses the arbitration agreement between gig workers and Ola with a focus on the terms such as unilateral appointment of arbitrators and the adhesion nature of such agreements. Such arbitration agreements have been subject to a series of lawsuits, the most recent being Uber v. Heller. Ultimately, the paper underscores the importance of protecting the rights of gig workers, who often face significant power imbalances when negotiating with large platforms, and calls for greater scrutiny of arbitration agreements to ensure that they are truly fair and just.

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I. Introduction

'Gig economy' has seen an accelerated growth over the past decade. This form of market allows workers to be hired as independent workers on digital platforms for individual tasks. The economy has generated fierce debate over worker conditions and their rights. This uncertain form of employment is governed by provisions provided in the 'terms and conditions' present on the platforms. These contracts contain asymmetrical arbitration agreements, which include unilateral appointment of the arbitrators, and unilateral determination of the seat of arbitration. These arbitration agreements between the gig workers and platforms have generated litigation across jurisdictions – while this aspect has been relatively unexplored. This paper seeks to analyse some of the characteristics of these agreements. The author has argued that the adhesion nature of arbitration agreements and unilateral appointment of arbitrators by the platforms is not only detrimental to the interests of the gig workers, but also violates Section 12(5) of the Arbitration and Reconciliation Act, 1996 ["**the Act**"]. In the last section, the author has provided certain suggestions for improving the scope of arbitration in gig economy disputes.

II. Rise of gig economy in India

'Gig economy' is a form of labour market which includes freelance, hire on-demand, and short-term contracts. The workers of this structure are called 'gig workers,' who are hired by companies like Swiggy, Zomato, and Ola through their smartphone application platforms. NITI Aayog has estimated that in 2021, 7.7 million workers were already engaged in this gig economy

structure, and this workforce is expected to expand to 23.5 million workers by 2030.[49]

Through the widespread adoption of smartphones and associated technology, this new form of employment outside of traditional employer-employee relationship structures has emerged. A person who wants to participate in this economy can simply log in to the platform, accept the electronic agreement that appears on the application, and after the approval from the platform, can start working through the application.[50] Since this contractual relationship does not fall within the traditional employer-employee structure, they are not governed by any social security legislations.[51] Numerous public interest litigations and petitions have been filed on behalf of gig workers or platform workers,[52] to be declared as 'unorganised workers' under the Unorganized Workers' Social Security Act, 2008.[53] In many instances, Ola and Uber (the primary taxi-service providers present in the Indian economy) drivers have resorted to indefinite strikes in response to long working hours and meagre incomes.[54]

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49 Perspectives and Recommendations on the Future of Work India's Booming Gig and Platform Economy, https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf.

50 Ola Partners - Terms & Conditions, Olacabs.com (2018), https://partners.olacabs.com/public/terms_conditions. "*Governing Law and Dispute Resolution: 1. If any dispute arises between the Transport Service Provider and OLA, in connection with, or arising out of, this Agreement, the dispute shall be referred to arbitration under the Arbitration and Conciliation Act, 1996 (Indian) to be adjudicated by a sole arbitrator to be appointed by OLA. Arbitration shall be held in Bangalore. The proceedings of arbitration shall be in the English language. The arbitrator's award shall be final and binding on the Parties.*"

51 Namrata, *The empty promise of social security to gig workers*, THE LEAFLET, https://theleaflet.in/the-empty-promise-of-social-security-to-gig-workers/.

52 Shruti Kakkar, *Gig Workers' Approach Supreme Court Seeking Social Security Benefits From Zomato, Swiggy, Ola, Uber*, LIVE LAW, https://www.livelaw.in/top-stories/gig-workers-approach-supreme-court-for-social-security-zomato-ola-uber-swiggy-182107; Haritima Kavia, *The gig is up: international jurisprudence and the looming Supreme Court decision for Indian gig workers*, THE LEAFLET, https://shorturl.at/lGMyw.

53 THE UNORGANIZED WORKERS' SOCIAL SECURITY ACT, No. 33 of 2008, § 2(m) (Ind.).

54 Aditi Shah, *Uber, Ola drivers strike in India, demanding higher fares*, REUTERS, https://www.reuters.com/article/us-uber-ola-strike-idUSKCN1MW1WZ.

In the international arena, various employers have used mandatory arbitration agreements as a shield from the employees bringing individual or class claims.[55] Even if the Supreme Court recognises gig workers as 'unorganised workers,' this problem is bound to persist. Issues related to fair wage, safe workspace, and discrimination will still have to be resolved according to the dispute resolution clauses given in the partnership agreement. These arbitration clauses are often termed as 'time bombs' for the gig economy as they shield the workers from bringing claims through the traditional litigation route.[56] Next part deals with the arbitration agreements between the gig workers and the platforms.

III. Arbitration agreements between gig workers and platforms

The arbitration agreements between the workers and the platforms are characterised by *first*, unilateral appointment of sole arbitrators, and *second*, 'take it or leave it' form of clauses. This section argues that such clauses are impermissible and detrimental to the interests of the gig workers.

A. Unilateral appointment of the sole arbitrator

The mandatory arbitration agreements that accompany the adhesion contracts for partnership often contain unilateral appointment of sole arbitrators. The statutory position pre-amendment to the Act, did not have any strict guidelines with respect to the impartiality or independence of the arbitrators.[57] Consequently, The International Bar Association on Conflict

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55 Jean R. Sternlight, *Disarming Employees: How American Employers are Using Mandatory Arbitration to Deprive Workers of Legal Protection*, 80(4) BROOK. L. REV. 1309, 1310 (2015).

56 Patrick Ouellette, *Mandatory Arbitration: A time bomb for the Gig economy*, PENNSTATE LAW ARBITRATION LAW REVIEW BLOG, https://sites.psu.edu/arbitrationlawreview/2020/12/18/mandatory-arbitration-a-time-bomb-for-the-gig-economy/.

57 Soham Banerjee, *To Appoint or Not to Appoint: A Critical Study of Unilateral Appointment of Arbitrators under the Arbitration Act, 1996*, SCC ONLINE BLOG, https://www.scconline.com/blog/post/2022/03/14/a-critical-study-of-unilateral-appointment-of-arbitrators-under-the-arbitration-act-1996/.

of Interest was incorporated within the Act in order to establish standards in the form of Schedule 5 and 7 under Section 12 (5).[58] According to Section 12(5) and the accompanying Schedules, the existence of an individual relationship between an arbitrator and a party does not necessarily disqualify the arbitrator from appointment, but it may raise justifiable doubts about their independence. According to Section 12(5) and the accompanying schedules, the existence of an individual relationship between an arbitrator and a party does not necessarily disqualify the arbitrator from appointment, but it may raise justifiable doubts about their independence.[59]

In *TRF Ltd.* v. *Energo Engg.* ["**TRF**"], the Supreme Court relied on Section 12(5) of the Act and held that any person who is statutorily ineligible to be an arbitrator (for example, in this case, the Managing Director of one of the parties to the dispute), cannot nomiate an arbitrator.[60] In the case of *Bhayana Builders Pvt. Ltd.* v. *Oriental Structural Engineers Pvt. Ltd.* ["**Bhayana Builders**"],[61] the Delhi High Court distinguished the principle established in *TRF*, holding that if parties in their commercial wisdom agree to vest the power to appoint the sole arbitrator on one of the parties to the dispute, such an agreement would not be violative of Section 12(5) of the Act.[62] The partnership agreement between gig workers and the platforms includes a similar clause, wherein, platforms like Ola have the right to appoint a sole arbitrator.[63]

Eventually, the Supreme Court reiterated the *TRF* principle, negating the distinction created by the High Courts. In the case of *Bharat Broadband*

58 *Id.*

59 HRD Corporation (Marcus Oil & Chemical Division) v. GAIL (India) Limited, (2018) 12 SCC 471.

60 *Id.* at ¶ 53.

61 Bhayana Builders Pvt. Ltd. v. Oriental Structural Engineers Pvt. Ltd., 2018 SCC OnLine Del 7634.

62 *Id.* at ¶ 32.

63 *Supra* note 2.

Network Ltd. v. *United Telecoms Ltd.* ["**Bharat Broadband**"],[64] the Court dealt with an arbitration clause between Bharat Broadband and United Telecoms on the supply, installation, commission, and maintenance of solar power equipment. The arbitration agreement included unilateral appointment of the Chairman and Managing Director ["**CMD**"] , Bharat Broadband Network Ltd. ["**BBNL**"] as the sole arbitrator, or in case CMD was unable or unwilling to act as an arbitrator, some person appointed by the CMD would be appointed as the sole arbitrator in the dispute.[65] The Supreme Court set the clause aside and held that if a person is statutorily ineligible to be appointed as the sole arbitrator, then he could also not be permitted to nominate an arbitrator.[66]

In the case of *Perkins Eastman Architects* v. *HSCC*,[67] the Supreme Court reiterated the principle established in the earlier TRF case. The court examined a contract between Perkins Eastman Architects DPC, a New York-based architectural firm, and HSCC (India) Limited ["**HSCC**"], a subsidiary of the public sector undertaking NBCC (India) Limited ["**NBCC**"]. The contract pertained to the planning, design, and preparation of working drawings for the All India Institute of Medical Sciences at Guntur. The dispute resolution clause in the contract stipulated that only the person appointed by the CMD of HSCC could act as the arbitrator. Consistent with the TRF precedent, the Supreme Court held that such a unilateral appointment clause violates Section 12(5) of the Arbitration and Conciliation Act, 1996.[68] The Court, while relying on *TRF*, set aside the appointment of the arbitrator made by HSCC, and appointed former judge of the Supreme Court Justice AK Sikri to preside as the sole arbitrator.[69] In this context, a perusal of the arbitration agreement which grants Ola or any

64 Bharat Broadband Network Limited v. United Telecoms Limited*,* (2019) 5 SCC 755.
65 *Id.* at ¶ 20.
66 *Id.* at ¶ 20.
67 Perkins Eastman Architects DPC v. HSCC (India) Limited, 2019 SCC OnLine SC 1517.
68 *Id.* at ¶ 2.2.
69 *Id.* at ¶ 28.

other platform the unilateral right to appoint the sole arbitrator, shows such a clause would be hit by Section 12(5).

However, there are yet another series of decisions that have moved away from the holding of *Bharat Broadband* and *Perkins Eastman*. Udian Sharma has argued these changes were made in light of the retrospective applicability of the *Perkins Eastman* holding in arbitration proceedings, and application on cases which have already been decided by unilaterally appointed arbitrators.[70] In *Voestalpine Schienen* v. *Delhi Metro*,[71] the Court was adjudicating a challenge to appointment of the arbitrator, wherein the Respondent-State had unilaterally provided a panel to choose from for the Petitioner-firm. The Supreme Court held that such an appointment is valid, since the parties mutually consented to the terms of the contract. On merits, the Court directed the Respondent-State to provide Petitioner-firm is a broader panel, upholding the clause.[72] While in the case of *Central Organisation for Railways Electrification* v. *M/s. ECI*,[73] the Court upheld an asymmetrical procedure for appointment of an arbitrator, that was mutually agreed by the parties. However, on merits, the Court directed the Petitioner to send a fresh panel of retired officers for the Respondent to choose from.[74]

The arbitration agreements that govern the contractual relationship between the platforms and the gig workers need to be distinguished from these series of judgments. As *first*, these series of judgments often deal with disputes which have already been decided by the arbitral tribunal, and, in appeal the appellate has questioned the unilateral appointment of the arbitrator.[75] Whereas, the arbitration agreements that this note deals with

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70 Udian Sharma, *Independence and Impartiality of Arbitral Tribunals: Legality of Unilateral Appointments*, 9(1) IND. J. ARB. L. 121, 135 (2020).

71 Voestalpine Schienen GmbH v. Delhi Metro Rail Corp. Ltd., (2017) 4 SCC 665.

72 *Id.* at ¶ 29.

73 Central Organisation for Railways Electrification v. M/s. ECI-SPIC-SMO-MCML (JV), 2019 SCC OnLine SC 1635.

74 *Id.* at ¶ 40.

75 *Supra* note 23.

are illegal from the start. *Second*, the cases mentioned above deal with a panel of arbitrators offered by one of the parties to the other to choose from. The arbitration clauses governing the partnership agreements do not have any mention of such a procedure. It merely mentions that the platform will be appointing the arbitrator for dispute resolution. *Third*, the Supreme Court has upheld the arbitration clauses in such cases on grounds of mutual consent.[76] However, the consent in partnership agreements is often vitiated for various reasons explained in subsequent sections.

B. 'Take it or leave it' Arbitration Agreements

The dispute resolution clauses between gig workers and the platforms are characterised by mandatory binding arbitration agreements, unilateral appointment of arbitrators and seat of arbitration.[77] This clause is part of an electronic 'take it or leave it' form of contract, also known as 'adhesion contracts.' Adhesion contracts require the customers to sign the standard form of contracts, without any scope of changes or adjustments.[78] Recently, the Supreme Court has criticised these forms of contracts, wherein the value of 'freedom of contract' is completely lost.[79] In this case, the Court, while analysing a standard form contract for insurance, held that such contracts are obviously one-sided, grossly in favour of the insurer, due to weak bargaining power of the consumer.[80] In the case of *Central Inland Water Transport Corporation* v. *Brojo Nath Ganguly*, the Supreme Court made an exception to this principle, stating this principle would not apply where the bargaining power of the contracting parties is equal or almost equal, such

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76 *Id.* at ¶ 19.

77 *Supra* note 2.

78 Nagpal, N. (2022) *Legality and enforceability of electronic arbitration agreements in India*, *Arbitration & Dispute Resolution - Litigation, Mediation & Arbitration - India*. Available at: https://www.mondaq.com/india/arbitration--dispute-resolution/1262248/legality-and-enforceability-of-electronic-arbitration-agreements-in-india.

79 M/S Texco Marketing Pvt. Ltd. v. TATA AIG General Insurance Company Ltd. & Ors., (2023) 1 SCC 428, ¶ 10.

80 *Id.* at ¶¶ 2-5.

as between two businessmen in a commercial transaction.[81] However, in the case of *Vidya Drolia* v. *Durga Trading Corporation* ["**Vidya Drolia**"],[82] the Supreme Court opined that the adhesion contracts that are non-negotiated and where party autonomy is weak, legislature can shield the weaker parties, and limited court intervention should be made.[83] This idea of non-intervention of courts is derived from the *kompetenz-kompetenz* principle of the United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration, 1985 ["**Model Law**"].[84] Article 5 emphasises on minimal interference of courts in any arbitration proceeding.[85] However, as Sharma argues, this idea of minimal intervention is to be balanced with the idea of equity.[86] While Sharma only deals with the concept of unilateral appointment of arbitrators; for any clause that causes prejudice and bias against one of the parties, the Court must exercise its power to set aside such clauses. This would include unilateral decisions made for the seat and venue of the arbitration.

Ms. Jean Sternlight has critiqued this concept of mandatory arbitration clauses, which leave no room for negotiation. She bases her arguments on two grounds, *first*, lack of consent, and *second*, lack of public scrutiny.[87] These adhesion contracts containing mandatory arbitration agreements are often concealed or the employees often overlook the dispute resolution part of the contract. In an electronic contractual setting, this problem is aggravated as:

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81 Central Inland Water Transport Corporation v. Brojo Nath Ganguly, (1986) 3 SCC 156.

82 Vidya Drolia v. Durga Trading Corp., (2021) 2 SCC 1.

83 *Id.* at ¶ 72.

84 United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration, 1985 U.N.G.A. Res. 40/72 (Dec. 11, 1985), as amended by U.N.G.A. Res. 61/33 (Dec. 18, 2006), art. 16 [hereinafter UNCITRAL Model Law].

85 UNCITRAL Model Law, art 5.

86 *Supra* note 24, at 128.

87 Jean R. Sternlight, *Creeping Mandatory Arbitration: Is it Just?*, 7(1) STAN. L. REV. 1631 (2005).

1. It is possible that gig economy participants may overlook the dispute resolution clause;
2. It is possible that even after reading the dispute resolution clause, the gig workers may be unable to comprehend the same substantively, owing to their population typically consisting of persons with low to middle level of education.[88] Hence, these mandatory arbitration agreements are bound to lack consent.

For declaring an adhesion arbitration clause illegal, it needs to be proved that the contract was executed between parties with unequal bargaining power and improvident bargains. This unconscionability doctrine has been adopted by most jurisdictions, with the most recent example being Canada. In the case of *Uber* v. *Heller*,[89] the Canadian Supreme Court adjudicated on the validity of an arbitration clause between a Toronto-based driver and the platform Uber Technologies. The argument presented on part of Heller in the class action suit, stated that he and his colleagues are employees, and that, as such, they should benefit from the protections of the Employment Standards Act, 2000, which grants specific rights and recourse to employees.[90] However, Uber Technologies filed a motion to stay the proceedings on the ground that Heller and others were bound by an arbitration clause requiring the dispute to be dealt through arbitration in the Netherlands.[91] The Ontario Supreme Court rejected Heller's argument, holding that since there was a valid arbitration agreement between Heller and Uber Technologies, the Employment Standards Act, 2000 does not expressly exclude recourse to arbitration.[92] In the Court of Appeals, the Court held that the arbitration clause prevented Heller from availing the benefits of the Act, and further, the arbitration clause itself was

88 *Supra* note 1.
89 Uber Technologies Inc. v. Heller, [2020] 2 SCR 118 (Can.)
90 Employment Standards Act, S.O. 2000, c 41 (Can.).
91 Heller v. Uber Technologies Inc., [2018] ONSC 718, ¶ 33 (Can. Ont.).
92 *Id.* at ¶ 65.

unconscionable in nature.[93] The Court found errors of fact in the Ontario Supreme Court's judgment, as, *first*, it was noted that there are numerous dispute resolution mechanisms that were accessible from Ontario, whereas Justice Parell inferred that no dispute resolution mechanism was located in Ontario. S*econd*, the cost of presenting a claim to the Netherlands was US$14,500, which in effect would have prevented Heller from bringing a claim through arbitration.[94]

The Court of Appeals laid down the equity principle stating, that where there is an overwhelming imbalance in bargaining power caused by the victim's ignorance of business, illiteracy, or ignorance of the language of the bargain, and the other party knowingly takes advantage of this vulnerability; then such arbitration clauses would be invalid due to their unconscionable nature.[95]

Similarly, the courts in India have dealt with the question of unconscionability of arbitration agreements as well; an example being the case of *Central Inland Water Transport Corporation* v. *Brojo Nath Ganguly*.[96] However, the Court pinned the idea of striking down of unfair or unreasonable clause in the contract, which was entered into by two parties of unequal bargaining power under Article 14.[97] The Court opined that this principle applies to situations where one of the parties to the dispute has no choice, or no meaningful choice, but to give his assent to a contract, or to sign on a dotted line prescribed, or a standard form of a contract presented.[98]

The arbitration agreement that governs dispute resolution process between the platform and the gig workers often unilaterally decides the seat of

93 *Supra* note 41, at 5.
94 *Id.* at ¶ 2.
95 *Id.* at ¶ 5.
96 *Supra* note 33, at 89.
97 *Id.*
98 *Id.*

arbitration and appointment of arbitrators, among other things.[99] Without any scope for negotiation, and without any real consent, these agreements are not only illegal, but are also detrimental to the interests of the gig workers, thus affecting their access to justice.

IV. Way forward for Arbitration in gig economy disputes

While various authors[100] have argued that the platforms of gig economy often use mandatory and prejudicial arbitration clauses to deprive workers of legal protection,[101] India could pave the way for arbitration agreements that benefit both the platforms and the workers. This part deals with some of the clauses that platforms in different jurisdictions have inserted that has saved tedious litigation, and has also prevented any reduction in access to justice for the workers.

A. Opt-out clause

In the United States of America ["**USA**"], Uber's use of an opt-out clause in its partnership agreements has often become a line of defence in the unconscionability challenges brought forward.[102] An opt-out clause provides the gig workers an opportunity to opt out of the arbitration requirement, assuming that this clause is substantively visible and not hidden away in fine print. In the case of *Mohamed* v. *Uber Tech.*,[103] the Court held that since the agreement includes an opt-out clause, it cannot be held to be unconscionable. Since the opt-out clause changes the nature of the contract from 'take it or leave it' to 'take it or opt out,' it is helpful for both,

99 *Id.*

100 *Id.*

101 Charlotte Garden, *Disrupting Work Law: Arbitration in the Gig Economy*, (2017) UNIV. CHI. LEGAL F. 205 (2018).

102 Jill I. Gross, *The Uberization of Arbitration Clauses*, 9 Y.B. ON ARB. & MEDIATION 43, 60 (2017).

103 Mohamed v. Uber Techs., Inc., 848 F.3d 1201 (9th Circuit, 2016).

the gig workers and the firms, saving litigation costs of challenging the clause itself.

The most important argument made above has been the idea of lack of consent in mandatory adhesion arbitration agreements. The idea of mandatory arbitration agreements is not only challenged because they are mandatory, or that they are taking away the jurisdiction of the courts. Such clauses are challenged as they violate one of the most fundamental values of arbitration procedure, i.e., voluntariness and consent to undertake arbitration for resolving disputes.[104] An opt-out clause could solve the issue of mandatory arbitration agreements. One would also suggest lengthening the opt-out period like Uber did in the USA. However, the effectiveness of this clause would depend on how the agreement is presented.

B. Delegation clause

An addition of delegation clause would mean that the chosen arbitrator would not only decide the issue of merits but also the issue of arbitrability.[105] Including such a clause would ensure that the decision on whether the dispute is arbitrable or not, can be decided by the tribunal itself. If such a clause is not included, the arbitrability could be challenged in the courts, consequently incurring litigation costs for the platform and the gig workers both.

C. Reasonable notice of the terms of the arbitration agreement

Perhaps the most important way to ensure consent in such electronic arbitration agreements would be to ask for consent separately from the overall partnership agreement. After multiple challenges to Uber's driver agreement in the USA, the platform revised its agreement to include a warning that the terms and conditions included an arbitration provision, by

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104 GARY BORN, INTERNATIONAL COMMERCIAL ARBITRATION § 1.02[A][2] (3rd ed. 2021).
105 *Supra* note 54.

specifying the same in bold, at the beginning of the same.[106] Adding such a warning would ensure the drivers do not unknowingly consent to an arbitration agreement. Any changes to the arbitration agreements should be notified on all communications lines between the drivers and the platform.

D. Online Dispute Resolution

Online Dispute Resolution ["**ODR**"] refers to an online forum where arbitrations can be conducted fairly and efficiently, without incurring additional costs of logistics to both the parties.[107] Various companies in the European Union are already using ODR to resolve arbitral disputes between them and their consumers.[108] The same model could ensure that gig workers can bring forth their claims without any financial prejudice.

V. Conclusion

Gig economy has expanded multi-folds in the past decade. While this shows increase in entrepreneurial strength of the country, the workers involved are often subjected to long working hours and unfair wage. Petitions related to defining this economy have drawn attention in many jurisdictions, including India. Since the relationship between the platforms and the workers is governed through contracts, it becomes imperative to study these contracts. Through this note, the author has primarily analysed the arbitration agreement between Ola and its drivers. The agreement is of electronic adhesion or 'take it or leave it' nature. The arbitration clause for dispute resolution consists of unilateral power of Ola to appoint an arbitrator and to select the seat of arbitration. These agreements are grossly biased against the gig workers, and no real consent can be inferred from these agreements.

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106 *Id.*

107 *Supra* note 24, at 140.

108 Mirèze Philippe, *ODR Redress System for Consumer Disputes: Clarifications, UNCITRAL Works & EU Regulation on ODR*, 1(1) INT'L J. ONLINE DISP. RES. 57, 57-69 (2014).

While electronic arbitration agreements are permissible in India,[109] the issue of adhesion arbitration agreements continues. This is the aspect of arbitration agreements which been explored in this note. In India, unilateral appointment of arbitrators is not permissible except in cases where both the parties are commercial entities.[110] However, this exception does not operate in the case of gig workers. In the international sphere, these contracts have been subjected to ample litigation on the grounds of unconscionability, lack of equal bargaining power, and lack of consent.[111] The agreement between Ola and gig workers can be challenged on similar grounds in the Indian context.

Employment contracts are held to be non-arbitrable in India. However, the gig economy workers are not considered workers under any of the legislations yet. There is an imminent need for the platforms to rework their arbitration agreements to prevent similar litigation in India. The solutions mentioned above could help the rising amount of gig economy workers without putting the platforms at a disadvantage.

109 *Supra* note 30.
110 *Supra* note 13, at 32.
111 *Supra* note 41.