DRIVERS FOR CAB AGGREGATORS: THE CURIOUS CASE OF WORKER MISCLASSIFICATION

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ABSTRACT

The cab aggregator industry has seen a phenomenal rise throughout the world, particularly in India, on the sheer count of the convenience it has brought to its customers. Aggregators operate as an intermediary platform, where they connect registered drivers directly to the cab users. The Indian legislature has taken steps towards formally recognising such aggregators as distinct business entities, however, such recognition comes with the ensuing debate regarding the employment status of drivers working for the aggregator companies. Under this, as the article discusses, the drivers are classified as independent contractors, although they seek the status of employees of aggregators. The paper discusses applicable tests adopted by the courts in India to differentiate between an employee and an independent contractor, in the context of labour laws in general, the position of aggregators in the contemporary legal system, and the outcome and impacts of application of such tests and classification. The paper provides a brief overview of the global outlook on the misclassification battle, and concludes with an alternate solution, which may be adopted to balance the conflicting interests.

INTRODUCTION

Cab aggregators like Uber, Ola and Lyft have brought in the on-demand taxi revolution and upended the transportation sector across the globe. They have emerged as fallbacks to the traditional taxi-service industry, and they operate through a smartphone app, which enables a customer to connect with a driver registered on their platform, available for service. Due to the sheer convenience they bring to the users, they have become universally popular. Uber Inc. has expanded into over 720 cities, spanning across 84 countries within only 8 years of operation, which has led many to hail Uber as the most successful Silicon Valley startup ever.[1] In India, platforms such as Uber and Ola have

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[1] Jay Yarow, 'At $12 Billion, Uber Would Become the Most Valuable Startup in the World' (*Business Insider*, 23 May 2014) <www.businessinsider.com/at-12-billion-uber-would-become-the-most-valuable-startup-in-theworld-2014-5> accessed 5 September 2018.

nearly 9,50,000 drivers working with them, driving them towards success,[2] and the players continue to expand due to the increasing number of mobile internet users in India.[3]

On account of their innovative technology, new pricing structure, global presence and competitive nature, the meteoric rise of such aggregators has also brought in numerous regulatory challenges in several jurisdictions which range from identification of business model[4] and recognition of employment status of their drivers[5] to user's privacy and safety concerns.[6] The legislature, as well as other business forms, take time to adapt to the challenges brought in by such technological disruptions. While Uber and Ola had hit the Indian market in early 2013, they continued to operate under a regulatory grey area, as there had been a looming uncertainty concerning their amenability to law.[7] The Motor Vehicles (Amendment) Bill, 2016[8] (hereinafter the Bill) was lauded by the transportation industry, as it sought to give statutory recognition to 'app-based taxi aggregators' like Uber and Ola.[9] Such companies are unique in their operation as, being aggregators, they act as mere digital intermediaries or a marketplace where passengers connect with the drivers for availing transportation services.[10] Until now,

[2] Shashwati Shankar, 'Undeterred by high attrition rate, Ola and Uber banking on drivers in their 20s' (*ET Bureau*, 1 June 2017) <http://economictimes.indiatimes.com/small-biz/startups/undettered-by-high-attrition-rate-ola-and-uber-banking-on-drivers-in-their-20s/articleshow/58935423.cms> accessed 5 September 2018.

[3] Morgan Stanley, 'Shared Mobility on the Road of the Future' (*Forbes*, 20 July 2016) <www.forbes.com/sites/www.morganstanley.com/ideas/car-of-future-is-autonomous-electric-shared-mobility> accessed 5 September 2017.

[4] *Asóciacion Profesional Elite Taxi v Uber Systems Spain SL* Case C-434/15 ("Uber Spain").

[5] Gabriel Fletcher, 'To Employ(ee) or Not to Employ(ee): Are Uber Drivers Employees or Independent Contractors?' (2016) University of Cincinnati Law Review <https://uclawreview.org/2016/01/27/to-employee-or-not-to-employee-are-uber-drivers-employees-or-independent-contractors/> accessed 5 September 2018.

[6] Brishen Rogers, 'The Social Cost of Uber' (2017) The University of Chicago Law Review Dialogue 85, 92-94.

[7] Anil Lulla, 'App-based Cab Aggregators New Business Entities, Govt to Frame Rules for Them' (*Your Story*, 14 April 2017) <https://yourstory.com/2017/04/cab-aggregators-motor-vehicles-bill/> accessed 5 September 2018.

[8] The Motor Vehicles (Amendment) Bill 2016 ("Bill").

[9] 'Report No. 243, Ministry of Road, Transport and Highways, Government of India, Parliamentary Standing Committee Report on Transport, Tourism and Culture' (2017) <http://www.prsindia.org/uploads/media/Motor%20Vehicles,%202016/SCR%20Motor%20Vehicles%20Bill,%202016.pdf> accessed 5 September 2018 ("Report").

[10] Bill (n 8).

the Motor Vehicles Act, 1988, which is the primary legislation for the regulation of road transport, did not recognise their model of operation.[11] The Bill, as stated, accords the status of 'app-based taxi aggregators' to the operators, ensuring that such operators would become business entities in themselves.[12] This step to streamline and standardise the cab-aggregator industry in India was long overdue, particularly in light of the exponential growth of the sector in India. However, now that India is moving towards statutory recognition of such intermediaries, the next step that follows is deciding upon the nature of employment of the drivers working for such aggregators.

The policy of hiring workers as independent contractors is a growing trend across economies, as it allows employers to avoid workplace regulations. This trend is referred to as 'gig economy'.[13] If workers are classified as independent contractors, they miss statutory benefits that accrue to employees, they pay expenses out of their pocket, and are not entitled to statutory safeguards such as minimum wages.[14] Cab aggregators worldwide classify their drivers as independent contractors, and because of such classification have faced litigation by disgruntled drivers across several jurisdictions.[15] Moreover, companies in various other sectors, such as Wash.io Inc., which have adopted the policy of hiring independent contractors, have faced similar actions.[16] The Delhi High Court is currently seized of a matter, which deals with the employment status of taxi drivers working for such on-demand app--based taxi aggregators.[17] The Court is set to determine as to whether drivers working for such operators are their employees or independent contractors. The case is set against the backdrop of a global debate over the issue of 'misclassification'. The High Court ruling becomes significant, owing to the impact it will have on all the parties involved - be it the companies engaged in such a business, various unions of drivers, or the Central and State Governments, and the influence it may have on similar legislations or litigations worldwide.

[11] Report (n 9).

[12] Bill (n 8).

[13] Valerio De Stefano, 'The Rise of the Just-in-time Workforce: On-demand work, Crowdwork and Labour Protection in the gig-economy' (*ILO*, 2016) <http://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—travail/documents/publication/wcms_443267.pdf> accessed 7 September 2018.

[14] Ramesh K Vaidyanathan and Probal Bose, 'India: The Conundrums of a Gig Economy' (*Mondaq*, 25 August 2017) <http://mondaq.com/india/x/623528/Contract+of+Employment/The+Conundrums+Of+A+Gig+Economy> accessed 7 September 2018.

[15] Fletcher (n 5).

[16] *Luqman v Washio Inc* BC 592428.

[17] *Delhi Commercial Driver Union v Union of India* (2017) WP(C) 3933.

THE EMPLOYEE-INDEPENDENT CONTRACTOR CONUNDRUM

The question regarding the distinction between an employee and an independent contractor has been a moot question before the judiciary for decades. An employee is defined as 'one who works for an employer; a person working for salary or wages'.[18] There should be a contract of employment, which creates an employer-employee relationship.[19] Moreover, under the Industrial Disputes Act, 1947 (hereinafter the Act), *"any person under express or implied terms of employment, employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, is a workman."*[20] However, the concept of an 'independent contractor', in the absence of a statutory definition, stems from the interpretation of the definition of a 'workman' under the Act. An independent contractor is one who undertakes to do a certain work or produce a given result for another but in the actual execution is not under the other's control.[21]

The problem regarding the borderline between what is clearly an employer-employee relationship and what is clearly an independent entrepreneurial dealing has given rise to a plethora of cases.[22] The distinction becomes relevant because once a person is recognised as an employee, there are numerous rights under the Act. It would also pave way for several social welfare benefits under legislations such as the Workman's Compensation Act 1923, the Payment of Wages Act 1936, the Employees' State Insurance Act 1948, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 etc., which his employer would be bound to oblige with. The Supreme Court has adjudicated upon this problem in numerous instances, each time under a different factual scenario. It is largely because of this factor that the Court has refrained from giving a straitjacket formula for answering the question. On the contrary, the Supreme Court has, repeatedly, judicially interpreted as to who is an employee or an independent contractor by laying down certain broad suggestive tests to differentiate between them.

The first test in this regard was laid down by the Supreme Court in *Dhrangadhra Chemical Works Ltd v State of Saurashtra*[23], where the test of 'supervision and control' was held to be the prima facie test for determining the distinction between an employee and an

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[18] Bryan A Gamer, *Black's Law Dictionary* (4th edn, OUP) 617.

[19] *Hutchiah v Karnataka State Road Transport Corporation* (1983) 1 LLJ 30 (Kar).

[20] Industrial Disputes Act 1947, s 2(s).

[21] *Shivanandan v Punjab National Bank* AIR 1955 SC 404.

[22] *National Labour Relations Board v Hearst Publications* 88 L Ed 1170.

[23] *Dhrangadhra Chemical Works Ltd v State of Saurashtra* 1957 AIR SC 264.

independent contractor. The Court, therein, ruled that while arriving at a conclusion regarding an individual's status as an employee or an independent contractor, consideration should be given to the determination - whether there was due control and supervision by the employer on the work performed by him. This control and supervision would extend not only to the matter of work the employee needs to do but also the manner in which the work needs to be done. Furthermore, lawful authority to command becomes a material factor in determining such relationship. Consequently, the degree of such control and supervision becomes the determinative factor while reaching on a decision to the issue.

However, it was soon realised that since the nature or extent of control varied from business to business, it became impossible to define the extent of control and supervision precisely.[24] Thus, such a test could not be used as a foolproof measure to determine the employment status of an individual. The Supreme Court has ruled that the emphasis in this field has shifted and it no longer rests exclusively or strongly upon the question of control. Control is obviously an important factor but it is wrong to say that in every case it is decisive. The Court then went on to adopt the 'organisational test',[25] in order to effectively deal with such a dispute. Under this test, the key issue considered was whether the individual concerned was integrated into the business' organisation or was independent of it. For this purpose, the nature of work performed by such an individual is to be evaluated, and if such work were primarily a part of the business, such an individual would be an employee. However, if such work were merely an accessory function, the individual would be an independent contractor.[26]

CURRENT POSITION OF AGGREGATORS IN INDIA

While determining the nature of the relationship between the parties, it is imperative to note that activities of cab aggregators fall within the ambit of road transport, which is regulated under the Motor Vehicles Act, 1988. While the said statute outlines the law in this regard, its implementation is the prerogative of states, each of which have enforced state-specific rules that supplement it and articulate the manner in which the legislation is enforced.[27] Until 2015, such aggregators had to register themselves as either agents or canvassers, as the Motor Vehicles Act did not provide for a separate class of aggregators. However, in 2015, the Central Government recognised aggregators as a distinct entity

[24] *VP Gopala Rao v Public Prosecutor* 1970 AIR SC 66.

[25] *Silver Jubilee Tailoring House v Chief Inspector of Shops and Establishment* (1974) 3 SCC 498.

[26] *Stevenson Jordan and Harrison Ltd v Macdonald and Evens* (1952) 1 TLR 101.

[27] Motor Vehicles Act 1988, s 93.

and issued draft guidelines for licensing of such aggregators.[28] Based on these guidelines, several State Governments have proceeded to issue regulations for the conduct of such intermediaries. However, none of the guidelines have addressed the issue regarding the employment status of drivers working for such intermediaries.

The Central Government's guidelines state that only licensed taxi operators can employ drivers,[29] but is silent about the relationship between drivers and aggregators. Even the guidelines of various State Governments fail to define the employment status of such drivers explicitly. However, the Karnataka[30] and Delhi[31] guidelines stipulate that working hours of drivers should be in accordance with Motor Transport Workers Act, 1961. It is crucial to observe that the benefits under this Act extend only to a motor transport worker, who is 'employed' by a motor transport undertaking.[32] Courts have already settled their position, that for an individual to be employed, there should be a contract of employment which creates a master-servant relationship.[33] Consequently, for the purposes of working hours within the guidelines, such drivers are considered as employees.

APPLICATION OF THE TESTS OF EMPLOYMENT

The extent of control and supervision that the aggregators can exercise upon drivers has been enunciated in the Central Guideline for Licensing of aggregators. This broadly extends to aggregators setting up driver-training programs,[34] ensuring adherence to prescribed vehicle standards,[35] establishing a code of conduct for work and monitoring conformity to the same,[36] conducting due diligence prior to driver registration,[37] and

[28] 'Ministry of Road, Transport and Highways, Government of India, Advisory for licensing, Compliance and liability of On-demand Information Technology based Transportation Aggregator [Taxis (4+1)] operating within the jurisdiction of India' (2015) <http://morth.nic.in/showfile.asp?lid=1822&key=aggregator&n=1> accessed 7 September 2018 ("Advisory").

[29] Yarow (n 1).

[30] The Karnataka on-demand Transportation Technology Aggregators Rules 2016, r 10 (1)(i).

[31] 'Transport Department, Government of NCT of Delhi, City Taxi Scheme-2015' (2015) <http://delhi.gov.in/wps/wcm/connect/f9c68480499d268a87b99f018ef168b1/Taxi.compressed.pdf?MOD=AJPERES&lmod=-370276847> accessed 7 September 2018.

[32] Motor Transport Workers Act 1961, s 2(h).

[33] *Hutchiah* (n 19).

[34] Advisory (n 28) para 2.2.

[35] Shankar (n 2) para 3.

[36] Uber Spain (n 4) para 7.

[37] Morgan Stanley (n 3) para 5.

framing grounds regarding the suspension of drivers from work.[38] The guidelines cover control, instruction, as well as managerial tasks of aggregators at all stages of operation. Obligations of the aggregators and drivers as per the guidelines are found in the Master-Servant Agreement entered between them. An analysis of such an agreement between Ola Cabs and its drivers reveal that the drivers are designated as 'partners' who are free to decide their working hours and other conditions on the basis of the contract and are not considered as 'employees' of Ola. Moreover, Ola exercises secondary control over the drivers by means of a rating system, wherein the customers rate their drivers and on that basis, the drivers may be rewarded or punished. Further, the agreement has an exhaustive list of don'ts, and prescribed penalties for such violations, ranging from a meagre fine to suspension and termination. The analysis also shows that Ola appoints the drivers; Ola fixes the prices and determines the share of drivers earnings. Under the agreement, there is no guarantee of a certain fixed salary, as a driver's earnings are dependent solely on the amount of work he does.[39]

If the courts in India consider the adherence to such guidelines, as well as to the terms under the driver agreement as an act of exercise of substantial control and supervision, they could go on to rule that the drivers for aggregators are their employees. This would be the more socially welcome ruling, as it would lead to an extension of employee rights to such drivers. However, what really needs to be considered is the nature of work performed by the drivers, and the conditions governing the same. To that effect, the striking factor is the element of freedom prevalent in this area of work. The sheer degree of independence that the drivers enjoy in choosing whom to work for and when to work outweighs any form of secondary control, which the aggregators may have while the drivers are working for them. The drivers are allowed to register with other competitors and there is no minimum number of hours they have to work.[40] If such independence is accounted for, the court would be heavily inclined to rule that the drivers are independent contractors. Moreover, the application of the organisational test in the present context would be flawed because the test has ordinarily been applied in instances where a multitude of work is performed by an entity, where certain activities are held to be integral whereas certain functions are considered accessory to it. In the present dispute, aggregators' platform being an intermediary, has the only task of connecting drivers and customers. In such an instance, where only one work is carried out, application of the organisational test would lead to a distorted conclusion.

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[38] Uber Spain (n 4) para 7.

[39] Alok Kumar, 'Analysis: Ola's Contract with Drivers Shows They've Got a Raw Deal' (*Factor Daily*, 21 March 2017) <https://factordaily.com/ola-contract-driver-analysis/> accessed 5 September 2018.

[40] Advisory (n 28) 4.

GLOBAL DEBATE OVER THE ISSUE

As stated earlier, the cab aggregator business has seen an exponential growth within a very short span of time. Currently, Uber is the industry leader in this sector as its presence scalps several countries, whereas there are several domestic companies, such as Ola Cabs, Lyft, DidiKuadi and GrabTaxi, which give the multinational aggregators a run for their money. Since the *modus operandi* of all these companies are similar, they have faced similar regulatory challenges in several jurisdictions. The dispute regarding the employment status of drivers of such aggregators is one crucial question which has emerged before several courts.[41] It is pertinent to note that the tests of employment used by Indian courts are not unique to Indian jurisprudence. The 'control and supervision test' as well as the 'organisation test', referred earlier, have been heavily relied upon by the courts in the UK,[42] the USA[43] and other jurisdictions as well.[44]

The Labour Court of California, for instance, in the case of *Barbara Ann Berwick v UBER Technologies Inc*,[45] adopted the 'control and supervision test' when the dispute at hand arose before it. The Court considered several facts including that Uber conducts preliminary due diligence before recruiting drivers, sets the default route to be taken, sets the fare, imposes conditions on drivers regarding the type of vehicle they can use, instructs and controls the drivers in the performance of their work, and uses a driver-rating system to effectively monitor driver performance and to manage/discipline the drivers. These factors indicated that while the drivers were working for Uber, the level of control Uber had on them was akin to the extent of control in an employer-employee relationship. Moreover, the Court observed that the drivers were not acting totally independently and autonomously, as a self-employed contractor would. On account of such scrutiny, the court held the drivers to be workers of Uber. Similarly, in *Aslam v Uber,*[46] the Employment Tribunal of London, in addition to applying the control and supervision test in a similar manner as applied in the aforementioned case, also adopted the organisation test and stated that when the nature of work is providing transport services, drivers are at the heart of such work, and consequently, the moment the drivers engage themselves to work for such taxi aggregators, they become their employees.

[41] Fletcher (n 5).

[42] *Aslam v Uber* Case No 2202550/2015.

[43] *Barbara Ann Berwick v Uber Technologies Inc* EK 11-46739.

[44] Bruno Federowski, 'Brazil Appeals Court Rules Uber driver not Entitled to Benefits' *Reuters* (Sao Paulo, 24 May 2017) <http://ca.reuters.com/article/businessNews/idCAKBN18J38G-OCABS> accessed 7 September 2018.

[45] *Barbara* (n 43).

[46] *Aslam* (n 42).

However, this position of law is not uniform across all jurisdictions, as various instances of diverging opinions regarding the issue has been observed. For instance, the District Court of Appeal of Florida, in the case of *Darrin E McGillis v Department of Economic Opportunity and Rasier LLC*,[47] held that drivers for cab aggregators have the autonomy to decide whether, when, where, with whom, and how to provide rides using such app platforms. The Court, therein, noted that freedom to this extent is not compatible with the control and supervision to which a traditional employee is subject, and accordingly ruled that drivers for aggregators like Uber are independent contractors. Similarly, a Brazilian Appellate Court ruled that the drivers have the ability to log off at will, offer their accounts to other drivers and split fares, which was enough evidence to exhibit that they should not be considered as employees of Uber.[48] Moreover, a Los Angeles Superior Court had confirmed an arbitral award, which held that Uber lacked the requisite control over the particular driver, or any comparable driver, to be considered an employer since it does not guarantee rides, require minimum activity time, prevent drivers from driving for competitors, or direct driver routes.[49]

OUTCOMES UNDER THE EXTANT SYSTEM

If the drivers are considered as employees of Uber, they will qualify as workmen under the Act. Thereafter, the drivers will be entitled to all the rights available to workmen under the Act. The most significant right would be a right to notice of change,[50] which is to be given 21 days prior to the change being introduced. Such a right to notice becomes significant because the aggregators have been constantly changing service conditions relating to wages, hours of work, withdrawal of concession and privilege, introduction of new rules of discipline and alteration of existing rules without giving any statutory notice and without adhering to the 21 days' mandatory time period as prescribed under the Act. Because of such unilateral conduct, the aggregators have attracted widespread criticism and protest from the drivers.[51] Recognition as employees would ensure that the mandatory notice period is followed and the drivers have adequate time to respond to such changes. Moreover, the employers would be liable to provide the entitlements for minimum wages, healthcare and social security benefits of the drivers, due to each employee.[52]

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[47] *Darrin E McGillis v Department of Economic Opportunity* 3D15-2758.

[48] Federowski (n 44).

[49] *Uber Technologies Inc v Eisenberg* BS166561.

[50] Industrial Disputes Act 1947, s 9(A).

[51] Yuvraj Malik, 'Ola, Uber Taxi Drivers Protest Suspension of Incentives' (*Livemint*, 10 February 2017) <www.livemint.com/Companies/HHHxtSuMoUGBUtKD0B2KII/Ola-Uber-taxi-drivers-protest-suspension-of-incentives.html> accessed 7 August 2018.

[52] Vaidyanathan (n 14).

However, such an obligation upon the aggregators would be largely inconsistent with the business model adopted by them. Aggregators like Uber are praying for no alteration in their operational status quo, as they lower their costs by classifying drivers as independent contractors instead of full-time employees.[53] This allows them to escape the liability to arrange for employee benefits. If the drivers are held to be employees, Uber and Ola would have to arrange for benefits of nearly 9,50,000 drivers engaged on their platform. However, it is pertinent to note that if the drivers are held to be independent contractors, it is beneficial for them as well. The drivers will continue to have complete autonomy with regards to choosing when and whom to work for. They can log in and logout as per their convenience, and have the liberty to work for a rival platform also. In contrast to being a traditional full-time employee, they will continue being their own boss. Additionally, by virtue of being such independent contractors, drivers can engage themselves in other work, if required, or give time to their family or education, which a rigid employee schedule would not allow.

THE WAY FORWARD

At this juncture, the Delhi High Court, according to *lex lata*, may either declare the drivers as employees or label them as independent contractors. In the event the drivers are considered as employees, there could be long-lasting and irrevocable impacts, the foremost of which is the impact of such a ruling on the cab aggregator market. Currently, app-based cab aggregators have adopted the marketplace model of e-commerce,[54] under which an entity can receive 100% FDI without any government approval.[55] Under this model, an e-commerce entity has to provide a platform where it acts as a facilitator between buyers and sellers.[56] Aggregators adhere to the same, as their app exists as an intermediary platform, where independent drivers provide their services to potential customers. By adopting such a model, the aggregators receive foreign investment without any hindrances under the FDI Policy. However, if the drivers were recognised as employees of aggregators, in effect it would result in cab aggregators selling transportation services directly to customers via the drivers, who are their employees.

[53] Henry Ross, 'Ridesharing's House of Card: O'Connor v Uber Technologies Inc and The Viability of Uber's Labor Model in Washington' (2015) 90 WLR 1431, 1438-43.

[54] 'India formalises 100% FDI in e-commerce marketplace with riders' (*VC Circle*, 30 March 2016) <https://vccircle.com/india-formally-allows-fdi-e-commerce-marketplace-stumps-clause/> accessed 5 November 2018.

[55] Government of India, 'Press Note No 3' (*Department of Industrial Policy and Promotion*, 2016) <http://dipp.nic.in/sites/default/files/pn3_2016_0.pdf> accessed 5 September 2018 (Press Note).

[56] Shankar (n 2) para 2.1(iv).

Hence, aggregators would no longer remain an intermediary platform; rather they would become a company that directly sells cab transportation services to its customers. Therefore, their business model would tantamount to a model wherein a business entity would electronically sell its services to consumers directly, which is the B2C model of e-commerce.[57] However, under this form of e-commerce, no FDI is allowed.[58] Thus, if such a ruling were made, the cab aggregator industry will take a significant hit in its nascent stage as only domestic companies would be allowed to operate in this sector and the major global players would be wiped out from the market. On the contrary, if the drivers are held to be independent contractors, they would continue to lose out on all statutory rights and safeguards available to employees, and there would be no improvement in their working conditions.

Hence, it would not be an overstatement to say that this dispute has brought to surface several problems of law, foremost of which remains that a 21st century problem is being solved by 20th century rules. While the tests devised by the Supreme Court aid in distinguishing between an employee and an independent contractor, such a distinction is increasingly getting blurred, particularly in cases such as that of the drivers, where there is a substantial overlap of elements of independent contractors and employees. The drivers should have the same freedom as an independent contractor usually enjoys, but in the exercise of such freedom, they should not miss the benefits that accrue to the employees. Hence, such a scenario prompts the need for an alternative solution, which protects the interest of both the drivers and the aggregators. This can be achieved by striking a middle ground between the two classifications and adopting a hybrid model of classification for the drivers. Under such an exception, the drivers would be entitled to a basic minimum pay and they can have additional earnings based on their performance. The aggregators would also be bound to reimburse other operational costs incurred by the drivers. The drivers would be free to work for other rival platforms, but aggregator will not be required to arrange for their healthcare or social security benefits. Such an arrangement would serve as the most effective compromise between the conflicting interests of drivers and aggregators. An exception like this assumes more significance as aggregators and other similar on-demand platforms are on the rise, and if India comes forward with an alternate solution to the current *status quo*, it would ensure that the interests of all the parties remain protected in the long run.

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[57] Government of India, 'Discussion Paper on E-commerce in India' (*Department of Industrial Policy and Promotion*, 2014) <http://dipp.nic.in/sites/default/files/Discussion_paper_ecommerce_07012014%20%20%2013.pdf> accessed 27 August 2018.

[58] Press Note (n 55).

CONCLUSION

India's vast market size makes it a favourable destination for companies to conduct its business. Market research reveals that the number of rides taken only on Ola and Uber increased by four folds from 2015 to 2016, with nearly 500 million completed rides in the period.[59] Furthermore, the companies are trying to expand their presence in the transportation sector by venturing into other low budget options such as autos and e-rickshaws as well as operating shuttle services. They are also engaging in ancillary services such as delivery of food products by their driver partners. These steps ensure that the demand for their services are increasing, and the sector is growing at a pace faster than ever. The present dispute comes at a time when the on-demand economy across all sectors is growing rapidly, particularly with younger workers, and the individuals who work in this area are largely those who want greater flexibility, those who want to supplement their wages from a full-time job and those who are in transition between jobs. Moreover, the dispute is a mere cog in the larger arrangement, which has brought to light the outdated status of Indian labour laws. On such an account, the misclassification dispute should not only be looked at from a legal and economic standpoint, but also as an issue, which affects the social status of lakhs of drivers involved. Therefore, while it is a difficult proposition to incorporate an exception into a law, this exception is the best way to deal with the changes brought upon by such technological disruptions, and India should be the first to bring such a change.

[59] Sayan Chakraborty, 'Ola, Uber See Rides Rise Fourfold in 2016' (*Livemint*, 17 February 2017) <http://livemint.com/Companies/bjNzZDHCO25e0OZhj3okIJ/Ola-Uber-see-rides-rise-fourfold-in-2016-report.html> accessed 5 August 2018.