

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

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Regulation of Online Cab Aggregators: Issues and Challenges

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ABSTRACT

In the recent past, Indian taxi industry has undergone tremendous changes in the way they operate; there is transformation from traditional mode of operation to that of adapting changes from the globalized world. Online taxi booking is growing at a faster phase, though it is in the nascent stage and is successful in India. New age entrepreneurs have identified new opportunities in the fragmented industry by inventing new models clubbed with technology. The onset of online cab aggregators in the market has raised many issues, which seeks to be clarified by the government. No wonder, these online cab aggregators have been so far successful in implementing the “shared economy” model, however, in the absence of appropriate regulation, it is utmost important the factors that need to be kept in mind while drafting a proper framework. Reference can be taken from different jurisdictions; however, India needs to adopt a comprehensive set of rules exclusively applicable to online cab aggregators, since the very nature of service provided is different from ordinary taxi service providers. In the wake of the Delhi Uber Rape Case of 2015, issues concerning different realms of law need to be dwelled upon in order to prevent abuse of the privileges enjoyed by these online cab aggregators due to the present decentralized regime. There is also requirement of sound and futuristic regulatory framework which would lead to better development of the cab hiring economy. Presently, there are no clear guidelines and therefore, the present study is an analysis that highlights the various lacunae and challenges in regulating the booming market.

I. INTRODUCTION

In the recent past, Indian taxi industry has undergone tremendous changes in the way they operate; there is transformation from traditional mode of operation to that of adapting changes from the globalized world. Online taxi booking is growing at a faster phase, though it is in the nascent stage and is successful in India. New age entrepreneurs have identified new opportunities in the fragmented industry by inventing new models clubbed with technology.

The onset of online cab aggregators in the market has raised many issues, which seeks to be

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clarified by the government.

No wonder, these online cab aggregators have been so far successful in implementing the “shared economy” model, however, in the absence of appropriate regulation, it is utmost important the factors that need to be kept in mind while drafting a proper framework. Reference can be taken from different jurisdictions; however, India needs to adopt a comprehensive set of rules exclusively applicable to online cab aggregators, since the very nature of service provided is different from ordinary taxi service providers.

In the wake of the *Delhi Uber Rape Case* of 2015, issues concerning different realms of law need to be dwelled upon in order to prevent abuse of the privileges enjoyed by these online cab aggregators due to the present decentralized regime. There is also requirement of sound and futuristic regulatory framework which would lead to better development of the cab hiring economy. Presently, there are no clear guidelines and therefore, the present study is an analysis that highlights the various lacunae and challenges in regulating the booming market.

II. REGULATORY FRAMEWORK FOR AGGREGATORS IN INDIA

There is no existing regulatory framework for cab aggregators in India, there is no clarity as to whether these cab aggregators are to be brought under the ambit of ordinary taxis or under the ambit of transport technology aggregators. Motor Vehicles act, 1988 has no provision dealing with online cab services.³

Direct interaction of customer and taxi is covered under section 2(7) Of motor vehicles act known as Contract Carriage, which is either on time basis or from one destination to other. The power to ply taxi on the roads is only to the owner and the license is issued by the state government under section 67 of the act. MV act does not confer price variation of the contract of carriage.

Every state has its own system of fare regulation. For example, in Delhi, till 2015, there were two schemes for registering a motor cab. One was the Radio Taxi Scheme⁴ of 2006 with fare set at Rs. 23 per km and the other was the Economy Radio Taxi Scheme.⁵ of 2010 which fixed fare at Rs. 12.5 per km. The City Taxi Scheme⁶ framed in 2015 merged the aforementioned two

³ Tariq Ahmad, *India's Regulatory Approach To Uber*, CUSTODIA LEGIS: LAW LIBRARIANS OF CONGRESS (Jul. 11, 2016), available at <https://blogs.loc.gov/law/2016/07/indias-regulatory-approach-to-uber/> (last accessed 11.11.2020).

⁴ Transport Department, Government of NCT of Delhi, Radio Tax Scheme-2006 (2006), available at http://www.delhi.gov.in/DoIT/DoIT_Transport/trrs31.pdf (last accessed 09.11.2020).

⁵ Transport Department, Government of NCT of Delhi, Economy Radio Tax Scheme-2010 (2010), available at it.delhigovt.nic.in/writereaddata/sch2010751.doc (last accessed 05.11.2020)

⁶ Transport Department, Government of NCT of Delhi, City Taxi Scheme-2015, (Aug., 26, 2015) available at <http://delhi.gov.in/wps/wcm/connect/f9c68480499d268a87b99f018ef168b1/Taxi.compressed.pdf?MOD=AJPER>

schemes and thus the fare became uniform. Another example is that of Kerala where fare regulation is applicable for all contract carriages having an engine capacity less than 1500cc.⁷

National Regulation For Cab Aggregators

In pursuance of the order dated 11th August 2016 of Hon'ble High Court of Delhi in the writ petitions, Association of Radio Taxis v. Union of India & Ors. and the Meru Case, a Committee was constituted under the chairmanship of Secretary, Ministry of Road Transport & Highways (MoRTH) to examine all relevant issues related to existing permits given to black/yellow taxis, radio taxis, aggregators, etc.

The committee had finalized its report in December, 2016. The committee has recommended that city taxis should be allowed to run on App Based platforms. The policy recommendations also ensure that bigger aggregators do not undercut the traditional cabs. The major focus of the policy is to ensure safe, secure and affordable ride to the common public so as to help in reducing congestion as well as pollution in the cities. The policy also recommends that the app used by aggregators is validated for its integrity by an agency authorized by Ministry of Electronics and Information Technology. The policy would help in a healthy growth of the taxi industry. The policy is recommendatory in nature and would help to provide a particular framework to help the States in framing detailed regulations. The vehicles in India are operated as per the provisions of Motor Vehicle Act, 1988 and the rules framed thereunder. The power of enforcement of these provisions rests with the State Government. State Government Authorities take appropriate action on the vehicles who doesn't run in accordance with the Motor Vehicle Act, 1988 and the rules framed thereunder.

Motor Vehicles Amendment Bill,2016

The Bill amends the Motor Vehicles Act, 1988 to address issues around third-party insurance, regulation of taxi aggregators, and road safety. The Standing Committee on Transport, Tourism and Culture submitted its report on the Bill on February 8, 2017.²⁶ The Committee recommended that "aggregator" means a digital intermediary or market place for a passenger to connect with a driver for the purpose of transportation. It called for the liberalizing intra-city taxi permit system and other automobile aggregation policy. Based on the same, a few more amendments were made to the Bill and were circulated on April 7, 2017. Lok Sabha passed the

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⁷ Abhishek Das & Pooja Koppa, *Less Regulations for a Better Commute: A Case Study on Taxi Aggregators in Kerala*, Centre for Public Policy Research (2018), available at <https://www.cppr.in/wpcontent/uploads/2018/05/Less-Regulations-for-a-Better-Commute-A-Case-Study-on-Taxi-Aggregators-inKerala.pdf> (last accessed 04.11.2020)

Bill with these amendments on April 10, 2017.

The new Bill seeks to define digital intermediaries or market places which can be used by passengers to connect with a driver for transportation purposes (taxi services). It also states that State governments will issue licenses to aggregators in conformity with guidelines issued by the central government. The 2016 Bill does not specify what the central guidelines will cover. Currently, state governments determine guidelines for taxis (i.e., the rules that govern plying of the vehicle). With regard to aggregators, there could be cases where such state guidelines are at variance with the central guidelines. In such a scenario, the central guidelines will prevail because motor vehicles laws fall under the Concurrent List in the Seventh Schedule to the Constitution.

III. THE IMPACT OF AGGREGATORS ON THE MARKET: A COMPARATIVE PERSPECTIVE

In markets with imperfect information, such as the taxi market, changes in transaction costs and strategic complementarity may cause thick or thin market externalities, which can move the market towards one of much possible equilibrium.³⁷ Uber lowers entry barriers for operators by allowing them to function in a similar manner to taxis, but without the substantial cost of buying or hiring a taxi permit or medallion. This significantly decreases to entry barriers for supply. The ease and speed with which the app can be downloaded, coupled with cashless payment systems and high rates of Smartphone ownership, reduces transaction costs for the passenger. However, lower transaction costs on the demand side assume a certain level of supply, which will vary between jurisdictions. The supply needed to reduce transaction costs relative to the established taxi market remains an open empirical question – and one frequently discussed by regulators.⁸

Uber charges passengers according to a predetermined pricing structure which allows the fare to move between a fixed price floor and ceiling. Prices are set according to an algorithm based on the service level and the relationship between supply and demand in the local market and is calibrated to reflect price sensitivity. The passenger must agree to the cost of the journey before its commencement. The cost of the trip is known upfront and is consistent and non-arbitrary. This prevents discriminatory spot-market price gouging by drivers,⁹ for an

⁸ M. Flegenheimer, *De Blasio Administration Dropping Plan for Uber Cap for Now*, NEW YORK TIMES (Jul. 22, 2015) available at http://www.nytimes.com/2015/07/23/nyregion/de-blasio-administration-dropping-plan-for-bercap-for-now.html?_r=0 (last accessed 05.11.2020).

⁹ L. Harris, *Taxicab Economics: The Freedom To Contract For A Ride*, 1 GEORGETOWN J. LAW PUB. POLICY 195 (2003)

example of spot-market price gouging.

At peak times, however prices can reach 7.5 times the base rate, which has caused anger amongst passengers wishing to travel at these periods of very high demand. Price discrimination is generally viewed as “unfair” when prices are increased in response to a supply shortage, even in the presence of direct substitutes, such as public transport or regulated taxis, although, it has become accepted in some markets, such as the airline industry where it has operated since the 1980s.¹⁰

Despite the controversy, price discrimination by Uber has two effects: firstly, it stokes demand as price sensitive passengers are able to take rides outside of surge pricing times for prices generally below those of licensed alternatives¹¹ without having to subsidise rides taken during surge periods, as they would in regular taxi with static prices. In this sense, the pricing strategy makes the taxi market’s notoriously inelastic demand curve more flexible. Secondly, unlike the airline industry, Uber can use pricing to add supply to the market.

Matching supply and demand requires an intermediary to act as a clearinghouse for transactions. As both parties are using the same app, the software must provide an efficient centralized two-way clearing house which can process transactions whilst overcoming the congestion: the clog of transactions which need to be processed common in thick markets.

This problem is solved by the application itself whose capacity is more than adequate to process the required number of transactions instantaneously, a task beyond a traditional telephone-based dispatch system that is limited by staffing levels and the number of phone lines. Congestion is thus avoided through rapid processing times, whose brevity is further reinforced by issuing suppliers with “exploding” offers. Under the “exploding offer” system, a driver must respond to the offer of a journey, accepting or rejecting it within fifteen seconds, which ensures fast supply-side response times. After the completion of the ride, both drivers and passengers send feedback on each other to the operator who creates ratings for both which will be visible to both supply and demand sides. Constant and public peer-review allows passengers to avoid poor operators, and operators to dodge troublesome passengers, a benefit unavailable to regulated taxis.

This removes one aspect of the imperfect information problem from both sides of the

¹⁰ Balafoutas, L et al., *What Drives Taxi Drivers? An Experiment on Fraud n a Market for Credence Goods*, WORKING PAPERS N ECONOMICS AND STATISTICS (2011–11).

¹¹ Silverstein, S., *Everything You Need To Know About Uber Prices n 21 Cities*, BUSINESS INSIDER, (Oct. 16, 2014), available at <http://www.businessinsider.com/uber-vs-taxi-pricing-by-city-2014-10> (last accessed 05.11.2020)

clearinghouse¹² - passengers are unlikely to get a driver who has a history of offering a substandard service. Uber also goes some way to dealing with the problem faced by many US cities after they lifted quantity controls: new entrants without dispatch equipment, operating solely in the cruising market, cluster at demand spikes (i.e. hotels, airports and taxi stands) causing local over-supply. Uber effectively increase supply and provides those new entrants with low-cost access to dispatch services, which enables entrants to quickly locate passengers. This eliminates the need to wait for walk-up passengers at traditional centers of demand, like hotels and cab stands, which avoids local oversupply, stops public disputes amongst operators and lessens the externalities associated with increased supply, such as localized congestion. In short, Uber first creates the conditions necessary for the establishment of a thick market by lowering barriers to entry for supply and reducing transaction costs for demand. This type of market requires an efficient clearing house in order to function efficiently. In principle, a clearinghouse solves the three main challenges in such a market: sufficient volumes of transactions, congestion and safety. It achieves adequate volumes of transactions in the market through a thick market externality; evades congestion by using automated technology to link supply and demand, rather than dispatch centers with a limited number of human operators; and it ensures service standards through user feedback.

In this sense, it successfully solves the thin market problem. The array of service levels offered the customer through clear signaling provides effective market differentiation, allowing suppliers within the Uber model to offer better quality without being driven out of the market. Again, the feedback mechanism helps to minimize the gap between the quality advertised and that supplied. In this sense, the Uber model largely solves the problems associated with credence goods.

IV. CASE STUDIES: A BRIEF OVERVIEW OF THE EMERGING JURISPRUDENCE

SAFETY CONCERNS

The most horrific and disturbing case was perhaps the case of *Shiv Kumar Yadav v. State of NCT of Delhi*,¹³ wherein a woman was raped by a driver engaged by Uber India in December 2014. The driver was convicted of several counts of assault and rape and the conviction was also upheld by the High Court of Delhi. Although in instances like these, there is a need for proper monitoring of the partner drivers, especially when the convict in the aforementioned case

¹² Slee, T, *Some Obvious Things about nternet Reputation Systems*, WHIMSELY, (September 29, 2013), available at <http://tomslee.net/2013/09/some-obviousthings-about-internet-reputation-systems.html> (last visited 05.11.2020).

¹³ *Shiv Kumar Yadav v. State of NCT of Delhi*, Cri. A. 471/2016 (Decided On 10.09.2018).

was already charged with several offences on previous occasions. The deregulation of these online cab aggregators implies that aggregators like Uber and Ola follow safety standards subjectively, as prescribed by the corresponding State Transport Authority. However, beyond that, there is no measure taken by these companies in view of the safety of the passengers. Any regulatory framework that is brought into force needs to be reassuring in its objective to promote safety of the passengers first. The Current Taxi Policy Guidelines, though take into account this factor, it is hoped that the scenario would be much more stringent with the amended Motor Vehicles Act.

TAX ISSUES

A case¹⁴ was filed before the Income Tax Appellate Tribunal (Mumbai Bench), by Uber India Systems Pvt. Ltd. requesting stay of demand of Rs. 24,92,16,591/- and Rs. 84,13,13,665/- for Assessment Years 2016-17 and 2017-18 respectively. The facts of the case were that during a survey conducted on 12.01.2018 at the registered office of Uber India, it was observed that the company has not complied with TDS provisions which have resulted in non-compliance of provisions of Sec. 194C of the Income Tax Act, 1961 on the payouts/dues to the Driver-partners. Therefore, the company was treated in default and the aforementioned demands were raised against the company.

Uber contended stating that as it is providing only support services and acting as collection and remittance agent and disburses the payment as per the instructions from Uber B.V, a company incorporated in Netherlands. It also submitted that considering the facts that all Driver-Partners are residents of India having PANs/bank accounts and most likely earning below the threshold limit as prescribed under Sec. 44AD of the Act and accordingly not liable to tax at all. They further contended that the liability under Chapter XVII-B of the Act is a vicarious liability, the same arises only if the payment results in taxable income in the hands of the recipient and if the amount paid is not chargeable to tax in the hands of the recipient, there is no obligation under Chapter XVII-B of the Act. Therefore, the company denied liability to deduct TDS u/s. 194C of the Act on the ground that it is not a 'person responsible for making payment' to the Driver-Partners as the contract is between Uber B.V. and Driver-Partners. It contended that Uber India is merely working on the directions of the Netherlands company and passing on payments to the Driver-Partners as per the directions of Uber B.V. The Court, while determining that that Uber India had a prima facie case for staying the application of demand, referred the matter to

¹⁴ *Uber India Systems v. J.C.I.T. (TDS) (OSD) (2)(3)*, Special Appeals No. 436 and 437 of 2018 (ITAT, Mumbai Bench).

a larger bench, which means that the issue is currently subjudice.

CONSTITUTIONAL VALIDITY

In *Satish N. & Ors. v. State of Karnataka & Ors.*,¹⁵ The Karnataka High Court had to decide the question of constitutional validity of the Karnataka On-Demand Transportation Technology Aggregators Rules, 2016, which was alleged as stifling the functioning and control of the multinational companies over their businesses. Several writ petitions were filed by different stakeholders, based on which the Rules were challenged on the following aspects:

→ That the Aggregator Rules are in *ultra vires* the Motor Vehicle Act, 1988 as the State Government was not under the competence to frame separate rules for operators under the City Taxi Scheme and aggregators.

→ Rule 6(a) is violative of Article 14 of the Constitution as being arbitrary, since it capped the minimum requirement of having at least 100 taxis in order to be allowed to operate as licensed aggregator.

→ Rule 7(c) was violative of Article 14 of the Constitution as being an unreasonable and oppressive, since it requires that the taxis registered with an aggregator should have a panic button.

→ Also, Rule 10(h) which required the aggregator to verify the antecedents of the drivers, for the last seven years, through the police, before registering the driver on its platform, was violative of Article 14.

→ Rule 11 (1) (a), (b) and (c) of the Aggregator Rules, which bestows a power on the licensing authority to suspend or to cancel the aggregator's license under the circumstances mentioned therein, was violative of Article 14.

→ Exclusion of All India Tourist Vehicle Permit Holders from the purview of the Rules, as provided under Rule 10(n) is violative of Article 14.

→ Rule 10 (o) of the Aggregator Rules, which prohibits the permit holder and the driver, who are registered with an aggregator, from independent operation, or from accepting booking directly, violates the fundamental rights of the permit holders and the drivers under Article 19 (1) (g) of the Constitution of India.

→ Rule 10 (c) and Rule 10 (v) of the Aggregator Rules bestow an unbridled, uncontrolled power upon the State to have access to the personal information about the passenger violate

¹⁵ *Satish N. & Ors. v. State of Karnataka & Ors*, 2017 (2) Kar. L.J. 6

the right to privacy.

→ Rule 8 (c) of the Aggregator Rules, which requires that a driver should be a resident of Karnataka for a period of two years, and Rule 8 (d) of the Aggregator Rules, which requires that the driver should have a working knowledge of Kannada language, is constitutionally invalid.

The Court laid down the following observations; some of them are discussed as hereunder:

→ An Aggregator means an operator who connects the passenger/intending passenger to a driver of a taxi through technological means, for a consideration or without a consideration. - Aggregator also means an intermediary/ market place who canvasses or solicits or facilitates passengers for travel by a taxi and who connects passenger/ intending passenger to a driver of a taxi through a technological platform, for a consideration or without a consideration. An Aggregator is a canvasser. Therefore, the aggregator falls within the scope of Section 93 of the Motor Vehicles Act, 1988. Hence, the Aggregator Rules are legally framed under Section 93 of the M.V. Act, 1988.¹⁶

→ Since the definition of an "Aggregator", given in the Aggregator Rules, also includes an Operator, and the Aggregator Rules also deal with a contract carriage, therefore, the Aggregator Rules are legally framed under Section 95 of the M.V. Act.¹⁷ Section 96 (1) and Section 96 (2) of the M.V. Act, bestow ample power upon the State for framing Rules dealing with the provisions of Chapter 5 of the M.V. Act. Therefore, the Aggregator Rules are legally framed under Section 96 (1) of the M.V. Act. Hence, the State Government is well within its competence to frame the Aggregator Rules under Sections 93, 95 and 96 (1) of the M.V. Act. The Aggregator Rules are, thus, *intra vires* the Act.¹⁸

→ Also, the aggregator under the Aggregator Rules, and the Operator under the City Taxi Scheme form two distinct and separate classes. Therefore, they need not be subjected to the same control, or to the same set of liabilities. Since they are unequals, they cannot be treated equally.¹⁹

→ Rule 6(a) of the Aggregator Rules which prescribes the minimum requirement of having hundred taxis for an aggregator is a legislative policy decision of the State Government. Therefore, Court refrained from declaring the requirement as being violative of Article

¹⁶ *Satish N. & Ors. v. State of Karnataka & Ors*, 2017 (2) Kar. L.J. 6; para 252

¹⁷ *Supra* note 12, para. 252(2).

¹⁸ *Supra* note 12, para. 252(3)

¹⁹ *Supra* note 12, para. 252(4).

19(1)(g) of the Constitution of India qua the Start Ups.²⁰

→ Rule 7 (c) of the Aggregator Rules, which requires that the taxis registered with an aggregator should have a panic button, is not violative of Article 14 of the Constitution of India. Likewise, Rule 10 (h) of the Aggregator Rules, which requires the aggregator to verify the antecedents of the drivers, for the last seven years, through the police, before registering the driver on its platform, is not violative of Article 14 of the Constitution of India. Moreover, the requirement is neither oppressive, nor unreasonable. Hence, Rule 10 (h) of the Aggregator Rules is constitutionally valid.²¹

→ Rule 11 (1) (a), (b) and (c) of the Aggregator Rules, which bestows a power on the licensing authority to suspend or to cancel the aggregator's license under the circumstances mentioned therein, is also not violative of Article 14 of the Constitution of India. Furthermore, Rule 11 (1) of the Aggregator Rules does not grant an unbridled, uncontrolled power to the licensing authority to suspend or cancel the aggregator's license. Since the said power is circumscribed by sufficient safeguards provided under Rules 11 (3) and 12 of the Aggregator Rules, Rule 11 (1) of the Aggregator Rules is constitutionally valid.

→ All India Tourist Vehicle Permit Holders under Section 88 (9) of the M.V. Act form a separate class from the permit holders under Sections 74 and 88 (8) of the M.V. Act. - Rule 10 (n) of the Aggregator Rules, which excludes the All India Tourist Vehicle Permit Holder from the purview of the Aggregator Rules, is also not violative of Article 14 of the Constitution of India. The All India Tourist Vehicles can carry only tourists and cannot ply commuters.²²

→ Rule 10 (o) of the Aggregator Rules, which prohibits the permit holder and the driver, who are registered with an aggregator, from independent operation, or from accepting booking directly, does violate the fundamental rights of the permit holders and the drivers under Article 19 (1) (g) of the Constitution of India. Since the restriction is not in the interest of the public, Rule 10 (o) of the Aggregator Rules is not protected by Article 19 (6) of the Constitution of India. Thus, Rule 10 (o) of the Aggregator Rules is unconstitutional.²³

→ Rule 10 (c) and Rule 10 (v) of the Aggregator Rules bestow an unbridled, uncontrolled power upon the State to have access to the personal information about the passenger. Such unfettered power is likely to be abused by the State. Thus, Rule 10 (c) and Rule 10 (v) of the

²⁰ *Supra* note 12, paras. 252(5) and (14).

²¹ *Supra* note 12, para. 252(8).

²² *Supra* note 12, paras. 252(9), (10), and (11)

²³ *Supra* note 12, para. 252(15).

Aggregator Rules violate the right of privacy. The right of privacy is not only a human right, but is also a fundamental right under Articles 19 and 21 of the Constitution of India. Moreover, India being a signatory to International Conventions, which guarantee the right of privacy to the people, the Indian Judiciary is legally bound to protect and promote the right of privacy. Since Rules 10 (c) and 10 (v) of the Aggregator Rules violate the right of privacy, they are unconstitutional. Furthermore, the said provisions are contrary to other laws of the land, namely Rule 6 of the Sensitive Personal Data or Information Rules, 2011 and Rule 3 (7) of the Intermediary Rules. Hence, Rule 10 (c) and Rule 10 (v) of the Aggregator Rules are also unconstitutional on this account.²⁴

→ Rule 8 (c) of the Aggregator Rules, which requires that a driver should be a resident of Karnataka for a period of two years, and Rule 8 (d) of the Aggregator Rules, which requires that the driver should have a working knowledge of Kannada language, both these provisions are constitutionally valid. For, these provisions are within the object and purpose of the M.V. Act, which is to ensure the smooth functioning of the contract carriage, and to ensure the safety and comfort of the passenger.²⁵

The Court also laid down that Rule 11 (1) (e) of the Aggregator Rules, which permits the licensing authority to suspend or cancel the aggregator's license if “any criminal complaint is filed against the driver, or the aggregator, or its employee”, suffers from vagueness. Thus, the said provision is unconstitutional. The Court applied the doctrine of severability and stated that the Rules, de hors the invalid parts were constitutionally valid.

EMPLOYEE OR NOT?

In the case of *Ali Razak & Ors. v. Uber Technologies*,²⁶ the district court of Pennsylvania has discussed as to whether the plaintiffs, who were Pennsylvania drivers participating in the Uber ride-sharing service and provided services as Drivers through the Uber App's UberBLACK platform, were employees of the respondent. The Court dwelled upon the existing law to observe that employer is “any person acting directly or indirectly in the interest of an employer in relation to an employee” and an employee is any individual employed by an employer, wherein the meaning of employ was stated to be “to suffer or to permit to work”. Plaintiffs contended that Defendants “misclassify” them as independent contractors when, in fact, they are Defendants' employees, within the meaning of the Fair Labour Standards Act, 1938. The question of whether UberBLACK drivers are properly classified as “employees” or

²⁴ *Supra* note 12, para. 252(16)

²⁵ *Supra* note 12, paras. 252 and 18

²⁶ *Ali Razak & Ors. v. Uber Technologies*, Unreported in F.Supp. 3d. (2016).

“independent contractors” was, of course, at the heart of this dispute. The Court applied the following test to determine whether there is a relationship between the two parties in the nature of an employer and employee relationship, as mentioned hereunder: “*the control of the manner that work is to be done; responsibility for result only; terms of agreement between the parties; the nature of the work or occupation; the skill required for performance; whether one employed is engaged in a distinct occupation or business; which party supplies the tools; whether payment is by the time or by the job; whether the work is part of the regular business of the employer, and the right to terminate the employment at any time.*” The Court observed that although the plaintiff were indeed under the control of the respondent as far as the work done is concerned, the Court held that there was no fiduciary relationship between the parties which was based on confidentiality, special trust or fiduciary responsibilities. The Court held that Uber does not exercise enough control over its limo service drivers for them to be deemed employees under the FLSA. The drivers have the flexibility to work when they want to, where they want to and are free to tend to personal matters in between rides. Therefore, the Court observed that the drivers are not employees but they are independent contractors, and therefore, labour legislations are not applicable.

V. CONCLUSION

Therefore, as can be seen, there are myriad issues surrounding the functioning of online cab aggregators that need to be resolved by both the judiciary as well as the legislator. India, as of now, has not dwelled upon most of the issues which have already been adjudicated by foreign jurisdictions. No wonder, online cab aggregators are a boon to the economy from a consumer’s perspective. However, the lack of clarity that the Indian law enforcement agencies have with respect to regulation of online cab aggregators needs to be resolved. For instance, the United States Courts have taken an entirely different approach than what has been adopted in the United Kingdom, wherein the United Kingdom Employment Appeal Tribunal (EAT) has held that Uber drivers are workers rather than self-employed and are entitled to receive the national minimum wage and paid annual leave.²⁷

Therefore, as can be seen, courts have adopted different approaches in deciding all these issues and therefore, the Indian Courts need to be cautious while unilaterally adopting any one approach. In light of the findings of the study, there are some key recommendations that may be considered while framing a policy governing online cab aggregators, as discussed below. The policy makers should provide a legal definition of all the existing business models

²⁷ *Uber B.V. v. Aslam and Ors.*, [2018] I.R.L.R. 97 E.A.T.

operating under sharing economy concept. The definitions have to provide for criteria for inclusion and must also have scope of covering emerging innovative business models under the same. There may be separate definitions and treatments for innovative business models, however

an exhaustive definition with a similar treatment to all such models may also be considered. Regulators should balance regulations in a manner that regulations do not discourage innovations in business models and encourage competition in the market place. Regulations such as cap on the fleet sizes of vehicles or conditions imposed on the fleet composition may hamper the growth of online cab aggregators and may discourage the new entrants to this marketplace. Many economists strongly advocate the surge pricing system. They claim that this system itself is a perfect method to deal with a supply-demand imbalance. Research even suggests that the system was highly effective in dealing with increased demand during peak times. The surgepricing strategy provides a competitive advantage to online cab aggregators and makes this market attractive for new entrants. Thus restricting surge pricing completely may stifle the innovative strategies adopted by these emerging business models. Therefore, surge pricing may be permitted, subject to certain restrictions.

Government should take into account the inclusion and continuation of existing mobility solutions such as Black & Yellow taxis and Auto Rickshaws. Any regulations imposed should create a level playing field for all players and prevent practices such as subsidization of passenger fares that could create entry barriers for them to enter the Application Based transport services aggregation platform. Also, accountability of aggregators for the acts of drivers needs attention of the policy makers, and the aggregator must verify the licence and criminal record of driver before registering them on their platform.

Despite the Motor Vehicle Act clearly specifying the maximum number of hours drivers can work, some drivers work for more than the stipulated working hours. Therefore, this would need guidelines from Government so as to explore various other options on limiting driver hours.

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