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Privatisation of Local Transport- Ola, Uber and Consumer Protection

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Ola, Uber and the Motor Vehicles Act:

For the new generation, yellow taxis appear to be a thing of the past, with new platforms like Ola and Uber providing most of the transport services in the cities. Anyone who wants to avail of their services just downloads the apps- this is an easy, convenient and cost-effective method. Here, service providers act as media to facilitate the available drivers to get connected to customers. All driver details, his ratings, the cab number, etc. are visible to the consumer. However, the workings of these app-based cab aggregators lack sufficient clarity. Thus, there is a need to identify regulatory frameworks for them. The categorisation is itself debatable since it is not clear whether Ola and Uber are similar to traditional taxis or transport technology aggregators.[1] The regulations that issue licenses to all app-based aggregators are the Motor Vehicles Act 1988. Unfortunately, there are no provisions that deal with app-based service providers as it deals with only commercial and non-commercial vehicles, and in either case, it envisages the contracts to be between the customers and vehicle owners or agents without considering any intermediaries. Section 67 of this act also confers upon the state government the power to set fares for taxis driven by owners, thus giving no discretion regarding this matter.[2] This proves that the MV act 1988 is aimed to act on a non-digital economy driven by personal interactions with no intermediaries and no hidden costs. There is equality in bargaining power because costs are determined by the state. However, this status quo has been disrupted severely by cab aggregators.

The Gig Economy:

From the 21st century onwards, all societal aspects have been shaped by the fourth industrial revolution where digital technology combined with artificial intelligence

[1] Katherine E O'Connor, 'Along For The Ride: Regulating Transportation Network Companies' (2016) 51 Tulsa L Rev 579, 582-83.

[2] Motor Vehicles Act 1988, s 67 (1)(i)

has given rise to new socio-economic relationships. Also called the sharing economy, or the gig economy, the peer-to-peer economy is a major contribution of this industrial revolution. There has been the creation of "three-sided business models", with digital platforms like Ola and Uber acting as intermediaries between consumers and service providers. Passenger transport models of Ola and Uber are leading to great pressure on traditional taxis. The contribution of the digital economy and its societal impact has been the subject of much controversy- on one side, it has been praised as an achievement as it has helped to exploit excess assets and use them to their full capacity, has enabled asset owners to obtain income and jobs, has increased consumers' power by providing more choices.[3] On the other hand, it has been criticized for disrupting traditional businesses, exploiting service providers and completely disregarding consumer protection.[4] The existing consumer protection legislation, the COPRA 2019 aims to protect consumers in "consumer-to-business" transactions. Here, in the platform economy, service providers interact directly with consumers and these are "consumer-to-consumer" transactions. There is thus a drastic shortage in the regulations governing these platforms.

Ola, Uber and Inapplicability of COPRA 2019:

There is no doubt that people who avail of the services of Ola and Uber are consumers under section 2(7) of the CPA 2019[5]. The problem rests with the issue of whether Ola and Uber can be said to be providing 'services' as is described in the act. Uber describes itself as being a technology company that "does not provide transportation or logistic services" nor "function as a transport carrier" and all these logistic and transportation services are "provided by independent third-party contractors not employed by Uber."[6] Similarly, Ola provides us services that allow us to send requests through Ola to Drivers on the Ola Network.[7] It is evident from these descriptions that Ola and Uber do not consider themselves to be providing driving services, but are rather acting as intermediaries to connect consumers with drivers

[3] Cristopher Coopman, Matthew Mitchell, Adam Thierer, 'The Sharing Economy and Consumer Protection Regulation; The Case for Policy Change' (2015) 8(2) The Journal of Business, Entrepreneurship & the Law <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1130&context=jbel> accessed on 21 November 2021.

[4] Sukumar Ganapati and Cristopher G Reddick, 'Prospects and Challenges of Sharing Economy for the Public sector' (2018) Government Information Quarterly https://doi.org/10.1016/j.giq.2018.01.001 accessed on 24 November 2021.

[5] Consumer Protection Act 2019, s 2(7).

[6] Uber India Systems Private Limited, 'Terms and Conditions' (Uber, 26 May 2021) <https://www.uber.com/legal/en/document/?name=general-terms-of-use&country=india&lang=en> accessed on 29 November 2021.

[7] Ola- Ani Technologies Private Limited, 'Terms and Conditions' (Olacabs, 8 September 2021 <https://www.olacabs.com/tnc?doc=india-tnc-website> accessed on 29 November 2021.

who are independent contractors. These provisions exempt them from being regulated by labour laws and motor vehicle laws, the reason them being only software applications facilitating cab aggregation. Ola and Uber are also different from normal business intermediaries. They engage in-

1. Recruiting and enrolling of parties into the network,
2. Collecting data on consumers and service providers,
3. Suggesting prices for the providers of services
4. Applying “reward and punishment” policies
5. Providing review tools by which consumers and service providers can rate each other’s services, thus acting as a self-correction tool without legal intervention.[8]

Trust factors and rating are key to the aggregator economy. These prompt Ola and Uber to standardize the quality of services provided by them. This includes shorter waiting time, keeping the cars in good condition, ACs in working order and polite behaviour by drivers which is generally not the case in normal taxis and other public/private transport systems. The major point of concern for consumers is however the issues of safety.

Reported problems:

On the fifth of December 2019, a woman was raped in Noida by a Uber driver.[9] It was found out by the Noida police that Uber had not undertaken the driver’s verification process and that he was unregistered. Though all drivers are necessitated to obtain certificates from the police that they have clean records, a survey where many cab drivers were questioned revealed that police and app background checks were grossly inadequate.[10] Rules can be flouted easily. The 2014 Uber rape case and the abduction of a doctor by an Ola driver in 2017 were results of lacking background checks. Police officers do not take these checks seriously, and sometimes do not even confirm addresses provided by drivers. Four registered cab drivers were nabbed for robbery by

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8Katerina Stanoevska, Vera Kesekamp, Victor Sutev**, ‘**Platforms and the Sharing Economy: An Analysis EU H2020 Research Project Ps2Share: Participation, Privacy, and Power in the Sharing Economy’ (2017) SSRN Electronic Journal https://www.researchgate.net/publication/322845971_Platforms_and_the_Sharing_Economy_An_Analysis_EU_H2020_Research_Project_Ps2Share_Participation_Privacy_and_Power_in_the_Sharing_Economy_2017 accessed on 20 November 2021.

9 ‘Unregistered Uber driver rapes 26-year-old woman in Greater Noida, accused arrested’ Business Today (New Delhi, 15 February 2019) <https://www.businesstoday.in/latest/corporate/story/unregistered-uber-driver-rapes-26-year-old-woman-greater-noida-170227-2019-02-15 > accessed on 25 November 2021.

10 Niharika Lal ‘How easy are background checks for app-based drivers’ the Times of India (Delhi, 23 February 2019) <http://timesofindia.indiatimes.com/articleshow/68114183.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed on 25 November 2021.

the Gurugram police in 2018.[11] All these instances show us that the importance regarded to consumer protection and safety is negligible. Another concern is regarding the issue of surge pricing. Though the Consumer Protection Act bans unfair trade practices, Ola and Uber attribute the surge in prices during peak hours to algorithms that calculate prices based on supply and demand factors, thus validating surge pricing. Hence, consumers have to pay exorbitantly high amounts to travel even short distances during peak hours. Various cases have been lodged complaints about the issue of surge pricing.[12] Despite the engagement of Ola and Uber in apparent anti-competitive behaviour, wherein the drivers crowd out ordinary taxis and increase prices, the NCLAT judgement in *Samir Agarwal v. Competition Commission of India* was in favour of Ola and Uber It held that these platforms do not facilitate cartelization between drivers as the drivers were "independent contractors who operated independently" and also that surge pricing was legal [13]. All these cases erode the high pedestal upon which Consumer Rights are positioned.

Existing Legislation:

The Motor Vehicles Act, 1988 has been amended to take into account unique roles played by Uber and Ola in the transport sector.[14] The amended law defines the 'aggregators' as a "digital intermediary or marketplace for a passenger to connect with a driver for transportation."[15] It mandates these platforms to procure licenses from the requisite authorities to continue operating, the failure of which would result in the banning of the apps.[16] This provides a defined position for these platforms in our economy. State Governments have also tried to regulate various peculiarities of Ola and Uber-like surge pricing,[17] verification of drivers[18] and the registration of

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[11] '4 Cab Drivers Rob15 passengers on Delhi Gurgaon Expressway, arrested' NDTV (Gurgaon, 19 December 2018) < https://www.ndtv.com/gurgaon-news/4-cab-drivers-rob15-passengers-at-delhi-gurugram-expressway-arrested-1964754> accessed on 25 November 2021.

[12] *M/s Fast Track Call Cab Private Limited v M/s ANI Technologies Pvt. Ltd.* Case No. 6 & 74 of 2015; *Meru Travel Solutions Private Limited vs. Uber India Systems Private Limited* Case No. 96 of 2015.

[13] Samir Agarwal v. Competition Commission of India and Ors., Case no. 37 of 2018, NCLAT

[14] Motor Vehicles Act 1988

[15] Motor Vehicles (Amendment) Act 2019, s 2(1A).

[16] n(13), s. 93; ibid, s. 36.

[17] 'Ola, Uber to deactivate surge pricing during odd-even scheme in Delhi' *The Economic Times* (Delhi, 2 November 2019) <https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/ola-uber-to-deactivate-surge-pricing-during-odd-even-scheme-in-%20delhi/articleshow/71862650.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 20 November 2021.

[18] Maharashtra City Taxi Rule 2017

vehicles for aggregator use.[19] The Delhi Government has even banned app operations due to non-compliance with motor vehicle laws.[20] In 2014, the Delhi Government has also amended its Radio Taxi Scheme to impose obligations related to customer safety, grievance redressal, presence of physical offices and transparent fares.[21] Uber and Ola have also introduced police verification, background checks, emergency response teams and in-app safety features following allegations of abuse by drivers.[22] Many of these regulations are also ongoing, and their applications vary from state to state. Though many rules have been proposed as is evident, the on-ground application is still found to be lacking.

E-Commerce Rules 2020- Applicability to Ola and Uber:

To accommodate rapid alterations in commerce and its shift to online platforms, the Consumer Protection (E-Commerce) Rules, 2020 were notified on July 23 by the Department of Consumer Affairs. These rules apply to "all goods and services bought or sold over an electronic or digital network." They prescribe obligations that sellers and platforms covered under these rules are subjected to ensure that the rights and interests of consumers are protected. In this regard, platforms like Ola and Uber are obligated to appoint Nodal Officers or Alternate Senior Functionary to ensure compliance with the Act. They have to set up grievance redressal systems to allow consumers to lodge complaints and track them efficiently, from the comforts of their homes. A grievance redressal officer should be appointed to facilitate this process and his contact details must be mentioned on the platform. It also requires e-commerce bodies to display basic information like contact details, names, addresses 'prominently' on platforms, and ensure the consent of consumers through explicit, affirmative actions and not through pre-ticked boxes. Cancellation of services should be followed by refunds being reverted in a reasonable period. In case of cancellation of delivery of services, Ola and Uber must impose fines on consumers only if they are willing to pay charges in case of cancellation from their side. It also prohibits the making of 'unreasonable' or 'unjustified' profits. Thus, the 2020 E-Commerce Rules

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[19] Motor Vehicles (Amendment) Act 2019

[20] 'Uber banned in Delhi over taxi driver rape' *BBC News* (India, 8 December 2014) <https://www.bbc.com/news/world-asia-india-30374070> accessed 20 November 2021; Chiranjeevi Kulkarni, 'Karnataka Govt bans carpooling by Ola and Uber' Deccan Herald (Bengaluru, 28 June 2019) https://www.deccanherald.com/state/top-karnataka-stories/karnataka-govt-bans-carpooling-by-ola-and-uber-743435.html accessed on 20 November 2021.

[21] City Taxi Scheme 2015

[22] Saritha Rai, 'Uber gets serious about Passenger Safety in India introduces Panic Button' *Forbes* (Asia, 12 February 2015) < https://www.forbes.com/sites/saritharai/2015/02/12/uber-gets-serious-about-passenger-safety-in-india-introduces-panic-button/?sh=3bf3da563cf8 > accessed 25 November 2021.

are well-positioned to deal with the redressal of many problems faced by users of driving platforms.[23]

Drawbacks of the E-Commerce Rules:

Ola and Uber use pricing algorithms to determine prices based on market forces, and it is indeterminate whether the profits arising out of such "surge-prices" could be called 'unjustified' or 'unreasonable' despite them not being arbitrary *per se*.[24] The rules also do not mention the minimum qualifications required for the appointment of Nodal Officers and Senior Functionaries and the actions that platforms must undertake to satisfy such requirements. They do not prohibit cartelizing behaviour by Ola and Uber, nor do they engage in the prevention of non-competitive behaviour by their drivers. Even the necessity of background checks of drivers is not stressed. All these have led to flouting of rules, and consequently, many consumer complaints regarding the unfair trade practices engaged in by Ola and Uber as well as by drivers of traditional taxis complaining of anti-competitive behaviour. Consumer satisfaction of Ola and Uber services remains at 37% and 35% respectively, suggesting the inefficiency of their redressal systems set up by them.[25] The prevalence of these unfortunate events has impacted business and consumer sentiments in the economy negatively. Thus, the Government recently proposed amendments to the E-Commerce Rules- "Proposed Amendments" to protect the consumers' interests and these are yet to be implemented.[26]

Proposed Amendments to the E-Commerce Rules:

The proposed amendments tackle the various emerging loopholes that enable Ola and Uber to mislead their users. The new rules require the registration of all industries operating in India with the Department for Promotion of Industry and Internal Trade (DPIIT). It prohibits the "deliberate misrepresentation"- mis-selling of goods and services by entities selling them and prohibits misleading advertisements. It advocates for the replacement of the grievance redressal officer with a Chief Compliance Officer responsible for warranting compliance with the rules and would be liable in all proceedings initiated on his failure to observe due diligence in the discharge of duties by the platforms.[27] This would ensure better regulation of Ola and Uber and quick

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[23] Consumer Protection (E-Commerce) Rules 2020

[24] Sriram Sivaraman, 'Explaining ola and Uber's urge pricing' The Hindu (Chennai, 19 April 2016) https://www.thehindu.com/news/national/explaining-ola-and-ubers-surge-pricing/article8494839.ece accessed on 27 November 2021.

[25] Voxya-Voice of Consumers, Ola cabs < https://voxya.com/company/ola-cabs-complaints/1492> accessed on 1 December 2021; Voxya-Voice of Consumers, Uber cabs < https://voxya.com/company/uber-cabs-complaints/5534 > accessed on 1 December 2021.

[26] Proposed Amendments to Consumer protection (E-Commerce) Rules 2020

[27] ibid s. 3(5)(a).

redressal of consumer complaints. It also requires the appointment of a nodal contact person who would be working 24/7 to coordinate law enforcement officers and agencies[28] and a resident Grievance officer who would work to acknowledge orders, directions, notices issued by competent authorities, the appropriate Government or court of the relevant jurisdiction.[29] All these proposals indicate the importance accorded to consumer interests.

Motor Vehicle Aggregator Guidelines:

The new Motor Vehicle Aggregator Guidelines allow Ola and Uber to charge a commission of only 20% of the total fee, with the remaining fare going to drivers. The apps are mandated to have the local language in States where Hindi is not the official language. This is done to enable easier access by consumers. Pooling facilities have been provided to customers, with provisions for women to choose other women passengers to pool with. It has restricted the base rate to Rs. 25-30 for the first 3 km. These regulations also control surge pricing and have capped them at 1.5 times the original fee.[30] This leeway has been allowed to promote and enable asset utilization which is a fundamental aspect of transport aggregation and to vindicate dynamic pricing in conformity with market forces of supply and demand.

Conclusion:

Consumer protection with legally enforceable regulations is an urgent requirement. In the establishment of a legal consumer protection framework, India faces many challenges. Of these, the absence of a designated status of Ola and Uber and their responsibility to users of their platforms is a crucial one. Under the Consumer Protection Act, they are digital intermediaries and thus are not responsible for risks between consumers and drivers. The next challenge is insufficiency of the evaluation of "self-regulation systems" given by these platforms to access efficiency like ratings, grievance redressal officers and so on. Though Ola and Uber have made numerous provisions for consumer satisfaction, there is a dearth in the execution and a lack of determination of their effectiveness. Another challenge is to ensure that the current laws balance the interests of platform drivers, platforms, consumers and traditional taxi systems. The rules applicable to traditional taxis do not apply to Ola and Uber as they work on different mechanisms. The Consumer Protection Act 2019, the new E-Commerce Rules and its proposed amendments, the Motor Vehicle Aggregators Guidelines are well-positioned to deal with problems faced by consumers. But apart from infallible legislation, proper execution is the need of the hour. Setting up of grievance redressal officers, nodal officers, tax guidelines, surge-pricing curbs, rating mechanisms, mandatory background checks etc. must be accompanied by a mechanism for checking their effectiveness. All these measures would reduce the

[28] ibid s. 3(5)(b).
[29] ibid s. 3(5)(c).
[30] Motor Vehicle Aggregators Guidelines 2020.

unfair advantage that e-commerce entities hold against individual consumers and would help consumers take recourse against exploitation, falsehood and deception.[31]

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