

RGICS Issue Brief

(September 2, 2015)

The New Economy Labour

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Technology and convenience have come together to create a new marketplace which has created a whole new dynamic between buyers and sellers and has transcended the old demand and supply equation. The new age e-commerce business models of sale are run on the basis of competitive marketing strategies undertaken by ‘aggregators’. By exploiting the convenience of technology available to almost everyone via smart phones, the ‘aggregation’ based business model is able to fill in the gap of supply of services to the consumers.

An ‘aggregator’ is defined as a person/entity that owns and manages a web based software application (app) and through the help of an app is able to connect people who provide certain kinds of services to the people who are in need of that service.ⁱ Proponents of service disbursement modelled on aggregation policies have entered into our everyday life in the form of easy cab rides through Uber, Ola; convenient shopping through Amazon, Flipkart, Myntra, Groffers; renting hotel rooms through Oyo; curated restaurants by Zomato, Foodpanda and many more. All of these companies provide a platform to individual service providers in order to connect with the consumer thereby improving their accessibility and have given rise to a new kind of ‘platform economy’.

Various terms are being used interchangeably to describe these new age economies: aggregator economy, on-demand economy, sharing economy, gig economy, collaborative consumption.ⁱⁱ Although some of these terms are indicative of models that are aimed at encouraging the sale of under-utilized assets or services to the consumers, which is not true for the e-commerce business oriented companies that aim at disbursing commercial services.ⁱⁱⁱ Therefore the most appropriate definition for services provided by companies like Uber, Ola, Amazon, Groffers and others is encompassed by the term ‘on-demand economy.’ Under this kind of economy through the help of web-based technology the consumer demand for goods and services is fulfilled immediately.^{iv} Thus, the core principle (see figure 1) of this kind of economy is to capitalise on the need of consumer for convenience and efficiency by aggressively using connectivity provided the by internet via smart phones.

This platform economy provides the perfect environment for encouraging innovation because of its unique framework and young entrepreneurs who have managed to create the right offering for the market have become the darlings of the international bourses with valuations that have reached almost mythical levels! However in the gushing attention that these new world companies and entrepreneurs receive (and deserve!) from policy makers and the press, are the fulfillment teams, the delivery boys, the cab drivers – the final link in this equation - getting left behind?

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Figure 1: The core principles of the On-Demand Economy^v



Today the United States is at a stage when it has completed experiencing decades of freelancing, contracting, temping and outsourcing even before the coming of Uber in 2009.^{vi} The way businesses work and workers are managed has been revolutionized further with better technology. It becomes interesting to review what stand the policy makers are taking to tackle the advance of these on-demand companies. Whether these policy makers are gravitating towards curbing the business of these on-demand companies? Or do they insist that the on-demand companies remain as they are but provide employee benefits to these freelance workers? The discussions in this regard centre on the need to protect the interest of the workers from being exploited. The intention is not to remove these companies since that would be akin to stifling innovation. It is rather to build a 'growth and fairness economy'.^{vii} As the platform or on-demand economy is advancing in India (see figure 2) it is important for the policy makers to consider what there stand will be in dealing with the emergence of the new economy.

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Figure 2: Market Share of the E-Commerce Companies in India^{viii}



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The On-Demand Economy

Since the on-demand economy is relatively new in India and there are effectively no official reports on the various aspects of this sector, we looked at secondary sources of information to understand the workforce who are the virtual backbone of this \$16.4 billion industry^{ix}, and their employment arrangements and work conditions. For example there have been recent media reports that talk of ‘order abuse’ occurring in parts of Noida. ‘Order abuse’ is the collateral damage suffered by the workers of Amazon and Flipkart when some buyers misuse the cash on delivery options, leading the concerned e-commerce companies to stop their deliveries to these areas.^x It is reported that the delivery boys of these companies carrying the orders to houses in Noida are harassed to the extent of being beaten, locked in bathrooms or even looted at gun-point of the goods they were carrying.^{xi} Apart from this there have been incidents in other aggregator conglomerates as well. Cab drivers had to undergo several ‘troubles’ by Delhi police during the intermediary period when the cab aggregators (Uber and Ola) were banned from plying in Delhi. Some of these troubles ranged from arbitrary fines being imposed on the cab drivers to impoundment of their vehicles by the Delhi Police. They had been at the mercy of Delhi cops in case they were caught.^{xii}

Do these delivery boys and cab drivers have any locus standi to claim payment for the damage suffered by them? Does the new economy labour have the option of job security, health insurance, minimum wages and humane working hours? The promptness and efficiency of the on-demand economies is hinged on the fact that its workforce is fanned out in the entire area and is available to carry out the task quickly. It then becomes the responsibility of the company hiring them for their services to take care that they are provided for their basic needs. What are the redressal options available to an Uber cab driver in case he is harassed by a customer when cab drivers are considered third party contractors? If a delivery boy for Amazon meets with an accident will his hospital expenses be covered by the company? Is this business model, where delivery boys and cab drivers are usually not full time employees but are contractual workers and perform the function of “fulfilment arms” or “service providers”, a fair system as far as these individuals are concerned?

While a few of the workers do not mind being a part of this network since they are able to earn quick money some detrimental effects of such an arrangements will be felt in the long run. Presently on-demand companies like Amazon, Flipkart, Uber, Ola are spending a considerable amount on what is termed as ‘acquisition costs’ i.e. customers are paying less with all the attractive discounts and the cab drivers (in case of Uber and Ola) are earning profits from the large scale business they are getting. This arrangement will not remain status quo forever, if that is what is being understood by all. The aim behind this business strategy is to eliminate competition in the sphere for transportation through taxi cabs or for that matter even online retail shopping so that eventually the cab drivers and the labour force employed to provide logistical support will have to work on the terms decided by the company under which they may not necessarily profit or work in the best of conditions. Thus, slowly and gradually the workforce will be losing their bargaining power whatever little they have had.^{xiii}

This is evidenced by the current situation of cab drivers working for Uber in the United States who after paying a 20 percent commission to Uber, incurring tax and car maintenance expenses are not able to earn an enviable amount of money at the end of the year, as was earlier endorsed by the company.^{xiv} Therefore it is best that some sort of regularization for these on-demand services is devised in order to avoid a bleak future for the welfare of the workers.

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Employee or Independent Contractor?

The biggest controversy around the labour hired in the on-demand companies in the US is with regard to their employment status- are they employees or independent contractors? For a very long on-demand companies like Uber have refrained from terming the cab drivers as their employees and instead defined them as independent contractors or freelance employees who work on their own on short term contractual basis for Uber. By terming them independent contractors the aggregator service providers have managed to circumvent contributing to payroll taxes of their workers, providing them fringe benefits or even reimbursing them for the fuel and upkeep of their vehicle.^{xv}

Questions relating to the policies governing labour welfare under the new aggregator economies are being raised to policymakers in a number of developed countries, particularly the United States of America. A ruling by the California Labour Commissioner's Office on June 3rd this year stated in one particular case that the Uber cab driver (plaintiff) will be termed as an employee and not an independent contractor. And further it was decided that the Uber cab driver shall be entitled to recover the business expenses and costs that she incurred while working with the company.^{xvi} It has been claimed by Uber-like service providers that they are merely neutral, virtual platforms providing space to contractors to market themselves to the consumers. The said California ruling however did not let Uber get away from not treating the plaintiff as an employee on the basis of this logic.

The ruling highlights the inconsistency in the job status and wages of the people working for such aggregator companies which has been a concern for labour activists for long all around the world.^{xvii} As the on-demand economy grows in India we need to look at policies that address this issue in a balanced and fair manner too.

On-Demand Economy Labour Woes

While talking of labour woes in the emerging on-demand economy, the uproar regarding Amazon's exploitative 'zero-hour' contracts immediately comes to the fore. These contracts are nothing but another name for casual contracts through which employers are able to hire workers at short notice without any job guarantee whatsoever. Hundreds of Amazon employees employed on the basis of these contracts had to work under arduous conditions with timed toilet breaks, 15 mile walks during shifts, 10 hour shifts of packaging products with only a half an hour break in addition to being under constant surveillance through the GPS tags attached to them. The workers endured all this in addition to the likelihood of being fired and then later re-hired them so that company could avoid paying them full time employment benefits.^{xviii}

Closer home a strike of around 400 delivery boys from Flipkart and Myntra in Mumbai last month is what it took to bring the unfair conditions faced by labour working on the ground in these companies. It has been alleged by the workers that they are not provided with the bare minimum facilities like washrooms at the workplaces, a six-day week and fixed work timings. The list of 20 demands presented by the workers includes demands for giving them allowance for maintenance of their vehicles and an Employment State Insurance Corporation card among other things.^{xix} Workers stated that apart from their basic salary of Rs. 10,000 per month they are given a nominal additional amount of Rs. 3.50 per delivery. This amount is supposed to be utilised for maintaining their vehicle, refilling fuel and at times even paying for parking. Needless to say there is no accident cover provided to them by these e-commerce companies. All this is in addition to the hassle they will have to go through at the hands of customers when deliveries are late, they are paid in fake currency notes or even when they have to climb stairs with a heavy bag in some posh localities where they are not allowed to use the elevator.^{xx} The response of the

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companies has been to disclaim these allegations and therefore the issue is still moot. It cannot be denied that the allure of earning fast cash brings young delivery boys to work in dismal conditions. What is even more appalling is that most of these companies generate billions of rupees as their annual turnover and hardly any of it trickles down to the bottom of the food chain. In effect the labour force continues to agitate for their rights claiming better working hours and other social security benefits while their bosses in the on-demand companies revel in the profits the company is making.

A similar state of affairs can also be seen in case of cab aggregator companies like Uber. Even though a number of drivers earn a significant amount per month there is a sizeable number who have grievances but there is nobody to listen to them. In order to sort out issues the drivers are given a small time window once a week when an Uber manager will hear their concerns via a call although it has been alleged that the managers are rarely available to listen to the driver's grievances.^{xxi} The company does not feel any sense of responsibility towards the drivers who it considers to be entrepreneurs plying their own vehicles. The cost of last minute cancellations, payment of parking and toll charges, municipal taxes and upkeep of vehicles is to be borne by the drivers themselves without any assistance from the company they are working for.^{xxii} Since their daily earnings are unpredictable drivers are not sure whether they can manage paying these costs based on what they earn in a day and are sometimes faced with disproportionately large out of pocket expenses.

Of late Uber has started offering a 'minimum guarantee' for logging on to the Uber app for certain number of hours in a day. For instance a driver with a midrange fleet was given a minimum guarantee of Rs. 20,000 if he went online for 90 hours in a week during the time slots pre-fixed by the company and took at least 40 trips during this time. Further to incentivise its drivers to work for them and not shift their loyalties Uber has various

strategies like organising a lottery for the cricket world cup tickets in Australia or easing the process to enable its drivers to buy their own cars by partnering with lending companies.^{xxiii} While it is more than clear that Uber needs the drivers for maintaining its network of taxis and providing efficient customer service it refuses to be accountable for them emphasizing that they are nothing but individual entrepreneurs.

The Controversy

A number of the companies in the on-demand economy argue that the workers at the bottom of the pyramid in these companies are individual contractors, and therefore responsible for themselves. However, this is a specious argument at best, for if it were so then cab drivers and delivery boys would be attracting clientele solely on the basis of their reputation and efficiency. This is clearly not the case as customers avail the services of the individual contractors on the basis of the reputation of the brand of these on demand companies-Uber, Ola, Amazon, Flipkart. This is suggestive of the fact that the brand of the company is linked with the services provided by its workers. Additionally these contractors run the risk of being fired from the service or given a bad rating on the basis of customer feedback which many not always be justified. In such a scenario serious questions with regard to their job security and redressal options need to be debated and addressed.

The fact is that the success of the on-demand business model is based on the aggregator service provider's ability to leverage a vast network of individuals to carry out the designated tasks in the shortest possible time. It is possible to have a large, cost-effective network of labour available to make deliveries or for hailing cabs because the companies do not have to 'invest' in providing benefits that they would ordinarily be expected to in case all of them were employees. By avoiding the responsibility and costs of providing insurance cover, maintenance

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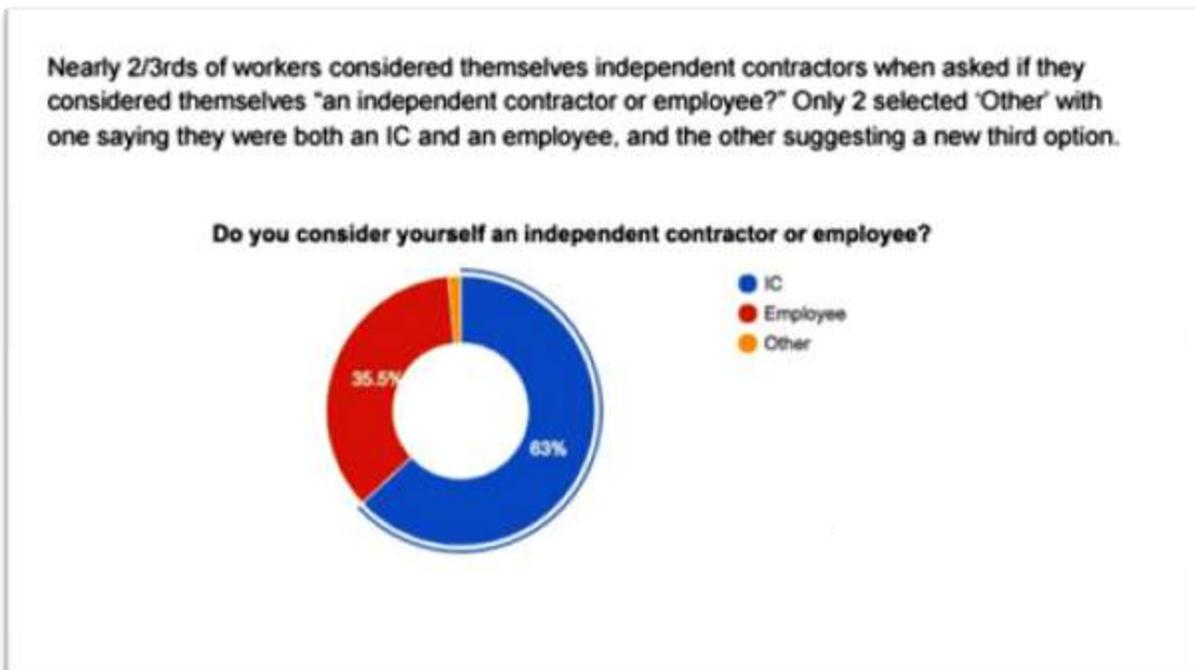
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allowances, and other such perks available to employees, the on-demand companies are able to maintain a veritable army of individuals to work for them.

In a recent survey (see figure 3) conducted among the workforce working with the on-demand companies in the US of which 86 per cent worked for Uber or Lyft (both taxi hailing services) it emerged that the need to classify the workers is fast gaining traction. Interestingly it was found that at least 63 per cent of those surveyed considered themselves to be independent contractors in order to protect the ‘flexibility’ and ‘freedom’ afforded to them. While the ones who did consider them to be employees for these companies reasoned that the ‘deactivation risk’ in case they refused a ride and the lack of ‘driver choice’ makes them eligible to be treated as employees.^{xxiv}

Though there has been no survey conducted among the Indian cab drivers working as individual contractors for Uber and the like there is enough evidence to support the fact that there are some who do like the flexibility of not being in a full time employment. One media report suggests that cab drivers log in and out of apps of various taxi aggregator services to suit their convenience so that they can earn extra money.^{xxv} Such revelations indicate that while some of these individual contractors would like to be given the status of “employees” others *may* not be keen on engaging in full time employment. Therefore there may actually be a need for us to consider the discourse that is gaining considerable traction with regard to the emergence of a new, third class of employees.

Figure 3: Survey of workforce with five on-demand companies in the United States^{xxvi}



The New Class of ‘Dependent Contractors’ or ‘On-Demand Contractors’

The class of workers working on the ground level for large on-demand companies are akin to the ‘precariats’ (a social class formed of people existing without security or predictability). They need recognition for their labour which is what is actually ensuring the smooth functioning of the on-demand economies. The idea of having a

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third category of workers between employees and individual contractors has recently entered the sphere of popular debate particularly due to political comments made by Senator Mark Warner who is vying for the 2016 United States presidential elections.^{xxvii} While Uber and Uber-like services increasingly employ freelance labour in the United States, the Internal Revenue Service (IRS) wishes them to be classified as employees so that they can be effectively taxed.^{xxviii} Keeping this fact in mind the discourse in that country currently leans towards not slowing down the process of globalization through reducing the ‘disaggregation between the employer and the employee.’^{xxix} Instead the challenge identified by them is to find a solution that would save the perks enjoyed by consumers owing to the advent of on-demand economies by balancing it out with protection extended to the muscle that makes this possible.

It is in such a situation that a need was felt for evolving a classification of workers “that blends the protections afforded (to) employees with the flexibility afforded (to) contractors.”^{xxx} While this idea is still being debated and there is no real clarity about a number of related aspects, the need for creating a new category of workers cannot be ignored. Academicians believe that the present classification of labour as employees is archaic and the shift from employees to contractors is inevitable as the world moves into a more networked society from a previous society of ‘monolithic organizations.’^{xxxi}

Although there has been no concrete proposal dealing with the labour working for on-demand companies in India, it would be useful for us to understand the debate in other developed markets as they arrive at appropriate policy responses to this issue. Two *possible* approaches have been suggested by Senator Mark Warner. The first is an ‘hour-bank’ approach which would track the number of worker hours on the basis of which welfare programs could be modelled. Under the ‘hour-bank’ model the workers working for different companies can still qualify for full-time benefits. The idea is that the worker is able to ‘bank’ hours so that it totals up to a certain minimum number of hours at the end of the day. The number of hours invested in working will then form the basis for the workers getting their insurance covers and social security benefits.^{xxxii} And the second is an ‘opt-in’ approach that would let the consumers add a nominal amount to their payment of services which will be collected in a fund earmarked for the benefit of the workers.^{xxxiii}

Governments and activists across the world are focussed on the need to understand the uniqueness of this new classification of workers who will be incentivised by the companies they work for and will retain their flexibility to shift on various platforms as they explore other avenues of employment.^{xxxiv} Policy makers in developed countries have also been mulling over the idea of a separate category of ‘dependent contractors’ that will provide security to the quasi workforce and also not increase the expenses of the employer diabolically.^{xxxv}

Evidence for such employment arrangements have been discussed previously by the International Labour Organisation (ILO). Such arrangements can be found in the European Union particularly in United Kingdom, Germany, Italy, Spain and Portugal.^{xxxvi} In these countries there is a separate category of workers called ‘economically dependent workers’ who do not have an employment contract but are dependent on a single employer for their income. Interestingly these workers have characteristics of employees as well as independent contractors. In addition they lack a clear distinction with regard to use of space and equipment belonging to the employer and the services provided by them are not strictly ‘professional services’ since they may not necessarily require a specific knowledge for performance. All of these characteristics are similar to the working conditions of the labour working for the on-demand companies.

The recent concerns raised by workers at Flipkart and Myntra, the cab drivers anxiety in dealing with web-based aggregator companies who are not being adequately regulated indicate that these issues need to be addressed at

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the earliest, and the fact that and the current government is looking at pushing through labour law reform means that the time is ripe for us to decide on an appropriate policy response to the new class of more than one lakh^{xxxvii} ‘on-demand contractors’ or ‘economically dependent contractors’ The discourse in developed markets grappling with the same problem is tending towards exploring a new categorisation of workers since this would preserve the advancement in service disbursal and at the same time will not neglect the labour that makes this possible.^{xxxviii}

In India the current definition of ‘workman’^{xxxix} under the Industrial Disputes Act, 1947 only refers to them being a part of an industry which is extremely archaic in light of the new economy and its eco-system. The new proposed labour reforms by the current government largely involve improvement in the code of labour laws that are already in place. And thus they cover within their ambit workers in relation to industries in the organised sector and employees. There is no room for the new economy labour that works on contractual basis. It further becomes more important to recognise this new category of workers so that they can find a place in the freshly drafted Minimum Wage Code thereby extending them the benefits of these minimum wages. The idea whether these on-demand employees require the right to form trade unions, have guidelines for occupational safety, be eligible for reimbursement of damages and expenses and further health insurance, needs to be explored in depth. A recent report on the growth of Ultra High Net Worth Individuals^{xl} (Ultra HNI) segment in India states that the “emergence of the high-growth sectors such as e-commerce and logistics are creating India’s new Ultra HNI’s. To ensure that this growth engine (expected to be US \$ 70 billion by 2020) represents equitable and fair growth for the freelance labour and independent workers hired on short term contracts it is imperative that the government looks at alternative definitions and policy frameworks. The time is right for India to explore the possibility of evolving this new categorisation of labour into the new labour laws that are on the anvil.

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