Behind the veil of algorithms: Invisible workers

A Report on Workers in the 'Gig' Economy

Peoples Union for Democratic Rights (PUDR)

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Preface

The growth of the 'gig' economy and 'gig workers' in India is a phenomenon of the last decade or so. Even though this may not be the fastest growing category of workers, still names like Swiggy, Zomato, Ola, Uber or Urban Company and Amazon are among the many companies that have come in to provide 'services' and 'employment' in the form of 'gigs'. Some of these are off-shoots of international companies, while others are Indian.

Over the past two years there have been reports of gig workers demonstrating against their work conditions – these include the Swiggy workers' strike in September 2020 and the Urban Company workers' protest in October 2021. Internationally, in recent years gig workers have gone to court against some of the companies and won some rights.

What are the issues that affect gig workers and what are their struggles? It was to understand these that PUDR conducted a fact finding investigation over September-November 2021 into the working conditions, terms and issues that affect 'gig workers' in a few companies in Delhi NCR. The PUDR team was able to speak to workers Ola, Uber, Swiggy, Zomato, and Urban Company; it consulted technical experts and official company publications, as well as independent academic studies and reports, examined judgments in court cases in India and abroad, and spoke to organisations attempting to mobilise gig workers across the country. The following is a report of our findings. (It may be noted here that the report is limited to the conditions in the NCR. Names of workers have been changed to protect their identity.)

1

Business of Providing Services

The phone screen shows the Uber cab inching closer to the location. As the icon for the cab moves closer, the lines between the algorithm and humans get blurred---it is quite easy to ignore that there is a human, a driver, a worker sitting behind the wheels.

Uber, Ola, Swiggy, Zomato, Amazon, Big Basket, Urban Company have become fairly commonplace for the urban populace not just in the metropolitan cities but also Tier II cities of the country. All these services can be availed with a mere tap of a finger on a phone or a laptop. The ease of availing the services as well as lucrative prices have made them extremely popular. Gig work—which is basically work delivered 'on-demand', as and when the requirement arises, and for a fixed period of time—has been around for some time but has increased even more after the pandemic.

The Merriam-Webster dictionary has been expanded in April 2019 to officially include the phrase "gig economy" defined as "economic activity that involves the use of temporary or freelance workers to perform jobs typically in the service sector." A "gig worker" is one who does these kinds of temporary jobs. The reality of "gig" work today has moved far from the original meaning of "gig" – a slang word used by entertainers/musicians to describe a one-time job/performance.

According to a recent report participation in the gig economy is more in developing countries (between 5% and 12%), than in developed countries (between 1% and 4%). "And most of these jobs are in lower-income job-types such as deliveries, ridesharing, microtasks, care, and wellness," the report says. The report further argues that in the next three-four years, India's gig economy is all set to triple, and has the potential to touch up to 90 million jobs in the next eight to 10 years, in the non-agriculture sector alone. For the same time period, it could transact over $250 billion worth of work in terms of volume, and subsequently, contribute at least 1.25% to India's gross domestic product (GDP) in the long term. According to ASSOCHAM, India is expected to have 350 million gig jobs by 2025.

Gig Economy or the platform economy operates via platforms or the digital interfaces which take the form of websites or smartphone and computer applications or apps. The number of freelancing platforms has significantly increased in India—from 80 in 2009 to 330 in 2021. These platforms boast of a clientele comprising not only start-ups, but also Fortune 500 companies. There is a lot of money which has gone into financing such platforms. Globally, more than $12 billion were pumped into Uber alone in 2017 (Jeremias Prassl*, 'Humans as a Service: The Promise and Perils of work in the Gig Economy',* OUP, 2018).

Almost on a daily basis, new 'start-ups' set up online platforms to provide 'better', 'safer' and 'faster' services. It is claimed that the provision of work on demand or 'worker' on demand generates new and flexible employment opportunities as well as cheap services for the customers. They also provide a pool of freelancers to the company with varying levels of skill. But the question is, how are these companies like Uber, Ola Swiggy, Zomato or any start -up able to provide the services so cheaply with the help of platforms? Paying lower than 'normal' fares for a cab ride or getting the house cleaned at 'too good to be true' rates seem inexplicable or counterintuitive. For this, one needs to understand the business model of the gig economy. There are some crucial components of this model.

In the world of gig economy, consumers log in to the platforms and service providers or freelancers are on-boarded. These service providers are fairly heterogeneous –they can be coders, graphic designers or psychologists to cab drivers and beauticians. In some cases, service providers need not have a visible interface such as riders or runners for Swiggy and Zomato. In these cases, it is the customers and the restaurants who log in and are on- boarded and delivery boys or riders /runners/ taskers need not have a visible profile. Nevertheless, whether it is a coder or a delivery boy, all are treated as freelancers. We shall see that it is more appropriate to treat the gig workers at lower end as workers rather than freelancers. The business model of gig economy is based on having a large pool of freelancers or workers at all times. This large pool of workers is matched to a fluctuating demand for services. Ever expanding supply of workers means that the workers compete with each other and are willing to work at low remunerations. This is what explains why companies like Swiggy and Zomato actually increased the 'recruitment' in or immediately post Covid times. The low paid worker, then becomes the premise for the low price of services. There was a time when Uber passengers were paying less than half of the actual cost of the trips. Provision of services at low prices helps the company to undercut its competitors and crate its own monopoly in the market. Since the workers are not considered employees of the company (and only as freelancers), they can be given a task whenever the demand is there. In situations of low demand, they can keep themselves logged in to the platform, since for the company, there is virtually no cost of retaining these workers. The company is also not responsible for the number of hours a worker needs to wait between the orders. Further, the workers have to get their own tools (cars, computers), often know how to ride a motorcycle or a car and so these costs are also not borne by the company. All this reduces the costs for the company.

Low wages and low costs enables the company to offer service to the customers at attractive prices. And hence more customers are tempted to log in. This in turn makes it worthwhile for large number of workers to on-board as well. Thus, from the perspective of the company, it is a win-win situation---more workers, low costs, provision of services at low prices, more and more consumers and the market can be monopolised. A well-known tactic is to provide considerable incentives to both the customers and the workers in the initial period. These incentives, especially those to the workers, start being reduced once a large number of workers are 'trapped' in the business. Almost all of the gig workers, we spoke to, confirmed the same. *Govind, Prashant and Ehsan who work as Uber, Ola drivers told us that the incentives were deducted significantly in 2017 – media reports support this. We also spoke with Swiggy and Zomato riders who faced a similar situation in 2019. At present in Delhi-NCR, the Swiggy/Zomato workers informed us that they can only get full incentive of Rs. 850 a day from the company if they get 15 orders in a day and even if they manage to complete 14 orders they would get about half the amount or less. In contrast, a few years earlier they used to get Rs. 1100 as incentive after 10 deliveries.*

Another significant, if not a more important component of the business model is to escape legal regulation on labour. Despite exercising control similar to that of an employer or a boss inside a factory, the companies which set up platforms present themselves as mere 'brokers' or 'matchmakers'. Since the workers are allegedly freelancers, the company shirks off all responsibility and liability towards them.

Excerpts from 'Terms and Conditions' laid down by different companies explicitly state this:

"….independent third party providers, including drivers, are not actual agents, apparent agents, ostensible agents or employees of Uber in any way….any safety related effort, feature, process, policy, standard or other effort undertaken by Uber in the interest of public safety (whether required by applicable regulations or not) is not an indicia of an employment, actual agency, apparent agency or ostensible agency relationship with an independent third party driver."

Terms and Conditions (under 'Legal') in the Uber app. (accessed 9 December, 2021)

"Taskers are independent contractors and not employees of the company. Company does not perform tasks and does not employ individuals to perform tasks. Users hereby acknowledge that company does not supervise, direct, control or monitor a tasker's work and is not responsible for the work performed or the tasks in any manner".

TaskRabbit, 'Terms of Service' (1 June 2017, cited in Prassl, 2018)

The contractual agreements between the workers and the companies are often drafted in a manner so as to prevent the workers from going to court. What is more, the entire narrative of the business model of the platform economy is to emphasize the 'personal responsibility' of the gig worker. According to a report in Daily Mail (28 February, 2017), when a Uber driver complained about the pricing changes to the CEO, the latter yelled at him saying that he (driver) needs to start taking responsibility and not blame others for his troubles. Many of the companies have specific clauses in the contract preventing the workers from contacting or servicing the customers directly. This sits in contradiction with the claim that the workers are independent agents. The fact of the matter is that although the companies exercise huge control over the workers, like in the case of a factory boss, they have created a business model where they can operate outside the domain of rights of the workers. It can be said that evasion of labour law is at the core of the business model of the gig economy.

Another component of the business model is that a percentage of the workers' earnings are deducted as the commission by the company. Structure of commissions can be designed to keep the workers locked in for long periods of time. Many workers have experienced an increase in the cut by the platforms to such an extent that some keep working simply to pay off their loans taken for car/other tools. *Ola workers informed us that they were charged commission of 40% while some Uber drivers (who also occasionally worked for Ola) said that they were charged 30% commission by the company. Naresh who started driving for Uber in 2020 after losing his job in the first lockdown, informed us that in 2020 Uber was charging 22% commission while at present, in late 2021 the company is charging an additional 18% as tax – the total commission amounts to almost 40%.* The amount seems to vary depending on different factors – peak hours and surge pricing (more commission deducted), city or state etc. apart from other unclear factors taken into account by the app algorithm. The consequence is that the workers, who deploy their labour, skill, car and fuel, receive a variable and limited amount of what the customer pays.

Thus, the business model is based on having a large pool of freelancers (workers) at all times who get work whenever there is demand and who bear all the costs and risks of the job (hence called a freelance entrepreneur); companies portraying themselves as mere 'brokers' who take a cut from the workers' earnings and operating outside the ambit of labour laws and labour protection.

Box 1

Double speak

Matchmakers or employers? Freelance entrepreneurs or workers? Tasks or work? Favour or business? The companies present themselves as 'mediators' or 'brokers' who undertake the matching of service providers with the customers. In fact, the 'workers' are referred to as contract partners or independent freelancers and freelance entrepreneurs who can reach the potential customers via the platforms. The work or service is itself presented in the websites and advertisements of these companies, almost as an altruistic endeavour such as giving a ride to a friend or neighbourly help of reaching food. Taskers, Runners, Riders are believed to be engaged in 'gigs' instead of 'working'. This presentation is at odds with the reality where the companies actually exert control over workers like factory bosses and powerful labour intermediaries. They are certainly not simply matchmakers since they continue to control the income of the 'partner' who does the work/delivers the service, long after the 'match' is made. The contracts are carefully worded so as to escape regulation and labour laws. Technology, algorithms and ratings are used to monitor and control each aspect of the gig-worker's life and work. Failure to comply could even lead to deactivation (from the app) of the worker akin to 'termination' in the traditional sense.

1.1. Black Hole of Workers' Rights

Today's gig workers operate in a black hole of rights but within a world which has fought for and brought in labour rights and regulations. Unlike the workers of the early 19th century who dealt with similar precarity and exploitation (see *Box 2 'Old wine in new bottle?'* below), the situation of gig workers today is worse because they are deliberately excluded from labour rights that exist today, in law and policy. This is done by a clever evasion and mis-classification – by refusing to recognise workers as workers. Since they are not considered as or called workers, they automatically are not entitled to any of the rights won by labour in the course of history. Not only do the companies take no responsibility for the workers, they are often involved in drafting laws which state explicitly that workers are independent contractors. This can be seen in the ride- sharing legislations passed in multiple American states for instance, in Ohio, an Act stipulates that 'drivers are not employees except when agreed to by written contract." (*Ohio 131st General assembly, Substitute House bill No. 237, I, 10-11*, cited in Prassl, 2018).

Through the world as well as in India, there has been a steady increase in contractualisation of jobs over almost the last two and half decades. Permanent and regular, stable work has become more and more rare. The registered firms and companies also keep a large proportion of workers on a contractual basis, thereby depriving them of protections and benefits accorded to permanent workers. Thus, labour laws are either bypassed or violated. However, on paper, even contract workers have certain rights. There are legislations which prohibit work of a perennial nature to be done by contract workers. However, the gig economy side-steps the very ambit of labour laws –here, the issue is not just of violation but, as mentioned above, of non-recognition of workers as workers. By renaming them as 'partners', while companies exercise great control over the gig workers but for the purpose of rights and protections, they are not treated as workers.

Box 2

Old wine in new bottle?

Despite the use of modern technology, the business model of gig economy is not so new or at least the treatment and exploitation of workers is not so new. Whether it is breaking down of jobs into small, standardised, low-skilled works to be done by large number of workers or the control exerted by powerful intermediaries on the workers or a part of workers' earnings pocketed as commission by the intermediaries, 19th century has witnessed similar practices. However, the labour practices of that time predated the ushering in of labour rights, protections and laws. Workers in London port or harbour workers elsewhere the 19th Century did not require too many job specific skills. Powerful hiring agents acted as brokers and distributed the day's work to whoever was lucky to be hired. In return, they took a cut from the workers' earnings as their commission. The unlucky workers stuck around waiting for the next round of hiring for the day. Literally, thousands of men competed with each other to be hired for a single task. Now, substitute companies for middlemen of history and substitute technology, platforms internet and apps for physical structure of the dockyards and ports and we have a similar situation (Prassl, 2018).The similarity does not end here. 19th century port work increased the potential pool of workers by tapping into non-traditional workers such as women and children. Gig economy does the same by tapping into the idle time of immigrant workers. A large number of people migrated from the villages, sold their land in order to buy cars and began to work as Uber and Ola drivers in the major cities of India. As already stated, the increased pool of workers helps to push remuneration down. The one difference and an important difference between then and now, is the passage of more than 200 years, a time which witnessed workers' struggles throughout the world and institution of minimum protections for the workers. Some basic laws in favour of labour were enshrined as part of the Universal Declaration of Human Rights of International Labour Organisation. The gig economy seems to have traversed back in time to the preindustrial era, an era before the institution of rights and protection of workers.

2

Contract Partners, Freelance Entrepreneurs or Workers?

What does the gig economy offer to the workers? Tall claims are made about employment generation and flexible work hours which makes it easy to earn some money on the side or maybe even in the leisure hours from some other job. This may be true for highly skilled gig workers such as coders or graphic designers. However, if we look at the blue collared gig workers, situated at the bottom of the skill ladder (last two rows in the table below), most of the workers are trapped into low paying, precarious and tedious work patterns.

Table: Types of Gig Workers

Type of Gig Work	**Skill Level**	**Earning Potential**	**Degree of control exercised by the worker**	**Platform and company**
Remote Work	High (soft skills, legal or technical writing etc)	High (By negotiation)	High	Upwork, Fiverr, Gigster, Elance, People per Hour
Remote Intermediation but Physically Delivered	Medium (Plumbers, Electricians, Beauticians)	Low	Partial or none	Urban Clap (Now Urban Company), Housejoy.in, Uber, Quikr, Aasaan Jobs
Remote Intermediation but Physically Delivered	Low (Delivery boys)	Low (Often below minimum wages)	None	Zomato, Swiggy, Dunzo, BookMyBai, Taskbob.in

(Based on table in the paper *"Is Platform Work Decent Work? A Case of Food Delivery Workers in Karnataka,"* Occasional Paper Series 10/2020, NLSIU, Bangalore)

For most of these lower end workers, gig work is not something, they are doing on the side for extra cash. This is the primary job. The workers bear the entire cost as well as risk associated with the work and are called entrepreneurs (those who take the risk for an enterprise). They need to undertake the requisite expenditure such as purchase and maintenance of cars in case of cab drivers. Very often, these workers struggle to make minimum wages and are forced to work very long shifts. The work, often, necessitates them to ignore both health and safety concerns. Irrespective of the language and the propaganda, they are not any freer than a factory worker. Instead of a physical supervisor, they are under continuous surveillance and control of overarching reach of the 'app; algorithm and ratings. At times, the control can both be physical and digital. They may even face 'deactivation' for refusing certain tasks. However, unlike the factory workers, they have no rights, not even nominal, and do not come under the ambit of labour laws.

2.1. Low Earnings, Long Days and Unpaid Waiting Time

Excess supply of workers leads to a situation where the workers keep waiting for hours for deliveries or orders. There are reports suggesting that companies like Uber, contact workers with promises of 'high demand' in order to have more workers compete with each other at any given time. This unpaid waiting time can stretch to a few hours every day. *One Swiggy worker told us that sometimes he has to wait for four hours between consecutive deliveries. The basis of allocating orders is not clear to them – while one worker may get 3-4 orders, another worker at the same hub might not get a single order during the same period. An Uber worker told us he had to wait at least two hours between bookings at times. Amazon workers have to often wait 2 hours or more between their deliveries around the pick-up points.* Needless to say, the companies do not pay the 'freelance entrepreneurs' for waiting between the tasks.

In India, on an average, Uber and Ola drivers take home a monthly income of 25,000-30,000 INR whereas the same is around 14000-15000 INR for Swiggy or Zomato workers. A 2020 survey by Flourish Ventures highlighted that almost 90% Indian gig workers lost their income during the pandemic. While they earned more than INR 25,000 per month before the pandemic, by August 2020, 90 per cent were earning less than INR 15,000 per month. One in three workers were making less than INR 150 per day. Hence, many workers were forced to take drastic steps to make ends meet such as 44% borrowed, 45% reduced their essential expenditures and 83% used their savings. All workers we spoke to, working across platforms confirmed this. Moreover for Uber and Ola drivers, the costs of the EMI for the loan they take for their cars is deducted further after this, making the actual income in hand lower than this amount – as Rajan, and many others found. The workers who rented cars from others had to pay a hefty rent per day – *Uber drivers Naresh and now Rajan found that they are able to earn a sum closer to Rs.15000 per month or less after paying rent for the car (about Rs. 500 or Rs. 600 per day). Workers with Urban Company, who provide different services have to pay for the products used for the work sold by the company alone (e.g. cleaning products for those providing cleaning services, oils, massage bed etc. for 'spa-therapists' etc.) apart from paying substantial sums for the company's 'training' (in addition to the hefty commission on each job charged by UC).* Gig workers often do not know how much the company will deduct from the amount paid by the customer– and cannot be sure of how much they will receive – *as Mahesh Kumar an Uber driver in Delhi NCR illustrated with the help of a concrete example of what he had face recently, upon completing a ride of 32 km, in which the customer had paid Rs. 427/- he, the driver, received only Rs. 230/-. He tried to ask the company the basis of the deduction but was unable to get any response from them.*

According to a study, in USA, Uber drivers were 'at risk of taking home less than a third of the National Living Wage' despite being on the road for extended periods of stay.(Frank Field & Andrew Forsey, *Sweated Labour: Uber and the Gig Economy* (2016)). Some companies even decide the form in which workers get their wages for instance majority of M Turk workers outside the United States can redeem their income only as Amazon.com gift card, to be used exclusively on the company's online portals (Prassl, 2018)

Low wages force the workers to put in extended work hours every day in order to take back subsistence wages. On an average, gig workers in India clock in around 12-14 hours on a daily basis. *Swiggy workers Govind or Prashant work for 12 hours every day including Sundays and can earn their bare minimum wage only if they do not take any leave throughout the month. Another Swiggy/Zomato worker Tanmay works about 15 hours every day (also without a single leave through the month) and earns about Rs. 22000 a month. The largest number of Ola/Uber drivers we spoke to all work at least 12 hours each day and all 7 days in the week.*

These long shifts enable the companies to have access to large pool of workers at all times and since the companies do not pay for workers' 'idle time', low wages help the companies to offer services at low prices to the consumers. Finally, there are times when the customer rejects the completed service or gives poor ratings or negative comments on the app or even the common situation where the customer cancels the booking. In such situations also the burden is borne by the worker. *Ola worker Mukesh who works part time complained about how the app algorithm works against the driver. The driver is often allocated a ride when the previous ride is still continuing, based on the spot where the cab currently might be, passing by the location of the customer making the next booking. However, the driver has to complete the trip and drive back to the where the cab was. Yet the time shown to the passenger is from the place where the cab was when the ride was booked. Customers often cancel the ride, citing delay by the driver as a reason, and Rs. 200 is debited from the drivers' account by the company. For UC workers who we spoke to, like Sangeeta, who gives massages and beauty treatment and has to carry a heavy massage bed and products, from one place to another, cancellation of orders at short notice means both the financial burden of having to pay for transport and also considerable time and effort.*

2.2 Additional Income or Primary Job

It is claimed that gig economy enables workers to earn some extra money by taking on a 'gig' during the leisure hours of his/ her primary job. However, for most of the gig workers interviewed by us, this is their primary job. *For Ehsan whose parents, wife and child depend on him, his Zomato job has been his primary work, and they manage with difficulty. This is only possible because the house they live in is owned by his father and they do not have to pay rent. For Prashant and Tanmay, Swiggy workers since 2017, Rajan who has been working for Uber since 2016, or Maninder who worked with Urban Company in 2018 these jobs were/are their primary jobs, and they were able to manage to survive because some others in their families supported them.* This has become even more pronounced since Covid induced economic slowdown. The only way, workers manage to subsist with the gig job is either because some other family member is also earning, or own dwellings and hence do not need to pay the rent or in some cases, they have some earnings from land owned in the village. *Uber worker Naresh had lost his steady job of many years (in a company as a driver) in May 2020. He had been replaced by much lower paid contract workers. Working for Uber is his primary job, and he told us that he had to send his family to the village where the extended family has a bit of land. He had been able to survive in Delhi only because his landlord had given him credit for the last 5 months. Swiggy worker Prashant used to own a small paint factory and employed workers but following the Covid lockdown he had to close it down. Prior to Covid, sometimes, he took on a few deliveries through Swiggy. But, now, he has become completely dependent on Swiggy for his livelihood. He can only manage to meet some expenses and support his family because he lives with his parents and his father owned the house and had retired with a pension.*

However, we also found that some of the workers who did these jobs of delivering food or driving cabs for the platforms part time, or had multiple sources of income or support tended to regard these platforms more positively. *Thus Vijay whose father is working in an established press and brother also has a job and regular income in his joint family, and whose family has 5 properties in Delhi is very supportive of Uber, the company with which he was registered for work as a driver. Needless to say Vijay owns the car he drives and is relatively young and fit. Likewise Swiggy 'partner' Vikas chooses to work part time for about 4 hours every day, getting the basic amount per ride, rather than the day's income or incentive. His primary income comes from other work/business. Others like Mukesh drive a bus in the day and an Ola cab for*

6 hours in the evening to supplement his income – even though he finds the company's practices skewed against workers.

The uncertainty of earnings can be borne as long the earnings are additional to other, regular wages. However, when the main earnings become uncertain and low, the worker gets trapped in an extremely precarious and vulnerable situation. On top of uncertain incomes, the gig workers have to bear all the expenses pertaining to work. Uber and Ola drivers have to have a car, have the skill of driving, food delivery 'boys' get their own motorcycles and urban company's beauticians have to buy the beauty products beforehand as well as make their own arrangements for transport. Needless to say, the workers are responsible for the maintenance of their cars and bikes as well as the fuel costs. After all, they are 'freelance entrepreneurs'. Many of the drivers interviewed by us had either sold off or mortgaged the family land so as to finance the cars. With a dip in their earnings and increasing precarity of job, some had been forced to sell off the car. Others had to continue working simply in order to pay off the loan instalments. *One Uber worker Rajan a middle aged man who presently drives a car owned by another person, had earlier bought a car on loan, drove it for Uber, but then was unable to continue to pay the EMI, especially after the lockdown. He then tried to drive a car owned by Uber but found the high rent to be a burden. He gave that up and now rents a car at a less exorbitant rate, though it is really difficult to make a living.*

2.3 Freedom of the freelancer

Unlike freelancers, gig workers have no control over the fares or the fees that they can charge from the customers they serve. It is the company which decides these charges. Often, the companies determine the pay of the workers based on what the consumers are willing to pay for a particular task during a certain time of the day. Of course, the number of workers willing to do a particular task is the other determinant. Algorithmic control over the workers is a far cry from the world of autonomous and free entrepreneurs. Gig workers are not free to choose their work anymore than they can choose the charges for the customers. Anecdotal evidence shows how the workers are forced to take on unpleasant tasks or else face deactivation by the companies. *Swiggy/Zomato worker Ehsan told us that if he declines an order it becomes a 'black mark' against him. He would have to complete 100 orders/deliveries without any complaint from the customers to redeem himself or take away the negative report. This was confirmed by other gig delivery workers. Those working for UC, like Sangeeta or Maninder also found their chances of being assigned work or bookings went down if they refused to do any job for some reason. Another gig worker in UC said that in case she needs to take the weekend off she has to show a medical certificate because the demand for services is very high over the weekend.* It is obvious that if the worker had been 'free' in a real sense, she could have chosen her days of work.

The contractual agreement with the companies prevents them from striking an independent bargain with the customers. The gig workers do not have the autonomy over the tasks they do, number of tasks they can take in any particular day, number of hours they work or the charges they can ask for. Yet since are not classified as workers, they also do not have any redressal mechanism since they are supposed to be responsible for all their actions and problems in their lives.

2.4. Tyranny of Technology and Ratings

Technology is a double-edged sword. Internet which facilitates the access to virtually infinite numbers of workers and customers and is the basis for matching of customers and workers, also becomes a weapon of exercising control over gig workers. In case of gig workers at the bottom of the ladder, internet matches the demand and supply but the task has to be completed physically by the worker for example a cab driver or a delivery boy. For these workers, technology allows for pervasive control over the worker. From the moment that a worker (say an Uber driver) registers with a platform, the company (via the platform) demands extensive information and documents from the worker. After this point, monitoring becomes even more intense. As the driver logs in to the Uber app, he loses control over where he wants to drive to, the fare he can charge, number of rides he takes during the day and thus, even the hours that he works. In contrast to the claim by the company, the driver does not have the autonomy to choose the conditions of work. If he refuses to accept a ride which he does not like (too short, too risky, lower paid work, congested route, too far from home after a long day etc), he may be penalised in many ways. There are different ways in which coercion operates. As soon as a driver begins to log off, he may get messages indicating that there is a huge demand or surge pricing in his area, thus luring him to stay logged in for more time.

Zamiruddin, an Ola/Uber driver confirmed that the drivers are often given bookings for customers travelling long distances in directions away from their own home, even after they have indicated that they want to return homewards, or end their working day. Their low pay-out, and their dependence on incentives and ratings mean that drivers find it difficult to refuse these rides, which also extend their working hours further. In other cases, repeated refusal to undertake a task can lead to deactivation for a period of time, thus barring them from further orders.

What is the role of ratings and how do ratings work? Ratings are not limited to simple feedback by the customers. The company designs the algorithms or the mathematical formulae which can influence the ratings that the worker gets. For example, the way the app is designed for Swiggy or Zomato, the consumer can only see an icon showing the approach of food. The worker or the delivery boy becomes invisibilised. In such a situation, in case the food arrives late, it is quite possible for the customer to give a bad rating to the worker since in his mind, lines between the icon and the workers are blurred. Most algorithms are designed so as to give higher ratings to a worker whose compliance is greater and acceptance of tasks is very high. A better rating is supposed to provide access to 'high value' orders and therefore better remuneration. Rating system, though powerful, seems to act in an arbitrary manner. There is no evidence a driver with a rating of 4.9 is in any way better than one with a rating of 4.5. The algorithms can also be used to monitor various aspects of the driver's behaviour such as how he interacts with the customer. Further, the ratings cannot be transferred across platforms, thus disincentivizing workers from working for multiple platforms. Sometimes, companies also use algorithms to lure workers from other platforms.

Digital innovation has definitely changed the landscape in terms of using the internet for intermediation, reliance on smartphones apps by both customers and the workers but if we look at the essence of work, algorithm's constant watch is similar to and sometimes more pervasive and invasive than a supervisor's or a boss's monitoring inside a factory.

2.5. Risks and costs of Entrepreneurship

The gig economy pushes all the risks and the costs on to the workers. We were informed of the following case. *In 2020, Ola asked the drivers to take the cars to designated parking centres for sanitisation (on account of Covid). Many of these cars had been bought by the drivers under a financing scheme of Ola where driver pays 35,000 rupees upfront and after 4 years of driving can own the car. Throughout India, Ola drivers took their cars for sanitisation but many of them did not get the cars back and some of them were paid a paltry sum of 5000 INR instead of the car.*

The risk is not limited to the cost of the cars, computers and other tools. Sometimes, the pressure of speedy delivery makes flouting of traffic rules unavoidable. In case of accidents or grievous injury, the intervention by the company is quite nominal. In a situation of misbehaviour by a customer, the entire risk is to be borne by the worker (think of an alcoholic boarding the cab, or a customer misbehaving sexually with an urban company's masseur). As *UC worker Maninder found to his horror the work of male spa therapists with UC in practice entailed facing routine sexual advances from customers, and their expectation that the therapist would give them sexual favours. We have come across Uber and Ola drivers who complained of customers not making the payment after the ride, and the company refusing to intervene in the matter.*

Given the power that the customer has, the role of customer ratings in UC, and the dependence on customer ratings and reports by the supervisor/category manager to decide the assignment of future 'jobs' to UC workers, it is unlikely that workers would be able to complain safely without jeopardising their income. Gig companies across the board do not seem to have any mechanism of checking such violations, nor are they apparently trying to doing so. As stated earlier, refusal of tasks by the worker leads to penalisation in number of ways from not getting 'good orders' to being deactivated. Above all, the unrelenting, ceaseless clocking of extended periods of time impacts the health of the worker adversely.

3

Looking Ahead

In October 2021, more than a hundred women beauticians with Urban Company (UC) protested in Delhi against "unfair work practices." One of the beauticians claimed that Urban Company had hiked the commissions it charged from them to over 30%, reducing their incomes significantly. A video that was being circulated had screen shots which showed UC threatening that it "will take strict police action against anyone who stops other partners from going to work."
Gig workers have been legally challenging their status as 'freelancers.' They have filed multiple cases demanding to be classified as workers allowing them minimal protections under the labour laws. In September 2021, the Indian Federation of App-Based Transport Workers (IFAT), a registered union and federation of trade unions representing app-based transport and delivery workers with over 35000 members across 12 Indian cities approached the Supreme Court of India. They have sought directions from the Court against the Union of India (through its concerned ministries) and aggregators including Ola, Uber, Swiggy and Zomato. This was precipitated by the desperate situation the gig workers found themselves in, subsequent to the Covid-19 lockdown. The workers have claimed that their fundamental rights to equality and life, and their right against forced labour, have been violated. They have held that the Government of India and the companies are both responsible. They have also demanded that gig or platform workers be considered as "unorganised/wage workers" under the existing labour laws. Further they have sought health insurance, pensions, education and housing allowance and disability allowance among other welfare/security benefits. They have also sought compliance with the Motor Vehicle Aggregator Guidelines, 2020 which stipulate minimum fares and maximum working hours. Finally, they sought directions for a moratorium on coercive actions by banks and financial institutions due to non-payment of EMIs or loans on vehicles. On 13 December 2021, the Supreme Court agreed to hear the PIL of gig workers.

This attempt at legal intervention follows on the footsteps of similar attempts worldwide. Internationally, different courts (Paris, London, Amsterdam etc.) which have recently adjudicated claims of Uber workers or similar gig/platform workers against the companies have held that these workers are in a relationship of "permanent subordination" to the companies. This is demonstrated by (a) their long working hours in order to sustain themselves, (b) deactivation of accounts upon frequent cancellations/refusals, (c) unilateral fixing of terms before acceptance of rides by drivers, (d) total control of clientele/business with the company and restricted communication between drivers and passengers, (e) unilateral determination of fares by the company's algorithms and selection of routes even if inefficient, (f) the disciplinary/penal effect imposed by the company through the rating system over these workers and the unilateral grievance redressal over complaints by passengers.[*] Following these court decisions, and their own deliberations, the European Commission has recently announced draft rules to give certain categories of gig workers (such as drivers for online firms such as Uber and Deliveroo) employee benefits.

Additionally the International Labour Organisation (ILO) through its Employment Relationship Recommendation, 2006 (No. 198) has recommended that policies should be created which combat employers' attempt to disguise employment relationships in order to evade legal responsibilities, and has recommended members to effectively establish the difference between employed and self-employed workers. It has also recommended that the actual relationship between workers and employers should be based on observation rather than going by the text of the written contract.

New Labour Codes

India saw the passage of new Labour Codes in 2020. One of these, the Code on Social Security claims to address some of the problems of gig workers. It must be remembered that there had been attempts to extend protection to gig workers in the other Codes as well – for instance, the Standing Committee on Labour (2019-2020) in its eighth report on the Industrial Relations Code (para 4.12) had recommended inclusion of gig workers in the definition of "worker/employee." Yet this was not done. While the term 'gig worker' is included in the Code on Social Security, 2020 and defined as 'a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship' – a definition that explicitly underwrites the companies' claim that they are not 'employers'. The government's claim to protect gig workers' rights is limited to some measures of social security extended to them along with other unorganised workers. (Code on Social Security, 2020, published in Gazette of India, No. 61, 29 September 2020, pp. 67-71, Chapter IX). The measures largely entail registration by the workers independently with the government, following which they would have access to some social security schemes, including access to health-care, income security, work injury etc. These are to be provided through government schemes, the implementation of which will be supervised by a National Social Security Board (supposed to meet 3 times a year, has recommendatory powers, and is supposed to ensure the implementation of government welfare schemes for all unorganised

* Derived from following judgments (reference in hyperlink) Labour Chamber of the Court of Cassation, France, Uber France & Ors v Mr. A, 4 March 2020; Court of Amsterdam, The Association of the Ducth Trade Union Federation (FNV) v Uber BV, 13th September 2021 - ECLI:NL:RBAMS:2021:5029; Employment Appeal Tribunal, United Kingdom, Uber BV & Ors v MR Y Aslam & Ors, 10 November 2017 [Upheld by the Supreme Court of United Kingdom, 19 February 2021] - [2021] UKSC 5; Supreme Court of Calfironia, Dynamex Operations West Inc v The Superior Court of Los Angeles County & Ors, 30 April 2018 - 4 Cal.5th 903, 416 P.3d 1, 232 Cal.Rptr.3d 1

sector and gig workers). No further provision or specific practical mechanisms or guidelines/institutional framework for implementation, or penalty for non-implementation is laid down.

On paper, the state, through this particular Labour Code claims to undertake the responsibility of gig workers' social security. However it has not made the companies accountable to the workers in any way. By absolving companies from even standard responsibilities of employers, the state, is actively colluding them in the violation of gig workers' rights. This effectively prevents the workers from laying any claim with regard to wages and working hours, let alone bargaining for better terms within the framework of the law.

Conclusion

Reiterating some of our findings in conclusion, we note that although the gig economy relies on the internet and on smartphones, its 'success' is not based on any technological innovation but on age-old exploitation of labour. Our investigation confirms the working of the business model that these companies in the gig economy rely on. This model is based on 3 key elements – (1) mis-definition of workers as freelancers so that companies are able to evade labour laws and shirk off all responsibilities towards workers (2) ensuring a large reserve of workers, who compete with each other for work and orders, and push down their incomes and thus enable the companies to sell cheap services. (3) charging of commission by the companies for their 'matchmaking' services (matching the customer with the worker). It is the large number of unemployed workers, and the lack of any regulatory institutional checks that effectively enables the companies to carry this all off. They can appease customers by selling low priced goods and services and they use technology in a manner which dehumanises or renders invisible the human workers who are providing the service. As we found, most of the gig workers, especially those who rely on this work as their primary source of livelihood continue to work in extremely precarious situations with low levels of remuneration and long hours of work. Companies exert tremendous control over them while presenting them as 'partners'. The Indian government and state machinery, is guilty of abetting the companies, passively and actively, by failing to hold them accountable for the condition of gig workers.

There is some hope today in the scattered but growing attempts of gig workers to organise themselves and demand to be treated as 'workers' – laying claim to the name and the labour rights denoted by the term.

In view of the above, PUDR demands

(1) The state and judiciary must take steps to recognise gig workers as 'workers' and extend them labour rights and protection. A starting point could be to extend the coverage of the Motor Vehicle Aggregators Guidelines 2020 (under the Motor Vehicles Amendment Act 2019) to cover gig workers. These guidelines stipulate minimum fares and maximum working hours and the Act also includes provision for health insurance and term insurance by the aggregator. This kind of protection must be extended and implemented by all state governments for other gig workers as well.

(2) Immediate measures be taken to fix the accountability of companies towards gig workers, and clearly establish mechanisms for ensuring this, including substantive penalties for violating the workers' labour and democratic rights.