

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In The Indian Context

Authored by: CA. Karnik Gulati

Date: 26 February 2021



This article delineates the recent UK Supreme Court ruling¹, pronounced on 19 February 2021, in case of Uber and its potential impact in India. Even though this ruling discusses the applicable employment laws in the UK jurisdiction, but it fundamentally discusses the rights and obligations of Uber drivers and the overall relationship between Uber and its drivers. In that process, captivating findings have been made by the appellate authorities in form of how Uber actually operates and the influence it has on its so-called independent drivers, which is what intrigued me to write this article.

Given the graveness of the ruling, the article is slightly lengthy as it was important to cover all major aspects and anything less would not have been justified on my part.

The article is divided into 3 sections:

Section A: Findings of the UK appellate authorities and the principles emanating therefrom

Section B: Potential impact of this ruling in the Indian context not only on cab aggregators but other platform-based businesses

Section C: Closing

Section A: Findings Of The UK Appellate Authorities And The Principles Emanating Therefrom

Background

A recent Supreme Court ruling of the UK, in case of *Uber BV and others (Appellants) v Aslam and others (Respondents)*, could potentially change the dynamics of the Gig Economy. The seminal question before the Hon'ble Supreme Court was whether the Uber drivers, who are freelancers or contractual workers, are entitled to statutory rights like minimum wages, annual paid leave and other similar rights available to full-time employees in the UK. The Hon'ble Supreme Court upheld the conclusion of the lower appellate authorities, i.e., Employment Tribunal², Employment Appeal Tribunal³ and the Court of Appeals⁴, which were in favour of the respondents (the Uber drivers).

<Left blank on purpose>

¹ [\[2021\] UKSC 5](#)

² [Case nos: 2202550/2015 & Others](#)

³ [UKEAT/0056/17/DA](#)

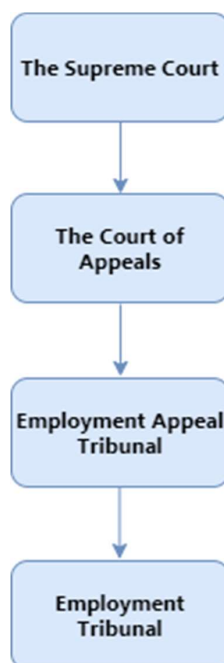
⁴ [\[2018\] EWCA Civ 2748](#)

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

Before we embark upon the issues involved in the case, it is important to know the hierarchy⁵ of appellate authorities in this case and how it reached the highest court.



Issues Before The Supreme Court

1. Whether the Uber drivers fall under the definition of workers' contracts and qualify for the national minimum wage, paid annual leave and other workers' rights available in the UK or they are merely independent contractors, performing services under contracts made with passengers through Uber as their booking agent?
2. If they are categorized as falling under the definition of workers' contracts, a secondary question arises as to what duration counts as working time for the drivers, i.e.,:
 - whenever they were logged into the Uber app within the territory in which they were licensed to operate and ready and willing to accept trips; or
 - whether they were working only when driving passengers to their destinations.

<Left blank on purpose>

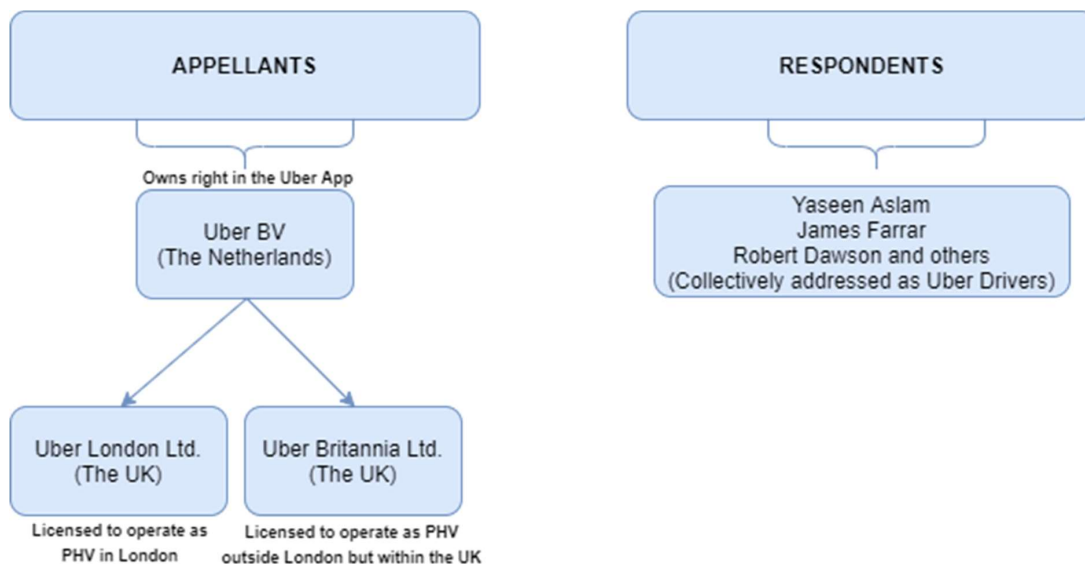
⁵ The Author acknowledges that the appellate hierarchy in the UK involves existence of various sub-courts and, has therefore, limited the hierarchy only to the relevant appellate authorities involved in this case.

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

Parties To The Appeal



How Uber Operates?

In order to understand the issues involved and the conclusion reached by the Hon'ble Supreme Court of the UK, it is imperative to understand Uber's business model and how it operates.

Asset-light model

- Uber operates on an asset-light model wherein they only own rights in the Uber app and the cars are owned by the drivers which supposedly are freelancers/contract workers working at their free will. Driver bears all costs incidental to owning and running the vehicle including fuel, insurance, road tax, repair & maintenance, etc.

Drivers' (in)dependence

- Based on Uber's representations, the drivers are free to log in and log out of the Uber app at their free will. They are not prohibited from providing services through other organisations including Uber's direct competitors, like Ola Cabs, Lyft, GetTaxi, Didi Dache, Hailo, etc.

Can we say that drivers are entrepreneurs in their own right? We, including the drivers themselves, always thought so. The reality only came to light much later when the drivers' started to realise that they are not entrepreneurs, in its true sense.

How and why are the drivers dependent and work under the instructions of Uber is discussed, at length, by the all the appellate authorities in their respective orders. The same has been discussed later in this article.

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

Fare fixing

- Fares are set by Uber and the drivers have no say in it. Even the government regulators normally have no say in this, unlike what they have in the government-run taxis. That's another challenge that the governments around the world have been facing but that is out of scope for this discussion.
- The driver has a leeway to accept a ride at a fare lower but not higher than the fare fixed by Uber. I, personally, don't see any reason for the drivers to agree for a lower fare – which is what the Courts, in this case, have also spelt out clearly. However, this language may only be there to portray Uber giving freedom to the drivers which, in reality, they never had.

Remuneration charged by Uber from the drivers

- Uber charges a commission/service fee from drivers for each ride. Such commission or service fee is charged on the fare fixed by it. The commission percentage varies across geographies. The commission is charged on the fare fixed by Uber even if the driver accepts a ride at a lower fare. For all practical purposes, I am unable to comprehend why would any driver accept a ride at a lower than prescribed fare, more so when he has to pay commission only on the originally prescribed fare. Completely baseless to even have this condition, in my personal opinion.

Penalty against complaints and other compensation

- Uber handles all the customer complaints and penalises the drivers only if the user is granted refund due to driver's fault. In all other cases, Uber itself bears the cost of refund. Uber will also, in some circumstances, bear the cost of any damage caused by the passenger(s) to the vehicle.

Invoicing

- Uber app generates an invoice in name of the user on behalf of the driver. The invoice only has name of the customer and the driver. No vehicle number is mentioned, nor any other customer details are mentioned.

What Do The Written Agreements Say?

There are various agreements between Uber, its drivers and the users/passengers. Let's evaluate the major terms of the same to understand the facts even better.

Agreement between Uber BV and drivers

- In simple terms, the services agreement between Uber BV and the driver(s) states that the driver (termed as customer of Uber in the agreement):
 - i. appoints Uber BV as its limited payment collection agent solely for the purposes of accepting the fare ... on behalf of the driver(s) via the payment processing facility facilitated by the Uber Services;
 - ii. agrees that the payment made by the user(s) to Uber BV shall be considered the same as payment made directly by user(s) to driver(s)

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

- Furthermore, Uber BV has the right to change the fare calculation at any time in its discretion. Moreover, it also reserves the right to adjust the fare (in case the driver took an inefficient route) or even cancel the fare altogether (in response to a user complaint).
- An interesting point to be noted here is that the agreement with drivers is entered into by Uber BV, the Netherlands entity, and not the local Uber entities in the UK. This is a very interesting observation which has gone against Uber.

Agreement between Uber and passengers

- These terms are called the "Rider Terms" which the Uber app users are required to accept before they can use the Uber app. These Rider Terms state that they constitute a tripartite agreement between the rider, Uber BV and the local Uber company (Uber London or Uber Britannia, in this case). The relevant terms of the tripartite agreement is as under:

"Uber UK (includes Uber London and Uber Britannia) accepts PHV (private hire vehicle) Bookings acting as disclosed agent for the Transportation Provider (as principal). Such acceptance by Uber UK as agent for the Transportation Provider (driver) gives rise to a contract for the provision to you (user/passenger) of transportation services between you (user/passenger) and the Transportation Provider (the 'Transportation Contract'). For the avoidance of doubt: Uber UK does not itself provide transportation services, and is not a Transportation Provider. Uber UK acts as intermediary between you (user/passenger) and the Transportation Provider (driver). You (user/passenger) acknowledge and agree that the provision to you (user/passenger) of transportation services by the Transportation Provider is pursuant to the Transportation Contract and that Uber UK accepts your booking as agent for the Transportation Provider, but is not a party to that contract."

[Few insertions made by the Author to provide clarity to the readers. Such insertions have been underlined]

The licensing regime in the UK

- In addition to vehicle having requisite commercial license and the driver required to obtain the relevant driving license, even Uber is required to hold a valid license to operate as a private hire vehicle (PHV) operator, which, of course, it did. This PHV operator license also played a huge role in deciding the role of Uber in the scheme of things.

Statutory rights of "workers"

- The respondents (or the drivers) in this case have claimed statutory rights like minimum wages, annual paid leave and other similar rights available to full-time employees in the UK. All this is pursuant to the definition of "worker" as defined under section 230(3) of the Employment Rights Act 1996. The relevant definition of "worker" is reproduced as under:

"an individual who has entered into or works under (or, where the employment has ceased, worked under) -

(a) a contract of employment, or

*(b) **any other contract**, whether **express or implied** and (if it is express) whether **oral or in writing**, whereby the **individual undertakes** to do or perform **personally any work or***

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

***services for another party** to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;*

and any reference to a worker's contract shall be construed accordingly."

[Emphasis supplied]

Uber's Contentions

- That it is not a transport service provider and is merely a collection agent of the drivers. Once the driver accepts a user's ride request made through the Uber app, a legal and direct business relationship is established, to which none of the Uber affiliates is a party.
- That it is the driver who is solely responsible for providing transportation services to the passenger.
- That the only role of Uber BV is to provide technology services and to act as a payment collection agent for the driver.
- That the role of Uber London and Uber Britannia is to act as a booking agent for drivers.
- That the approach adopted by the lower appellate authorities of disregarding the unambiguous terms of the written agreements, without any legal justification, is legally incorrect.

Proceedings Before The Employment Tribunal

Analysis of definition of "workers"

- In interpreting whether Uber drivers fall within the ambit of "Workers" as defined above, the ET relied upon the Hon'ble Supreme Court ruling in case of *Bates van Winkelhof v Cyyde & Co LLP*⁶ which held that the employment law distinguishes between three types of people:
 - i. those employed under a contract of employment;
 - ii. those self-employed people who are in business on their own account and undertake work for their clients or customers; and
 - iii. an intermediate class of workers who are self-employed but who provide their services as part of a profession or business undertaking carried on by someone else.

The Hon'ble SC, in case of *Bates van Winkelhof* (supra), held that some statutory right, such as the right not to be unfairly dismissed, are limited to those employed under a contract of employment, but other rights, including those claimed in these proceedings, apply to all "workers".

- The point of dispute in the statutory definition of "workers" (reproduced above) is limb [b] which can be divided into three elements as under:
 - i. a contract whereby an individual undertakes to perform work or services for the other party;
 - ii. an undertaking to do the work or perform the services personally; and
 - iii. a requirement that the other party to the contract is not a client or customer of any profession or business undertaking carried on by the individual.

⁶ [\[2014\] UKSC 32](#)

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

The ET acknowledged that the case is concerned with the first of these requirements.

- It concluded that it is not in dispute that the drivers worked under contracts whereby they undertook to perform driving services personally; and it is not suggested that any Uber company was a client or customer of the drivers.
- The critical issue is whether, for the purposes of the statutory definition, the drivers are to be regarded as working under contracts with Uber London whereby they undertook to perform services for Uber London; or whether, as Uber contends, they are to be regarded as performing services solely for and under contracts made with passengers through the agency of Uber London.

Observations of the ET

- Remuneration paid to drivers for the work they do is fixed by Uber and the drivers have no say in it (other than by choosing when and how much to work).
- The notional freedom to charge a passenger less than the fare set by Uber is of no possible benefit to drivers.
- Uber also fixes the amount of its own "service fee" which it deducts from the fares paid to drivers.
- Contractual terms on which drivers perform their services are dictated by Uber.
- Although drivers have the freedom to choose when and where (within the area covered by their PHV licence) to work, once a driver has logged onto the Uber app, a driver's choice about whether to accept requests for rides is constrained by Uber by imposing penalty and other restrictions. This is done by Uber in two ways:
 - One is by controlling the information provided to the driver i.e. limited passenger information shared with the driver (only name and user rating is shared)
 - Second is exercised by monitoring the driver's rate of acceptance (and cancellation) of trip requests.

The above factors do place drivers in the position of subordination to Uber.

- Uber exercises a significant degree of control over the way in which drivers deliver their services. The use of the ratings system whereby passengers are asked to rate the driver after each trip and the failure of a driver to maintain a specified average rating will result in warnings and ultimately in termination of the driver's relationship with Uber.
- Uber restricts communication between passenger and driver to the minimum necessary to perform the particular trip and takes active steps to prevent drivers from establishing any relationship with a passenger capable of extending beyond an individual ride.
- The ET further pointed out that from the drivers' point of view, the same factors - in particular, the inability to offer a distinctive service or to set their own prices and Uber's control over all aspects of their interaction with passengers - mean that they have little or no ability to improve their economic position through professional or entrepreneurial skill. In practice the only way in which

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

they can increase their earnings is by working longer hours while constantly meeting Uber's measures of performance.

Conclusion of the ET

- The ET clearly held against the Uber stating that 'any driver who (a) has the App switched on, (b) is within the territory in which he is authorised to work and (c) is able and willing to accept assignments, is, for so long as those conditions are satisfied, working for Uber under a 'worker' contract and a contract within each of the extended definitions'.
- The ET further went on to say that it is surprised to see the remarkable lengths to which Uber has gone to prove its point through the twisted language of the legal agreements. It stated that any organization (a) running an enterprise at the heart of which is the function of carrying people in motor cars from where they are to where they want to be and (b) operating in part through a company discharging the regulated responsibilities of a PHV operator, but (c) requiring drivers and passengers to agree, as a matter of contract, that it does not provide transportation services ... and (d) resorting in its documentation to fictions, twisted language and even brand new terminology, merits a degree of scepticism.
- ET further stated that the notion that Uber in London is a mosaic of 30,000 small businesses linked by a common 'platform' is to our minds faintly ridiculous.
- ET went further to state that Uber's case is that the driver enters into a binding agreement with a person whose identity he does not know (and will never know) and who does not know and will never know his identity, to undertake a journey to a destination not told to him until the journey begins, by a route prescribed by a stranger to the contract (UBV) from which he is not free to depart (at least not without risk), for a fee which (a) is set by the stranger, and (b) is not known by the passenger (who is only told the total to be paid), (c) is calculated by the stranger (as a percentage of the total sum) and (d) is paid to the stranger. The absurdity of these propositions speaks for itself.
- ET concluded any supposed driver/passenger contract was a "pure fiction", bearing no relation to the real dealings and relationships between the parties. It further rejected any suggestion that Uber was working "for" the drivers - the only sensible interpretation was that the relationship was the other way around.

Proceedings Before The Employment Appeal Tribunal

- Aggrieved with the pronouncement of the ET, Uber preferred an appeal before the Employment Appeal Tribunal. The proceedings were presided by a single-member bench which upheld the ET's conclusion and against the Uber.

Proceedings Before The Court of Appeals (Civil Division)

- Aggrieved, again, Uber went on to appeal before the Court of Appeals (Civil Division). These proceedings were presided by a three-member bench. Interestingly, two of the members were in favour of what the ET concluded and also upheld by the Employment Appeal Tribunal. However, one of the members, dissented with its fellow colleagues and raised very pertinent questions which

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

are important to discuss in this article. Therefore, under this section, I have only discussed the dissenting member's point of view as the other two members majorly echoed the ET's view.

Dissenting member's view

- The dissenting member chose to give literal interpretation to the existing employment related legislation. He consciously chose not to apply common law approach wherein the judicial precedents make the law. His straight answer, in the current case, was if the current legislation, in plain letters, does not protect the drivers then the only way is for the Parliament to amend the legislation. He specifically pointed out that the existing agreements between the stakeholders do not mis-state the true relationship but that the relationship created by them is one that the law does not protect.
- He went further, in para 165 of the ruling, to point out an article in the Oxford Journal of Legal Studies, Changes and Challenges to the Contract of Employment, in the context of the analogous question of zero-hours contracts. The relevant portion has been reproduced below:

"There is no doubt that zero-hours contracts are a matter of very great concern. This is because they are often—although not always— cynically constructed agreements, framed by the employer in order to avoid their legal duties. I do not believe that the common law can successfully deal with them alone. Autoclenz allows a court to deal with the cases where the agreement is a sham, but the problems arise when it genuinely reflects the way in which the contract is performed, although the worker would choose that the contract were otherwise. The courts cannot simply ignore express terms or apply some general doctrine of unconscionability to invalidate a contract because of unequal bargaining power."

- He also pointed out that the whole question of whether and how to adapt existing employment law protections to the development of the so-called gig economy, and in particular to the use of service-provision platforms such as Uber, is under active review by the Government at present.
- He finally concluded that such issues are policy matters which the Parliament is inherently better placed to assess than the Courts.

The Supreme Court's Verdict

Uber, with the consent of the Court of Appeals, filed an appeal before the Hon'ble Supreme Court. The proceedings before the Hon'ble Supreme Court were presided by seven-member bench⁷.

On Issue # 1

- The Hon'ble Supreme Court in principle agreed with the findings of the lower appellate authorities as they, in particular, the ET, had done detailed fact finding of all the existing agreements between the stakeholders, their actual conduct and also analysed the same based on its legal acumen

⁷ ***The postscript in the SC ruling mentions as under:*** "After the hearing of the appeal but before this judgment was handed down, Lord Kitchin fell ill and it was uncertain when he would return to work. With the agreement of the parties, the presiding judge, Lord Reed, gave a direction under section 43(3) of the Constitutional Reform Act 2005 that the court was still duly constituted by the remaining six Justices, all of whom are permanent judges."

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

supported by existing rulings in the UK and European Union. Surprisingly, the Hon'ble Supreme Court didn't pay much heed to the observations of the dissenting judge of the Court of Appeals.

- Relying upon the findings of the lower authorities and their own analysis, the Hon'ble Supreme Court stressed upon the following principles before concluding in favour of the respondents, i.e., the drivers.

Principle of substance over form

- Even though there is no written agreement between the local Uber entities in the UK and the drivers of Uber acting as its agent, it has to be inferred from the conduct of the parties that such relationship did exist.
- The licensing regime (as discussed above) requires any PHV operator to obtain a separate license, which Uber local entities in the UK do possess. The Court held that if Uber's contention, that it is the driver which accepts the booking and is directly responsible to the users/passengers, is accepted, the driver will be in direct contravention of the licensing regime, as he only holds a normal commercial driving license and not the one which is separately required by PHV operators, which Uber local entities in UK held. With this interpretation, the Hon'ble Supreme Court held that only contractual arrangement compatible with the licensing regime is the one whereby the local Uber UK entities accepts private hire bookings as a principal (only) and those obligations are fulfilled through the drivers.

Principles of contract and agency law

- On Uber's contention that based on the Rider Terms (discussed above), passenger directly enters into a contract with the driver, the Court held that it is only trite law that Person A (Uber in this case) cannot create a contract between Person B (driver, in this case) and Person C (third party user/passenger) unless A is actually or apparently authorized by B to act as its agent.
- It further pointed out that the Rider Terms are between the user/passenger, Uber BV and local Uber UK entity and that the driver is nowhere a party to this agreement. Therefore, based on the basic principles of contract and agency law, nothing in the Rider Terms authorized local Uber UK entities to act as the agent of the driver nor it gave rise to any contract between a user/passenger and a driver.
- It also pointed out that the only written agreements to which the drivers were party to were with Uber BV, the Netherlands company.
- The Court acknowledged that the agency relationship need not always be contractual and any apparent act by the principal (driver, in this case) conferring authority on the agent (Uber, in this case) to act on its behalf is enough to establish such relationship.
- In fact, it also mentioned that even if there is no actual authority, a person (A) who purports to act as an agent of another person (B) may still affect B's legal relations with a third party under the principle of apparent authority, but only if B has represented to third party that A is authorized to act as its agent and the third party relied on that representation. However, the employment tribunal

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

made no finding that person B (driver, in this case) made any overt act to make the user/passenger believe that Uber is driver's agent.

Conduct of the parties

- One should focus on the reality of the situation where written documentation may not reflect the reality of the relationship.

Role of bargaining power of the parties

- The Court relying upon this court's ruling, in case of *Autoclenz Ltd v Belcher*⁸, which in turn relied upon a Court of Appeal's ruling, in case of *Aikens LP*⁹, held that the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement, in reality, represent what was agreed. It further went on to state that the true agreement will often be gleaned from all the circumstances of the case, of which written agreement is only a part.

On Issue # 2

- The Supreme Court also held that the employment tribunal was entitled to find that time spent by the claimants working for Uber was not limited (as Uber argued) to periods when they were actually driving passengers to their destinations, but included any period when the driver was logged into the Uber app within the territory in which the driver was licensed to operate and was ready and willing to accept trips.
- However, one interesting statement of the Hon'ble Supreme Court (in paragraph 136 of the ruling), which I found incomplete, while dealing with one of the Uber's contentions, that the drivers are free to work with other organisations as well and, therefore, their time on duty cannot be measured when they are not actually driving but only have the Uber App on and waiting for the duty to be assigned, is that they did not answer the contention properly and, in a way, left it open. The issue to answer was how would you measure time in such cases, to which the Employment Appeal Tribunal said (in paragraph 126 of its ruling) that given the Uber's market share in London, it is not possible for the drivers to even get free to be able to accept bookings from Uber's competitors.
- To this, the Hon'ble Supreme Court simply said that this question cannot be answered in the abstract. It further mentioned (in paragraph 137 of the ruling) that there has been no evidence that any competitor of Uber existed in London to even leave drivers with any option to accept bookings from anyone else.
- In my opinion, this question of time measurement remains fact specific and has not been answered on a principal basis. This could create practical challenge while determining the working hours of such drivers.

⁸ [\[2011\] UKSC 41](#)

⁹ [\[2010\] IRLR 70, paras 87-89](#)

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

Section B: Potential Impact Of This Ruling In The Indian Context

In India, similar issue arose, back in 2017, wherein the Delhi Commercial Driver Union (the Union) filed a writ petition¹⁰ before the Delhi High Court requesting it to direct the Union of India, the Labour Department, and the Transport Department, to set up a Committee for the monitoring of the implementation of labour and social welfare laws with respect to the relationship between Uber/Ola, and their drivers (as well as looking into pay and work conditions, and framing guidelines for compensation in cases of injury or death on the road). Reliance was placed on ET's ruling (supra) in case of Uber. The point of contentions of the Union were similar to the arguments covered above.

Surprisingly, if you were to check the status of this writ petition¹¹, the case stands disposed off and the order simply says *'after some arguments, learned counsel for the petitioner seeks to withdraw the present petition with liberty to approach the appropriate Government for making a reference under the Industrial Disputes Act, 1947'*. I leave to you to figure why was this writ petition withdrawn. Regardless, will that issue crop up again before the Indian Courts? Well, why not?

While foreign judgements have no authoritative value on Indian courts they do have persuasive value and, in this case, the principle of substance over form has been invoked which remains same across the world.

What the Union Budget 2021-22 had in store for the gig economy?

- The Budget Speech¹² of 2021-22, in paragraph 112, categorically states that social security benefits will extend to gig and platform workers. Furthermore, minimum wages will apply to all categories of workers, and they will all be covered by the Employees State Insurance Corporation. While certainly this looks promising but it still on paper and not much can be said unless it is implemented in reality.

Impact on other platform operators

- This could also impact other businesses like food delivery apps like Swiggy, Zomato, etc. However, it is unlikely to impact the hotel aggregators since their business model differs with that of Uber/Ola. This fact has been specifically dealt by the Hon'ble UK Supreme Court in paragraph 104 of the ruling.

Impact on Taxes

- Currently, in India, the cab aggregators (Uber/Ola, etc.) are liable to pay GST under the reverse charge mechanism. Once the drivers are considered as (deemed) employees, the government is set to lose the GST revenue on the same.

¹⁰ [Click here for the copy of Writ Petition](#)

¹¹ [W.P.\(C\) 3933/2017](#)

¹² <https://www.indiabudget.gov.in>

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

- ¹³However, on the other hand, the tax authorities will set to gain on the income tax front, as currently they get income tax revenue in form of tax deducted at source (TDS) by Uber/Ola @ 1% under section 194C (as contractors) wherein most of the drivers may not be even filing their tax returns to pay their actual due taxes, whereas with the drivers becoming (deemed) employees, the TDS will be based on the applicable slab rates.
- Having said that, it will be a practical challenge to calculate the expected earnings for the entire financial year as the earnings of the drivers will still be contingent upon the business they bring. A clear set of guidelines to deal with such cases should follow once such drivers/other category of workers are brought within the ambit of labour laws and are given a status of (deemed) employees.

Section C: Closing

Phewww!! No, I never intended to write this long article, but I hope the readers will appreciate that it could not have been done in lesser words, without comprising on the content. Nevertheless, finally it is time to conclude. Here we go!

Given the emergence of new business models in the recent years, it has been challenging for the governments around the world to keep up the pace by carrying out corresponding amendments in the existing laws at the same pace.

That being said, the principle of 'substance over form' is one such weapon for the Courts to use against the self-proclaimed smart business entities which try and disguise any transaction/agreement, in such a manner to make it appear different from the actual conduct of the contracting parties. There have been quite a few observations by the Hon'ble UK Supreme Court which re-emphasises the importance of actual conduct of parties vis-à-vis the fancily drafted agreements. In fact, the principle of 'substance over form' is not limited to any particular law but can be invoked under any legislation.

Having said that, by no means it should be inferred that there is no relevance of the written agreements – what is important is that the actual conduct of parties should coincide with the written terms of contract/agreement.

Furthermore, the dissenting member's view, that the Courts should refrain from applying common law in cases where the business models are such that the current legislation needs a revisit, is an important one.

Open (Moot) Questions

- When the drivers can work for other organisations as well at the same time, will they be treated as employees of more than one organization at the same time? If yes, will they be treated as part-time employees?
- How will the working hours of the drivers be calculated when they are free to accept bookings from competitors as well?

¹³ This is based on Author's random discussions with Uber drivers in India

A Rap On The Knuckles For Uber By The UK Supreme Court: What It Means For The Gig Economy And Its Potential Impact In India

26 February 2021

By CA. Karnik Gulati

- What will be the tax implications from an overall perspective?
- There are plethora of questions which are tagged along once the drivers are treated as employees of the cab aggregators and the compliance burden on such companies will only increase.

This will be an interesting space to watch out for.

Disclaimer: The views are personal and does not represent the views of any organization that the author is associated with.