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"CRIMINAL LIABILITY OF ONLINE FOOD DELIVERY PLATFORMS"

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Abstract:

The exponential growth of online food delivery platforms such as Zomato, Swiggy, and Uber Eats has significantly transformed the food service industry, creating a complex digital marketplace that connects consumers, restaurants, and delivery personnel. While these platforms position themselves as mere intermediaries facilitating transactions, their expanding role in vendor selection, quality control, pricing mechanisms, and logistics raises critical questions regarding their legal status and accountability. This paper examines the scope of criminal liability of online food delivery platforms in India, particularly in cases involving food safety violations, misrepresentation, fraud, and public health risks.

The study critically analyses the applicability of the Information Technology Act, 2000, especially the safe harbour provisions, alongside the Food Safety and Standards Act, 2006, to determine whether such platforms can claim immunity from criminal prosecution. It further explores key legal doctrines including negligence, vicarious liability, and strict liability to assess whether platforms can be held responsible for harm caused by listed restaurants or cloud kitchens operating through their interfaces. The paper also considers the growing influence of algorithmic decision-making and data-driven practices, which may contribute to the promotion of non-compliant vendors, thereby challenging the notion of passive intermediation.

Through a comparative analysis of regulatory approaches in jurisdictions such as the European Union and the United States, the paper highlights emerging global trends towards increased platform accountability. It also identifies key enforcement challenges, including the attribution of knowledge, evidentiary burdens, and the fragmented nature of regulatory oversight in India.

The paper argues that the existing legal framework is inadequate to address the evolving nature of platform-based food delivery services. It advocates for a balanced approach that imposes a model of shared criminal liability on platforms, particularly where they exercise significant control or fail to exercise due diligence. The study concludes by recommending legal and policy reforms, including stricter compliance requirements, enhanced monitoring obligations, and greater algorithmic transparency, in order to ensure consumer protection and strengthen accountability within the digital food ecosystem.

Introduction:

The digital revolution has significantly reshaped the food service industry, particularly with the

emergence of online food delivery platforms. These platforms act as intermediaries connecting consumers with a wide range of

restaurants and cloud kitchens, offering convenience, accessibility, and variety¹⁰¹⁶. However, their rapid expansion has also introduced complex legal challenges, especially concerning accountability in cases of food safety violations, fraud, and consumer harm.¹⁰¹⁷

Traditionally, these platforms have positioned themselves as neutral intermediaries, merely facilitating transactions between consumers and food vendors. This classification allows them to claim protection under intermediary liability frameworks, thereby limiting their legal responsibility.¹⁰¹⁸ However, the evolving nature of these platforms—marked by their involvement in logistics, algorithmic ranking, promotional activities, and sometimes direct participation through cloud kitchens—raises critical questions about the extent to which they can continue to rely on such immunity.

This paper seeks to examine whether online food delivery platforms should bear criminal liability for wrongful acts committed within their ecosystems. It evaluates the adequacy of existing legal frameworks in addressing these challenges and explores the need for a more robust regulatory approach.¹⁰¹⁹

Evolution of Online Food Delivery Platforms:

Online food delivery began as simple aggregator models but has evolved into sophisticated logistics-based services.¹⁰²⁰ Platforms now control payment systems, delivery networks, and customer data.¹⁰²¹ This shift from passive intermediaries to active participants complicates their legal position, especially when determining responsibility for criminal acts.

¹⁰¹⁶ NITI Aayog, E-Commerce in India: Status and Trends (2020).

¹⁰¹⁷ Food Safety and Standards Act 2006; Food Safety and Standards Authority of India (FSSAI), Guidelines for Food Business Operators on E-Commerce Platforms (2017).

¹⁰¹⁸ Information Technology Act 2000, § 79; Shreya Singhal v. Union of India, (2015) 5 SCC 1.

¹⁰¹⁹ Avnish Bajaj v. State (NCT of Delhi), (2008) 150 DLT 769; S. Sandeep & R. Bansal, “Liability of E-Commerce Platforms in India: A Critical Analysis,” (2021).

¹⁰²⁰ NITI Aayog, E-Commerce in India: Status and Trends (2020); OECD, An Introduction to Online Platforms and Their Role in the Digital Transformation (2019).

¹⁰²¹ OECD, The Role of Digital Platforms in the Collection of VAT/GST on Online Sales (2019); Ministry of Consumer Affairs, Consumer Protection (E-Commerce) Rules, 2020 (India).

Concept of Criminal Liability in Digital Platforms:

Criminal liability refers to the legal responsibility of an entity for acts that constitute offenses under criminal law. In the context of digital platforms, liability can arise in multiple forms. Direct liability occurs when the platform itself engages in unlawful conduct. Vicarious liability arises when employees or agents commit offenses within the scope of their employment. Corporate criminal liability, on the other hand, is imposed when an organization fails to prevent wrongdoing due to negligence or lack of proper safeguards.¹⁰²²

A key element in criminal liability is mens rea (guilty intent). Establishing intent in the case of digital platforms is challenging because decisions are often automated or distributed across multiple actors.¹⁰²³ Nevertheless, courts may infer intent from negligence, recklessness, or failure to comply with statutory obligations.¹⁰²⁴

Nature of Online Food Delivery Platforms:

Online food delivery platforms operate as digital marketplaces that aggregate multiple food vendors and provide users with an interface to browse, order, and receive food¹⁰²⁵. While they initially functioned as passive intermediaries, their role has expanded significantly over time.

Today, these platforms exercise varying degrees of control over vendor onboarding, pricing strategies, customer reviews, and delivery logistics. In some cases, they are also involved in operating cloud kitchens or private-label brands. This shift from passive facilitation to active participation complicates their legal

¹⁰²² Indian Penal Code 1860; Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74 (recognising corporate criminal liability in India); State of Maharashtra v. Syndicate Transport Co. (P) Ltd., AIR 1964 SC 1950.

¹⁰²³ Shreya Singhal v. Union of India, (2015) 5 SCC 1 (interpretation of knowledge and intent in digital intermediary liability); OECD, An Introduction to Online Platforms and Their Role in the Digital Transformation (2019).

¹⁰²⁴ Information Technology Act 2000; Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021; Avnish Bajaj v. State (NCT of Delhi), (2008) 150 DLT 769.

¹⁰²⁵ NITI Aayog, E-Commerce in India: Status and Trends (2020); Organisation for Economic Co-operation and Development (OECD), An Introduction to Online Platforms and Their Role in the Digital Transformation (2019).

classification and raises concerns regarding their accountability.

The degree of control exercised by these platforms is a crucial factor in determining their liability. The more control they exert, the weaker their claim to intermediary status becomes.

Legal Framework in India:

The legal position of online food delivery platforms in India is primarily governed by two key statutes: the Information Technology Act, 2000, and the Food Safety and Standards Act, 2006.¹⁰²⁶

Under the Information Technology Act, intermediaries are granted conditional immunity from liability for third-party content, provided they do not initiate, modify, or have actual knowledge of unlawful acts. This “safe harbour” provision has been widely invoked by digital platforms to avoid liability.¹⁰²⁷

On the other hand, the Food Safety and Standards Act, 2006, imposes obligations on food business operators to ensure that food is safe for consumption¹⁰²⁸. However, the application of this Act to online platforms remains ambiguous, particularly when they do not directly prepare or handle food.

Additionally, provisions of criminal law relating to negligence, fraud, and public safety may be invoked in cases where consumer harm occurs. The challenge lies in determining whether these platforms can be held accountable under such provisions.

Grounds for Criminal Liability of Food Delivery Platforms:

Online food delivery platforms may face criminal liability under several circumstances. One major ground is the distribution of unsafe or adulterated food. If a platform knowingly allows non-compliant restaurants to operate, it

may be held liable under laws such as the Food Safety and Standards Act, 2006.¹⁰²⁹

Another ground is fraudulent misrepresentation. Platforms often display images and descriptions that may not accurately reflect the actual product. If such representations mislead consumers, they may constitute criminal fraud.¹⁰³⁰ Data protection is another critical area; unauthorized access, misuse, or leakage of customer data may attract criminal penalties.

Additionally, negligence in delivery operations can lead to liability. For instance, if delivery personnel engage in reckless driving causing accidents, questions may arise regarding the platform’s responsibility, especially if proper training and supervision were lacking.¹⁰³¹

Judicial Trends and Case Law Analysis:

Judicial approaches to platform liability are evolving. Although Indian courts have not extensively addressed food delivery platforms specifically, analogous cases involving e-commerce and ride-sharing services provide valuable insights¹⁰³². Courts have shown a willingness to impose liability where platforms exercise significant control over transactions.¹⁰³³

Globally, there is a trend toward increased accountability. Courts in various jurisdictions have emphasized consumer protection and public safety, often prioritizing these considerations over strict adherence to intermediary immunity.¹⁰³⁴ This shift indicates that food delivery platforms may face stricter scrutiny in the future

¹⁰²⁶ Information Technology Act 2000; Food Safety and Standards Act 2006.

¹⁰²⁷ Information Technology Act 2000, § 79; Shreya Singhal v. Union of India, (2015) 5 SCC 1.

¹⁰²⁸ Food Safety and Standards Act 2006, §§ 26–27.

¹⁰²⁹ Food Safety and Standards Act 2006, §§ 26–27; Food Safety and Standards Authority of India (FSSAI), E-Commerce Guidelines (2017).

¹⁰³⁰ Indian Penal Code 1860, §§ 415–420 (cheating and fraud); Ministry of Consumer Affairs, Consumer Protection (E-Commerce) Rules, 2020 (India).

¹⁰³¹ Indian Penal Code 1860, § 304A (causing death by negligence); State of Rajasthan v. Vidyawati, AIR 1962 SC 933 (vicarious liability principles).

¹⁰³² Avnish Bajaj v. State (NCT of Delhi), (2008) 150 DLT 769 (platform liability in online marketplaces); Shreya Singhal v. Union of India, (2015) 5 SCC 1.

¹⁰³³ S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 (vicarious liability principles); Uber BV v. Aslam, [2021] UKSC 5 (UK Supreme Court recognizing platform control over workers).

¹⁰³⁴ European Commission, Digital Services Act (2022); OECD, An Introduction to Online Platforms and Their Role in the Digital Transformation (2019).

Criminal Liability: Doctrinal Analysis:

The question of criminal liability of online food delivery platforms can be examined through several legal doctrines:

- Negligence: Platforms may be held liable if they fail to exercise reasonable care in verifying the credentials and compliance of listed vendors.¹⁰³⁵
- Vicarious Liability: This doctrine raises the question of whether platforms can be held responsible for the acts of restaurants operating through them, particularly when there is a degree of control or supervision.¹⁰³⁶
- Strict Liability: In matters involving public health and safety, courts may impose liability without requiring proof of intent or negligence.¹⁰³⁷

The application of these doctrines depends on the extent of the platform's involvement and knowledge. If a platform knowingly allows non-compliant vendors to operate or fails to act upon complaints, it may be exposed to criminal liability.

Emerging Challenges:

Several challenges complicate the imposition of criminal liability on online food delivery platforms:

- Attribution of Knowledge: It is difficult to establish whether a platform had actual or constructive knowledge of violations committed by vendors.¹⁰³⁸
- Algorithmic Influence: Platforms use algorithms to rank and promote restaurants, which may indirectly encourage the visibility of non-compliant vendors.¹⁰³⁹

¹⁰³⁵ Donoghue v. Stevenson, [1932] AC 562 (HL) (establishing the modern law of negligence); Indian Penal Code, 1860, § 304A.

¹⁰³⁶ State of Rajasthan v. Vidyawati, AIR 1962 SC 933 (recognising vicarious liability principles); S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89.

¹⁰³⁷ Rylands v. Fletcher, (1868) LR 3 HL 330 (doctrine of strict liability); Food Safety and Standards Act 2006 (public health obligations).

¹⁰³⁸ Shreya Singhal v. Union of India, (2015) 5 SCC 1 (clarifying "actual knowledge" standard under intermediary liability); Information Technology Act 2000, § 79.

¹⁰³⁹ OECD, Algorithms and Collusion: Competition Policy in the Digital Age (2017); European Commission, Digital Services Act (2022).

- Cloud Kitchens: The rise of cloud kitchens, sometimes operated or controlled by platforms, blurs the distinction between intermediary and service provider.¹⁰⁴⁰

- Enforcement Issues: Regulatory authorities often face difficulties in monitoring and enforcing compliance due to the fragmented nature of the ecosystem.¹⁰⁴¹

These challenges highlight the inadequacy of existing legal frameworks in addressing the complexities of digital platforms.

Comparative Analysis:

Internationally, there is a growing trend towards increasing platform accountability. Regulatory frameworks in jurisdictions such as the European Union and the United States have begun to reassess the scope of intermediary immunity.

The European approach emphasizes due diligence and proactive responsibility, requiring platforms to take measures to prevent harm. In contrast, the United States has traditionally provided broader immunity to platforms, though recent debates suggest a shift towards greater accountability.

These developments indicate a global recognition of the need to balance innovation with consumer protection.

Need for Reform and Recommendations:

The current legal framework in India is insufficient to effectively regulate the evolving role of online food delivery platforms. There is a pressing need for reforms that clearly define the liability of such platforms.¹⁰⁴²

Key recommendations include:

- Establishing a shared liability model where both platforms and vendors are held accountable.

¹⁰⁴⁰ Food Safety and Standards Authority of India (FSSAI), Guidelines for Food Business Operators on E-Commerce Platforms (2017); NITI Aayog, E-Commerce in India: Status and Trends (2020).

¹⁰⁴¹ Ministry of Consumer Affairs, E-Commerce Rules, 2020 (India); NITI Aayog, E-Commerce in India: Status and Trends (2020).

¹⁰⁴² Information Technology Act 2000; Food Safety and Standards Act 2006; NITI Aayog, E-Commerce in India: Status and Trends (2020).

- Imposing mandatory due diligence obligations on platforms during vendor onboarding.
- Enhancing monitoring and compliance mechanisms to ensure food safety standards.
- Introducing algorithmic transparency to prevent the promotion of non-compliant vendors.
- Providing clear statutory guidelines to eliminate ambiguity regarding the legal status of platforms.

Such measures would help create a balanced regulatory environment that protects consumers without stifling innovation.¹⁰⁴³

Role of Intermediary Liability and Safe Harbour Protection:

The concept of “safe harbour” is central to determining the liability of online platforms. Under the Information Technology Act, 2000, intermediaries are protected from liability for third-party content if they act as neutral conduits and comply with due diligence requirements.¹⁰⁴⁴

However, the applicability of safe harbour depends on the level of control exercised by the platform. If a platform actively curates content, influences transactions, or participates in delivery, it may lose this protection.¹⁰⁴⁵ Courts have increasingly adopted a functional approach, examining the actual role played by the platform rather than relying solely on its formal classification.

Challenges in Imposing Criminal Liability:

Imposing criminal liability on online food delivery platforms presents several challenges. One major difficulty is proving mens rea, as platforms operate through complex technological systems involving multiple

stakeholders. Establishing intent or knowledge in such cases can be difficult.¹⁰⁴⁶

Another challenge is the fragmented nature of transactions. Responsibility is often divided among restaurants, delivery personnel, and the platform itself. Determining who is liable for a particular offense can be complicated.¹⁰⁴⁷ Jurisdictional issues also arise, especially when platforms operate across multiple regions.

Furthermore, regulatory frameworks often lag behind technological advancements, leading to ambiguity and inconsistent enforcement. These challenges highlight the need for clearer legal standards.

Regulatory Framework and Policy Recommendations:

To address the complexities of criminal liability, a robust regulatory framework is essential. Governments should clearly define the legal status of food delivery platforms, distinguishing between intermediaries and service providers based on their level of involvement.¹⁰⁴⁸

Stricter due diligence requirements should be imposed, including verification of restaurant licenses, compliance with food safety standards, and monitoring of delivery practices.¹⁰⁴⁹ Platforms should also be required to implement effective grievance redressal mechanisms.

In addition, laws should establish clear standards for data protection and consumer rights. Regulatory authorities must ensure that platforms are held accountable for negligence while also encouraging innovation and growth in the digital economy.¹⁰⁵⁰

¹⁰⁴³ OECD, The Role of Digital Platforms in the Digital Economy (2019).

¹⁰⁴⁴ Information Technology Act 2000, § 79; Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021.

¹⁰⁴⁵ Shreya Singhal v. Union of India, (2015) 5 SCC 1 (limiting safe harbour to cases without actual knowledge); Avnish Bajaj v. State (NCT of Delhi), (2008) 150 DLT 769.

¹⁰⁴⁶ Indian Penal Code 1860 (requirement of mens rea in criminal offences); Shreya Singhal v. Union of India, (2015) 5 SCC 1 (interpretation of knowledge in intermediary liability).

¹⁰⁴⁷ Avnish Bajaj v. State (NCT of Delhi), (2008) 150 DLT 769 (issues of liability in multi-party online transactions); NITI Aayog, E-Commerce in India: Status and Trends (2020).

¹⁰⁴⁸ Information Technology Act 2000, § 79; European Commission, Digital Services Act (2022).

¹⁰⁴⁹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021; Food Safety and Standards Act 2006; Food Safety and Standards Authority of India (FSSAI), E-Commerce Guidelines (2017)

¹⁰⁵⁰ Information Technology Act 2000, §§ 43A, 72A; Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1; OECD, The Role of Digital Platforms in the Digital Economy (2019).

Conclusion:

The rise of online food delivery platforms has fundamentally altered the dynamics of the food service industry, necessitating a re-evaluation of existing legal principles. While these platforms have traditionally relied on intermediary immunity to avoid liability, their increasing involvement in various aspects of the food delivery process challenges this position.

This paper has argued that the current legal framework in India is inadequate to address the complexities of platform-based services. Given their growing control and influence, online food delivery platforms should not be allowed to evade accountability entirely. Instead, a nuanced approach that imposes shared criminal liability, particularly in cases of negligence or failure to exercise due diligence, is essential.

Ultimately, ensuring consumer safety and accountability in the digital food ecosystem requires a proactive and adaptive legal framework that reflects the realities of modern platform-based business models.





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