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# **Identifying Food Delivery Workers - A Legal and Human Rights Perspective**

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# TABLE OF CONTENTS

1. ABSTRACT	03
2. INTRODUCTION	04
• WIDE CUSTOMER BASE	04
• A MIGRANT LABOUR SECTOR	05
• WOMEN IN THE GIG ECONOMY	05
3. ISSUES FACED BY FOOD DELIVERY WORKERS	05
• HEALTH, SAFETY, AND WAGES	05
• A COMPLICATED SYSTEM OF INCENTIVISATION AND DELIVERY	06
• LACK OF AUTONOMY ALTHOUGH SELF-EMPLOYED	06
• LONG WORK HOURS	06
• INEFFICIENT REDRESSAL MECHANISM	07
• ISSUES FACED BY FEMALE DELIVERY PERSONNEL	07
4. A CASE OF FOOD DELIVERY WORKERS FROM KOCHI, KERALA	07
5. THE NEED TO RECOGNISE FOOD DELIVERY WORKERS	09
• ADDRESSING THE NEED FOR A LEGAL DEFINITION	09
• SOCIAL BENEFITS	09
6. RECOMMENDATIONS	10
7. CONCLUSION	12
8. BIBLIOGRAPHY	13

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# Identifying Food Delivery Workers - A Legal and Human Rights Perspective

Ann Mary Biju

**The food delivery system in India operates through mobile applications. The precarious nature of the industry uniquely questions labour rights as the system relies on a complicated rating and incentivising process.**

## ABSTRACT

The food delivery system in India operates through mobile applications. The precarious nature of the industry uniquely questions labour rights as the system relies on a complicated rating and incentivising process. It also promotes long working hours without proportional wages. Furthermore, the lack of transparency on how the system operates discourages any opportunity to plan work hours or the number of orders for delivery workers. The wages alone are barely sustainable, with no adjustments corresponding to the hike in fuel prices.

The redressal mechanism for the food delivery workers must be strengthened, safeguarding their fundamental and labour rights. It is needed to legally evaluate conditions of food delivery workers with respect to the work hours versus wages earned, availability of insurance, benefits, and the workers' knowledge of how the delivery process takes place so that they can plan their gigs.

## INTRODUCTION

Division of labour into the formal and informal sectors endows each sector with its own set of features. However, formal sector jobs hold precedence over informal sector jobs, even though the cash incentives of certain jobs in the formal and informal sectors remain pretty identical, especially when self-employed (Ministry of Labour and Employment 2015). This discrimination persists because employment in the formal sector comes with societal prestige and a range of guarantees and benefits such as bonuses, paid leave, and fixed working hours and maternity leave (Sociology Group n.d.).

This scenario has undergone a rampant shift with the onset of the 'Gig Economy', 'Platform Economy' or 'Gig Work'. The work consists of non-standard income-earning activities outside of conventional, long-term employer-employee relationships, and is generally taken up for a short duration or on a project basis (Gig Economy n.d.). Gig work involves online and offline work, including freelancing for short periods or seeking employment via mobile applications. The gig economy has transformed the conventional understanding of labour. Individuals can work on their own terms. However, this holds true only for a specific section of online workers. These workers are technologically well-equipped and can deliver services remotely. However, the larger platform economy, which entails physical services that have become a part of urban lives, follows a different pattern. Workers of the platform economy are considered self-sustaining entrepreneurs, even though they deliver their services on behalf of other well-flourished startups.

Initially, gig jobs offered food delivery workers decent salaries as part-time or full-time employees. However, this does not hold anymore. Companies employ platform economy workers on a hire-and-fire basis, with minimal or no social and health cover guarantees (Deloitte 2018). These guarantees are particularly critical for a developing nation like India, with a large percentage of the young population between 15 to 64 years of age accounting for 67.27% of the people as of 2020 (O'Neill 2021). This population that enters such labour markets is usually moderately educated. This paper examines the case of food delivery workers in India. It analyses the threats they face from an employment, social security, and human rights perspective. Furthermore, the paper also examines possible labour rights policies and practices that can benefit gig workers.

### **Wide Customer Base**

The food delivery business has been lucratively targeting a wide range of the customer market since its inception. The contribution of the online food delivery system in transforming the restaurant business as one of the most successful ones in various cities is noteworthy. The pandemic restrictions have understandably increased the number of customers who order food online, a rampant behavioural change from even the reluctant customers who previously wouldn't order food online (Biju 2020). This surge in ordering food online is likely to sustain even post the pandemic, indicating a need for adequate numbers of food delivery personnel.

## A Migrant Labour Sector

The restaurant industry in most urban cities accommodates a considerable section of the migrant labour workforce (Singh and Singh 2020). These restaurants employ migrant workers as cooks after rounds of training in the cuisines specialised by the restaurants. The food delivery system has also seen an increased number of migrants joining as food delivery partners (Iqubbal 2021). The platform economy provides migrants with a lucrative opportunity to be involved in a more socially respected, stable, and autonomous employment than being employed as construction or manual labourer with unstable incomes.

## Women in the Gig Economy

In 2019, the Indian gig economy, which had 1.4 million members, saw the addition of 40,000 women to the sector (Sindwani 2019). There are 67,900 women gig workers in India with a wage range of INR 15,000 to INR 30,000 (Sindwani 2019). Gig work has attracted women mainly due to its flexible system, but concerns about the quality of the jobs that they enter have also been expressed (OECD 2017). Women have also actively entered areas of gig work, such as food and merchandise delivery, that were occupied exclusively by men (Sindwani 2019). Digitalisation is creating more job opportunities globally in new industries such as platform-based services, blogging, specialised services such as software development, data analysis, etc. Still, it also leads to job losses in traditionally performed human labour centric tasks (OECD 2016). Arntz, Gregory, and Zierahn (2016) found that only 5% of women workers with a tertiary degree were at risk of losing their digital-economy related jobs due to automation, while 40% of women with a lower secondary degree were at a higher risk. Food delivery platforms like Zomato and Swiggy hired approximately 700 and 500 women in their delivery hubs across India (Sindwani 2019).

## ISSUES FACED BY FOOD DELIVERY WORKERS

Food delivery workers in the platform economy, termed 'executives' by the delivery companies, face numerous issues related to poor working conditions. The problems mentioned above have been prevalent well before the onset of the pandemic. However, the pandemic brought to the surface newer issues faced by the delivery agents.

### Health, Safety, and Wages

The delivery agents of various platform economy services worked as essential service providers during the pandemic. However, delivery persons providing food and groceries across cities were met with unpleasant scrutiny by officials when they ventured out amidst lockdowns. 2020 saw numerous strikes by gig economy workers employed across platforms like Uber, Ola, Swiggy, and Zomato (Ranipeta 2020). The workers demanded a revised payment structure and safety gear when stepping out for work during the pandemic (ibid). The lack of safety gear for the platform economy workers could be seen as a disregard for their rights to a safe life. Workers also received reduced incomes due to the decrease in the number of orders in the beginning of the pandemic as food delivery was

not allowed. The removal of the cash-on-delivery option also contributed to the decline as customers took time to adapt to digital payments. This initial decrease in online food delivery meant that the food service agents took up more unpaid travelling. They had to deal with long waiting hours to meet the minimum number of orders to help them earn decently (ibid).

A job that fetched delivery workers INR 40,000 on average at the time they joined, today pays them half of that amount (Vaidyanathan 2020). The pandemic resulted in a cutback of the base pay for Swiggy workers to Rs. 15, which is a 57% reduction in minimum income (Vaidyanathan 2020). In a survey conducted by the Wire In Bangalore and Delhi, it was found that prior to the lockdown, 30.9% of food delivery workers received 16-20 orders a day while post lockdown, only 7.2% of workers were able to receive orders of this range (Lalvani and Seetharaman 2020). The dwindling wages combined with steeply rising fuel prices have made their employment prospects grimmer and unsustainable.

### **A Complicated System of Incentivisation and Delivery**

Incentivisation and delivery processes in the food delivery industry are complicated. Incentivisation is delivery based. For instance, Zomato increases the remuneration from the basic INR 75 for six orders to INR 125 after ten orders, INR 225 after 14 orders, and so on (Iqubbal 2021). In the case of Swiggy, workers receive INR 375 for 22 orders as an incentive, based on the completion of a target number of deliveries and performance (Iqubbal 2021). Based on their performance, workers are also categorised into four levels - Diamond, Gold, Silver, and Bronze (Iqubbal 2021). However, surveys conducted with the food delivery workers in a few states indicate that the system remains beyond the complete comprehension of the food delivery personnel.

### **Lack of Autonomy Although Self-employed**

The appeal of the food delivery industry lies in service providers being 'self-employed'. It gave service providers the option to take up orders as and when needed. Workers could use their own vehicles and take up work at their convenience, further supplementing the idea of being autonomous. However, the on-ground reality is different. Workers have to log into the apps for numerous hours per day for minimum income and incentives. Here, the self-employed status becomes a deliberate attempt by applications to evade the responsibility of ensuring benefits to the delivery agents.

### **Long Working Hours**

A study conducted by Behera et al. (n.d.) found that 47% of the full-time delivery workers work more than 12 hours a day. Additionally, 39% of the part-time delivery partners work 5 to 8 hours a day and 42% work over 12 hours a day. Peak ordering hours, such as the lunch and dinner timings, with attractive offers for customers contribute to these workers' long working hours.

## Inefficient Redressal Mechanism

The mass suspension of delivery agents in 2019 in Bangalore resulted from the absence of an efficient redressal mechanism. Suspensions were used as a disciplining tool against aggrieved or protesting workers (Medappa 2021). The suspensions also reportedly happen without any notice. Neither are the workers able to raise any counter concerns.

## Issues Faced by Female Delivery Personnel

In addition to the grievances mentioned above, food delivery platforms paid women 10% less than their male counterparts. This gender pay gap is only increasing (Sindwani 2019). There is no consolidated data on the number of women employed in the gig economy. Moreover, the primary concentration of jobs is in the beauty, cleaning, and care work sectors (Raman and Saif 2021).

Platforms like Swiggy and Zomato claim to encourage women to take up orders during the daytime. Nevertheless, the emergency provisions in these applications are absent and do not protect their employees against cases where they may face violence or deliver amidst unsafe situations. Such conditions are essential for ensuring the safety of all delivery workers, especially women.

## A CASE OF FOOD DELIVERY WORKERS FROM KOCHI, KERALA

In this section, we examine the case of the food delivery system in Ernakulam district in Kerala with a focus on the metropolitan city of Kochi that has seen the rise of food delivery work in the past few years. Reportedly, the general population that becomes part of food delivery work in Ernakulam consists of reasonably educated people in rotating attrition (M. K. 2019). According to the latest reports, the unemployment rate in Kerala is 23.5%, more than triple the national average (Knoema n.d.). In this section, we will hear the experiences of a few food delivery workers from Kochi who agreed to have a telephonic conversation about their satisfaction of working in the platforms, work hours, associations they are part of and what, according to them, can improve in the system.

When asked about his overall experience, what needs to be improved, and his opinion about associations for food delivery workers, Gokul Das (personal communication, 20 June 2021) said the following:

*"I have been working with Swiggy for around 5 months, for nearly 11 hours per day as a delivery agent. I have no regrets for taking this up. We should be willing to work hard. Some customers are very pleased, some don't even look at our faces. I don't take anything personally. However, I think the rating system is something that can improve. We do not have any idea as to who gives what rating and what is the reason for it. So, we do not know how we can improve anything. Personally, I have not noticed a change in my income due to any rating I got. With regards to association, well I don't know. This platform has a floating population and each of us*

*have our own issues and poverty. The platform has mixed people - well-educated and poor. So, I think it's hard to coordinate any such association. We are also not involved in any combined operation and are pretty much doing our own deliveries and trying to earn decently."*

Ashraf (personal communication, 26 June 2021) is a native of Kerala's Malappuram district and has worked with Swiggy in Kochi for 3-4 months. He is on the platform as a temporary relief since his activities associated with a cricket league in Malappuram has been dysfunctional owing to the pandemic. When asked about any association that he is part of and what could improve in the platform, he responded:

*"I have heard of WhatsApp groups that are there for food delivery workers in districts and cities, but I am not part of it. Guess it's for more experienced people. What I feel can improve is that when we go to hotels, sometimes there is the issue of waiting. For this we get paid only 5 rupees as the base price although it can change with the waiting time. I don't know how it works and I think the customer is by default paying for it, but the money should increase for us. I also think the cost for the minimum distance covered by us must increase from the current 20 rupees to at least 25 rupees." (Ibid).*

Sajan (personal communication, 30 June 2021), an ex-Zomato Kochi employee who stopped working with the platform for the past eight months, narrated some troubling instances. He had worked with the app only for two months, hoping to earn money to buy a professional camera. He said:

*"We get an incentive if we make above a particular number of orders and we also get tips. Sometimes we get two orders together. Then one can get delayed due to many reasons. Once when I was just completing a delivery at Edappally and I got a simultaneous order from Kakkanad which is not a nearby location. Usually for such orders, we are supposed to get paid 90 rupees, but I got only 60 or 70 rupees. I had travelled for 12 kms, but didn't get paid accordingly. And then, I got a third order to a location near Edapally because the app showed my current location as Edappally, but I was actually still at Kakkanad completing my second order! So, I got paid as per that only. When I began my work, we used to get paid 30 or 40 rupees per order for the minimum distance. As time went by, it reduced to 20 rupees."*

Sajan also met with two accidents during his delivery but received no financial assistance from Zomato. Narrating his accidents, he said:

*"I had met with two accidents at the time I was working with Zomato but did not receive financial support from the app. They told me that I will get insurance by just showing my employment ID as given in the mobile app in the hospital I consult with. But the first hospital that I went to had no idea about such an insurance claim and refused to accept it. Then I went to a government hospital and paid out of my pocket for treatment. They then told me that I could reimburse the money spent by showing hospital documents. But I didn't have one of the papers and couldn't get the money*



*reimbursed. The second time I met with an accident while taking a U-turn, but thankfully I just had minor injuries on my arms. The main problem is that we are running to get orders.” (Ibid).*

The above excerpts from the food delivery workers indicate some critical aspects for improvement. It includes the workers’ rights to know about the system of their ratings, safety and security of delivery personnel, and the right to a vehicle and medical insurance in case of accidents. The workers are accustomed to this lack of redressal mechanisms or the complicated processes behind the platform economy. Many also believe that addressing their issues wouldn’t translate to the applications taking any worthwhile action. They are considered temporary workers who come to work and are relieved according to their preference.

## THE NEED TO RECOGNISE GIG ECONOMY WORKERS

### Addressing the Need for a Legal Definition

The gig economy or the digital labour economy was not acknowledged as a distinct sector by the government until the 2019 Code of Social Security passed. The application of labour laws to the domain was kept out of bounds by denoting the relationship between a gig worker and an employer as that of an independent contractor and an aggregator, respectively (Bharadkar, Medappa, and Mani n.d.). This implies that workers in the gig economy are independent, and the employer has limited control of the employees. The latter part is simply untrue. The platform economy, until recently, could be rightly recognised as a contravention of Indian law (Kumar 2019).

With the Code of Social Security in 2019, the platform economy workers received a legal definition and recognition. The Code defines the term gig worker as “a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationships” (Ministry of Labour and Employment [MoLE] n.d.). The Code covers platform economy workers in the online portal. On 26 August 2021, MoLE launched the E-Shram Web portal in an attempt to create a national database of unorganised sector workers. The portal saw the registrations of food delivery workers as well (Sundar 2021). Henceforth, they can avail benefits from the government on the fulfilment of certain conditions. As per the MoLE, these conditions include:

1. Being in the age bracket of 16 to 60 years;
2. Having work experience ranging from 90 days to 12 years;
3. Registration with Aadhar number; and
4. Electronically submitting a self-declaration form.

### Social Benefits

The Code also offers a range of social security benefits to workers in the unorganised sector. These benefits include life and disability cover, accidental insurance, health and maternity benefits, creches, and so on (MoLE n.d.).

However, it is also noteworthy that the Code does not guarantee these benefits. It merely deems unorganised sector workers eligible for the same. The Code also states that the central government can fund the stated social benefits, either individually or jointly with the state governments (MoLE n.d.). It requires collective action by the central and the state governments to decide upon the fiscal financing requirements of the workers, thereby ensuring that social security benefits are duly delivered.

## RECOMMENDATIONS

### Going Beyond Legal Recognition

Undoubtedly, recognising the platform economy workers as a discrete category of emerging workers is a step in the right direction. This recognition will help define their rights and benefits clearly. A prospective funding proposal could help cover these benefits. However, it is crucial to go beyond a prescriptive code that is legally non-enforceable. There is a need to make the recognition and benefits a legal guarantee. This step will require the joint efforts of both central and state governments to bear fiscal accountability. In 2019, the then labour minister of Karnataka S. Suresh Kumar had proposed that a tripartite system with labour unions, platforms and the governments must be responsible to resolve disputes the Contract Labour (Regulation and Abolition) Karnataka rules will be reviewed which is yet to take place (Hindu 2019). Agents such as organisations working on labour rights, the platforms and the state governments will need to make adequate efforts in ensuring legal guarantees for the workers.

### Need for Human Resource Training

There have been cases of wrongful or criminal behaviour from food delivery agents. Such instances include the murder of a kitchen operator by a food delivery boy in Delhi this year and a Kochi delivery boy stealing thirty mobile phones two years back (ETV Bharat 2021; Keralakaumudi Daily 2019). Nonetheless, it would be beneficial if food delivery platforms conducted introductory human resource training sessions for delivery agents. The training would particularly help migrant delivery agents become accustomed to the basics of customer service and etiquette.

### Improve the Redressal Mechanism

The redressal mechanism has to be sensitive to the needs of delivery agents. It must cater equally to delivery agents at any level of the hierarchical ranking structure. The reviews and customer ratings received should be available to the delivery agents. They must also have a chance to explain themselves for lower ratings or customer reporting against them either via a scoring or explanatory format in-built within the app interface or customer service. Most importantly, setting up a legally mandated redressal mechanism by platforms accessible to workers is required. It is also important that in case platforms maintain an inefficient or unreachable redressal forum, the workers shall directly reach out to entities like the labour commission to report their grievances. It would ensure an unbiased and fair redressal system, balancing the power asymmetry between the

employers or customers and gig workers.

## **The Role of Platforms and Governments in Insurance Coverage**

The 'Code on Wages' makes platform economy workers eligible for insurance (MoLE n.d.). However, reports mention the evasion of health insurance and vehicle insurance coverage by the platforms in case of accidents. This is because even though life insurance coverage is technically provided to workers, the conditions upon which an insurance claim is applicable remains unclear (Chakrabarti 2018). Such ambiguous insurances are unfair to the food delivery agents, who are often victims of road rage (ibid). Accidents are frequent since gig workers are under pressure of 'fast delivery' and associated offers available to customers on food applications. In the pandemic context, delivery platforms had started offering covid insurance coverage and income protection plans for their employees, ranging from INR 50,000 to INR 5 lakh for their delivery workforce (Laskar 2020).

The responsibility of health and accident insurance should be the combined responsibility of state and local governments through a centrally mandated scheme and the primary responsibility landing on food delivery platforms themselves. Informal sector researchers and non-governmental bodies working for the welfare of platform workers can also analyse and determine the requirement of other forms of coverage specific to food delivery agents.

## **Gender and Bias in the Food Delivery System**

Although food delivery platforms encourage women delivery partners to complete delivery before late hours, pressuring them to reach minimum orders per day before dinner hours. There need to be further efforts in ensuring the safety of women delivery partners. Non-penalised emergency withdrawal from delivery in case of potentially dangerous circumstances is one such step. There must be an active POSH [Prevention of Sexual Harassment] committee from the food delivery platforms for grievance redressal in cases of violence or harassment. Although applications such as Jubilant FoodWorks, a franchisee of Domino's Pizza, have claimed to be strictly enforcing their POSH cell, there is no verifiable information on the status of POSH cells within most players in the food delivery market (Bhushan 2015).

Similarly, the majority of food delivery workers in India belong to lower class and caste backgrounds. The case of order cancellation in Zomato by a customer because of a non-Hindu delivery agent speaks volumes of the caste and religious divide prevalent in India (India Today Web Desk 2019). It should also be an objective of future research to determine all forms of discrimination that exist in the arena of food delivery. The platforms should remedy the same.

## CONCLUSION

The prevalence of the platform economy has been an important direction in the narrative of employment, labour, and associated rights. Food delivery workers had entered the platforms to be in charge of their work while earning decent liveable wages. However, just like other forms of unorganised labour, this arena requires rights guarantees and benefits to its workers. The proposition of having ‘self-employed entrepreneurs’ as delivery agents has not ensured the independence of workers. Instead, it has narrowed the scope of benefits or the ability to access redressal systems simply because platforms may not be required to do so as per labour laws. This transient labour force is difficult to collectivise or unionise. Hence, cases of mistreatment of the delivery agents by platforms or customers often present themselves as isolated incidents. It may appear to workers themselves that speaking about their human and labour rights or collectivising may not be necessary as they do not often plan to stay long in the job. However, it should be a human principle that their vulnerability is not exploited even for the short duration they work for these platforms. It takes a humanistic perspective to address the issues faced by food delivery agents in urban cities. This perspective shall champion workers’ rights and benefits and ensure their survival in the complex food delivery system as long as they desire to stay.

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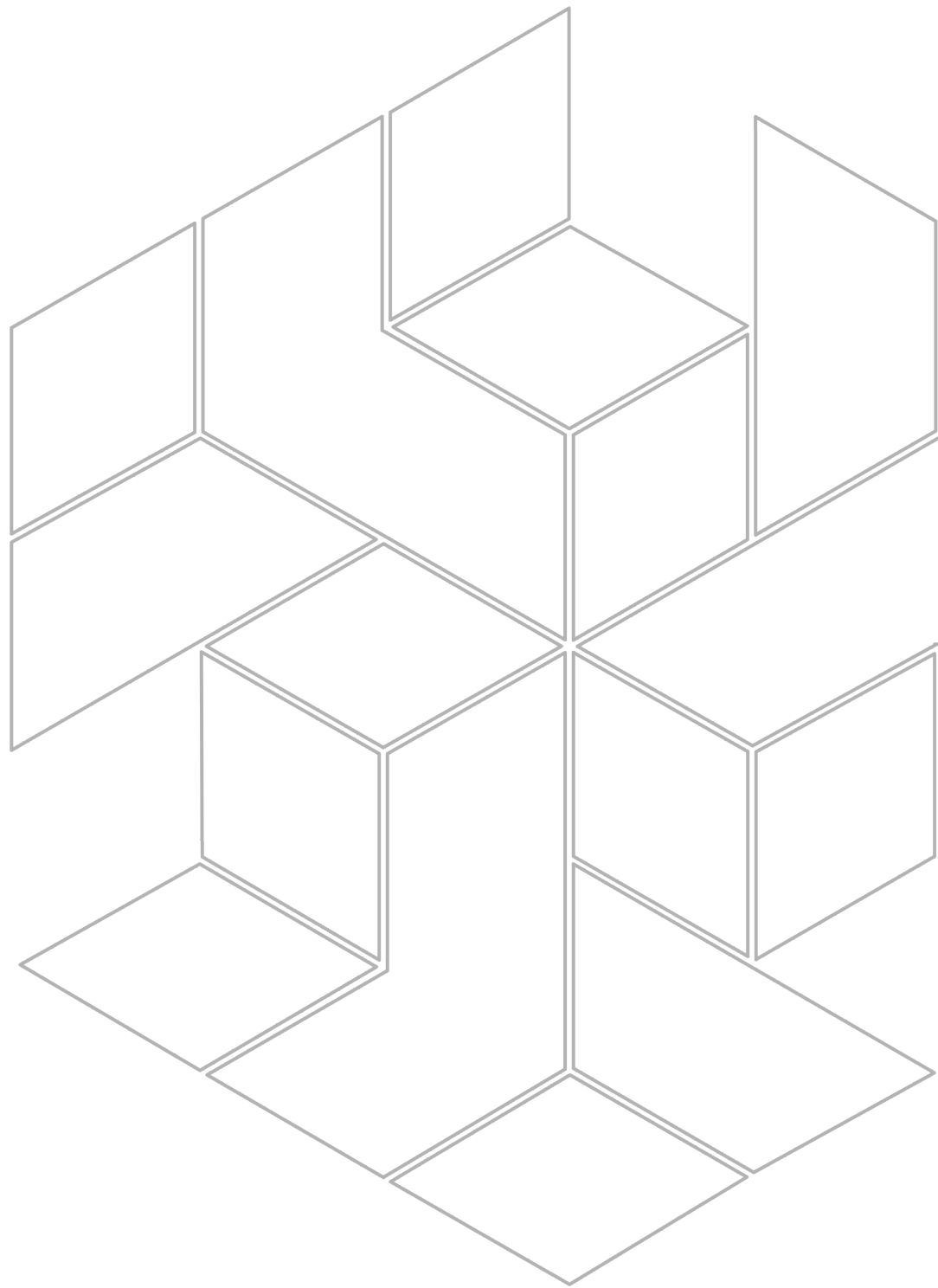
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