Law Journals

National Journal of
Labour and Industrial Law

ISSN: 2583-6498
Volume 6, Issue 2, 2023
DOI (Journal): 10.37591/NJLIL

http://lawjournals.celnet.in/index.php/jlil/index

Review NJLIL

Deliverymen, United—Collective Bargaining and Organization in the Indian Digital Economy

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Abstract

The expanding contours of the digital economy enhance the urgency of addressing its exploitative foundations. The feeble labour law legislation governing the partner-platform relationship leaves delivery executives bereft of social security rights and vulnerable to the whims of profit-maximising practices. In resistance to these conditions, delivery executives in many regions have collectivized in order to increase their bargaining power and wrest better terms from their employers. This study contains an investigation into the labour conditions of food delivery executives through an analysis of the existing legislation governing the sphere and the organizational tactics deployed by executives and their representatives. Relying on the innovative judicial conceptualisations put forth by international jurisdictions, the study suggests potential bargaining agreements and state guarantees that can be secured for this class of workers.

Keywords: Digital platform, gig worker, collective bargaining

INTRODUCTION

While a majority of the country's workforce languishes in an unorganized, unlegislated space, the corner carved out for delivery executives is shielded by legal rhetoric, owing to their misclassified employment status. The attempts of executives to expose the exploitative mechanisms of digital platforms have garnered substantial attention on social media platforms; however, the nature of information disseminated through such short-form media bears limits and necessitates greater engagement. The urgency of regulating the gig economy stems from its increasing hold on market transactions in the country and its renewed skill at bypassing legal standards to maximize profit by relying on the vast reserve of young and unemployed labour that India contains. This study contains a three-part exploration into the labour conditions of food delivery executives through an analysis of the existing legislation governing the sphere, the organizational tactics deployed by executives and their representatives as well as the potential bargaining agreements and state guarantees that can be secured for this class of workers.

On the Legislative Regime and Formal Barriers

The terms of the partner agreements laid down by Zomato and Swiggy, which possess an oligopoly in the food delivery market sphere, contain explicit acknowledgement of their principal-to-principal basis and the independent contractor status of the delivery executive [1]. Since this arrangement immunizes the relationship from being governed by labour legislation, protective provisions pertaining to employment security and collective bargaining no longer apply. This includes laws such as The Labour Codes and the Industrial Disputes Act, 1947, which provide for settlements and planned strikes but apply to industrial establishments employing workmen, necessitating an employer-employee relationship.

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Received Date: July 12, 2023
Accepted Date: July 28, 2023
Published Date: August 10, 2023

Citation: Nupur Paliwal. Deliverymen, Unite—Collective Bargaining and Organization in the Indian Digital Economy. National Journal of Labour and Industrial Law. 2023; 6(2): 8–13p.

S.2(35) of the Code on Social Security provides for a separate definition of gig workers as those that perform work outside the traditional employee-employer relationship while S.2(55) recognizes the nature of platform work. Mehrotra and Sarkar argue that the definitions of ‘gig’, ‘platform’ and ‘unorganized’ work often overlap unnecessarily [2]. Stemming from these conceptions, the Code allows for social security schemes to be formulated for individuals falling under this category and enforced against aggregator platforms. S.113 mandates the registration of unorganised, gig or platform workers in order to avail benefits from schemes framed under the Code. This process is subject to the fulfilment of specified conditions, which may be exclusionary to a large section of workers, such as the production of Aadhar identification documents.

Purported as a unifying legislation that consolidates existing labour codes, while expanding current measures, S.109(1) of the Code makes provisions for the Central government to frame schemes concerning health and maternity benefits, accident cover, disability and old age support and mandates the setting up of a separate Social Security Fund for gig and platform workers. Read together with S.109(2), which provides for the State governments to frame welfare schemes on additional areas, a duality in the administration of schemes is created while the implementation of the programmes at the local level remains unquestioned [3, 4]. Moreover, the recommendatory nature of the provisions regarding the formulation of security schemes makes them liable to dismissal and a lack of accountability. The apathy displayed by State governments in initiating the registration process demonstrates the drawbacks of legislative provisions which are not backed by punitive sanctions and corrective measures upon violation.

In addition to the lack of legislative protection, judicial interpretations of archetypical employee-employer relationships also need reformulation to suit the gig economy. In 1961, the Court in Kohinoor Pictures v. State of West Bengal And Ors. held that freelancers did not qualify as employees and could not be subject to the Minimum Wages Act, 1948 [5]. Additionally, in Nilgiri Cooperative Marketing Society v. State of Tamil Nadu, the factors establishing an employee relation were identified as concerning the authority of the paymaster, the nature of the job, the extent of control as well as authority to appoint or dismiss workers [6]. The question of integration of the concerned worker into the organization was also raised in a later case [7]. Based on these factors, it can be ascertained that the determination of wages, as well as the control of the corporation over delivery times and routes constitutes a subordinate form of relationship. Moreover, since platforms such as Swiggy and Zomato are designed as food-delivery aggregators, the delivery partners perform the very central purpose of the organization. However, the requirement of the authority of appointment or dismissal of partners is morphed into a contractual agreement which hides the disproportional power-relation that exists between the parties, allowing firms to control working conditions.

The feeble foundations of the entire labour law regime in India and its fluctuating ties with the ILO conventions represent the ideological dilemma of the post-colonial state and its drive to guarantee welfare measures to the working classes as well as the subsequent necessity of the neoliberal state to attract corporate investment. While these may be presented as opposing tendencies, the Indian state has demonstrated consistent distaste for the freedom of association and workers’ strikes. This is encapsulated in Nehru’s comment during an ILO Conference in Delhi, condemning the strike as an approach of bitterness and hatred, prioritizing conflict over cooperation [8]. The restriction of collective bargaining rights amongst delivery platform workers by negating their status as employees represents the culmination of this trend of appeasement into a clear shift in favour of the needs of capital against workers’ demands.

On Organizational Efforts and Collective Strategies

The lack of spatially bound working environments represents organizational challenges for workers by engendering an environment of alienation within the workforce. The reliance of executives on digital infrastructure provided by the platform limits communication to official forums and diminishes their interactions with each other. Through the introduction of grading systems, platforms exacerbate competition among the executives and disempower them from seeking collective action. Mukherjee and Harrison argue that one of the factors responsible for the emergence of the gig economy is the end of collective bargaining and the fragmentation of the work force [9]. However, this must be viewed through a dialectical perspective wherein the popularity of platform work and the strength of collective bargaining mechanisms develop against each other.

Based on this understanding, this section explores the strike action carried out by delivery executives in the recent past as well as the role of the representative bodies such as the All-India Gig Workers Union (AIGWU) and the Indian Federation of App-based Transport Workers (IFAT) in introducing collective action strategies to overcome the unique barriers faced by the executives. Recurring protests by Swiggy and Zomato workers in various metropolitan cities demanding a higher base pay, social security measures and safe working practices, were organized under the banner of the Union, working under the Centre of Indian Trade Unions (CITU). The AIGWU was formed during the pandemic and operates to build a mass base through social media awareness and interaction with other unions [10]. The struggle of the Union members in obtaining an official all-India registration under the Trade Unions Act, 1926 reinforces the earlier argument concerning the state's scepticism of collective action.

Additionally, the relative progress made by organized strikes demonstrates the importance of unionization in order to gain leverage during negotiations. In September 2020, Swiggy delivery workers in Hyderabad went on a strike to protest changes in the pay structure wherein the base amount per delivery was drastically reduced from Rs. 35 to 15 [11]. Led by the IFAT, the demonstration was able to procure a meeting with the Labour Commissioner of the State who jointly convened a meeting with Swiggy management to discuss the resolution of the workers' demands. This is in contrast to a strike in Chennai that had taken place the previous month but did not attract the eye of the state. Organizational unity also enables workers to mount a stronger front and challenge the divisive tactics employed by the platforms to break strikes. The secretary of the IFAT, Salauddin, explained the strategy which involved luring a section of workers back with incentives and reprimanding another section by withholding payments [12]. These historical devices relied upon by corporate entities were condemned by Engels, who upheld the role of the unions as being "the first attempt of the workers to abolish competition. They imply the recognition of the fact that the supremacy of the bourgeoisie is based wholly upon the competition of the workers among themselves; i.e., upon their want of cohesion [13]".

Lastly, akin to the beginnings of historical proletarian movements, the action undertaken by the executives largely falls within the bounds of the law and seeks reform through legislative channels. This is demonstrated by the public interest litigation that was filed by the IFAT demanding that platform workers be classified as unorganized sector workers in order to allow them to be governed by the Unorganized Workers Social Security Act, 2008. Economic relief in the form of daily cash transfers from the aggregator platforms for the course of the pandemic were also part of the demands raised, demonstrating the urgency of the issue. The state apathy and inadequacy of measures was also criticized by the representatives and the judiciary was viewed as a bearer of potential change [14]. More recently, the corporation also attempted to salvage its public image by allowing female delivery workers paid period-leave and permitting workers to avoid delivering orders in dangerous localities [15]. The central concern regarding base pay and social security benefits lingers.

On the Possibilities and Potentials for Collective Association and Bargaining

In its concluding section, this study presents potential approaches for promoting collective action practices within the gig economy. This comprises three necessary facets as well as a vision for prospective settlement agreements between executives and enterprises. Firstly, centralized bargaining at an industry level is required in order to limit the scope of contractual power that delivery platforms currently possess by engaging state institutions in tripartite agreements to establish and ossify terms for the gig economy [16]. Secondly, the process of formalisation of representative mediums such as trade unions and workers' associations requires improvement. The criteria for registration and recognition of these bodies would benefit from greater expansion in order to encourage and consolidate trade unions [17]. Thirdly, anti-trust laws must incorporate labour exemptions that extend to the scope of gig workers in order to ensure that the restrictions placed on enterprises under competition law do not obstruct collective bargaining. This is premised on the legal recognition of delivery executives as workers or employees instead of independent contractors or enterprises in themselves.

The misclassification of executives represents the primary hurdle faced by them in accessing labour rights. The demands extended by the executives must be premised around this legal axis in order to attain the privileges that their counterparts in the West have. In February 2021, the United Kingdom Supreme Court lay rest to the matter of employment status by dismissing an appeal to the decision in Uber BV & Ors. v. Aslam & Ors., which classified Uber drivers as workers, possessing entitlement to minimum wages and paid annual leave [18]. A month later, the Spanish government came to a similar agreement with trade unions in the country and passed legislation recognizing food delivery workers as salaried staff, entitled to labour protections and benefits [19]. The Cour de Cassation in France found Uber drivers as falling within the categories of workers but lower courts in the city of Paris delivered differing decisions concerning Deliveroo riders, creating ambiguity in the matter. In February 2021, the Court deemed a rider paid by the hour as an employee and ordered the delivery platform to compensate them for 'concealed work'. However, 2 months later, a different category of riders were ruled to be independent contractors as they possessed freedom to choose the work they performed and were allowed to sub-contract tasks [20].

Through an analysis of these decisions, a four-pronged approach undertaken by the judicial authority can be seen when dictating employment status. This involves the question of whether an employment contract exists between partners and the firm, the flexibility of wages, the relationship of authority as well as factors concerning social security benefits. It was found that the non-existence of an employment contract was insufficient to negate the employee-employer relation that may exist on account of the subordinate position of partners and their involvement in carrying out the core activity of the company, food delivery. The issue has also been taken up by the European Commission, in consultation with union representatives and the ILO has urged regulatory cooperation amidst various nations in order to protect delivery workers [21]. Using these arguments, trade union bodies can urge courts to take cognizance of the precarious working conditions that delivery workers are subject to and the global efforts to remedy them.

In August 2021, a decision of a Superior Court in the State of California invalidated the Proposition 22 which classified gig workers under corporations such as Uber, DoorDash and Lyft, as independent contractors instead of employees and exempt them from seeking protection under labour provisions. With a total spending of $ 224 million, the Prop. 22 represented the costliest ballot initiative campaign in the country and attempted to appeal to voters by arguing for the preservation of workmen benefits combined with the supposed freedom of independent contractual status. The petitioners, the Service Employees International Union (SEIU), challenged the constitutionality of the legislation on the grounds that it curbed legislative and judicial authority and violated the single-subject rule [22]. By using language which restricted collective bargaining and unionization, the law stretched beyond its objective of protecting individuals who chose to work as independent contractors. While the Court upheld these arguments and found the Proposition unconstitutional, it must be noted that the fight was waged on constitutional grounds instead of labour rights. Moreover, the initial approval of the proposition through intensive campaigns and lobbying demonstrates the increasing hold of the digital economy over legislature and the power of capital to purchase the laws it desires. Against this encroachment, trade union bodies should build awareness amongst the platform consumer base and seek to generate consciousness regarding the working conditions that delivery executives are subject to in order to perform their roles.

In addition to these legal reforms, collective settlements drawn between the platform and executives, necessarily through representative agents in the form of unions, should clarify their scope of application to include partners in all enterprises which require third-parties to engage in delivery services using independent means or transport. The agreements should contain provisions for adequate base pay, coverage of transport costs, reasonable working hours on a fixed basis and leave periods, insurance and health benefits and other security measures as may be fit.

Moreover, while international bodies such as the ILO have recognized the urgency of addressing the gig work issue, the lack of concrete measures to enforce the fundamental principles renders its rhetoric hollow and necessitates an internationalization of the issue. Despite the disparities in geographical conditions, the gig economy operates in similar fashion in third world countries in Asia and Latin America in consonance with frail liberal democratic governments seeking to increase foreign investment and corporatization. By forging cross-border connections, unions in these regions can seek to create greater pressure on their governments.

The misclassification of the food delivery boy as an independent contractor under the guise of entrepreneurial advantage represents the legal reorientation of the capital-labour relationship while maintaining its economic relation of surplus extraction. Through this reorientation, platforms seek to hinder workers' struggles and resistance by perpetuating individualized workspaces outside the purview of labour legislation. Therefore, collective action amongst this urban proletariat is required in order to win rudimentary working rights concerning wages, work hours and social security.

Acknowledgements
The author is grateful for the feedback provided by Professor Apoorva Sharma, JGLS, throughout the course of this paper.

Conflict of Interest
The author declares no conflict of interest.

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