

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

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Understanding Gig and Platform Workers & Addressing the Global Issue of “Misclassification”

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ABSTRACT

There has been a significant increase in the demand for gig and platform workers in recent years due to the rapid digitalisation in the labour markets, especially during the Covid-19 Pandemic. Companies usually classify these workers as “self-employed independent contractors” because they are not bound by the traditional “employer-employee” relationship. But there should not be a blanket classification as in certain cases, companies exert substantial control over the working conditions of these workers, which arguably puts them into the category of “workers” and not “independent contractors”. The primary aim of this research paper will be to analyse this growing issue of “misclassification” of gig and platform workers as “independent contractors” in all cases, thereby denying them of their well-deserved employment rights and benefits.

In India, gig and platform workers have recently been recognised under the Code on Social Security, 2019 (“CSS”) but have still not been given any substantial rights or protection. Since the issue of misclassification is widespread in India, an analysis into the relevant Indian case-laws has been done to understand how to effectively classify gig and platform workers. For further clarity, the outlook of International courts have been analysed to efficiently understand how to determine the nature of employment relationships. It is essential to correctly classify these workers as it determines the kind of social-security benefits that they receive. Through this in-depth analysis, I have come to the conclusion that the classification of these workers should be done on a “case by case” basis depending on the “real” nature of their work and by applying the various tests laid down by courts across jurisdictions.

Keywords: Misclassification of Gig and Platform Workers.

I. INTRODUCTION TO THE GIG & PLATFORM ECONOMIES

The world is going through an economic revolution driven by advanced technological

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innovations that is leading to a rapid rise in the working of the digital labour markets.² This has led to an exponential growth of the “Gig” and “Platform” economies on an international scale, including in India. These evolving digital labour markets are radically affecting the global economies and making life more convenient for billions of people.³ The gig economy is a network of markets that match service providers and customers on an “on-demand” or “gig” basis.⁴ Similarly, the platform economy connects customers with a large pool of suppliers through an “online intermediary”, i.e. the “platform”, that is specially modelled to suit the industry needs.⁵ The “platforms” provide customers with service providers to execute tasks including cleaning, transport, and deliveries, among many others.⁶ However, this undeniable convenience brought to consumers has come at the expense of the working conditions and well-being of the gig and platform workers.⁷

This research paper aims to discuss this evolving class of gig and platform workers and uncover all the hardships faced by them due to the growing issue of “misclassification” of these workers as self-employed “independent contractors”. This topic is of utmost importance and relevance as several companies are profiting from such a misclassification by depriving these workers of their well-deserved employment benefits. The main issue is whether these gig and platform workers in India should be classified as “workers” or as “independent contractors” of the companies in certain cases. If they are classified as “workers”, they would get essential social-security benefits under the Indian labour laws. To effectively address this issue, after the introductory sections, we will analyse the current Indian legal framework with respect to gig and platform workers. Further, since this is a matter of international importance, there will be a cross-jurisdictional analysis to determine the International stand on the issue of misclassification of these workers. Finally, we will discuss the possible outcome of the classification of gig and platform workers in India by referring to the relevant Indian case-laws.

² The Rise of the Platform Economy, 1 (2018), <https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/humancapital/deloitte-nl-hc-reshaping-work-conference.pdf> (last visited May 12, 2021).

³ Wilma B. Liebman, *Debating the Gig Economy, Crowdfork and New Forms of Work*, 7 SOZIALES RECHT 222 (2017), <https://www.jstor.org/stable/26626281> (last visited May 12, 2021).

⁴ Arne L. Kalleberg & Michael Dunn, *Good Jobs, Bad Jobs in the Gig Economy*, 20 PERSPECTIVES ON WORK 11 (2016), <https://www.jstor.org/stable/26621129> (last visited May 12, 2021).

⁵ Aditi Surie, *On-demand platforms and pricing: how platforms can impact the informal urban economy, evidence from Bengaluru, India*, 14 WORK ORGANISATION, LABOUR & GLOBALISATION 85 (2020), <https://www.jstor.org/stable/10.13169/workorglaboglob.14.1.0083> (last visited May 12, 2021); *Supra* note ii, at 223.

⁶ Valerio De Stefano, *The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowd Work and Labour Protection in the 'Gig-Economy'*, CONDITIONS OF WORK AND EMPLOYMENT SERIES, INTERNATIONAL LABOUR OFFICE, GENEVA 1 (2016), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443267.pdf (last visited May 12, 2021).

⁷ *Supra* note iii, at 222.

II. THE RISE OF GIG & PLATFORM WORKERS IN INDIA

Although the number of gig and platform workers has been growing in India, there is currently only one legislation, i.e. the CSS that has attempted to define them.⁸ Section 2(35) of CSS ambiguously states that “gig workers” are those that perform work outside the “traditional employer-employee relationship”.⁹ It also provides for a separate definition for “platform work” under Section 2(55), in which people use an “online platform” to access organizations or individuals to provide services in exchange for payments.¹⁰ Some popular examples of such platforms in India include Uber, Ola, Urban Company, etc. However, the statutory recognition of these workers was important as it is estimated that about 56% of the “new employment” is created through the gig economy in India.¹¹ The gig economy in India is also estimated to double in size by 2023 at its current growth rate.¹² The primary reasons for this exponential growth is the ability of the gig sector to make services accessible, affordable and convenient for customers and also that it generates millions of job opportunities for the economically unfortunate people.¹³

One of the best features of the gig economy is that it is extremely inclusive and provides opportunities to those who would otherwise be excluded. Therefore, there are no “barriers to entry” with regards to gender, economic status, location, etc.¹⁴ Further, the gig and platform economy not only encourage innovation and entrepreneurship, but also offer people with immense autonomy and flexibility within their jobs.¹⁵ However, the adverse impacts of these growing economies on the working conditions and rights of the workers tend to be overlooked.¹⁶ The gig and platform workers are often classified as “independent contractors”, thereby depriving them of essential employment rights and benefits that are given to other workers.¹⁷ This includes the right to receive minimum wages, paid leaves, engage in collective bargaining and several other social-security benefits. The lack of job security from these

⁸ Bhavani Seetharaman, COVID-19 and Employment: Why the Definition of Gig Workers Matters More Than You Think (2020), <https://thewire.in/tech/covid-19-employment-gig-workers> (last visited May 12, 2021).

⁹ Section 2(35), The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India).

¹⁰ Section 2(55), The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India).

¹¹ Nilanjan Banik, Opinion: India’s gig economy needs affirmative policy push (2020), <https://government.economictimes.indiatimes.com/news/economy/opinion-indias-gig-economy-needs-affirmative-policy-push/73121847> (last visited May 12, 2021).

¹² Nimish Joshi & Ritu Bhandari, Opinion | How platform-based gig economy can generate millions of jobs (2020), <https://www.livemint.com/opinion/online-views/opinion-how-platform-based-gig-economy-can-generate-millions-of-jobs-11606726023369.html> (last visited May 12, 2021).

¹³ *Id.*

¹⁴ *Supra* note ix.

¹⁵ *Supra* note iv, at 10.

¹⁶ International Labour Organisation, https://www.ilo.org/washington/WCMS_642303/lang--en/index.htm (last visited May 12, 2021).

¹⁷ *Id.*

irregular working conditions can be a huge burden on the middle class workers who rely on the gig economy for their livelihood.¹⁸ Unfortunately, these disenfranchised workers are open to exploitation at the hands of companies who profit from the working conditions by paying them extremely low wages and depriving them of their labour rights.¹⁹ Some companies even exert immense control over the working conditions of the so-called “independent contractors”, thereby leading to the issue of “misclassification of workers”, which will be discussed in detail in the later sections.

III. THE EFFECT OF THE COVID-19 PANDEMIC ON GIG & PLATFORM WORKERS IN INDIA

The gig and platform economies have been flourishing during the Covid-19 Pandemic as many companies are preferring a “gig-model” rather than hiring full-time workers.²⁰ It is reported that there has been a 115% increase in the number of gig workers that are working from home during the pandemic.²¹ Although there is a high level of employment generation in the gig sector during the pandemic, there is definitely a flip side to it with regards to the lack of bargaining power of these workers when it comes to any form of social-security protection.²² Therefore, while the platform economy seems to be “pandemic proof”, in reality these workers are the worst affected by the pandemic.²³

During the first wave of the pandemic, platforms like Swiggy, Zomato and Uber were thriving and they partnered up with companies to provide essential services and feed the needy.²⁴ However, while few platforms were laying off their platform workers after the lockdown, other workers had to decide whether it was more profitable for them to leave their jobs and return to their villages or carry on working in a situation of economic downturn, where they failed to even make ends meet.²⁵ Even if they chose to continue working out of economic compulsion, they were forced to risk their lives and work in containment zones to meet the needs of the

¹⁸ Charles Towers-Clark, *The Uberization Of Work: Pros And Cons Of The Gig Economy* (2019), <https://www.forbes.com/sites/charlestowersclark/2019/07/08/the-uberization-of-work-pros-and-cons-of-the-gig-economy/?sh=3d5cc3d91cc7> (last visited May 12, 2021).

¹⁹ *Supra* note iv, at 10.

²⁰ COVID-19 prompts workers, corporates to adopt gig economy, *The Economic Times* (2020), <https://economictimes.indiatimes.com/news/economy/policy/covid-19-prompts-workers-corporates-to-adopt-gig-economy/articleshow/78732156.cms?from=mdr> (last visited May 12, 2021).

²¹ *Id.*

²² Bhaskar Pant & Geetima Das Krishna, *COVID-19 and Gig Workers: Need to democratize the Gig Economy in India* (2020), <https://government.economictimes.indiatimes.com/news/economy/covid-19-and-gig-workers-need-to-democratize-the-gig-economy-in-india/78567292> (last visited Jun 17, 2021).

²³ Minaketan Behera, *Gig Work and Platforms during the COVID-19 Pandemic in India*, 55 *ECONOMIC & POLITICAL WEEKLY* (2020), <https://www.epw.in/node/157580/pdf> (last visited Jun 17, 2021).

²⁴ *Id.*

²⁵ *Id.*

customers, without getting any financial or social-security from their companies in return.²⁶ The situation just worsened during the vicious second wave, where the gig workers were anxious of how they would be able to pay for their heavy medical expenses in case they contracted the lethal virus while working.²⁷ The companies continued to hire more gig workers to serve the “pent-up demand” after the lockdown, however the gig workers were no longer certain about their jobs due to the lack of medical support provided by the companies.²⁸ It seemed like only the Legislators can effectively protect the interests of the gig and platform workers during these tough times.²⁹

IV. INDIAN LEGAL FRAMEWORK ON GIG & PLATFORM WORKERS

The laws and statutes need to be re-evaluated periodically to keep up with the rapid digitalization of labour markets. The current Indian employment laws were not designed to deal with these new classes of workers, i.e. gig and platform workers and this called for immediate regulatory changes.³⁰ The CSS was the first Indian enactment regarding gig and platform workers.³¹ With the rapid rise in the number of these workers in India, the enactment of the CSS was an absolute necessity to provide statutory recognition and protection to such workers. As mentioned above, the CSS defined gig and platform workers and provided for the formulation of social-security schemes for them with regards to “accident insurance”, “health and maternity benefits”, etc. under Section 114 of CSS.³² It also mandated the aggregators to contribute “1-2% of their aggregate annual turnover towards the social-security benefits” of their workers.³³ However, this could possibly hamper the immediate income of the gig workers who rely on their daily wages for their livelihoods if aggregators shifted the incidence of this 1-2% contribution onto the workers by deducting their wages.³⁴

There seem to be quite a few issues with the CSS provisions since it is such a fresh legislation that is dealing with a new class of workers. Firstly, the CSS provides for three separate definitions for gig, platform and unorganized workers. However, there are situations where one

²⁶ *Id.*

²⁷ K. Sunil Thomas, Gig workers face both challenge, and opportunity, in COVID-19 second wave (2021), <https://www.theweek.in/news/biz-tech/2021/04/30/gig-workers-face-both-challenge-and-opportunity-in-covid-19-second-wave.html> (last visited Jun 17, 2021).

²⁸ *Id.*

²⁹ *Supra* note xxiii.

³⁰ *Supra* note ii, at 3.

³¹ The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India).

³² Section 114, The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India).

³³ Divya J. Shekhar, Why The Code On Social Security, 2020, Misses The Real Issues Gig Workers Face (2020), <https://www.forbesindia.com/article/take-one-big-story-of-the-day/why-the-code-on-social-security-2020-misses-the-real-issues-gig-workers-face/63457/1> (last visited Jun 17, 2021).

³⁴ *Id.*

worker can fulfil the requirements of both gig and platform workers.³⁵ Further, both platform and gig workers are a subset of the larger set of unorganized workers itself.³⁶ Therefore, there is unnecessary overlapping within these definitions.³⁷ Secondly, under Section 113(1) of CSS and Rule 50(2) of CSS Rules, “every gig, platform and unorganized worker has to be compulsorily registered with their Aadhar number”.³⁸ This could be problematic as it could lead to “issues of non-inclusivity”, thereby defeating the whole purpose of enacting the CSS.³⁹ Further, the CSS leaves the formulation of the social-security schemes in the hands of the Central Government, but it does not mention anything regarding “how” or “when” these would be formulated or funded.⁴⁰ Therefore, these provisions seem merely recommendatory in nature, owing to the lack of accountability and time-frames given.⁴¹ Lastly, the involvement of both Central and State governments in the provision of social-security measures could lead to unnecessary procedural inconveniences.⁴²

The Standing Committee on Labour gave several important suggestions regarding the CSS provisions. They suggested that it should be clarified whether gig and platform workers fall under the category of “organized or unorganized workers” to avoid any confusion or misclassification with regards to their social-security benefits.⁴³ Even they highlighted that the provisions on welfare schemes for these workers seem to be recommendatory in nature rather than mandatory, and should therefore be appropriately changed.⁴⁴ They further stated that the Code is silent on the “specific mechanisms” to effectively extend medical facilities and other social-security benefits to these workers.⁴⁵ It should also be noted that while analysing the Industrial Relations Code, 2020, the Standing Committee had suggested the inclusion of all gig and platform workers in the unified definition of “worker/employee” to extend all labour

³⁵ Santosh Mehrotra & Kingshuk Sarkar, *Social Security Code, 2020 and Rules, A Critique*, 56 ECONOMIC & POLITICAL WEEKLY 17-20 (2021), <https://www.epw.in/journal/2021/12/commentary/social-security-code-2020-and-rules.html> (last visited Jun 17, 2021).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Section 113, The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India). ; Rule 50(2), Draft of the Code on Social Security (Central) Rules, 2020, Acts of Parliament, 2020. (India).

³⁹ Kingshuk Sarkar, Under new labour code, an Uber driver can be both gig and platform worker. It's a problem (2020), <https://theprint.in/opinion/under-new-labour-code-an-uber-driver-can-be-both-gig-and-platform-worker-its-a-problem/521628/> (last visited Jun 17, 2021).

⁴⁰ *Supra* note xxxv.

⁴¹ *Supra* note xxxiii.

⁴² *Supra* note xxxiv.

⁴³ Standing Committee on Labour (2019-20) on The Code on Social Security, 2019, (9 ed. 2020), http://164.100.47.193/lssccommittee/Labour/17_Labour_9.pdf (last visited Jun 17, 2021).

⁴⁴ *Id.* at 152.

⁴⁵ *Id.* at 153, 154.

benefits to them.⁴⁶ Unfortunately, this suggestion was rejected by the Ministry.⁴⁷ Thus, it can be inferred that although the enactment of the CSS was a step in the right direction, it is imperative for the Legislature to make appropriate changes to truly empower gig and platform workers.

V. INTERNATIONAL STAND ON THE STATUS OF GIG & PLATFORM WORKERS

As the platform and gig economies continue to grow globally, there has also been increased litigation regarding the “employment relationship” between these workers and their companies.⁴⁸ The determination of this employment relationship is essential as it is the gateway to all the social-security benefits for the worker.⁴⁹ Companies often try to classify these workers as “independent contractors”, thereby escaping their duty of complying with employment laws.⁵⁰ Although these jobs provide the workers with some form of flexibility, income stability continues to be a “mirage” for them.⁵¹ The expectations of a “work-life” balance in the gig economy is rarely based on robust empirical facts.⁵² Further, “demutualization of risks” by companies is a common phenomenon now, where “sham self-employment” relationships are used to circumvent the laws on labour benefits to cut on expenses.⁵³ As a result, these workers are even deprived of basic rights at work and fundamental principles, including collective bargaining and the freedom of association.⁵⁴ To tackle this issue, the International Labour Organization stepped in and formed the “Employment Relationship Recommendation, 2006 (No. 198)” to address the “*unequal bargaining position between parties to an employment relationship*”.⁵⁵ It aims to combat “disguised employment relationships” by applying the “primacy of facts” principle, which states that the determination of an employment relationship must be based on relevant facts relating to “*the performance of work and the remuneration of the worker*”.⁵⁶

⁴⁶ Standing Committee on Labour (2019-20) on The Industrial Relations Code, 2019, 16 (8 ed. 2020), http://164.100.47.193/Isscommittee/Labour/17_Labour_8.pdf (last visited Jun 17, 2021).

⁴⁷ *Id.*

⁴⁸ Valerio De Stefano et al., *Platform work and the employment relationship*, ILO WORKING PAPER 27 (GENEVA, ILO). 4 (2021), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_777866.pdf (last visited Jun 17, 2021).

⁴⁹ *Id.*

⁵⁰ *Supra* note vi, at 5.

⁵¹ *Id.* At 6.

⁵² Jon Messenger, *Working time and the future of work*, 6 ILO FUTURE OF WORK RESEARCH PAPER SERIES 22-25 (2018), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_649131.pdf (last visited Jun 17, 2021).

⁵³ *Supra* note vi, at 6,7.

⁵⁴ *Id.* at 11.

⁵⁵ *Supra* note xlviii, at 5,6.

⁵⁶ *Id.* at 7.

If the “primacy of facts” principle was effectively applied, a vast number of employment relationships in the gig economy would be reclassified as that of “employment”.⁵⁷ Another relevant factor to ascertain the nature of employment relationship is the amount of “control” exercised on the worker by the company. In the *Borello* case, the California SC stated that it is relevant to determine “*whether the entity retains ‘all necessary control’ over the workers performance*”.⁵⁸ Even the National Labour Relations Commission of Korea had ruled that a driver of the platform company “Tada” was a “worker” due to the “degree of control and direction imposed on the driver” by the platform.⁵⁹ Further, California’s “ABC test” that was developed as a result of *Dynamax Operations West v. Superior Court of Los Angeles County* can be referred to while determining employment statuses.⁶⁰ According to the “ABC test”, for a company to treat their employees as “independent contractors” instead of “workers”, they had to prove that the employee was free from the company’s control with regards to their performance of work and they must perform work that is “outside the company’s usual course of business”.⁶¹ They also had to prove that the worker is involved in an “independently established trade or business” of the same kind as the work being performed.⁶² Another relevant factor to take into account is the amount of “flexibility” involved in the work. For example, a court in Amsterdam had held in 2019 that “*Deliveroo*” courier workers were considered to be “workers” of the company despite the amount of flexibility enjoyed by them because the company did limit their “freedom of working hours”.⁶³ Lastly, even factors such as whether the workers wear the company’s uniform or whether they have the right to be substituted by other workers or are obliged to “personally” carry out the work themselves can be taken into consideration to determine the form of employment relationship.⁶⁴

Among all the cases filed globally, a significant amount have been filed against the multi-national platform company, Uber, where its drivers are alleging that they are misclassified as “independent contractors”.⁶⁵ Research suggests that Uber tries to classify them “independent contractors” but at the same time maintain a high level of control over them.⁶⁶ It was stated in

⁵⁷ *Supra* note vi, at 12.

⁵⁸ *S.G. Borello & Sons, Inc. v. Dep’t of Indus. Relations (Borello)*, 48 Cal. 3d 341, 350 (1989).

⁵⁹ *Supra* note xlviii, at 35.

⁶⁰ *Dynamax Operations West v. Superior Court of Los Angeles County*, (2018) 4 Cal. 5th 903.

⁶¹ *Supra* note xlviii, at 24,25.

⁶² *Id.*

⁶³ *Id.* at 33.

⁶⁴ *Id.* at 38, 39.

⁶⁵ *Supra* note iv, at 229.

⁶⁶ *Id.* at 231.

O'Connor v. Uber Technologies, Inc. that Uber expects “on-duty” drivers to accept “all” ride requests and they are known to suspend drivers due to low acceptance rates or if don’t perform up to Uber’s standards.⁶⁷ Further, Uber conducts background checks before hiring their drivers, determines how much payment they receive per ride and also subjects them to customer ratings after each trip.⁶⁸ Consequently, in *Uber BV v. Aslam*, the U.K. SC recently held that Uber’s drivers would be considered to be “workers” and not “independent contractors”, thereby entitling them to all employment benefits such as minimum wage and paid leaves.⁶⁹ After looking at Uber’s business model, the Court held that the drivers are in a “position of subordination” to Uber as their working conditions and pay are completely controlled by them.⁷⁰ However, this continues to be a highly contentious matter world-wide.

VI. INDIA’S STAND ON THE “CLASSIFICATION” OF WORKERS

Even in India, the biggest issue faced by gig and platform workers is that of “misclassification”. After several verdicts have been passed globally, the number of misclassification suits in India have risen as well, especially for multi-national companies like Uber, who have a similar business model in all territories. The correct classification of workers depends on the “real” nature of work performed and the application of the various above-mentioned tests. India, being a common law jurisdiction, has adopted the concept of “contract of service” for the determination of the nature of employment relationship.⁷¹ The line between “contract of service” and “contract for service” is often unclear, due to which the Indian courts have established various tests to ascertain the nature of employment.⁷² This determination is essential to ascertain the kind of labour benefits to be afforded to the worker.

One of the earliest Indian cases to contrast between “contract of service” and “contract for service” is *Dharangadhara Chemical Works v. State of Saurashtra*, where it was held that direct “control and supervision”, like a “master-servant” relationship was required for a

⁶⁷ *O'Connor et al. v. Uber Technologies, Inc.*, 82 F. Supp. 3d 1133 (N.D. Cal. 2015).

⁶⁸ *Supra* note iv, at 74.

⁶⁹ *Uber BV v. Aslam*, [2021] UKSC 5.

⁷⁰ Mary-Ann Russon, Uber drivers are workers not self-employed, Supreme Court rules, https://www.bbc.com/news/business-56123668?xtor=AL-72-%5Bpartner%5D-%5Bbbc.news.twitter%5D-%5Bheadline%5D-%5Bnews%5D-%5Bbizdev%5D-%5Bisapi%5D&at_medium=custom7&at_custom2=twitter&at_custom3=%40BBCBusiness&at_custom4=4FE60EAA-7298-11EB-B0F8-09034844363C&at_campaign=64&at_custom1=%5Bpost+type%5D (last visited Jun 17, 2021).

⁷¹ Ingrid Landau, Petra Mahy & Richard Mitchell, *The regulation of non-standard forms of employment in India, Indonesia and Viet Nam*, 63 CONDITIONS OF WORK AND EMPLOYMENT SERIES NO. 63, INCLUSIVE LABOUR MARKETS, LABOUR RELATIONS AND WORKING CONDITIONS BRANCH (2015), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_414583.pdf (last visited Jun 17, 2021).

⁷² *Id.*

“contract of service” to exist.⁷³ In contrast, for a “contract for service”, the company would only have control over what work was to be done and not the manner in which it was to be done.⁷⁴ Further, in the *Electronic Corporation of India* case, it was held that although the control test is imperative, it was not the sole test to differentiate between a “contract of service” and “contract for service”.⁷⁵ Even in *Nilgiri Cooperative Marketing Society v. State of Tamil Nadu*, the court laid down some relevant factors to be considered while determining the employment relationship, including “who the paymaster is, extent of control, nature of job, who the appointing and dismissing authority is, etc.”.⁷⁶ Lastly, in *Ram Singh v. Union Territory-Chandigarh*, the court laid down an “integration” test, wherein it would be examined whether the employee was entirely integrated into the employer’s organization or stayed independent of it.⁷⁷

If the worker can prove that the platform company exercises substantial control over their pay and the manner in which they work as per any of the above-mentioned tests, then they would be “workers” of the company with a “contract of service” and would be entitled to all the labour benefits. This shows us that such matters will have to be decided on a “case by case” basis because in certain circumstances, the employees of platform companies can be considered to be “independent contractors” but in other cases, they need to be reclassified as “workers” through the satisfaction of above-mentioned tests.

VII. CONCLUSION

In conclusion, it can be inferred that “an employee called by other names remains an employee as the actual relationship does not depend on nomenclatures devised to defeat the law”.⁷⁸ As stated in the *Management of DC Dewan Mohideen Sahib* case, to truly be considered to be an independent contractor, the independence of the person must be “real” and not “illusory”.⁷⁹ This growing issue of misclassification by companies to cut expenses and deprive their workers must be solved immediately by applying the various tests laid down across jurisdictions. Instead of focusing on just one isolated factor, multiple tests should be applied simultaneously

⁷³ Dharangadhara Chemical Works Ltd. v. State of Saurashtra, (1956) 1957 AIR 264.

⁷⁴ Bushan Tilak Kaul, 'INDUSTRY,' 'INDUSTRIAL DISPUTE,' AND 'WORKMAN': CONCEPTUAL FRAMEWORK AND JUDICIAL ACTIVISM, 50 INDIAN LAW INSTITUTE 32 (2008), <https://www.jstor.org/stable/43952131> (last visited May 25, 2021).

⁷⁵ Electronics Corporation of India v. Electronics Corporation of India, (2004) II CLR 256.

⁷⁶ Workmen of Nilgiri Cooperative Marketing Society Ltd. v. State of Tamil Nadu and Ors., (2004) Appeal (Civil) 1351-53 of 2002.

⁷⁷ Ram Singh v. Union Territory, Chandigarh, (2004) 1 SCC 126.

⁷⁸ Vikram Shroff, EMPLOYEE MISCLASSIFICATION - THE NEW WORLD ORDER? 6 (2018), http://www.nishithdesai.com/fileadmin/user_upload/pdfs/NDA%20In%20The%20Media/News%20Articles/180802_A_Employee-Misclassification.pdf (last visited Jun 17, 2021).

⁷⁹ Management of DC Dewan Mohideen Sahib v. Janab S. Ahmed Hussain, (1966) AIR 1966 SC 370.

for effective classification of workers. It is clear that India has taken a positive step towards the protection of gig and platform workers through the enactment of the CSS. However, there are several “creases that need to be ironed out” to truly empower these workers with suitable social-security benefits.
