



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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CLASSIFICATION OF GIG WORKERS AS INDEPENDENT CONTRACTORS OR EMPLOYEES

-Akanksha Priya

INTRODUCTION

A "gig worker" is a person who works on a contract basis, usually as a freelancer or independent contractor in the service industry. Since they do not have an employer-employee connection with the companies they work for, gig workers are not regarded as employees under Indian labour regulations.

There has been much discussion in recent years regarding the classification of gig workers as independent contractors or as employees. It is becoming more difficult to classify employees due to the gig economy's explosive expansion and the emergence of companies like TaskRabbit, Upwork, and Uber. This has significant implications for both companies and gig workers. Control over work, degree of freedom, and level of economic reliance are legal and economic variables that decide whether an individual is classified as an employee or an independent contractor.¹

Control over work, degree of freedom, and level of economic reliance are some of the legal and economic variables that decide whether an individual is classified as an employee or an independent contractor. This blog will examine the standards used to categorise gig workers, the reasons for and against each categorization, and the effects of the decision on the rights and obligations of gig workers as well as employers. Investigating and comprehending this complex topic will help us better appreciate the opportunities and challenges that occur in a labour market that is changing quickly.

¹ Vishesh Sharma, 'Research paper: Status of Labour Laws in the Gig Economy' (Medium, 2023) <<https://medium.com/@visheshsharma124/research-paper-status-of-labour-laws-in-the-gig-economy-6a9523e89a7c>> accessed 22 March 2024.

KEYWORDS

Gig workers, Independent contractors, Employees, classification.

GIG WORKERS AS INDEPENDENT CONTRACTORS

It is complicated and strongly debated to classify gig workers as independent contractors. Independent contractors are often defined as gig workers by the platforms they operate on, such as TaskRabbit, Uber, and Lyft. This classification allows firms to skip providing protections and benefits that are typically associated with traditional employment, such as health insurance, workers' compensation, and paid time off. Gig workers' status as independent contractors, however, has generated a lot of debate and legal challenges.²

ARGUMENTS IN FAVOR OF GIG WORKERS AS INDEPENDENT CONTRACTORS

- By being classified as independent contractors, gig workers can operate like small businesses, take on projects on their own terms, and potentially develop their skill set and clients in a more entrepreneurial manner.
- The independence that comes with being an independent contractor allows gig workers to pick and select which projects to work on, set their own hours, and work for multiple platforms or customers at once.
- The ability of firms to quickly modify their workforce in response to demand, free from the constraints of traditional employment arrangements, is made possible by the classification of independent contractors, which promotes market efficiency.
- Treating gig workers as independent contractors makes financial sense for businesses because it can save costs associated with payroll taxes, benefits, and other employment-related expenses.³

ARGUMENTS IN AGAINST OF GIG WORKERS AS INDEPENDENTS CONTRACTORS

² Jackson Knapp, 'Employee vs. contractor: how to classify workers in India (quiz included)' (Ripping,2023) < <https://www.rippling.com/blog/worker-classification-in-india>> accessed 22 March 2024.

³ 'What Are the Benefits of Gig Economy Workers?' (Expert360,2023)< <https://expert360.com/articles/what-are-the-benefits-of-gig-economy-workers#:~:text=Advantages%20of%20a%20gig%20economy,issues%20related%20to%20worker%20classification>> accessed 22 March 2024.

- Independent contractors are more vulnerable to exploitation and precarious financial conditions since they lack guarantees of minimum income, workers' compensation, health insurance, and overtime pay, among other perks.
- Others argue that because gig workers may lack the autonomy and authority of independent contractors—particularly if they depend financially on a single platform or company—they ought to be classified as employees.
- Independent contractors typically have less negotiating power than companies, which makes it difficult for them to come to an agreement on equitable compensation, comfortable working conditions, or dispute resolution protocols.
- Compared to businesses, independent contractors usually have less negotiating strength, which makes it challenging for them to reach agreements on fair pay, suitable working conditions, or procedures for resolving disputes.

Classifying gig workers as independent contractors has benefits in terms of flexibility and money, but it also has disadvantages, such as concerns about worker safety, fairness, and legal compliance. These elements must be harmonised in order to create a gig economy that is just, sustainable, and advantageous to employers as well as workers.

GIG WORKERS AS EMPLOYEES

It's controversial and difficult to determine that gig workers are legally considered employees. Gig workers, or those employed by companies such as TaskRabbit, Lyft, Uber, Postmates, and others, are often viewed as independent contractors rather than employees.

Workers are typically categorised as employees under traditional employment models, which grants them access to a number of benefits and protections like health insurance, overtime pay, and minimum wage guarantees. However, because they are commonly classified as independent contractors, gig workers are typically ineligible for these benefits.⁴

ARGUMENTS IN FAVOR OF GIG WORKERS AS EMPLOYEES

- Since gig workers would be entitled to employment benefits like health care, paid time off, and retirement plans, they would experience financial stability and security.

⁴ 'Gig Economy Worker Classification' (Amtrust financial) < <https://amtrustfinancial.com/blog/small-business/employment-classification-impact-on-gig-economy> > accessed 22 March 2024.

- Employee classification may provide gig workers with more job stability, protection from arbitrary termination, and legal recourse in the event of unfair treatment or termination.
- If gig workers are able to work together and collectively negotiate better wages, benefits, and working conditions, they will have more clout when negotiating with platform companies.
- If gig workers were regarded as employees, they would be entitled to benefits like workers' compensation, overtime pay, and minimum salary guarantees, which would ensure fair treatment and payment for their employment.

ARGUMENTS IN AGAINST OF GIG WORKERS AS EMPLOYEES

- If traditional employment regulations are enforced against the gig economy, it might not be allowed to grow and evolve. Employers and employees may face administrative burdens and regulatory challenges as a result of this.
- Many gig workers benefit from independence and autonomy as independent contractors, which allows them to determine their own working conditions and timetables. This flexibility may be restricted by the status of an employee.
- Businesses would have to pay more for benefits, payroll taxes, and labour law compliance if gig workers were categorised as employees. Customers may pay more as a consequence, or employees may have less opportunities.

The classification of gig workers as employees is a complex issue that necessitates striking a balance between the requirements for worker rights and benefits and the demands of the gig economy for flexibility and innovation. There has to be a solution that supports fair labour standards and addresses the concerns of employers and employees in order to influence the future of employment in the gig economy.⁵

TECHNIQUES FOR OVERCOMING WORKER CLASSIFICATION DIFFICULTIES

Thinking carefully and taking preventative measures are necessary when managing the complexities of labour classification. The following strategies can help businesses lower risks and make informed decisions:

- **Review and Update Regulations and Contracts:** Regularly review and update rules, processes, and contracts to guarantee that workers are classified accurately. Clearly

⁵ 'Gig Economy – Definition, Advantages and Disadvantages'(Navi,2020) <<https://navi.com/blog/gig-economy/>> accessed 22 March 2024.

define roles, duties, and expectations to minimise the chance of conflicts resulting from inaccurate classification.

- **Educate Managers and HR Employees:** Educate managers and HR employees about the nuances of worker classification and the potential repercussions of improper classification. Establish protocols to ensure consistent and law-abiding conduct throughout the entire organisation.
- **Stay Up to Date on Legal Developments:** Pay close attention to any modifications to the laws or rules governing labour categorization. Legislative changes and court decisions may result in significant modifications to the classification criteria, thus staying informed about these events will help you adjust your methods as needed.
- **Plan a comprehensive internal audit:** Perform a comprehensive audit of your personnel to ascertain the classification status of each individual. Verify that employment agreements, job descriptions, and working relationships adhere to the standards established by regulatory authorities.
- **Seek Legal Advice:** Consult with experienced employment lawyers who specialise in worker classification matters. They can assess your unique situation, provide sage advice, and work with you to draft a strong compliance plan that is tailored to your business's needs.

Many jurisdictions have developed laws and other measures to prevent worker misclassification and protect the rights and interests of individuals employed in the gig economy. The aim of these initiatives is to maintain a balance between safeguarding workers' rights and fair treatment and encouraging creativity and flexibility in the gig economy⁶.

CONCLUSION

There are implications for corporate operations, labour rights, and the overall structure of the gig economy from the complicated and complex debate over whether gig workers should be classified as independent contractors or employees. While there are valid points on either side, one needs to consider the unique features of gig work in order to make an informed decision.

As a result, a comprehensive plan is needed. Lawmakers ought to consider creating a new category that recognises the unique circumstances surrounding gig economy and offers enough

⁶ 'The Gig Economy: Navigating Legal Challenges In Classifying Workers As Independent Contractors' (Nupur Jalan) < <https://nupurjalan.com/the-gig-economy-navigating-legal-challenges-in-classifying-workers-as-independent-contractors/#:~:text=Traditional%20employment%20models%20typ> > accessed 22 March 2024.

protections for workers. To do this, a hybrid model comprising aspects of independent contractors and employees would need to be developed. This would enable gig workers to get the rights and protections they require without preventing the gig economy from growing.

Various countries and legal frameworks have taken different approaches to this problem. For example, laws and regulations in different countries provide gig workers with particular rights and protections, independent of their classification. In the US, legal actions and ongoing litigation have been taken to determine the employment status of gig workers.

The future of work will ultimately be greatly influenced by the classification of gig workers as independent contractors or employees. Building a fair and durable system that promotes financial stability and individual liberty in the dynamic workplace requires striking the correct balance between worker rights and flexibility.