



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## India's Legal Perspective on Moonlighting

Aishwarya. K<sup>a</sup>

<sup>a</sup>Ambedkar Law University, Vellore, India

*Received* 12 November 2022; *Accepted* 24 November 2022; *Published* 05 December 2022

---

*Moonlighting is an emerging trend and the biggest concern for IT companies. Moonlighting is a scenario where an employee takes up a second job along with the primary job without the knowledge of the employer. Though many opined it was unethical and cheating when Wipro fired 300 of its employees for moonlighting overnight which caused a ripple effect all over the IT sector while Unicorn companies like Swiggy permitted its employees to take up gig work after working hours, which is considered as an industry-first policy which the employees embraced. The Indian Ministry recognizing gig workers in the recently proposed Draft orders has opened new doors to the working community. This article discusses the causes of moonlighting by employees, why it is considered a nightmare by many employers, how employers can contractually tackle it, the importance of redrafting employment contracts by introducing the moonlighting clause in it, the Indian Judiciary's perspective on the issue of moonlighting. This article also insists on implementing clear-cut laws regarding moonlighting.*

**Keywords:** *moonlighting, employers, employees, gig workers.*

---

### INTRODUCTION

In recent days especially during the post-Covid-19 pandemic, the term moonlighting has been trending and is expected to be a matter of concern for IT giants in India. Though moonlighting was prevailing in India for a long time, it is said that the initiation of work-from-home culture triggered it all, increasing the number of moonlighters among IT employees, as they took up

second jobs simultaneously with primary jobs considering the pandemic as an advantage. As a consequence, Wipro terminated 300 of its employees for moonlighting, which made headlines, and created ripples all over the IT sector.<sup>1</sup>

Leading companies like IBM, Infosys, and Tata Consultancy services condemned moonlighting calling it unethical and cheating whereas Swiggy's stand on permitting moonlighting for its employees has created new possibilities in the way of working<sup>2</sup>. Significantly the Indian Ministry while insisting on flexible working hours expressed its clear-cut view on moonlighting calling it the Future of work unless it does not breach contractual obligations<sup>3</sup>. Accordingly, the New Labour Code Laws that are yet to be implemented have a provision specifically recognizing gig workers trying to balance the interests of employer and employee.<sup>4</sup>

Multiple opinions are being posed by IT employers when it comes to moonlighting raising concerns about whether to implement moonlighting with reasonable restrictions or simply outlaw it. For that, it is important to understand what Indian laws and the Indian judiciary have opined about moonlighting. Will legalizing moonlighting with reasonable restrictions be a novel step toward existing legal employment patterns in India? In this article, Let's discuss India's old and new legal perspectives on moonlighting.

## MOONLIGHTING

Moonlighting is a scenario where an employee takes up a second job apart from one's full-time job without the employer's knowledge<sup>5</sup>. The employees usually do it for extra money which

---

<sup>1</sup> Samriddhi Srivastava, 'Employees relations' (*Peoples matter*, 22 September 2022) <<https://www.peoplesmatter.in/news/employee-relations/wipro-terminates-300-employees-for-moonlighting-35374>> accessed 03 November 2022

<sup>2</sup> Meghna Sen, 'IBM India opposes moonlighting' (*Live Mint*, 14 September 2022) <<https://www.livemint.com/companies/news/after-wipro-and-infosys-ibm-india-opposes-moonlighting-says-not-ethically-right-for-full-time-employees-11663145350550.html>> accessed 03 November 2022

<sup>3</sup> Ministry of Electronics and IT, 'India@100- Scale, Speed, and Sustainability' (*PIB*, 23 September 2022) <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1861766>> accessed 03 November 2022

<sup>4</sup> 'Gig workers seek statutory Benefits' (*The Hindu*, 13 December 2021) <<https://www.thehindu.com/news/national/gig-workers-seek-statutory-benefits-recognition-as-unorganised-workers/article37944035.ece>> accessed 03 November 2022

<sup>5</sup> Vidya S, 'Moonlighting is a double edge sword' (*Business Standard*, 2 September 2022) <<https://www.businesstoday.in/jobs/story/moonlighting-is-a-double-edged-sword-beware-of-legal-repercussions-345517-2022-08-24>> accessed 04 November 2022

ultimately makes a difference in the quality of living standard. The first case of moonlighting was reported in Bengaluru MNC where the employee was found to be working seven jobs simultaneously.

## **CAUSES FOR MOONLIGHTING IN INDIA**

The onset of work-from-home culture is viewed as a major cause for the increase in moonlighting as employees started holding extra jobs for extra money without fear of being monitored by employers<sup>6</sup>. Apart from that, there are other causes like

### *Less income*

With less income paid, employees are left with no option rather than taking up outside work assignments. Employees nowadays are eager to have multiple income sources for better living standards.

### *Rising inflation*

With rising, inflation and price rise for necessities, employees are trying hard to make both ends meet, compelled to take up second jobs.

### *Layoffs*

With mass layoffs and hiring being frozen in many companies, employees feel insecure in their jobs, and fear of being jobless pushes them to take side employment.

### *Others*

Lack of appraisal, appreciation, and boredom are other factors for moonlighting.

## **WHY DO EMPLOYERS THINK IT IS A FIREABLE OFFENCE?**

---

<sup>6</sup> George A & George AS, 'A Review of Moonlighting in the IT sector and its Impact' (3 September 2022 Vol I) 66 <[https://www.researchgate.net/publication/364010587\\_A\\_Review\\_of\\_Moonlighting\\_in\\_the\\_IT\\_Sector\\_And\\_its\\_Impact](https://www.researchgate.net/publication/364010587_A_Review_of_Moonlighting_in_the_IT_Sector_And_its_Impact)> accessed 05 November 2022

Some employers fear that if an employee juggles dual jobs they may end up working overtime which reduces employees' productivity and eventually affects the interests of the company. Companies worry that moonlighting results in revenue loss and it is the reason employers pressure employees to get back to the office at least a few days a week. It is also coupled with the following issues: The fear is that permitting moonlighting to employees might end up in the disclosure of confidential trade information.

De-prioritisation of tasks assigned by the full-time employer as there will be no exclusivity to devote one's time to the growth of a company ultimately resulting in quiet quitting.

- Usage of the company's resources for second job increases operating expenses and comprisal of the company's intellectual property.
- Shifting from moonlighting to daylighting.
- Solicitation of co-employees or vendors.
- Multiple commitments lead to a breach of trust.
- Poor attendance as the employee works overtime resulting in absenteeism.

## COMPANIES THAT ARE AGAINST MOONLIGHTING

Wipro's CEO called moonlighting plain cheating and fired 300 employees. IBM recently warned employees against moonlighting. TCS said moonlighting is not ethical and is a violation of integrity<sup>7</sup>.

## THE LEGALITY OF MOONLIGHTING IN INDIA

Moonlighting is not defined in Indian laws but is perceived as dual employment in some of the Labour Law Statutes which is not defined either. The government only upon prior permission allows members of All India services to perform work of literary, artistic, sports, or any scientific work but may ask them to cease at any time<sup>8</sup>. However, the law to some extent restricts workers

---

<sup>7</sup> Jose K George, 'Moonlighting: why employees do it' (*The Week*, 16 October 2022) <<https://www.theweek.in/news/biz-tech/2022/10/16/moonlighting-reasons-benefits-laws-in-india-sacking-employers-upset-ideas-moonlight.html>> accessed 05 November 2022

<sup>8</sup> All India Service & Conduct Rules 1968, s 13(2)

from practising dual employment in factories and industrial establishments. It is noted that the legislature in the recently proposed New Labour code has included IT workers and gig workers under the definition of employees.

## THE PERSPECTIVE OF THE INDIAN JUDICIARY

Meanwhile, the Indian Judiciary has also expressed its opinions on dual employment through various judicial pronouncements, directing the dismissal of employees who took up dual jobs which indicates that it negatively affects an employee's performance towards the parent workplace and also conflicts with the interest of the latter. In addition, the Judiciary acknowledged the use of restrictive and negative covenants in the employment contract which prevents breach by an employee. The Punjab and Haryana court upheld that terminating a driver for double employment was completely valid<sup>9</sup>. The court while deciding on the eligibility of a LIC employee contesting in a local body election held that a government servant is prohibited from holding a dual job unless resigning from the position of a public servant. Also stated that the restriction was not on candidature for election but performing two jobs simultaneously results in being less fruitful and cautioned that dual employment will subject to misconduct resulting in termination<sup>10</sup>.

## INDIAN STATUTES ON MOONLIGHTING

### *The Indian contract Act*

**It justifies that the non-compete clause may not amount to a restriction of trade or business.**

It states that any agreement that restricts one from carrying out a business or any establishment is considered void. But there is an exception to this section. If the employment agreement prevents accepting an offer or carrying out business with the competitor, it should impose a non-compete clause, then it is valid and cannot amount to a restriction of trade or business<sup>11</sup>. However, the non-compete clause that prevents the employee from working with a competitor

---

<sup>9</sup> *Gulbahar v Presiding Officer Industrial*, 2016 CWP no 15088

<sup>10</sup> *Manohar Nathurao Samarth v Marotrao & Ors* AIR 1979 SC 1084

<sup>11</sup> Indian Contract Act 1872, s 27

is valid unless it is not harsh and one-sided<sup>12</sup>. If a contract expects an employee to work for a specific number of years but terminates before the stipulated period, he can be stopped from joining the competitor till the end of the specified period.

**Likewise, Schedule I-B Industrial employment (standing orders) act 1946 also talks about a non-competing clause.** It deals with exclusive service where a workman working in an establishment is prohibited from taking up employment from their competitor which ultimately prejudices the interest of the employer. Upon prior permission from the establishment for which he works primarily, the workman may take up additional jobs as long as it does not adversely affect the interest of the establishment<sup>13</sup>. If there is any existing contract between a master and a servant, it is deemed to be a bar to service from serving another master unless the contract says so or when the master consents.<sup>14</sup>

### *The factories Act of 1948*

This section restricts dual employment in factories where a worker is not allowed to work simultaneously in two places. However, this section only applies to factory workers<sup>15</sup>. In this case, a worker was terminated for dual employment. The court observed that it is impractical for a human being to be productive even if he works consistently for 16 hours a day which additionally divests another worker from an employment opportunity<sup>16</sup>.

### **OSH CODE**

Occupational safety and health and working conditions codes restrict dual employment in mines or factories.

### *Shops and Establishment Act 1954*

---

<sup>12</sup> *Niranjan Golikari v The Century Spinning Mfg* AIR 1976 SC 1098

<sup>13</sup> Industrial employment (standing orders) Act 1946, s 8

<sup>14</sup> *Manager Pyarchand v Omkar Laxman Thange & Ors* AIR 1970 SC 823

<sup>15</sup> Factories Act 1948, s 60

<sup>16</sup> *Manubhai Gordhandas v Arvind Mills Ltd* ILLJ 1956 BOM 554

The shops and establishment act differs in each state. Various states have amended it by their domestic laws for their convenience. The act in general includes employees of retail stores, restaurants, theatres, information technology, and information technology-enabled services, etc.

#### ***Bombay Shops and Establishment Act 1954***

This section not only prohibits an employee from working under other establishments during days prescribed as holidays as per the act or by the state but also forbids employers from deliberately allowing employees to work in other establishments on such holidays<sup>17</sup>.

#### ***Delhi shops and establishment Act 1954***

No employee shall hold or serve one or multiple establishments or under a factory during his lawful period of employment<sup>18</sup>.

#### ***Draft model standing orders under the Industrial Employment Act***

Meanwhile, the draft model standing orders 2020 that are yet to be implemented allow employees to take up dual jobs unless permitted by the employer which may be subjected to some conditions or without conditions whatever the employer thinks fit. Moreover, the act of recognizing employees of work-from-home or employees of the IT sector is considered as much needed in the current scenario. It has tried to balance the interests of employers and employees<sup>19</sup>. There may not be any restriction for dual employment unless it is contrary to the employment contract or if the employer doesn't consent<sup>20</sup>.

### **IS MOONLIGHTING ETHICAL IN INDIA?**

Moonlighting is considered unethical if an employee's contract includes non-compete clauses and exclusive employment. As long as the employee is not going against the company's ethics, moonlighting is not illegal. All that is required is to obtain be open about it.

---

<sup>17</sup> Bombay Shops & Establishment Act 1954, s 69

<sup>18</sup> Delhi shops & Establishment Act 1954, s 9

<sup>19</sup> Industrial Employment (Standing Orders) Act 2022, s 2(35)

<sup>20</sup> *Govt of Tamil Nadu v Tamil Nadu race course General Employees union* ILLJ 1993 977 Mad

## COMPANIES THAT ALLOWED MOONLIGHTING

Infosys has allowed employees to take up gig work after working hours with prior approval from the company. Swiggy announced an industry-first policy on moonlighting that allows its employees to take up gig jobs post-work with prior assent from the company<sup>21</sup>. An MNC firm that found its employees practising moonlighting rather than firing them imposed strict contractual obligations at the same time letting them freelance.

## HOW TO PROTECT THE INTEREST OF EMPLOYER AND EMPLOYEE

Companies may have to draft flexible employment contract and include clauses that clearly defines work obligations. If a job is exclusive it has to be mentioned in an employment contract. An employment contract is a contract between employer and employee and the latter should abide by the terms and conditions of it during the course of employment. That doesn't mean that outside the course of employment the employee can take up assignments from the company's rivalry that breaches confidentiality and conflict with the interest of the primary employer. So, companies are now revisiting employment contracts and policies to enable restrictions, including contractual obligations extending beyond work hours to address the moonlighting issue. Hence the employer must get the HR policy drafted which has a specified clause called moonlighting clause mentioning the company's position on dual employment.

## MOONLIGHTING CLAUSE

In absence of this clause even if the employee takes up an additional job it may not amount to a breach of trust. A moonlighting clause is a negative covenant that imposes restrictions on the dual employment of an employee. Thus, it forbids an employee from taking additional jobs while being employed by another employer. So that employees work efficiently and focus only on their current job. This clause must be acknowledged by both employer and employer with

---

<sup>21</sup> Rishika Singh, 'Swiggy's Moonlighting Policy' (*The Indian Express*, 25 August 2022) <<https://indianexpress.com/article/explained/explained-economics/explained-swiggy-moonlighting-policy-gigs-beyond-regular-job-8108919/>> accessed 07 November 2022



free consent. The employer has to make sure that the employment agreement mentions dual employment as a ground for termination of employment.

## HOW TO IDENTIFY MOONLIGHTING

Identifying professionals moonlighting in these times of remote work is a hurdle faced by every employer. It can be identified by using Universal Account Number given in the Employee Provident fund. Every employee will receive PF contributions from the working company. If an employee moonlights UAN will display multiple PF contributions. The first case of moonlighting was reported in Bengaluru MNC where the employee was found to have multiple provident fund accounts. Another MNC detected moonlighting by tracking official mail used in primary employment was used to send large files for a third-party company. But if an employee is holding a part-time job or working as a consultant or a freelancer there will be no PF contributions which will be difficult for the employer to identify. In such a case deploying an in-built software in the device used for office work that can detect when it is used in favour of a third-party company<sup>22</sup>.

## CONCLUSION

The idea of complete prohibition of moonlighting has its complexities and cannot be fully eradicated. Like all countries, India is trying to overcome the economic crisis that the pandemic created. Companies are already announcing mass layoffs, stopped recruiting freshers due to rising inflation, and are preparing themselves for the upcoming recession. During this time, the idea of taking up a side job that prevents one from ending up being moneyless cannot be blamed. At the same time, employers expect their employees to work for them exclusively, wanting their full potential to be used for the upliftment and growth of the organization cannot be blamed either. The idea of moonlighting whether legal or illegal depends on the employer and in terms

---

<sup>22</sup> India News Desk, 'Here's How Techies were caught on Moonlighting' (*India.com*, 15 October 2022) <<https://www.india.com/business/moonlighting-how-wipro-infosys-other-tech-cos-caught-employees-moonlighting-5688120/>> accessed 01 November 2022

of the agreement. Businesses like Swiggy permit their employee to moonlight after working hours has marked a new era in employment.

In India, there is a need for clear-cut laws regarding moonlighting. A grey law poses a risk of interpreting it according to one's own will. Government has to include moonlight in new labour laws in light of the present debate for moonlighting. Before the pandemic, working from home was impossible and IT sectors hardly allowed a few days for employees when they cannot work from the office. But the conception changed as the lockdown made work from home scenario a success. Likewise, it's high time to legalize moonlighting outlining what is permitted and what is not by giving it a proper structure.