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A Shift from Pen-Paper to E-Gadgets: Legally Accepted or Not

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ABSTRACT

Since the Covid-19 pandemic hit India and the country declared complete lockdown in March 2020. The conditions kept on worsening everywhere, be it health sector, economy, labour markets, education level or anything. Every sector suffered a lot. So, at that stage, work from home was introduced in India, when from government officials to private sectors, from IT companies to education, everyone got shifted to online and virtual modes. The employees, worked overtime because it was presumed that they are at homes. No proper facilities were provided to the employees. No one cared for their health, working hours, house-hold work and other personal works. There were no proper guidelines for work from home provided by the government neither do we have a proper legislature for the same nor it is mentioned anywhere, so every employer took work according to his own guidelines and manner which suited well to him.

While the law makers have also experienced such type of change for the first time, so they also needed some time to examine and settle with such shift. Keeping faith and positive attitude, we can expect there to be enforcement in law, in relation to the issues arising from working from home. In this article it is inculcated the routes opted by government and recommendations given by International labour Organization on the complications faced by the employer and employees from this new norm of working.

Keywords: *Pandemic, health sector, labour market, working hours.*

I. INTRODUCTION

The Corona outbreak strike India in the year 2020, when globally everything got shifted from physical to remote working. The industries, teaching, court proceedings; everything went on e-platform. That was the phase when India adopted the system of e-learning. Most of the countries had this system earlier also but was not as actively utilized as happened in the amid lockdown period. Every worker was instructed to work from home until the things get better. Several companies adopted this method of work from home on permanent basis also, after

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experiencing it the year 2020. Hence, work from home a new norm for employment.

Every human being is vested with different adapting skills. Some adjust rapidly, some struggle to cope with the new advancements. This was indeed a change for employer and employee both. Both have to work at same footing to meet the new changes. The aged employee grappled to adopt the new technicalities with the changing scenario. Along with this, each employer and employee was facing unparalleled economic and legal challenges in such type of working environment. At the same time, there was no legal provisions provided by the legislature or any guidelines issued by the government. There was also nothing prescribed in any Labour Code or Indian Labour Laws for work from home conditions.

II. INTERNATIONALLY ACCEPTED NORMS OF WORK FROM HOME

Work from home is not a new concept for internationally developed countries²; they have been practicing since years. India adopted this concept of working from home for the first time. Understanding the norms, rules and regulations adopted by the International countries, will help Indian legislature to improve the challenges growing from the new category of work and making regulations at the national level after microscopically examining the loopholes present at the regime of Indian Labour Laws. The following two concepts are to be looked precisely-

Teleworking- Telework is generally defined as the use of ICTs like smart phones, laptops, tablets, computers and other electronic gadgets to perform works or tasks ordered by the employer anywhere outside the office campus.³ This onset of working through electronic gadgets was missing from the Indian norms, Indians only believed in remote working. Without using pen and paper, their work cannot be accepted as successfully completed for the day. Because of this traditional culture, when Covid hit India and the working pattern changed, both employer and employee faced difficulties in from remote type working platform to digital platforms.

India in March, 2020 accepted the nature of Work From Home which was being practiced internationally long back, that is what was missing from Indian government (teleworking). The term “teleworking” was firstly coined by Californian Law in 1995⁴, which was recognized to be the earliest to frame legal guidelines for encouraging “telecommuting”, meaning distributing work to state employees to be completed via telecommunication technologies. Then gradually

² Alipour J. V., Falck O., Schüller S. 2020. “Germany’s Capacities to Work from Home” (IZA Discussion Papers).

³ N. Ben Fairweather, “Surveillance in Employment: The Case of Teleworking” (Journal of Business Ethics, Vol. 22, No. 1).

⁴ California Labour Code.

in 2002, The EU introduced a general framework for stabilizing the interests between employer and employee by initiating a “Framework Agreement on Telework”⁵.

International Labour Organization (ILO) Convention- 177 recognized teleworking on “home-work” for promoting equal treatment between non home-workers and home-workers⁶. The Convention failed in including the alteration of office-based work into home-work, whether full-time or part-time in teleworking as perpetual disposition. However, India has not endorsed such Convention.

The telework has been aimed at three generations till now namely, in 1970s, the utilization of desktops and telephones - stationary home-office , in early 2000s utilization of lighter wireless devices like laptops, mobile phones – the mobile office and till 2020s, the utilization of accessing office anywhere, anytime- the virtual office. This all has happened due to the advancement and development in technologies. Because of this, the Work from home was possible during the pandemic world widely.

From every new changes, comes with new challenges like after getting opportunity to work from home, their came health issues while sitting at one place for long hours, mental health concerns, eye strain by extension of screening hours, skill enhancement, styling with machines, work-personal life imbalance, etc.⁷

Flexible Working Arrangements- the Flexible Working Arrangements focuses on encouraging the work-life balance of employees.⁸ It basically has its roots in decent work or balancing work and current work situations from the employee’s perspective. It aims at providing flexibility in the working hours scheduled along with the reasonable amount of work, number of hours worked, and, place of work.⁹ Thus, FWAs is not similar for every type of work environment, it changes according to the needs of the employers and employees.

As per ILO, in 2020, during pandemic, India faced 22 percent surge in women employment between the age 15-64years in the wake of pandemic due to the additional flexible incentives provided to the employees to manage work according to their other responsibilities. As ILO, other surveys also showcase that FWAs held to be favorable for the youth of India.¹⁰

⁵ 2002,EU Framework Agreement on Telework.

⁶ International Labour Organization, “177th Report on Home Work Convention 1996”.

⁷ Soumya Jha and Ulka Bhattacharyya in Voices India, World TOI, “*Work From Home : Understanding the gaps in India’s regulatory framework*”, March 18,2021, available at: <https://timesofindia.indiatimes.com/blogs/voice/s/work-from-home-understanding-the-gaps-in-indias-regulatory-framework/>.

⁸ Julie Prowse, Peter Prowse, “*Flexible working and work-life balance: midwives’ experiences and views*”. *Work, Employment & Society*, Vol. 29, No. 5 (OCTOBER 2015).

⁹ *Ibid.*

¹⁰ *Supra note 7.*

This technique, attracted the policymakers more because the newly enacted Labour Codes or the draft Model Standing Orders are still silent on these issues, which has already proved its importance through various surveys. Though, the new draft Model Standing Orders, broadly specified its thoughts on providing flexible working hours for working from home for both employers and employees employed in IT sectors.

III. DOES INDIAN LAWS SUPPORT WORK FROM HOME?

This idea of working from home was new for India not other developed countries, who had special laws relating to the duties, rights and liabilities related to the employer and employee while working remotely. India, lacked a law related to this 'new normal' of legal setup of working from home¹¹, this was hence an alien concept for India. After the pandemic gets over, the work from home will then also be a significant part of labour sector. Thus after experiencing the condition, some job profiles have already added a permanent option of work from home, so after seeing such a change, there is a dire need now for solving such issues arising from it as it is now the future of work and is not going to end soon, because people has accepted it as a new normal way of working.

The issues can be dealt under this head-

- There might arise a difference in the payment scheme between a remote worker and a worker from home.¹²
- Not all administrative structures can be addressed by the enactment as all cannot inculcate work from home facilities, particularly in India.¹³
- In the same year, 2020, when whole India was lockdown, four new labour codes were introduced but none contained a single provision for work from home, which should be the priority of the law makers, which was the matter of prime importance to be added.

IV. POSITION UNDER LABOUR CODES

Now we talk about that though the concept of work from home is new in India, So, it is quite challenging for India to mould the concept of work from home in to law. Therefore before the covid, Work from home was never as growing as of now so regulating it into a special way by

¹¹ Supra note 7.

¹² Bonacini L., Gallo G. , Scicchitano. S. 2021. "Working from Home and Income Inequality: Risks of a 'New Normal' with COVID-19." (Journal of Population Economics 34: 303–60).

¹³ Blog: Pooja Pandey, "Do Indian law Support Work from Home" at Simpliance.

law was also not foreseen but as we are heading the words the era of technologically accepting work from home through law is essential requirement now.

Development under labour Code

There have been some new Development under labour code, under which an attempt is made to propagate work from home-

(A) *The Draft model Standing Order for Service Sector 2020*- Code applicable where employer has more than 300 workers. This draft model allow employer and employee to discuss the condition of work on which they will work from home. This draft is quite problematic as it does not specifically define the proper criteria and regulations for working from home

(B) *Code on Wages*- The stake holders discussing on the matter related to for work from home workers but before revising such, there can be done some alterations like companies may not give transport allowance but should give Internet allowance in return of that. Therefore work from home law just does not need deep legal framework but it should be made according to working condition of employee that he can have during working from home. The over time of worker should be ascertained with the note of care by a check on their login and Logout time from their systems of working.

V. IS WORK FROM HOME A CHALLENGE?

Work From Home has two sides firstly it is advantageous in one way as it saves travelling time and expenses, secondly one can continue his/her work while taking care of his/her family and spending time with children. On the other hand, it can be disadvantageous on the issues of not fixed working hours and no limit for the assignment of tasks. This all arose due to lack of legislature or a proper guideline for the same. We did never have any such guideline maybe because we never faced such a drastic pandemic before, where we had to shift everything to virtual platforms. Some of the challenges faced were-

Working hours and overtime- When an employee is working from home, it is very difficult for an employer to check every now and then, when the employee finished his task or when he invested overtime in his job or organization. So, it was a challenge faced both ways; both were helpless on such issue.

Health and Safety of workers at home- Within the work premises, it is indeed the liability of the employer to take proper care of the health, safety and hygiene of the workers. But would the employer would also be liable for health and safety of workers when they are working from home? This was an answered issue, whether the guidelines issued for sexual harassment at

workplace¹⁴, would also be applicable in the work from home conditions? According to the act, it can be clearly depicted that the liability of the employer is only limited to the workplace but will it also give a pathway to the employer for escaping from his other liabilities on the same grounds?

Facilities to be provided by the employer- Work from home in itself brings a lot of financial burden on the employees like- on equipment costs, proper internet connection, safety measures, maintenance, strain on eyes by increase in the screen timing, etc. Companies are already furnished with such conditions for every employer but for individually providing with such facilities again during the pandemic would cause burden on the employer as well.

On the other hand, it can also be justified from the part of the employer that work from home trims down the travelling expenses so an employee can adjust that with the equipment cost. But will it be possible for an employee to arrange every such facility at his rented home, will that travelling cost not spend on his extra electricity and internet bills.

Hence, there can be many such permutations and combinations arising from work from home issue, so it can be solved by the proper enactment made by the lawmakers on all possible issues that can arise from such situation.

Maintenance of statutory records- Every employer has a duty to maintain all records of his organization for further reference, which cannot be hence accessed by any system. Some documents are confidential which has to be and can only be accessed from the systems of the workplace by the employer and in such cases, employer can even also not order the employee to fill in their details required for records from their work place and from their systems. No, it cannot be possible; it will hence, amount to violation of right to privacy of all the employees and the clients, where everyone can access everything. Crime rates will thus reach its heights, if this all will be allowed. Thus labour laws should be designed in such a way that they provide criteria for maintaining employee records for statutory purposes.

Implementation of Wage Codes and other labour laws- The basic requirement of work from home is time, because if a company is situated another state and the employee is working from different state, then how will they manage their working hours. However, the working hours and minimum wages differ according to state. So, in that situation, which state laws to apply, where the employee is working or where the company is situation? This would hence create a

¹⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

lot of confusions, if there will not prevail in any Central law or state law which recognizes work from home.

VI. WORLDWIDE APPROACH FOR WORK FROM HOME

For better approach, we need to compare the legislatures of other nations for dissolving the challenges arising out of working from home criteria. So, firstly taking into account the laws made by Spain on this issue, as it is the most recent discovery of laws related to work from home.

Spain- Most recent legislature got developed by Spain in September 2021, which was particularly formalized in written manner to avoid prejudice arising from any general employment legislature or existing collective bargaining agreements.¹⁵ The law specifically mentions the applicability of the new law that it will be applied-

- (A) To those working under an employment contract
- (B) Who have rendered “work from home” for a minimum period of three months-
 - i. For at least 30% of an employee’s total working days; or
 - ii. An equivalent percentage based on the contract.
- (C) Teleworking is different from work from home.
- (D) Where companies agree to provide with the resources, equipments, necessary for working away from office premises. In return, employer has a right to ensure that employee does his duty with full faith and capacity.
- (E) The employee therefore, has right to payment, compensation (if any on repairment of equipments), data privacy and digital disconnection.

Finland- Since, 1990’s, Finland had a legislature, providing its employees with flexible working hours according to their work. In 2019, it has amended its Finnish Working Time Act with working arrangements according to the developing needs relating to ‘working time accounts’, flexible working hours and flexible working arrangements. This act primarily had flexible working hours for the employees and also a limit of not exceeding 40hours of working. The act also permits flexible working hours individually to an employee according to proper working arrangements (including proper rest in weekdays), flexible working hours and fixed monetary relief.

¹⁵ *Supra note 7.*

The United Kingdom- Since 2002, they have been allowing employees with flexible working arrangements through process of proposal and negotiation. This approach has been considered as a “light touch regulation” and hence has been adopted by Australia and New Zealand. Basically the concept of UK’s theory of flexible arrangements is structured on three main pillars-

(A) Proposal of change in working hours, time and place of work by the qualifying employees.

(B) Employer is bound to accept such application in a “reasonable manner” and can only refuse on grounds of inability to work as in comparison with the existing employees.

(C) Escalation to employment tribunals by employees, in limited circumstances.

The European Union- In 2019, the European Union had adopted a “Work-Life Balance Directive” focusing the flexible working arrangements for parents and guardians.

Singapore- This has its “Tripartite Standard on Flexible Work Arrangements” developed after proper consultation with multiple stakeholders which can be practically adopted by employers in assisting employees for better management and enhancing their productivity.

VII. ILO GUIDELINES ON WORK FROM HOME

After the pandemic hit India in 2020, the whole working system got shifting to virtual platforms, due to which, ILO on January, 2021, released a report titled “*Working from home: From invisibility to decent work, addressing the concerns related to working from home*”.¹⁶ This report focused on the major role played by the government in protecting the work from home workers. This report basically aimed at targeting the recommendations to be adopted by the legislature as early as possible because now this work from home is going to last longer and therefore, the legislature for the same, will be needed in a long run. The high-lightening feature of the report was that it was gender-responsive in suggesting the legal framework which would be helpful in providing equal treatment to all the sections of the society indulged in work from home criteria. It aids at providing legal protection, occupational safety and social security for industrial home based workers and also helps in maintaining a boundary between work life and personal life.¹⁷

¹⁶ International Labour Organization, report on- “*Working from home: From invisibility to decent work*”, 13th January 2021.

¹⁷ *Ibid.*

VIII. CONCLUSION

Since 2020 when the whole nation got lockdown and working from home became the necessity of all to earn for a living, the remote platforms self-placed themselves into the new norms of e-platforms. In 2021, after second-wave has hit India, India is again lockdown, so now we have to adjust with this new norm of working from home. Some companies have also permanently added work from home in their normal criteria of working and hiring employees.

Indulging into this new era of working, the employers and employee both needs a specific guided manual to walk on the path of this new normality. The labour codes introduced in 2020, is an advance step in the field of labour laws, but these codes still lack a proper enactment for work from home employees. When everyone has sacrificed their life styles according to the need of the change, the government should also take this seriously and hence provide with the speedy arrangements necessary for the betterment of the work from home workers.
