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Moonlighting in the IT Industry: Debates, Policies and Legal Perspectives

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ABSTRACT

Moonlighting, the act of holding a second job or engaging in additional work outside of regular employment, has become a subject of significant debate within the IT industry. This research paper aims to explore the multifaceted aspects of moonlighting in the IT industry, focusing on the debates surrounding its implications, the policies implemented by organizations, and the legal perspectives associated with this practice.

The paper begins by presenting the arguments for and against moonlighting in the IT industry. Supporters contend that moonlighting can foster skill development, enhance creativity, and provide additional income for employees. Conversely, opponents raise concerns about conflicts of interest, compromised work performance, and potential violations of intellectual property rights.

Subsequently, the paper delves into the policies established by organizations to address moonlighting in the IT sector. It investigates the various approaches adopted by companies, ranging from strict prohibitions to more flexible arrangements. The effectiveness of these policies is evaluated, taking into account their impact on employee morale, productivity, and innovation.

Furthermore, the legal perspective of moonlighting in the IT industry is examined. The paper analyzes relevant labor laws, contractual obligations. It explores the legal frameworks that guide moonlighting practices and the potential legal consequences for both employees and organizations.

It emphasizes the importance of striking a balance between the advantages and risks associated with moonlighting, advocating for clear policies that protect the interests of both employees and employers while promoting a culture of innovation and growth.

Keywords: *moonlighting, IT industry, debates, policies, legal perspectives, conflicts of interest, intellectual property rights, labor laws, contractual obligations, innovation.*

I. INTRODUCTION

Moonlighting refers to engaging in a secondary employment, typically performed discreetly, especially during night hours. It involves individuals opting to work "under the moonlight,"

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meaning they take on additional work or jobs after completing their regular daytime shifts at their primary job.

Moonlighting is the practice of engaging oneself in an additional job along with the primary employment. Often, in moonlighting, the employees get themselves engaged in the practice of side jobs without the knowledge of the Employers’.

Moonlighting is not a new concept,

In Our childhood days, we might have seen our teachers doing their jobs from 9am to 5pm, in the school and then teaching tuitions to the kids in the evening or on weekends.

Another instance is the doctors who sit in their private clinics at home or some other place after their full-time job in a private hospital. At times, when we are ill or need a doctor consultation for something, we can do that at their private clinics.

(A) Why are IT Companies against it?

Most new age businesses rely heavily on IP, expertise and data driven approaches. There is always a constant concern regarding the potential loss of valuable data, specifically when employees choose to engage in moonlighting activities for competing companies.

(B) What started the debate ?

In August of this year, Swiggy, the on-demand delivery platform, implemented a ‘moonlighting’ policy for its employees, with objective that this policy would allow an individual to take up external projects, allowing for additional income opportunities. Swiggy further comprehended that the moonlighting policy allows the employees to engage in activities outside of their office hours or on weekends, as long as it does not affect their productivity in their full-time job or create any conflicts of interest with the employer’s business operations.

II. REASON BEHIND “MOONLIGHTING POLICY” BY SWIGGY

The rapid transition to remote working eliminated the need for lengthy commutes, resulting in more flexible work schedules. This shift also opened up possibilities for individuals to manage smaller side projects during their free time, provided they were motivated enough to pursue them.

With the onset of the pandemic, numerous opportunities arose for various gigs, such as website development and app creation. These short-term projects were viewed by many as convenient means to augment their income. Since these endeavors didn't require full-time commitment, workers who chose to engage in such side jobs did not perceive them as direct conflicts of

interest.

(A) Controversy

Mr. Rishad Premji, the chairman of Wipro, raised the concern, linking ‘moonlighting’ to ‘cheating’.

Mr. CP Gurnani, the CEO of Tech Mahindra, raising his concerns, differed with the Chairman of Wipro, and emphasized the importance of adapting to changing times and further added that, “I welcome disruptions in the ways we work.”

Mohandas Pai said that, individuals should refrain from engaging in outside work during the time they have committed to their companies, and it should be checked that they do not utilize their employers’ intellectual property, assets, or resources for personal purposes. However, the individuals have the freedom to make use of their own free time as they see fit.

(B) Steps taken by IT Companies to curb the Moonlighting

Infosys, a prominent Indian IT company, has cautioned its employees that engaging in moonlighting activities could result in the termination of their employment.

Wipro has terminated around 300 employees, who were found to be involved in moonlighting with one of its significant competitors simultaneously. Certain Media reports have suggested that the company, Wipro has tracked down these employees by using the Universal Account Number (UAN) from the Employer’s portal of the Employee’s provident fund. Although, the company has not officially confirmed this yet. They consider this practice as ‘unethical’.

While few companies like Swiggy, Tech Mahindra, and even the minister for state of skill development, entrepreneurship, Electronics and Information Technology , Rajeev Chnadra Shekhar believe that there is no problem with employees involved in Dual employment , the IT Industry like Wipro, TCS , Infosys , or any other IT Tech company is totally against this practice.

(C) When is it ascertained that an employee is moonlighting?

Sashi Kumar, Head of sales at Indeed India, highlighted in an interview with a leading English daily that, the pandemic has made the employees to step back and reevaluate their priorities. In today’s era where talent holds significant value, there is a shift in emphasis from solely focusing on the employee experience to considering the broader aspect of the employee’s life experience.

- They are often tired

Experiencing occasional fatigue and a lack of energy is normal and acceptable. We all have

days when our productivity is not at its highest. However, it is important to ensure that this doesn't develop into a consistent habit.

If an employee consistently arrives with noticeable signs of fatigue, such as bags under their eyes, it may be necessary to pay attention and take note. While personal crises could contribute to their condition, it's important not to disregard the possibility of moonlighting as a potential factor.

Employees, who are involved in the practice of moon-lighting, are working at least 14 hours at a minimum, even if they are serving as a freelancer on the side. Continuously working without a break for an extended period can have detrimental effects on individuals. It is important to acknowledge that humans are not machines, and subjecting oneself to excessively long working hours will inevitably have a visible toll on their well-being and appearance.

- Frequent connectivity fails

Where the employee is frequently complaining about the wi-fi disruptions or issues with their wi-fi connection. It is important to take note of the situation that is their wi-fi seriously dysfunctional or are they trying to sneak in their side jobs during their committed hours of the primary job.

In certain situations, it is not unusual for team members who have recently relocated to encounter unreliable internet connections. However, like any other issue, there are limits to how long this can be tolerated. Most employees facing unstable Wi-Fi will make efforts to rectify the situation promptly to avoid work disruptions during business hours. If an employee is consistently attributing to missed deadlines or schedule disruptions to poor connectivity but fails to take any corrective actions, it is worth considering as an Employer.

- Delayed Responses

In today's work environment, it is common for teams to monitor notifications and updates shared by their team lead or co-workers during their work. If an employee consistently provides delayed responses despite receiving repeated warnings, it is advisable to be vigilant. While occasional delays can be forgiven, persistent occurrences often lead to negligence.

- Fall in quality of work

It is a wake up call for the employers' if the work of an employee deteriorates to an huge extent. Often, Employees indulged in the practice of moon- lighting fails to cope up with both jobs and ends up producing low quality work. So, if a gradual fall in the quality and output of work is seen from an employee, its time to have a check upon the individual.

Therefore, the determination that an employee is engaged in moonlighting typically occurs when it is discovered or confirmed that the employee is involved in additional work or employment outside of their primary job. This may be identified through various means, such as observing conflicts of interest, noticing a decline in productivity or availability during work hours, receiving reports or complaints, or through explicit disclosure by the employee themselves. Companies may also have policies or procedures in place to monitor and address moonlighting activities among their employees.

III. LEGAL PROVISIONS IN RESPECT TO MOONLIGHTING

While there is no specific law in India that directly addresses moonlighting, engaging in such activities may have legal implications under various statutes, such as the Employment Contract Act, the Shops and Establishments Act, and the Industrial Disputes Act. These laws could potentially apply to situations involving moonlighting and may carry legal consequences for the individuals involved. Such as-

- **Section 60³, of The Factories Act, 1948 establishes a prohibition on multiple employment.**

According to this provision, No adult worker may be required or allowed, unless otherwise stipulated, to engage in any factory on any day on which he has previously worked in any other business. except in the cases that may be specified.

- **Industrial Employment Standing Order Act of 1946 :**

According to this Act, it is mandatory for employers in industrial establishments to clearly outline the terms and conditions of employment and submit proposed standing orders for certification to the appropriate certification authority. The Act applies to industrial plants that employ 100 or more workers.

- **Section 65, The Bombay Shops and Establishments Act, 1948**

The Act prohibits employees from engaging in double work on holidays or during their vacation time. It states that no employee should work in any business on a day when they have been granted a holiday or are on leave as mandated by the Act. Similarly, employers must not knowingly permit employees to work in any establishment on such designated days.

- **Section 9, The Delhi Shops and Establishment Act of 1954,** places restrictions on concurrent employment.

³ Moonlighting: Is it Legal?, 3.1 JCLJ (2022) 1880

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(A) Harm in Moonlighting

- **Identification and prevention of hazardous related to moonlighting, such as data leakage and daylighting** , many businesses use tools and techniques (engaging in some other job during the recourse of the regular job).

Because of potential conflicts of interest, effects on primary work performance, abuse of corporate resources, absenteeism, inattentiveness, or exhaustion, employers may discourage their staff from moonlighting.

(B) Prevention of Moonlighting

- Develop comprehensive legislation that effectively addresses the phenomenon of moonlighting across all sectors.
- Employers can utilize tools such as Workforce Analytics Tool to monitor and maintain awareness of how remote employees are allocating their time during work hours. If certain employees start allocating more time than expected to their side projects, it is important to have discussions with them to address the issue.

- Employers can also assess the amount of time employees spend working after regular working hours by employing 'remote employee monitoring software' such as "Work Status."
- Employers should ensure that their employment policies, including documents like employee contracts and IT guidelines, clearly articulate the company's stance on moonlighting activities. It is crucial to have unambiguous and transparent guidelines in place regarding moonlighting.

(C) Quiet Quitting

Quiet quitting refers to a phenomenon where employees exhibit signs of disengagement or dissatisfaction without formally resigning from their positions.

Employees who engage in "quiet quitting" are those who chooses not to fulfill even the bare minimal requirements of their job responsibilities instead of formally resigning from their positions.

Quiet quitting can be predicted through various actions, such as consistently not arriving on time for scheduled shifts, not requesting overtime pay, refraining from taking on ambitious projects, emotionally detaching from the work, and establishing distinct boundaries between personal and professional life.

IV. JUDICIAL PRECEDENTS ON MOONLIGHTING

According to the Industrial Dispute Act, 1947⁴ and the Industrial Relation Code, 2020⁵, the term "workers" is defined under section 2(s) and section 2(zero) respectively. It states that any employee, whether their employment is expressed or implied, can work in any industry in exchange for a reward. The Industrial Employment Act of 1946 requires that every employee be issued a service certificate, and this act applies to the IT and ITES sectors as well. This means that an employee can be employed by an employer for more than the standard 8 hours a day. Additionally, Section 65 of the Bombay Shops and Establishment Act of 1948 prohibits such forms of employment.⁶ The case of *Gulbahar v. Presiding Officer Industrial Tribunal* in 2016, heard by the Punjab Haryana High Court, upheld the petitioner's dismissal based on concurrent employment. Similarly, in 2019, the Delhi court supported the termination of an employee in the case of *Metso Paper Pvt. Ltd. v. Mr. V Gokulakrishnan*⁷, where the employee held two jobs.

⁴ Industrial Relation Act, 1947

⁵ Is moonlighting legal or just a new trend of fading employee commitment? (n. 2)

⁶ Dr. Amitava Ghosh (n. 4)

⁷ *Metso paper Pvt. Ltd. v. Mr. V Gokulakrishnan*, 1989 ACC 524

Termination of employment based on dual employment is considered acceptable, despite the lack of specific regulations in Indian labor laws addressing this issue. There is currently a push for a 4-day work week in India, which may necessitate a closer examination of individuals holding multiple jobs and the need to establish a suitable legal framework to accommodate such arrangements. As laws evolve, there may be an increased prevalence of moonlighting or engaging in multiple jobs in the future, highlighting the necessity for legal reforms in this regard.⁸

(A) Importance of Adopting a hybrid model where moonlighting is accepted by companies to a certain extent:

Moonlighting practices tend to create a division between two categories of companies: traditional old-school IT enterprises and modern new-school businesses. For commercial reasons, the majority of traditional companies strictly prohibit their employees from engaging in work for third parties. On the other hand, the new age group of companies believes that moral standards should evolve and adapt over time.

- Retention of talented employees: Allowing moonlighting to a certain extent can help retain valuable employees who have diverse skills and interests. By accommodating their side projects, employers demonstrate a willingness to support their professional growth and personal aspirations.
- Increased employee satisfaction and engagement: Allowing employees to pursue side projects can enhance their overall job satisfaction and engagement. It gives them a sense of autonomy and flexibility, leading to higher motivation levels and productivity in their primary role.
- Access to diverse skills and knowledge: Moonlighting enables employees to gain additional skills and experiences that can be beneficial to their primary job. This brings a wider range of expertise and perspectives to the company, fostering innovation and adaptability.
- Talent attraction and employer branding: Embracing a hybrid model that accepts moonlighting can make the company more appealing to top talent. It demonstrates a progressive and supportive work environment that values individual growth and work-life balance, enhancing the employer's brand image.

While allowing moonlighting to a certain extent can offer these benefits, it should be

⁸ *Metso paper Pvt. Ltd. v. Mr. V Gokulakrishnan*, 1989 ACC 524

accompanied by clear policies and guidelines to ensure that it does not negatively impact employees' primary job responsibilities or create conflicts of interest.

(B) Would taking up freelance work as an independent consultant (contract for service) without the interference of the employer, amounts to moonlighting?

Engaging in freelance work as an independent consultant, where there is no interference from the employer and the work is conducted under a separate contract for service, generally does not fall under the definition of moonlighting. Moonlighting typically refers to taking up additional employment or side jobs that may conflict with or have an impact on one's primary employment. However, it is essential to review the terms and conditions of the employment contract and any applicable policies of the employer to ensure there are no restrictions or conflicts regarding freelance work.

V. WAY FORWARD

Companies should clearly define the permissible employee activities during non-working hours in order to provide clarity and avoid ambiguity. The employment contract should explicitly state whether the position requires exclusivity. Moreover, businesses should consider implementing robust employment contracts and human resources regulations that clearly outline the terms of employment, including the responsibilities and limitations applicable to employees, as well as defining what constitutes "misconduct" and the corresponding disciplinary measures. Furthermore, if an employee's contract includes non-compete provisions and mandates exclusive employment, as is typically found in conventional employment contracts, engaging in moonlighting activities may be seen as unethical. However, employees may not perceive it as a breach of trust or confidence if employment contracts lack this clause or provide exceptions.

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