

The Hindu

Explained | Is it time for the gig economy?

K. BHARAT KUMAR, October 06, 2022

What is moonlighting and how is it affecting the companies in India? Is it a punishable offence under the law? How has the work-from-home culture affected the gig economy of our country?

The story so far: Moonlighting – or employees working for remuneration with entities other than their employers – has been a hot topic in recent months. During the pandemic, those with desk jobs had more time on their hands and thus it was easier to take on a few projects outside of work. In July, Kotak Securities said in a study that at least 60% of 400 employees surveyed said they themselves had, or knew someone who had engaged in moonlighting.

How are companies reacting to moonlighting?

In August, Wipro chairman Rishad Premji tweeted: “There is a lot of chatter about people moonlighting in the tech industry. This is cheating – plain and simple.” The company sacked 300 employees following the discovery that they were working for rival firms on the side, leading to conflict of interest. Infosys has warned staff against moonlighting, saying it could lead to termination.

Another software firm DXC Technologies said that moonlighting by employees was a challenge for employers but that wouldn't affect its WFH (work from home) policy that has worked well for both the firm and its staff. Swiggy announced a ‘moonlighting policy’ that allows employees “to pursue their passion for economic interests alongside their full-time employment.”

What does the law say?

Moonlighting is not defined in any of the statutes in India, says S. Ravindran, Senior Advocate who

specialises in labour laws. “To my knowledge so far, no Constitutional Court has rendered a decision on the subject,” he says. However, there are enactments that deal with double employment. Section 60 of the Factories Act deals with restriction on double employment stating that “No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed”. However, this enactment is applicable only to employees working in factories, Mr. Ravindran points out.

There are State enactments which deal with employment of persons working in offices, banks, shops, etc. In Tamil Nadu, it is termed as “The Tamil Nadu Shops & Establishments Act, 1947”. However, there is no provision wherein dealing with dual employment.

However, moonlighting is subject to law of the land. Mr. Ravindran refers to the Supreme Court's observation in the case of Glaxo Laboratories (I) Limited vs Labour Court, Meerut and others. The apex court held that “The employer has hardly any extra territorial jurisdiction. He is not the custodian of general law and order situation nor the Guru or mentor of his workmen for their well-regulated cultural advancement. If the power to regulate the behaviour of the workmen outside the duty hours and at any place wherever they may be was conferred upon the employer, contract of service may be reduced to contract of slavery.” This case was not specifically about moonlighting but the court's observation gives us an idea as to how the law may view such cases.

Moonlighting is subject to law of the land. The sphere of employment cannot be extended by the employer beyond working hours and outside his place of employment, which is the principle laid down in the above judgment. In other words, the employee can choose to arrange his affairs as he pleases beyond the working hours of the employer.

Does the law lay out punitive action against moonlighting?

Mr. Ravindran avers that unless an employer is able to prove that an employee acted against the interest of the company, Courts may not uphold severe punishment of termination of employment. “We have to wait for precedents in this regard,” he says.

The Courts of law in India dealing with employment are Writ Courts and Labour Courts. These Courts exercise jurisdiction based on equity or fairness. Therefore, the Courts may lean in favour of the employee unless the contravention of the employee has led to serious prejudice and loss to the employer, he adds.

The Minister of State for Skill Development and Entrepreneurship, and Electronics and IT, Rajeev Chandrasekhar said that employers should not to suppress employees who want to monetise, develop and demonstrate but also urged employees not to violate their agreements with employers.

In today’s world, every company ought to have a gig economy strategy. Paul Estes, author of the book Gig Mindset, said, “Not having one is like missing the Internet revolution of 1990 or the mobile revolution in 2010.”

In the last century, work from home was never thought of. But in the current times, it has become a common norm.

Likewise, maybe we are indeed on the cusp of change when it comes to the gig economy.