



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

[www.ijlra.com](http://www.ijlra.com)

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ISSN

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# **“MOONLIGHTING – ITS MEANING, PREVALENCE IN THE TECHNOLOGY WORLD, AND PROVISIONS”**

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## **Abstract**

Moonlighting presents to us a modern dilemma. Moonlighting refers to employees holding onto multiple jobs at the same time. While such an employee holds onto multiple jobs, they are provided the opportunity to grow in their professional sphere and increase their finances, they would have to strike a balance between multiple jobs and other responsibilities outside their professional sphere.

But there is more to it than just this. Moonlighting poses several ethical, moral and legal challenges before us. Moonlighting is not an ethical concept; it challenges the employee's morality by making them question their loyalty towards each of the companies they are working at.

It also tires them out which affects their performance which might become an irreversible plight for them later on. The employee feels like it is a vicious cycle from which they would have no relief and they are stuck in the loop forever. Thus moonlighting is a modern day dilemma which is a problem both ways for the employees and the company.

## **An Introduction to Moonlighting**

Before we go on to understand how much of a concern moonlighting is for Indian employees and the Indian companies we first have to understand what moonlighting exactly means.

Moonlighting simply means taking up another job during the continuance of your main job without intimating the employer of your main job. This other job is usually a secondary job that is temporary and can be referred to as a side job as well. It holds a nature similar to that of a part-

time job.

Moonlighting does not exactly have any relation to the words “moon” and “lighting”. Moonlighting is when one person engages in any work that is sort of a freelancing, that helps them to generate money for their benefit. And moonlighting is just a term assigned this kind work. But as a result of such work, such an employee is neither holding onto the identity attached to him through the main job, nor is he having any identity to the secondary job. His loyalty towards both jobs becomes a question for discussion at this point.

Moonlighting is having two jobs at the same time and thus is also referred to as dual employment. Moonlighting poses several concerns for such an employee who juggles between jobs. A moonlighting employee's access to the data and files of the primary job makes it difficult to protect the privacy and confidentiality in relation to the secondary job. Specifically, if it is across competitor companies, it becomes a huge risk to have such an employee on board.

But it is also important to consider why people take up two jobs at the same time, that is an additional job in addition to their main job. The answer is not that simple, it is not just the greed or lust to earn money. Individuals require money to meet their expenses, pay off their loans, debts, insurances, and also to earn experience which is much needed for the professional growth.

The pandemic proved to be a turning point for people who were trying to sustain themselves in all the ways possible. And moonlighting became a prevalent way to sustain their livelihood. In order to make ends meet, people took up several jobs to meet the costs. Often these jobs could be done from the comfort of their homes, making it perfect for them to juggle several of them at the same time.<sup>5</sup>

Several companies insert anti-moonlighting clauses to protect themselves (the company) and prevent employees from taking up such kind of work. This kind of work makes employees question their own employees and their ethics towards the company on which they hold their main job which is often their primary source of income.

Moonlighting has definitely affected the market for employees to obtain job. If an employee engages in moonlighting, then that employee would end up taking the job of another employee

for whom that work could have been the primary source of income. And thus, such an employee might hold onto several such jobs decreasing the number of jobs available and not presenting others a chance to secure it.

Therefore, moonlighting is a double-edged sword. Some companies allow for it, Swiggy is one such example, while some companies do not allow for it, IT companies like Wipro and Infosys, which have warned their employees against the same. The legality of moonlighting and ethicality of moonlighting is another issue to be discussed with the growing number of employees engaged in such work.

## **Moonlighting In The Technology World**

Moonlighting in the technology industry in India refers to the practice of professionals working on additional projects or part-time jobs alongside their primary full-time employment. This phenomenon has gained prominence in recent years and is influenced by various factors unique to India's tech ecosystem.

Here is a detailed description of moonlighting in the technology industry in India:

1. **High Demand for Tech Skills:** India is known for its large pool of skilled tech professionals, which attracts a significant demand for their services. Many tech workers find themselves in a position where their skills are in demand for multiple projects, both full-time and part-time.
2. **Freelancing Opportunities:** The rise of online freelance platforms and the gig economy has made it easier for Indian tech professionals to take on side projects. Many professionals leverage these platforms to offer their expertise to a global clientele while working full-time.
3. **Financial Motivation:** Moonlighting is often driven by financial incentives. Extra income from side projects can supplement a tech worker's salary, helping them achieve financial goals or support their families.
4. **Diverse Skill Set:** Tech professionals often have a diverse set of skills. Moonlighting allows them to explore different areas of interest or gain experience in new technologies, which can ultimately enhance their career prospects.
5. **Start-up Culture:** India has witnessed a surge in start-up activity. Working for a start-up is often demanding, and employees might take on side projects to explore additional

income sources or build their own entrepreneurial skills.

6. Flexible Work Arrangements: Many tech companies in India are increasingly adopting flexible work arrangements, allowing employees to manage their time more effectively. This flexibility enables tech workers to engage in moonlighting without conflicting with their primary jobs.
7. Global Opportunities: With remote work becoming more common, Indian tech professionals can work with clients and companies from around the world. This global exposure broadens their network and provides access to a broader range of projects.
8. Challenges and Ethical Considerations: Moonlighting can pose ethical challenges, especially if it conflicts with an employee's primary job. Some tech companies in India have policies against moonlighting to prevent conflicts of interest or issues related to data security.
9. Legal Aspect: While moonlighting is common, there can be legal implications. Employees may need to disclose their side projects to their employers, and in some cases, companies may have non-compete clauses in employment contracts that limit moonlighting opportunities.
10. Balancing Act: Juggling a full-time job and moonlighting projects can be demanding. Many tech professionals in India find themselves balancing tight schedules and deadlines, which can lead to burnout if not managed properly.
11. Building a Personal Brand: Moonlighting can be an opportunity to build a personal brand and portfolio. This can be especially valuable for professionals looking to establish themselves as thought leaders or experts in their respective fields.
12. Skill Upgradation: Moonlighting often encourages professionals to stay up to date with the latest trends and technologies in the industry, as they seek to remain competitive and deliver value in their side projects.

Wipro Chairman Rishad Premji stated recently that the company discovered 300 of its employees were working for one of its competitors at the same time, adding that such incidents were dealt with by terminating their employment.

Many companies have a finance department that checks UAN numbers of employees on the EPFO employer dashboard to see if they are associated with other companies.

Even at Google, any code written by a developer during his or her employment will be owned by

Google.

### **Why are people moonlighting?**

- Firstly, Work From Home saves employees a lot of time. They no longer have to travel a great distance in hectic traffic to get to work. And all of the time you spend in the workplace sitting down and chatting with everyone and everything is gone after Work From Home.
- Layoffs are becoming more and more common across industries so now the employees started to think “Does it make sense to devote all of my time to just one company where one day my boss can come into the office and suddenly says, guess what? no more job.”
- And traditionally growing one’s income by being promoted may look less attractive.

## **Laws and Contract**

Some companies have responded to the issue by tightening the reins. Earlier this month, Infosys, India’s second largest IT services company, [warned](#) its employees that “dual employment is not permitted”, stating that any violation of contract clauses could trigger disciplinary action. Some companies are [checking up more on employees](#), either trying to bring workers back to the office, or running productivity checks to identify possible slackers.

Others are responding differently. In a [tweet](#), Tech Mahindra CEO CP Gurnani said that it was “necessary to keep changing with the times”, adding he welcomed disruption to ways of working. Food delivery company Swiggy's human resources head Girish Menon told India's Economic Times that [moonlighting was the “future of work”](#), and that with the right policies in place, employees would be responsible and declare their second jobs.

IT industry veteran and former director of Infosys Mohandas Pai [pointed out](#) that low entry-level salaries in the tech industry have contributed to moonlighting. Gopi says that if companies ensure good pay and steady career development, in ways that motivate and enrich workers, they might not seek out other jobs. “Of course, there are employees who don’t moonlight just for the money but also for sampling different skills, and that cannot be really prevented,” he adds.

Diya found it easy to hold down two jobs during the pandemic, but she faces being recalled to the office soon. Her plan is to watch and wait; ideally she plans to continue both roles and see

what her company offers her in terms of growth and advancement.

Her second job is not just about money, but the “satisfaction of using my diverse skills and being appreciated for that”, she says. And, despite the recent debate, she sees no reason to give it up yet. “As long as I am discrete and give my best both jobs, I don’t see what has changed.”

The companies will have the leverage, that they can fire someone who does moonlight because they have 100s of other people lining up to the interview and the employee’s leverage is, “Okay fire me because I have two other companies I’m already working on” I think it’s a game and if you don’t play you’re going to get played. Moonlighting is an open secret; everybody knows everybody else does it but nobody talks about it.

In conclusion, moonlighting in the technology industry in India is a multifaceted practice influenced by the country's vibrant tech ecosystem, the pursuit of financial goals, and the desire for personal and professional growth. While it offers many benefits, it also comes with its set of challenges and ethical considerations that tech professionals need to navigate effectively.

## **Moonlighting under Labour law**

Provisions in Labour laws

Moonlighting is not specifically addressed by law in India. However, it might be vulnerable to legal action under a number of laws, such as the Industrial Disputes Act, the Shops and Establishments Act, and the Employment Contract Act. Dual employment is permitted by the Industrial Employment (Standing Orders) Act of 1946. According to Schedule I-B of the Industrial Employment (Standing Orders) Rules, 1946, an employee cannot operate against the interests of the industrial establishment or accept a job that could jeopardise their employer's interests. On the other hand, dual employment is forbidden by Section 60 of the Factories Act of 1948. A mature worker cannot be forced to work in a factory on days when they have previously worked at another place of employment, under the Factories Act of 1948. The Factories Act and the Occupational Safety, Health and Working Conditions (OSH) Code ban similar things; however, the OSH Code limits its application to concurrent employment in a mine or factory.

Similarly, employees are prohibited from working in two or more establishments for longer than is permitted by law under Section 9 of the Delhi Shops and Establishments Act, 1954. However, because it relates to the amount of time an employee may be engaged in work, although while this

clause appears as a restriction on dual employment, it might also be interpreted as a restriction on overtime work.

Under the Industrial Disputes Act, a worker may be subject to disciplinary action if it appears that they are moonlighting. However, the extent of the disciplinary action depends on the type of work and how it impacts the main job.

### Case laws

Indian courts have, for the most part, upheld firing an employee for doing two jobs or moonlighting. For example, the Punjab and Haryana High Court supported the firing of an employee for allegedly engaging in parallel work, as claimed by the employer, in the case of *Gulbahar v. Presiding Officer Industrial*

In a similar fashion, the Bombay High Court held that a factory worker's dismissal under Section 60 of the Factories Act, 1948 for engaging in double employment was reasonable rather than harsh because the worker was depriving his employer of the best of his services by working two jobs, as it is humanly impossible to work consistently and at the same quality and efficiency for long periods of time.

In *State of Punjab v. Ram Lubhaya Bagga*, the Supreme Court decided that it is misconduct and subject to disciplinary action when an employee performs a second job that clashes with their primary role.

The Supreme Court stated as follows in *Manager, Pyarchand Kesarimal Ponwal Bidi Factory vs. Omkar Laxman Thange and Others (AIR 1970 SC 823)*: "The general rule in respect of relationship of master and servant is that a subsisting contract of service with one master is a bar to service with other master-unless the contract otherwise provides or the master consents."

In the case of *Government of Tamil Nadu vs. Tamil Nadu Racecourse General Employees Union (1993 ILLJ 977 Mad)*, the Madras High Court held, citing the previously mentioned Supreme Court decision, that "there may not be any prohibition to have dual employers if the contract otherwise provides, or the master consents."

## **Present scenario and way forward**

Moonlighting has increased recently as a result of the epidemic, and different businesses from different sectors have taken varying stances on how to address this problem. For example, publicly available data suggests that some companies have permitted workers to take on extra projects or label certain jobs as "side gigs" within the company after hours in order to expand their skill set, while others have outright banned dual employment and have fired workers who were discovered to be engaging in moonlighting as a breach of their employment agreements.

Employers face legitimate concerns and grey areas when dealing with employees who engage in dual employment, such as non-compete agreements, confidentiality, ownership and assignment of intellectual property, and contribution to employment social benefit schemes under laws like the Employees' State Insurance Act of 1948 or the Employees' Provident Funds and Miscellaneous Provisions Act of 1952.

Employers that wish to stop their staff from working two jobs could put a clear ban on this practice in their employment contracts by including an exclusivity clause that clearly states that violating the clause would be considered misconduct. Two aspects need to be considered while drafting the exclusive clause. First and foremost, workers should be forbidden from taking on additional jobs for the whole term of their contract with the company, not only during working hours. Employees could accept additional engagements during their off-work hours if there was an exclusivity clause that only applied during working hours. Second, the ban on other engagements need to cover consulting and advice contracts in addition to employment agreements. The ban may be expanded to include directorships, shareholding, etc. when appropriate.

Any kind of moonlighting would violate the previously mentioned exclusive clause. Therefore, in the event that an employee is discovered to be moonlighting, the employer is entitled to take appropriate legal action for breach of contract, which may include firing the offending employee for good reason.

In cases when companies wish to allow moonlighting, they should make sure that there is a clear policy that specifies the boundaries of what constitutes acceptable behaviour for employees. The following are important topics that the policy ought to regulate:

1. Application: Businesses may get concerned if they allow senior staff members or workers

on private projects to take on additional obligations on the basis of their job descriptions or duties within the company. As such, it would be crucial to ascertain whether or not any employees of the organisation are permitted to engage in other business ventures.

2. **Procedure:** It is essential to maintain transparency to make sure that the authorization to work a second job is not misused. As a result, businesses must to make clear the procedures for employees to accept second engagements; for example, whether they must get prior consent or need to notify specific individuals, etc.
3. **Engagements allowed:** The policy should specify the kinds of engagements that workers are allowed to take on and ensure that their duties to their employers do not conflict with one another. Allowing moonlighting that does not harm a company's interests specifically is one strategy to stop moonlighting that does. As a result, it's imperative to specify the parameters of acceptable interactions. In connection with this, employers need to make it clear to workers what kind of commitment they can make to their second engagement, whether they can use company property and resources for it, how IP created for another company will be handled if office space is used, etc.
4. **Protecting proprietary information:** Since this will be the main concern of any employer who permits moonlighting, special restrictions should be placed on employees' use and disclosure of employer proprietary information.

**Legal relationship type:** As previously mentioned, having multiple employers can cause both practical and legal issues for the employee. As a result, companies must to outline the kind of legal connection that workers can establish with respect to their subsequent activities (such as employment or consulting).

## Scope

The scope of moonlighting in India is broad and multifaceted, touching upon various aspects of the labor market, economic development, and social well-being. Here are some key dimensions of the scope of moonlighting in India:

1. **Economic Impact:** Moonlighting can significantly impact the income and financial stability of individuals. Understanding its scope is essential for assessing its contribution to poverty alleviation and income diversification in the country.
2. **Employer-Employee Relations:** Employers need to consider the implications of moonlighting for their workforce, including issues related to productivity, conflicts of

interest, and the potential for overwork.

3. **Informal Economy:** Moonlighting often takes place within the informal economy, which plays a significant role in India's labor market. Recognizing its scope is essential for labor market policies and regulations.
4. **Skills Development:** Moonlighting can provide opportunities for individuals to acquire new skills and knowledge. Recognizing the scope of moonlighting in skills development can inform policies aimed at enhancing human capital.
5. **Regulation and Policy:** Policymakers need to understand the extent and nature of moonlighting to formulate regulations and policies that strike a balance between supporting individuals' financial needs and maintaining the integrity of the formal labor market.
6. **Social Well-being:** Moonlighting's impact on work-life balance, mental health, and overall well-being is an important aspect to consider in its scope.
7. **Regional Variation:** The prevalence and implications of moonlighting can vary significantly across different states and regions in India. Recognizing these variations can inform targeted interventions.

In conclusion, moonlighting in India is a multifaceted and complex phenomenon that deserves attention from policymakers, employers, and researchers. Its scope extends beyond the simple act of working multiple jobs and encompasses economic, social, and regulatory dimensions that can have far-reaching implications for the country's labor market and the well-being of its workforce.

Thus, Moonlighting, the practice of holding multiple jobs or engaging in additional employment outside of one's primary occupation, is a complex and multifaceted phenomenon with both advantages and disadvantages. Here is a concise conclusion on moonlighting:

Moonlighting can offer several benefits, including:

1. ***Supplemental Income:*** Moonlighting can provide individuals with extra income, helping them meet financial goals, pay off debts, or improve their quality of life.
2. ***Skill Diversification:*** It offers the opportunity to gain new skills and experiences that may enhance one's career prospects or personal development.
3. ***Risk Mitigation:*** Diversifying income sources can reduce financial vulnerability in the face of job loss or economic instability.

However, moonlighting also comes with some drawbacks, such as:

1. *Burnout and Overwork*: Juggling multiple jobs can lead to burnout, fatigue, and decreased productivity in both the primary and secondary roles.
2. *Conflict of Interest*: Moonlighting can create conflicts of interest, particularly in professions with ethical or confidentiality considerations.
3. *Reduced Work-Life Balance*: Balancing work commitments can strain personal relationships and limit the time available for leisure and family.

In conclusion, moonlighting is a strategy that should be carefully considered, taking into account the individual's unique circumstances and goals. It can be a valuable means of achieving financial security and personal growth but must be managed thoughtfully to avoid the potential downsides associated with over-commitment and reduced work-life balance.

## **Conclusion**

Moonlighting means taking up a second job or multiple other work assignments apart from one's full-time job. Companies have opposed the practice, saying that employees doing multiple jobs can impact their productivity.

Moonlighting has become a topic of debate in the IT industry as working from home became the normal norm during the Covid-19 pandemic, which is believed to have led to a rise in dual employment.

However, Indian IT firms are divided when it comes to moonlighting. For some, it's unethical while others call it the need of the hour.

Tata Consultancy Services' chief operating officer (CFO) NG Subramaniam has termed it an ethical issue. Infosys has also warned its employees against taking up a second job without letting the company know. In one of the recent emails sent by the HR department to employees, Infosys highlighted that all its employees must read their employment contracts before taking up an alternative job. In fact, the company also warned employees of termination if they take up a second job during or post-working hours. On September 15, IBM India MD Sandip Patel called moonlighting unethical.

Meanwhile, Tech Mahindra CEO CP Gurnani said he could be open to the practice if it helps employees make extra money.

"If you actually look at the definition of moonlighting, it is having a second job secretly I'm all about transparency. As a part of transparency, individuals in organizations can have very candid conversations," Premji said at an event, reiterating that current employees working for rival firms are a "complete violation of integrity in its deepest form".

Mohandas Pai also disagrees with Premji on the issue. The former director of Infosys does not consider moonlighting "cheating". "Employment is a contract between an employer who pays me for working for them for 'n' number of hours a day. Now what I do after that time is my freedom, I can do what I want," Business Today quoted him as saying.

