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ASSESSING MOONLIGHTING IN IT SECTOR: IMPACT AND SOLUTIONS

AUTHORED BY - ANANYA DESWAL
& ANANYA SHARMA

ABSTRACT

Undertaking additional or secondary employment, apart from an employee's primary engagement, has resulted in severe cracks in the Information Technology (IT) Sector. Covert employment or 'Moonlighting' has an element of "secrecy" or "non-disclosure" and is often interpreted negatively. However, at this stage, the world may need to adopt a form of dual employment regulated in the economy's best interest and holistic development of the workforce. Recent global events like COVID-19, inflation etc., have affected human needs and earning capacity. The current trend is now about necessarily finding different and flexible earning options to diversify the source of one's income. A working individual needs greater security to effectively handle the various socio-economic issues of inflation, anticipated recession, higher living costs and more.

Major corporate concerns against moonlighting are confidentiality breaches, high attrition rates, compromised efficiency and impaired productivity. Is it realistically plausible to have the same dedication and commitment to both the employments that an individual has undertaken? One way to tackle this phenomenon is by raising questions of business ethos, morality and legality. Another way is to provide for consideration of the personal freedom of an entity. The question is of using self-autonomy as a sound logical stance in cases of dual employment through a restrictions-based approach. This can be achieved by enacting an 'umbrella' legislation establishing certain standards governing the practice.

Hence, the paper construes a need for regulatory legal provisions that cater to providing a

framework for the rights and duties of employers, benefits received, tax and related considerations and employees' protection. Additionally, attention has to be directed towards detailing the extent of knowledge dissemination and control between primary and secondary employers over their staff. This can be achieved by creating a regulatory body that has the force of law to sanction dual employment through a specific procedure and a redressal mechanism for any disputes that may arise. These are some immediate questions that have been pondered over and answered.

This paper thus attempts to essentially deal with the questions that have been raised above and prospective resolutions, possibly in the form of employment-related regulations or policies. An irrefutable fact is that change is the law of life and to be better is only possible by changing the present workings of the system we are a part of.

Keywords:

Moonlighting, Dual Employment, Business Ethos, Regulatory Body, Redressal Mechanism

RESEARCH METHODOLOGY

This paper employs a doctrinal research methodology to examine the legal framework and policy implications surrounding moonlighting in the contemporary workplace. Drawing on a range of authoritative sources including principles, journals, articles, commentaries, and authoritative books, the paper offers a critical analysis of existing legal frameworks and makes policy recommendations to address emerging challenges. While the paper prioritizes legal analysis, it also draws on empirical data and other relevant sources to support its arguments and recommendations. By taking a holistic approach to understanding the complex interplay between legal and social factors that shape workplace dynamics, this paper aims to contribute to ongoing debates about the future of work and the role of moonlighting in the 21st century economy.

INTRODUCTION

As the world experiences an unparalleled rate of progress, there has been a corresponding shift in the desires and demands of individuals, as well as a transformation in the market's composition. Professionals must constantly upgrade their skill sets and the technologies employed to ensure the successful fulfilment of targets. With the business environment becoming increasingly complex and dynamic, goals are no longer static but rather are active and adaptable entities, subject to the changing needs and demands of both clients and service providers. The pervasive existence of cut-throat competition in the present-day economy, in tandem with inflation and the ensuing impending recession, has instigated each working individual to reassess their financial position. This has led to an increased emphasis on diversifying one's assets and securing multiple income sources to achieve more excellent stability in the face of potential financial disruptions.¹

The lack of commensurate remuneration and wage scales in line with contemporary living standards presents significant impediments to the developmental trajectory of the world, particularly in countries like India. It is the fear of the instability that paralyses individuals from growing, developing holistically, exploring new fields of interest, or gaining more experience. Such deficiencies inhibit individuals from realising their full potential, as they are preoccupied with addressing the pressing concerns surrounding their basic sustenance. But this vicious cycle has a parallel form of existence wherein, to ensure the sustenance of the household, individuals end up working multiple jobs, sometimes without informing the primary employer about the same. This phenomenon, which has the element of secrecy intertwined, is referred to as 'moonlighting'.

In the recent past, IT giants like Wipro and Infosys laid off several of their employees on account of undisclosed dual employment. Employers allied to this line of thought have outlined their main concerns - data and confidentiality breaches, integrity violations, misplaced focus, decreased productivity and unfair use of resources of one employer for another job, among others. Post-

¹ Pouliakas K, "Multiple Job-Holding: Career Pathway or Dire Straits?" [2017] IZA World of Labor <<https://wol.iza.org/articles/multiple-job-holding-career-pathway-or-dire-straits/long>> accessed 20th December 2022.

pandemic, the world has witnessed a dichotomy in the attitude towards work.

On one hand, remote work has been embraced by many, with its benefits of flexibility and convenience outweighing the challenges of isolation and distractions. On the other hand, there is a grim reality for those rendered unemployed due to the pandemic's economic fallout. This has created a standoff between the aspirations of the employers and the employees if the conflict of “to do or not to do” is not resolved with regard to the prevalence of moonlighting.

This paper looks at the direct and indirect implications that have arisen or may do so in the future if moonlighting is established as the ‘new normal’. The analysis of the benefits and drawbacks of dual employment has yielded invaluable insights regarding the priorities of both employers and employees. In light of these findings, we propose a series of pragmatic policy recommendations that can significantly transform the IT industry that acknowledges the nuanced needs of all stakeholders. Our research also presents a standardisation model of dual employment through regulatory bodies, that hopefully benefits all those engaging in it, without it being at the cost of another party, which in this case, will mostly be the primary employer.

MOONLIGHTING: MEANING AND CONTENTIONS

Moonlighting can be defined as “the term that applies to the holding of a second job by a public employee who is supposed to work his job full time.”² The fundamental rationale for the presence of this practice is the requirement for people to have greater economic security through alternative strategies of income escalation. This is possible when a person invests some of their free time, or more aptly, time away from their primary job, into other ventures. These may be directly related to the same industry or maybe a completely different field altogether.

Those who advocate in favour of the practice take the stance that moonlighting is a promising investment and not a misdirected focus that consumes the individual, thus making them unable to achieve the desired results at their workplace(s). It capacitates such people to use their “free” time

² “Moonlighting” Sociology of Work: An Encyclopedia (2013) Vol 1

in the manner that is most beneficial to their career trajectory, the opposition to which seems like unwarranted policing. Opponents of moonlighting express concerns over potential data breaches decreased productivity, and lack of accountability and loyalty. They also argue that while occasional pressure can be beneficial for motivation and productivity, chronic and excessive stress can be detrimental to overall health and well-being as is the case when a person moonlights, as it includes self-working for prolonged periods of time, devoting both physical and emotional energy.

The absence of any regularisation of 'secret' dual employment, specifically in the IT sector has raised several concerns in the current epoch that have prompted an abundance of inquiries regarding ethical, moral, and legal implications. The contentious issue at hand revolves around the extent of autonomy employees should possess in deciding to take up secondary employment while continuing with their primary job, or whether they should remain dedicated to a singular job to fulfil their responsibilities to the best of their ability.

INFLUENCING FACTORS: EXAMINING THE INDIVIDUAL AND SITUATIONAL DRIVERS OF MOONLIGHTING

Moonlighting, as a phenomenon, can be better understood by examining the underlying factors that motivate individuals to engage in it. One such approach is through Maslow's Hierarchy of Needs. The first two levels cater to the physiological and safety needs of human beings like air, food, water, shelter, reproduction, employment, security, resources, etc. These are considered the most basic of needs that humans generally strive to achieve. The next three levels are higher-order needs like love and relationships, esteem and finally self-actualisation.

The fluctuating nature of human needs and the cycle of fulfilment varies from person to person, but getting to the top is the easiest if the basic needs are met.³ Maslow suggests that basic physiological and safety needs must be met before individuals can strive for higher-level needs

³ Ahmad Dar S and Sakthivel DP, "Maslow's Hierarchy of Needs Is Still Relevant in the 21st Century" [2022] Journal of Learning and Educational Policy 1 <<http://dx.doi.org/10.24193/tras.59E.7> > accessed 27th December, 2022

such as esteem and self-actualization. This is germane to moonlighting which is essentially about the extra income, skill and experience that gets added to the employees' arsenal and is directly linked to the quantum of growth that the person will be able to achieve.⁴

Several factors drive a person to partake in the practice of moonlighting, despite being aware of the adverse effects and the risks involved. Our current labour laws are not very suitable for distinguishing between personal and professional activities, making it difficult for employees to justify dividing their attention between moonlighting and their primary employment. In the wake of recent global economic shifts, including the COVID-19 pandemic's profound impact on businesses and employment opportunities, the rise of automation and artificial intelligence, and the growing prevalence of gig work, individuals worldwide, including those in India, are facing significant financial challenges.⁵ To maintain economic well-being, many are turning to moonlighting or engaging in secondary employment as a reliable means of supplementing their primary income and reducing financial pressure.⁶

Moonlighting, encompassing activities such as freelancing, part-time work, or starting a small business, allows individuals to diversify their income streams and establish a safety net, while simultaneously cultivating new skills and exploring alternative career paths.⁷

Although research indicates that secondary jobs may offer lower pay, benefits, and status, they also provide greater autonomy, flexibility, and personal fulfilment. As such, moonlighting has been linked to job heterogeneity, which promotes financial security and the ability to navigate economic uncertainties. Employers who support moonlighting arrangements can promote employee engagement, loyalty, and retention, while also providing an attractive perk for

⁴ Seema, Choudhary V and Saini G, "Effect of Job Satisfaction on Moonlighting Intentions: Mediating Effect of Organizational Commitment" [2021] 27 European Research on Management and Business Economics 100137 <<https://doi.org/10.1016/j.iemeen.2020.100137>> accessed 28th December 2022.

⁵ "The Cumulated Impact of the COVID-19 Crisis on Employment and Hours of Work Is Ten Times Greater than during the Global Financial Crisis" [2020] OECD Employment Outlook <<https://doi.org/10.1787/1686c758-en>> accessed 31st December 2022

⁶ Jabbar A and Shahzad M, "Impact Analysis of Covid-19 on Employment Trends" (2022) <<https://assets.researchsquare.com/files/rs-1292246/v1/12f6e1d3-0eb8-4933-a800-5981e7228510.pdf?c=1643205606>> accessed 2nd January 2023

⁷ Diphoorn T, "Moonlighting: Crossing the Public-Private Policing divide in Durban, South Africa" [2017] Oxford Scholarship Online <<https://doi.org/10.1093/oso/9780190676636.003.0009>> accessed 10th January 2023

employees seeking work-life balance.⁸

However, ethical considerations must be taken into account, and contractual agreements should strike a balance between personal freedom and legal obligations. Parties must ensure that they are not engaging in any fraudulent or dishonest activities, as such actions could have legal repercussions. For example, if a single, non-competitive employment clause is included in the work agreement, engaging in another employment may be regarded as an act of fraud/dishonesty/cheating which may lead to legal complications.⁹ In order to address these challenges and improve the economic well-being of low-income IT workers, policy interventions are needed that aim to reduce income inequality, increase access to education and training opportunities, and provide a supportive work environment that prioritizes worker well-being and fair labour practices.

A DOUBLE-EDGED SWORD: THE PROS AND CONS OF DIFFERENT TYPES OF MOONLIGHTING IN THE IT INDUSTRY

Moonlighting is a complex and multifaceted concept that can be broken down into various stages of involvement, including effort, energy, and time. These stages are indicative of the level of commitment and investment a worker has in their moonlighting activities. For instance, an individual may put minimal effort, energy, and time into their secondary employment, using it as a means of earning some extra income without compromising their primary job.

On the other hand, some may be deeply invested in their moonlighting work, putting in significant effort and energy to develop their skills, knowledge, and professional networks. It is important to recognize that the various stages of moonlighting are not static and can change over time,

⁸ Seema, Choudhary V and Saini G, "Effect of Job Satisfaction on Moonlighting Intentions: Mediating Effect of Organizational Commitment" [2021] 27 European Research on Management and Business Economics 100137 <<https://doi.org/10.1016/j.iedeen.2020.100137>> accessed 28th December 2022

⁹ Estlund CL, "Between Rights and Contract: Arbitration Agreements and Non-Compete Covenants as a Hybrid Form of Employment Law" [2006] SSRN Electronic Journal <[10.2139/ssrn.911284](https://ssrn.com/abstract=102139)> accessed on 12th January 2023

influenced by factors such as personal circumstances, financial needs, and career goals.

As mentioned above, these stages/levels can be divided into four quadrants - blue, quarter, half and full moonlighting, and are differentiated based on the extent to which an individual engages in secondary employment. Blue moonlighting is the lowest level or stage that involves failed attempts at engaging in a secondary job for the purpose of earning additional income, because of the absence of the necessary skillset or expertise to perform the job effectively.¹⁰ The lack of technical acumen leads to shortcomings in meeting the needs of the employer.

Quarter moonlighting, the next stage of the cycle is a term used to describe a specific type of moonlighting where an individual seeks part-time employment which is usually a quarter of their regular work hours¹¹. It is often seen as a viable option for those who wish to supplement their income without sacrificing too much of their personal time. This type of moonlighting offers several advantages, including a boost in income and an opportunity to learn new skills but it comes with its own challenges like a potential clash between the primary employer and the secondary employer in terms of scheduling and other logistical concerns.

The third stage is “half moonlighting” which involves dedicating approximately half the time and effort one would devote to their primary job, making it more than part-time moonlighting.¹² The practice of half moonlighting is typically undertaken by individuals who desire to supplement their income, develop additional skills, or pursue their interests outside of their primary employment. It requires a careful balancing act between work and personal life, as well as a clear understanding and communication with primary employers about the additional work commitments. In terms of benefits, half moonlighting can lead to personal and professional growth, increased income, and a diversification of skills and experiences.

However, it can also lead to burnout and stress, especially if the worker fails to strike a balance between their primary and secondary employment or faces conflicts between the two.

¹⁰ Dr. A. Shaji George, & A.S. Hovan George. ‘A Review of Moonlighting in the IT Sector And its Impact. Partners Universal International Research Journal’, (2022) <[10.5281/zenodo.7114049](https://doi.org/10.5281/zenodo.7114049)> accessed on 1st January 2022

¹¹ ibid

¹² ibid

In the final stage of moonlighting, which can be described as “full moonlighting,” employees engage in two full-time jobs simultaneously, requiring a significant amount of time and effort to manage both roles effectively. This stage demands the ultimate level of balancing dual employment and accentuates the commitment and sacrificial dedication of individuals who strive to expand their skillset and income streams.¹³

Moonlighting can be seen as a double-edged sword due to the potential benefits and drawbacks that arise from engaging in additional employment.¹⁴ On one hand, moonlighting offers the opportunity to augment one’s income and expand professional networks and experience. It may also help individuals diversify their skill sets, which could enhance their marketability and competitiveness in their respective fields. However, on the other hand, moonlighting can potentially lead to negative consequences. For example, moonlighting may create conflicts of interest between an individual’s primary and secondary employers, potentially leading to ethical or legal violations.

It may also lead to increased workloads and burnout, which could negatively impact job performance and overall well-being. However, research findings indicate that a considerable proportion of the workforce in developed countries, ranging from about 20-25%, has the potential to operate remotely for three to five days per week without compromising their work output. Notably, this marks a significant escalation, with the number of remote workers increasing by a factor of four to five compared to the pre-pandemic era.¹⁵

To achieve a successful stint of double employment, individuals must contend with the practicalities of managing dual corporate identities, dual EPF accounts (or a linked mechanism), two email IDs, and the demands of reporting to two bosses.¹⁶ Some employers hold a pessimistic

¹³ *ibid*

¹⁴ Santana M, “The Impact of Covid-19 on the Future of Work and a Research Agenda for the Future of Work” (2021) *New Directions in the Future of Work* 183 <<https://doi.org/10.1108/978-1-80071-298-020211021>> accessed on 20th January 2023

¹⁵ Dr. A. Shaji George, & A.S. Hovan George. . ‘A Review of Moonlighting in the IT Sector And its Impact. *Partners Universal International Research Journal*’, (2022) <[10.5281/zenodo.7114049](https://doi.org/10.5281/zenodo.7114049)> accessed on 1st January 2023

¹⁶ Dr. Vidya S “Moonlighting’ Is a Double-Edged Sword! Beware of Legal Repercussion” (*Business Today*, 2022, <<https://www.businesstoday.in/jobs/story/moonlighting-is-a-double-edged-sword-beware-of-legal-repercussions-345517-2022-08-24>> accessed on 31st January 2023

view towards moonlighting, apprehending that it could lead to a lack of loyalty or commitment from their employees. An employee who takes on additional work outside of their primary employment becomes overburdened, loses focus, or experiences conflicts of interest. There is potential for their confidential information, trade secrets, or other proprietary information to be compromised if an employee is working for a competing organization.¹⁷

Employers hold a vested interest in the matter of moonlighting and its potential implications for their business operations. This is pertinent in the information technology (IT) industry, where technical sophistication and the safeguarding of sensitive information are paramount. There is a need to prioritize securing data against unauthorized access and breaches, as it may have disastrous consequences for the company as a whole.¹⁸ Therefore, employers find it imperative and non-negotiable to be highly vigilant and proactive in identifying and mitigating any potential ‘threats’ posed by moonlighting employees.

TACKLING MOONLIGHTING THROUGH ORGANIZATIONAL SUPPORT

In today’s dynamic and uncertain economic environment, the concept of job security has become increasingly elusive. The traditional notion of a single job serving as a sole source of income and stability is gradually giving way to the trend of individuals seeking additional sources of income as a cushion against potential failure or job loss.

This trend has been further exacerbated by the ongoing COVID-19 pandemic, which has resulted in widespread layoffs and terminations. In such a scenario, it has become imperative for companies to recognize the changing needs and preferences of their employees and provide them with the

¹⁷ Dr. A. Shaji George, & A.S. Hovan George. . ‘A Review of Moonlighting in the IT Sector And its Impact. Partners Universal International Research Journal’, (2022) <[10.5281/zenodo.7114049](https://zenodo.org/record/7114049)> accessed on 1st January 2023

¹⁸ Busulwa R and Evans N, “Digital Business, the Digital Business Imperative, and Digital Business Transformation” [2021] 29 Digital Transformation in Accounting <[10.4324/9780429344589-5](https://doi.org/10.4324/9780429344589-5)> accessed on 5th february 2023

necessary support and resources to navigate these uncertain times.

It is important to note that while individuals may seek additional sources of income through secondary ventures, the primary job still holds significant value and importance as there is never any guarantee regarding the success of secondary, exploratory ventures. Therefore, it is crucial for companies to provide their employees with a sense of security and stability in their primary roles, which can act as a shock absorber and a cushion against potential failure or job loss.

In order to decide on the issue of moonlighting, companies must consider the reasons behind the employees' engagement in such behaviour. If the employee is motivated by financial constraints, or the need to supplement their income, it is important to limit the duration of their moonlighting period due to the risk of exhaustion and burnout, as they may already be working long hours at their primary job. In such a status quo, companies should take proactive steps to support their employees both economically and positively. Rather than prioritizing profit-making exclusively for the benefit of top-level management, it is important for companies to identify the limitations of such a mercenary mindset. Equitable distribution of profits is necessary to create a comfortable and valued working environment for employees, which is essential for the long-term success of the organization

Another way in which organizations can support their employees economically and positively is by offering flexible work arrangements, such as telecommuting or remote work and part-time work, which can enable individuals to pursue other avenues without having to compromise on their primary job responsibilities. Additionally, companies can provide their employees with access to training and development opportunities, which can enhance their skillset and increase their earning potential.

Moreover, companies must recognize the importance of building a culture of trust and transparency, where employees feel empowered to voice their concerns and seek support when needed. Some employees may seek a safer and healthier work environment with sufficient resources to support their well-being. Providing ample incentives and a supportive workspace could potentially mitigate the need for moonlighting as a means of supplementing their overall

aspiration of ‘perfect employment’.

One of the major causes of moonlighting is the employees wanting to pursue an engagement that provides them with better earnings and work hours, which are required to maintain a healthy lifestyle. This inference comes from the ‘hours restriction’ theory, which essentially states that there should be limitations on the number of hours an employer can require an employee to work in a day or a week.¹⁹ This theory in labour and employment law is premised on the notion that prolonged work hours can have adverse consequences on various facets of an employee’s life.²⁰ Excessive working hours can contribute to various physical health problems, such as cardiovascular diseases, musculoskeletal disorders, and fatigue.²¹ Similarly, prolonged work hours can also negatively impact an employee’s mental health, contributing to depression, anxiety, burnout, strained personal relationships etc.²²

Therefore, understanding the nuances of these differences in the motivation behind moonlighting can help in the formulation of efficacious policies and recommendations for managing the practice in the industry.

BEYOND RESTRICTIVE POLICIES: A FRAMEWORK FOR ENCOURAGING RESPONSIBLE DUAL EMPLOYMENT

The trend of moonlighting has seen a significant uptick since the 2008 financial crisis, leading to increased scrutiny from both employers and policymakers due to concerns of potential deception

¹⁹ Pouliakas K, “Multiple Job-Holding: Career Pathway or Dire Straits?” [2017] IZA World of Labor <<https://wol.iza.org/articles/multiple-job-holding-career-pathway-or-dire-straits/long>> accessed 20th December 2022.

²⁰ Caruso CC, “Negative Impacts of Shiftwork and Long Work Hours” (2014) 39 Rehabilitation Nursing 16 <[10.1002/rnj.107](https://doi.org/10.1002/rnj.107)> accessed 31st January 2023

²¹ Kivimäki M and others, “The WHO/ILO Report on Long Working Hours and Ischaemic Heart Disease – Conclusions Are Not Supported by the Evidence” (2020) 144 Environment International <<https://doi.org/10.1016/j.envint.2020.106048>> accessed 10th february 2023

²² Pouliakas K, “Multiple Job-Holding: Career Pathway or Dire Straits?” [2017] IZA World of Labor <<https://wol.iza.org/articles/multiple-job-holding-career-pathway-or-dire-straits/long>> accessed 20th December 2022.

towards the primary employer and the possible risks posed to the main course of employment, as evidenced by the various factors elaborated upon earlier. However, the current circumstances necessitate a reevaluation of the conventional stances on moonlighting and the consideration of alternative approaches that balance the interests of both the employee and employer. This could involve the implementation of policies that permit a regulated form of moonlighting that addresses the needs of both parties while minimizing potential risks and conflicts of interest.

Legal statutes regarding the duration of work, the availability of temporary contracts during periods of economic slowdown, and the potential lack of a statutory wage floor may impact the overall earnings of individuals engaged in their primary occupation.²³ Several pieces of research indicate that the inclination to pursue moonlighting opportunities is largely driven by the potential for a significant wage boost, especially among lower-paying jobs. The need of the hour is to create a comprehensive policy framework that takes into account the unique challenges and opportunities presented by moonlighting and ensures that workers are fairly compensated and do not have to face any exploitation or abuse.

Rather than implementing strict rules or policies that make moonlighting illegal, companies should embrace it as a new norm and work to establish guidelines that ensure both parties benefit from the arrangement. It is imperative that the Human Resources (HR) departments develop measures to safeguard confidential information, protect against conflicts of interest, and incentivize employees to prioritize their primary job responsibilities. This, along with safeguarding the company's confidential information, builds trust and confidence among employees. It also promotes a culture of accountability, mutual respect, and responsibility.

By taking a proactive approach to 'moonlighting', companies can leverage the skills and expertise of their employees to drive innovation, increase productivity, and ultimately gain a competitive advantage in the marketplace.

²³ "Why This Clause in Your Employment Contract Is Unenforceable." (Baker & Company, 1 June 2022), <<https://bakerlawyers.com/employment-law/why-this-clause-in-your-employment-agreement-is-unenforceable/>> accessed 21st January 2023.

Policymakers are increasingly prioritizing the recognition and validation of skills gained through part-time work as a means of enhancing job mobility and creating a more flexible labour market. In light of the current context of double employment, employees who breach contractual duty should be given the benefit of doubt, as disciplinary actions must be contextual and situational. A fair and impartial process, possibly through an arbitrator, should be employed for disciplinary proceedings. Ultimately, disciplinary actions must be proportional to the offence committed and must be based on reasonable rules deliberated upon by both parties as part of the employment contract and governance policies of the corporation.

The issue of double employment in India has been addressed in various state-level legislations, such as the Delhi Shops Act, Bombay Shops Act, as well as in some provisions of the Industrial Employment (Standing Orders) Rules. However, at the central level, only Section 60 of the Factories Act prohibits double employment, and this applies only to factory workers.²⁴ In the absence of a legal restriction at the central level, an employee is free to engage in double employment if there is no prohibition in the employment contract and no non-compete clause is in effect. This legal landscape raises questions about the effectiveness of current laws and policies in addressing the potential risks and conflicts of interest associated with moonlighting. With the IT sector in India undergoing a paradigm shift towards entrepreneurship and the Startup India initiative, it may be opportune to develop an ecosystem that allows for secondary employment without compromising the efficiency and trust of the primary employer.

One possible solution that we propose is the mandate to obtain a No Objection Certificate (NOC) from the first employer to the second employer. This NOC can be verified by a government authority to ensure compliance and accountability, including for taxation and other regulatory objectives. Such a mechanism would be a step towards creating an effective policy that accommodates the requirements of both employees and employers.

A regulatory body dedicated to managing dual employment in the IT sector can be made responsible for verifying the NOCs issued by primary employers to their employees seeking

²⁴ The Factories Act, 1948 (India)

secondary employment. This body shall consist of a national board and two state-level boards, one overseeing secondary employment in the non-IT sector and the other dedicated to overseeing secondary employment within the IT sector. The NOCs must be verified by the appropriate board before the employee can begin their secondary employment. By implementing a streamlined procedure, the government can effectively serve as a third party and remain informed about the ongoing developments in the concerned sector.

As the IT sector continues to expand globally, and telecommuting becomes increasingly common, it is important for India to integrate its IT sector into the global market. This calls for a streamlined process of obtaining NOCs for individuals working for international employers while located in India. For this, the proposed national regulatory body should include provisions for verifying and issuing NOCs for international employment. This will benefit the Indian IT sector along with creating new opportunities for employees to work with global clients, contributing to India's economic growth and development in the digital age. This national board should work in conjunction with the state-level boards to maintain consistency and standardization in the overall regulatory process. By implementing such a system, the IT sector can facilitate international job opportunities for employees without compromising the integrity and efficiency of their primary employment.

It is imperative that the said NOC issued by the regulatory body contains specific and detailed information regarding the secondary job. This includes the rationale for pursuing the additional job, the nature of the work involved, the expected working hours and remuneration, among other relevant details. By mandating the inclusion of such information in the NOC, the regulatory body can ensure that the employee is engaging in a legitimate and lawful form of double employment, without jeopardizing the primary course of employment or breaching any ethical or legal obligations. Such measures can also help in promoting greater accountability and compliance among both employers and employees, thereby fostering a more sustainable and responsible approach towards double employment in the IT sector.

In the event that an employer denies a NOC for double employment, a letter must be provided detailing the reasoning behind the decision. This letter should be sent to the appropriate regulatory

body, depending on whether the request pertains to IT to non-IT or IT to IT employment or international employment. If the regulatory body accepts the reasoning provided in the letter, the decision stands. However, if the regulatory body rejects the reasoning, the employer must either issue the NOC or submit a new letter with a fresh rationale for rejection within 15 days of the initial decision and send it to the regulatory body for further review. It is crucial that the regulatory body assesses these requests with utmost care to ensure that the interests of all parties involved are protected and that the system remains transparent, accountable, and fair.

A scenario may arise where an employee disagrees with the reason given by the body for not issuing a No Objection Certificate (NOC) even if it is acceptable to the body. In such an event, there is another opportunity for redressal. By the virtue of the employee being covered under the scope of “workmen” under the current Industrial Disputes Act 1947, they can invoke Section 11 of the Industrial Disputes Act that deals with the ‘Procedure and powers of conciliation officers, Boards, Courts and Tribunals’.²⁵ However, it is worth noting that a fee is typically required to deter employees from making frivolous applications in the event of the NOC being denied.

CONCLUSION

The conventional work structure of a single job per employee is undergoing a transformation, as individuals seek to augment their income streams through multiple employments. This trend is particularly evident in the IT sector, where the demand for specialized skills has resulted in an increasing number of individuals taking up secondary jobs as consultants or freelancers. Individuals at different levels of the organizational hierarchy may explore additional sources of income through different means. For instance, those at the higher echelons of organisational hierarchies may consider offering consultancy services, whereas those at the lower end may opt to engage in the gig economy through multiple jobs.

Allowing employees the opportunity to work for multiple employers, with proper regulations in place, is essential in today's competitive job market. Restricting an employee's ability to engage in outside financial activities or work for a competing business excessively impedes their ability to

²⁵ Industrial Disputes Act 1947 (India)

exercise their talents, pursue their interests, and supplement their income. Regularised double employment has the potential to facilitate skill acquisition, promote professional development, and sustain employee productivity. Therefore, it is crucial to legalize and structure multiple job holding to support human capital development and promote economic sustainability. Existing policies and regulations that limit outside activities, particularly in the IT industry, must be re-evaluated.

The Indian workforce is constantly evolving with new trends and practices. As the country contemplates a shift towards a 4-day work week, it is vital to reevaluate the policies surrounding moonlighting and explore the possibility of legalizing and structuring dual employment. With the advent of entrepreneurship and the IT startup boom in India, there is a growing need for a regulatory framework that allows for a regulated form of double employment. The traditional stance of deterring moonlighting may no longer be suitable for the changing times. By creating such a regulatory body to tackle the issuance and verification of NOCs for secondary employment, the Indian workforce can benefit from a more structured approach to moonlighting that minimizes risks and conflicts of interest. Moonlighting may very well be the future of work, and India needs to embrace this change by transforming its regulations to accommodate this emerging trend.

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