

MOONLIGHTING: DUAL EMPLOYMENT IN INDIAN LAW

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INTRODUCTION

Economists refer to India as a country with a surplus of workers as a labor surplus. All of these things are caused by the fact that our nation is the world's second-largest in terms of population. Many private sector workers are required to work long hours and are paid less than the federal poverty line. People were compelled to work two jobs to cover their expenses as a result.

WHAT IS MOONLIGHTING?

The name "Moonlight" comes from the word "Moonlighter," which means someone who works at night and under the moonlight. This was used in 1882 when an organized band in Ireland committed nighttime robberies and murders as part of their agrarian outrages. In American English, the term "moonlighter" meant "one who goes serenading during the moonlight nights."¹ Nowadays, moonlighting can take many different forms, such as starting a side business, working as a freelancer, or working part-time. People may take on part-time work for a variety of reasons, including the need to increase their income, the desire to pursue a passion or hobby, or the need for additional work experience.

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A few of the many benefits of moonlighting include increased financial security, professional development, and the opportunity to pursue interests outside of one's primary job. Time management issues, conflicts of interest, and the risk of burnout from working long hours are all potential downsides.²

WHY DOES MOONLIGHTING OCCURS?

When working as a side hustle, it's not always about making more money. Let's take a look at the reasons why people still take on a second job.

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¹ Barira Parvez, legal service India < <https://www.legalserviceindia.com/legal/article-9591-moonlighting-dual-employment-in-indian-law.html> > accessed 20th February 2023

² Chatgpt < <https://chat.openai.com/chat/6149b78f-0dd9-401b-bceb-a2702fb165d5> > Accessed 20th February 2023

PLAN B/ ADDITIONAL INCOME SOURCES

Having a backup plan or an additional employment source is always a good first step toward achieving financial stability and security in the future, as any experienced financial planner will tell you. People have lost jobs and have been pushed to the brink of poverty as a result of the worst global economy since World War II. According to a private organization known as the Centre for Monitoring Indian Economy, India's unemployment rate will be 6.50 percent in September 2022. It is 6.00% in rural India and 7.70% in urban India. People naturally have contingency plans in such situations.

CHANGE OF CAREER

Occasionally, people who want to change careers take on a second job to get used to it. People moonlight for a side job that gives them the experience they need to later land lucrative employment in their target industry if they don't have a formal background in it. Occasionally, people who want to change careers take on a second job to get used to it. You can continue working for your current employer while looking for side jobs or opportunities to work for yourself as a freelancer in any industry you choose. Many people work as a side job if they don't already have a formal foundation in their field. This gives them the experience they need to get a lucrative job in their field later.³

MULTIPLE SOURCES OF INCOME

You should always have multiple sources of income, as any financial advisor will tell you. A side business or investments that provide a passive income source are options for some. However, for some, it's a second job. It never goes out of style to make extra money, and that's probably what makes people moonlight.

PAYING OFF DEBT

India, along with the rest of the world, experienced significant job losses during the COVID-19 pandemic. Despite the fact that the coronavirus is not currently considered a major health emergency, things appear to be far from improving. Financial analysts predict a recession that cannot be avoided, and as a result, problems in the employment sector continue to get worse.

³ Barira Parvez, legal service India < <https://www.legalserviceindia.com/legal/article-9591-moonlighting-dual-employment-in-indian-law.html> > accessed 20th February 2023

Moonlight is being used by people to pay off debt. It could be a laptop, a car, or a home loan they took out before the pandemic. They are able to afford it thanks to a second job.

PASSION

For some, it's more about following your passion than it is about money. However, you might not always be able to make a living doing what you love. Therefore, you must work during the day and DJ at night. Even if a passion project doesn't immediately turn into a significant source of income, it might be beneficial in the long run. As a result, you can pursue your passions without worrying about losing your primary source of support by moonlighting.

CREATIVITY

For the sole purpose of ensuring their financial future, many people are confined to routine occupations. When their day-to-day lives prevent them from using their ingenuity, people turn to a side job as a way to keep their minds active and stay on top of their game. You can sometimes find the challenge you need to rekindle your creative side by working a part-time second job. You might not be motivated to come up with novel concepts or approaches to completing tasks if that obstacle is not present.⁴

IS IT ETHICAL?

When it comes to moonlighting, opinions in the IT industry range widely. The chairman of Wipro, Rishad Premji, stated in a tweet that moonlighting in the tech industry is dishonest. Premji and former Infosys director Mohandas Pai disagree on this point. He doesn't think working for someone else is cheating.

According to Mohandas Pai, employment is a contract between employers and employees in which employees are compensated for working for them for "n" hours per day. The employees are free to do whatever they want after the "n" hours.

LEGAL RULES FOR DUAL EMPLOYMENT IN INDIA:

It is not against the law to hold more than one job in India. However, due to the fact that many employers include such restrictions in their employment agreements as well

⁴Sounak Mukhopadhyay, mint (14th September 2022) <https://www.livemint.com/news/india/why-moonlighting-why-do-people-take-up-a-second-job-anyway-11661918379778.html> accessed 21th February 2023

as rules prohibiting holding down multiple jobs, a person with a similar set of jobs may raise concerns regarding a breach of confidence. Moonlighting may be considered cheating if an employee's contract includes non-compete and exclusive employment, as is the case with the majority of traditional employment contracts.⁵ In India, dual employment is restricted by the following laws. Workers are prohibited from working in more than one factory at the same time, according to the Factories Act of 1948, Section 60. However, an IT professional or any employee holding an administrative or supervisory position is not included in the Factories Act's definition of a worker.

Employees employed in shops, restaurants, theaters, commercial establishments, and other public amusement or entertainment venues are subject to the Shops and Establishments Act. The Shops and Establishments Act is unique to each state. Double employment was restricted by the Delhi Shops and Establishments Act and the Bombay Shops and Establishments Act.

According to the Industrial Employment (Standing Orders) Central Rules of 1946, a worker should not work against the industrial establishment's interests and should not take on any additional work that might hurt the employer's interests. However, workers are exempt from all of the aforementioned laws, which do not apply to professionals or employees in administrative or supervisory positions. As a result, in the IT industry, there is no overbearing law that prohibits dual employment or freelance work. However, because employment agreements include such restrictions, there may be a breach of confidentiality when employees perform similar tasks. Employers may view moonlighting as cheating if an employee's contract contains non-compete and single-employment clauses. However, it is not dishonest when employment contracts offer severities or do not include such a provision. Therefore, employees must review the employment contract and ensure compliance with any moonlighting policies prior to taking on a side job or starting a business.⁶

⁵ Barira Parvez, legal service India < <https://www.legalserviceindia.com/legal/article-9591-moonlighting-dual-employment-in-indian-law.html> > accessed 22th February 2023

⁶ Mayashree Acharya, cleartax (13th September 2022)< <https://news.cleartax.in/concept-of-moonlighting-and-its-legality-in-india/8455/> > accessed 22th February 2023

WHAT IS THE PUNISHMENT FOR DUAL EMPLOYMENT?

The dual employment provisions of Indian law do not specify the penalties for dual employment. Numerous court decisions state that dual employment in India has led to the termination of employees who hold both positions.

CAN YOU BE FIRED FOR MOONLIGHTING?

According to legal experts, courts have previously granted employers the right to fire employees who moonlight. Dual work is also limited by the factories act. However, IT businesses are exempt from this rule in some states.⁷

MOONLIGHT CLAUSES:

An employment contract with a moonlighting clause has negative covenants that prohibit the employee from working elsewhere during or after the term of the contract. Employers use it to ensure that employees devote their full attention and energy to their current position and to safeguard the interests of the business. It is a clause with a negative covenant that prevents an employee from working two jobs at once. As a result, it prevents an employee from switching jobs while they are employed by another company. Moonlighting is working a second job during one's regular working hours. The purpose of adding moonlight clauses to an employment contract is to guarantee employees' focus and efficiency at their current job. The moonlight clause can only be included and signed by both the employer and employee with their free consent. A moonlight clause is legally enforceable in India, and it can be enforced whenever necessary. The employer should mention dual employment as grounds for termination of employment in an employment agreement to prevent dual employment. He can ensure that dual employment is against his employment contract in this manner. Dual employment is regarded as a valid ground for termination of employment, despite the fact that the Indian labor laws do not address the issue. This can be stated in the employment contract by employers. The laws and courts accept the actions taken against dual employment because it affects individuals' and organizations' well-being. The courts did not rule that terminating a worker for having two jobs is against the worker's right. Companies include moonlight clauses in their

⁷ Bizaccen knnect <<https://bizaccenknnect.com/what-is-moonlighting-is-moonlighting-illegal-in-india-can-a-company-sue-for-moonlighting-moonlighting-policy/>> accessed 23th February

employment agreements to address dual employment. By creating a proper framework, the organizations' HR policies should also establish a position on dual employment. Employers can include moonlight clauses in their contracts in addition to enacting legislation. The term itself refers to working another job during regular business hours.

In the event of dual employment, the Indian employment laws and regulations have the same goal. Man is not a machine; he is a social animal that needs family, social life, and rest. As a result, everyone's and society's well-being depends on getting enough rest and leisure time. Dual employment is prohibited by Indian employment laws.⁸

CASE LAWS

1. In a case involving the transfer of an employee from a factory to the head office, manager, **Pyarchand Kesarimal Ponwal Bidi Factory vs. omkar Laxman Thange and others (AIR 1970SC 823)**, the supreme court made the following observations: “the general rule in respect of the relationship of master and servant is that a subsisting contract of service with one master is a bar to service with another master unless the contract otherwise provides or the master consents.

2. Article 21 of the constitution includes the right to life and personal liberty. The right to life has been read broadly with the right to livelihood in the case of **the Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendra Nath Nandkarni (1983) 1 SCC 124.**- The Court concluded that "the right to life" guaranteed by Article 21 encompasses "the right to livelihood".⁹

3. The Madras High Court in the case of *Government of Tamil Nadu vs. Tamil Nadu Race Course General Employees Union (1993 1 LLJ 977 Mad)*, citing the aforementioned Supreme Court judgment held, “*if the contract otherwise provides, or the master consents, there may not be any prohibition to have dual employers*”.¹⁰

⁸ Adv. Rashmi Kumari , lawtendo (3rd April 2021) < <https://www.lawtendo.com/blogs/analysis-of-dual-employment-laws-in-india> > accessed 22nd February 2023

⁹ Barira Parvez, legal service India < <https://www.legalserviceindia.com/legal/article-9591-moonlighting-dual-employment-in-indian-law.html> > accessed 23rd February 2023

¹⁰ Bishen Jeswant & varsha Sriram , ‘Cyril amarchand mangaldas ‘(10th October 2022)< <https://corporate.cyrilamarchandblogs.com/2022/10/moonlighting-legal-considerations-and-contractual-regulation/> > accessed 24th February 2023

CONCLUSION

Dealing with moonlighting is a delicate and challenging situation for businesses. This law is even more susceptible to being twisted according to one's own interpretation because there is no concrete law regarding it. This seems fair and just from the general public's perspective. However, organizations or businesses do not operate according to ideals or delusions of right and wrong. It is governed by contracts, policies, and laws. a lack of which can result in a haphazard, chaotic, and mismanaged situation. This may even pose a threat to the economy. As a result, a law that effectively addresses "dual employment" or "moonlighting" can be drafted by the court or the government to make it easier to regulate and govern while also considering the needs of the people and safeguarding their fundamental rights.

