

Rights of Workers in the Era of Remote Work in India: Legal Challenges and Solutions

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Abstract:

In the rapidly evolving landscape of remote work in India, there is a pressing need to navigate the legal challenges inherent in this shift. This article delves into the intricacies of the rights of remote workers within the Indian legal framework, aiming to offer insightful analyses and viable solutions. The article explores the dynamic nature of remote employment, particularly amidst the backdrop of the COVID-19 pandemic.

Remote work, a burgeoning trend accelerated by global circumstances, presents both opportunities and hurdles for workers and employers alike. Despite its prevalence, remote work lacks specific regulation under Indian law, posing challenges in areas such as contractual agreements, labor disputes, and worker protections. These challenges are compounded by the absence of clear guidelines and monitoring mechanisms, leading to concerns over productivity, work-life balance, and mental health.

To address these complexities, the article advocates for the establishment of comprehensive regulations tailored to the nuances of remote work. Emphasizing objective-based performance assessments, flexible work arrangements, and safeguards for worker well-being, it underscores the importance of adapting legal frameworks to accommodate the evolving nature of employment relationships. By navigating these legal challenges and implementing effective solutions, India can foster a more equitable and sustainable remote work environment, ensuring the protection of workers' rights in the digital age.

Keywords: Remote work, worker protections, Legal challenges, Workers' rights, work-life balance.

1. Introduction

Considering remote work in the Indian context, it is important to address and foresee potential legal challenges for both employees and employers. This article aims to provide an in-depth analysis of the legal rights of remote workers in the Indian context. It highlights challenges and provides possible solutions, keeping in mind the interests of both the employee and employer.

The dynamic and constantly evolving global market has revolutionized the face of employment, transforming traditional employee-employer relationships and creating innovative flexible work formats that benefit both the employer and employee. One of these formats, which has seen tremendous growth in recent years, is remote work. Remote work has shown promise in boosting industries and economies by maximizing the quality and effectiveness of workers in diverse sectors. The impact and potential of remote work are amplified in the light of the global COVID-19 pandemic and the enforcement of strict social distancing measures. Given the high transmission rates of the respiratory infection and its

pandemic status, businesses and public institutions are turning to remote work as an urgent and necessary response to ensuring business continuity while ensuring the safety of their workforce.¹

1.1. Overview of remote work in India

Remote work, although not regulated or defined under any Indian law, is essentially work that is not conducted from a traditional office setting. With the advent of globalization and proliferation of internet and mobile technology, coupled with increasing commercialization of private life, working remotely has become a prevalent mode of work. India has seen a steep rise in the culture of remote work with an increasing number of Information Technology (IT) companies as well as a start-up culture, both of which prefer to offer flexibility in work location and hours.² Furthermore, there is an increasing number of foreign companies, especially in the software and development sector, outsourcing their work to Indian entities or hiring Indian employees. With the recent COVID-19 pandemic, the Government of India, followed by respective State Governments, issued advisories and directives to employers to extend the benefit of work from home to its employees in order to reduce physical presence at the workplace and contain the spread of the virus. While this was an impromptu decision to combat the unforeseen situation, it has led to rethinking on how work and work contracts are structured in India, more particularly, from the standpoint of both the employers and employees.³

1.2. Importance of addressing legal challenges

There are several sectors in India which could reap considerable fiscal benefits from a well-regulated regime to facilitate remote working, and India's outsourcing industry could be the most significant beneficiary. Firms could obtain considerable cost savings on real estate and facilities expenditures which are amongst the highest in the world in India. Workers in this sector could shift to less costly suburban or rural locations if they are not bound to a physical workplace, and this could mitigate some of the societal and economic inequalities exacerbated by rapid urbanization in India. However, in the absence of relevant laws, a number of complex legal issues could serve as obstacles to the realization of this potential. Making provisions for remote work in an employment contract between an employer and employee could be easily undone by the operation of section 5 of the Indian Employment Act which stipulates that all terms and conditions of employment that are less favorable to workers than rights conferred under the Act are void. With a recent ruling of the Supreme Court of India that those working in call centers can be classified as 'workmen', it has been held that provisions of the Industrial Disputes Act apply to them. If section 2(s) of this Act, which defines a 'workman' to include those holding 'an office or a railway, having worked in an airfield, motor transport undertaking, mine, oilfield or port', is given a broad meaning, it could be interpreted that the workman has to actually be physically employed at the location, advocated for by his entitlement under the Act to claim wages for non-working period due to lay-off or retrenchment. If remote work is not successfully distinguished from employment at a physical location, the rights of remote workers under this legislation will be affected.⁴

¹ Prasad, K. D. V., Vaidya, R. W., & Mangipudi, M. R. (2020). Effect of occupational stress and remote working on psychological well-being of employees: an empirical analysis during covid-19 pandemic concerning information technology industry in Hyderabad. *Indian Journal of Commerce and Management Studies*, 11(2), 1-13. ijcms.in

² Sagara, H. & Das, K. (2020). Technological disruptions and the Indian IT industry: Employment concerns and beyond. gidr.ac.in

³ Mukherjee, S. & Narang, D. (2023). Digital economy and work-from-home: The rise of home offices amidst the COVID-19 outbreak in India. *Journal of the Knowledge Economy*. springer.com

⁴ Mohan, M. P. (2020). Exclusion clauses under the Indian Contract Law: A need to account for unreasonableness. *NUJS L. Rev.*. nujlawreview.org

2. Legal Challenges Faced by Remote Workers

India currently does not have any legislation regulating the terms and conditions of employment in the unorganised sector, which forms the majority of remote work in the country. This presents a major issue for remote workers when their terms of work are not clearly defined in any form of employment contracts. If a dispute may arise between the worker and the employer, there is no specific legislation that the dispute may be referred to and hence it would be more difficult to resolve. The lack of legislation also affects the potential for remote work in India to be considered by workers outside the unorganised sector or employers as a viable alternative to on-site work. With no regulations specifically for remote work, the terms and conditions of remote employment would still be based on current labour laws, making it less attractive for parties who may wish to have more flexible arrangements unique to remote work. If any form of legislation were to be created for remote work, it should extensively cover all types of remote workers from the unorganised sector to even those engaged in fixed employment under an employer but carry out most of their work off the employer's premises. The legislation should also aim to be an alternative to current employment laws where the terms of remote employment can be more favourable to both worker and employer.

2.1. Lack of clear regulations for remote work

The recent notification by the Ministry of Labour and Employment, Government of India, brings into force various mandates of the Occupational Safety, Health and Working Code 2020 and the Code on Social Security, 2020. However, the codes fail to contemplate remote workers as a different class of workers in comparison to others. This is evident by a concatenated reading of the codes, since there is no specific definition and circumstances under which a person can be considered a remote worker.⁵ Further, the codes fail to mention the applicability of the provisions to remote workers and how it will impact the employer and the remote worker. It is pertinent here to note that it may also lead to confusion and/or misuse of the provisions of the codes, thus affecting the loss of essential benefits of remote workers. For example, and as stated earlier, Social Security benefits could be extended to remote workers. However, an employer may misuse the same for adjustment of wages of a remote worker with reduced benefits against work to be provided. This clearly demonstrates that the legislature not only lacks adequate regulations but also fails to foresee the impact of the regulations on remote workers and their employers.⁶

2.2. Difficulty in monitoring and ensuring productivity

The potential unemployment or uncertainty for the job can be extremely detrimental to the labour force. India has a sizeable unemployment rate for people who are qualified for a job but are unable to find employment. Job insecurity can lead to reduction in work productivity and several employees have reported that remote work conditions can potentially lead to salary cuts and disruptions in their careers. High skilled contractual employees can also potentially lose their job contracts with foreign employers. With India having no uniform regulations for remote work, nothing can be done to ensure the job

⁵ Béland, L. P., Brodeur, A., & Wright, T. (2023). The short-term economic consequences of Covid-19: exposure to disease, remote work and government response. *Plos one*. [plos.org](https://doi.org/10.1371/journal.pone.0278888)

⁶ Gorodeski, E. Z., Goyal, P., Cox, Z. L., Thibodeau, J. T., Reay, R. E., Rasmusson, K., ... & Starling, R. C. (2020). Virtual visits for care of patients with heart failure in the era of COVID-19: a statement from the Heart Failure Society of America. *Journal of Cardiac Failure*, 26(6), 448-456. [nih.gov](https://doi.org/10.1177/1535764720958888)

security for these employees. The lack of legal rights and remedies will be discussed in the later sections.⁷

One of the unique things about India is that the work culture and approach varies from industry to industry and employer to employer. Labour laws aside, various companies have different work environments and conditions for their employees. Some companies are very stringent about work hours and productivity while some are laid back and give employees more flexibility with work hours. However, with remote work being applicable to all sectors, there is no one glove that fits all for the way work must be done. It is up to the employer to decide whether the work can be done from home and the work conditions which can be modified at any time. This can potentially affect the employment of many people because of change in work conditions and result in termination or layoff due to factors other than employee performance.⁸

In India, the performance of the employee is deeply connected to the relationship with the employer and has always been a significant factor in the employer-employee relationship. However, with remote work, there is absence of supervision and monitoring by the employer which can lead to anxiety for the employer and can potentially harm the job prospects of the employees. The employer is uncertain whether the work will be done and employee will be concerned that his job is on the line by not being in proximity with the company.

This uncertainty is the result of lack of monitoring and ensuring work productivity for both the employer and employee.⁹

2.3. Addressing work-life balance and mental health concerns

The traditional nine-to-five work schedule is deeply ingrained in employment culture and is frequently seen as a benchmark for commitment and productivity. Because remote work is a relatively new concept and employers often struggle to adjust from a mentality of minimum hours = minimum productivity, one common challenge faced by remote workers is that they are often expected to work longer hours than their in-office counterparts as a way of demonstrating their productivity. This was highlighted in a 2017 report which found that remote workers in the US, UK, Germany, and France worked an average of 4 more hours per week than those based in an office setting. While it's great to have motivated employees, the pressure to be 'always on' and fear of being judged as less productive than colleagues can lead to stress and eventually burnout. This can be particularly damaging in cultures that stigmatize mental health issues or in countries such as Japan where death by overwork is a legally recognized phenomenon. High stress and long hours can also have a detrimental effect on family life, potentially leading to marital strain and damage to the relationship between remote parents and their children. It's important for employers to consider the long-term effects of an 'always on' culture and to set reasonable work hour expectations. In order to ensure adequate rest, Japan has taken a creative approach and some companies are limiting overtime by shutting off lights and powering down computers at a certain time.

⁷ Prasad, D. K., Mangipudi, D. M. R., Vaidya, D. R., & Muralidhar, B. (2020). Organizational climate, opportunities, challenges and psychological wellbeing of the remote working employees during COVID-19 pandemic: A general linear model approach with reference to information technology industry in Hyderabad. *International Journal of Advanced Research in Engineering and Technology (IJARET)*, 11(4). academia.edu

⁸ Ibid

⁹ Savolainen, I., Oksa, R., Savela, N., Celuch, M., & Oksanen, A. (2021). Covid-19 anxiety—a longitudinal survey study of psychological and situational risks among Finnish workers. *International journal of environmental research and public health*, 18(2), 794. mdpi.com

While this doesn't directly address work hours, it does force an end to the workday and provide a clear indicator to employees that they should be resting.¹⁰

3. Solutions to Protect Workers' Rights

According to the survey, 45% of remote workers believe that performance assessment is much more intrusive when compared to on-site workers. Assessment in a remote situation is very important, but the employees still feel uncomfortable with direct manager's observation. It can lead to psychological stress and inaccuracy in the assessment result. In a remote work situation, the employee's performance cannot be accessed merely from a visual indicator, thus still making the assessment based on output and outcome the best option. The assessment of output and outcome is directly linked to the objective-based performance. By turning the performance into a series of objectives, the duration can be set as a clear parameter and can be measured regularly with or without assessment from the manager. This method is more effective compared to an assessment based on visual indicators and reduces the perceived surveillance from the manager, which makes the employee feel uncomfortable.¹¹

The regulations must also include rules about working hours at the remote setting and the time flexibility option. The time flexibility option is very common to achieve better work-life balance and mental health for the employee, thus giving much less psychological stress when managing the job with personal life. Different from result-based performance, time flexibility is a concept where the employee is allowed to change the start and finish time of the daily work shift within a certain period, with the total working hours maintained at a specific amount. If an employee takes the time flexibility option to do their job after meeting the client at the location, they must have an agreement so they are not being called into the office on that specific day, thus meaning the employee must have a good understanding of the expectations of the time flexibility option. Lastly, the employer must also have a clear view of the discipline violation and its punishment for the remote employee. By having the rules stated above, the employer must also provide a clear explanation to the employee about the expectations and why the employer, together with the employee, is choosing remote work as an option.¹²

The first solution to protect workers' rights in the era of remote work is by establishing clear guidelines and regulations for remote work, focusing on the objective-based performance. Such guidelines and regulations must explain the policy about eligibility to work remotely and tasks that are prohibited to be done at remote sites. It must be included that remote work is an option, not an obligation, thus giving the employee an equal judgment in deciding their work setting. The purpose of this regulation is to make sure the employee understands what the expectations from the employer are for them to have a better understanding of which tasks they are allowed to do remotely and what tasks are supposed to be done on-site. Plus, the expectations can also be used as a measurement for the employee's performance in the remote setting.¹³

¹⁰ Aksoy, C. G., Barrero, J. M., Bloom, N., Davis, S. J., Dolls, M., & Zarate, P. (2022). Working from home around the world (No. w30446). National Bureau of Economic Research. aeweb.org

¹¹ Singh, P., Bala, H., Dey, B. L., & Filieri, R. (2022). Enforced remote working: The impact of digital platform-induced stress and remote working experience on technology exhaustion and subjective wellbeing. *Journal of Business Research*. nih.gov

¹² Shirmohammadi, M., Au, W. C., & Beigi, M. (2022). Remote work and work-life balance: Lessons learned from the covid-19 pandemic and suggestions for HRD practitioners. *Human Resource Development International*, 25(2), 163-181. tandfonline.com

¹³ Pathak, H., Kumar, G., Mohapatra, S. D., Gaikwad, B. B., & Rane, J. (2020). Use of drones in agriculture: Potentials, Problems and Policy Needs. *ICAR-National Institute of Abiotic Stress Management*, 300, 4-15. icar.gov.in

3.1. Establishing clear guidelines and regulations for remote work

The Code on Social Security, 2020 recognizes 'platform work' and defines it to mean a work arrangement outside of a traditional employer-employee relationship, in exchange for a fee, using an app or platform which enables the exchange of information or service by digital means and on a short-term basis. This definition seems to resemble remote work; however, section 2(57) specifically deals with platform workers who operate in the informal economy, who have been provided with a more secure livelihood through accessing larger databases of work opportunities and have been given a different identity from informal labor. It does not cover home workers who have been shown to constitute a large part of remote workers in India during COVID-19. Home workers experienced many legislative changes that worked against them, and the social security code seeks to formalize and extend social security to many informal economy workers over a period of time. This change in legislation should extend to the contract of remote workers, but there is a reluctance in accepting home work as a form of remote work.¹⁴ The Indian government changed the way it perceives and defines 'work' in four different codes enacted in 2019. These codes show a shift in the regulatory framework for Indian labour, and they are the Code on Wages, the Industrial Relations Code, the Occupational Safety and Health and Working Conditions Code, and the Code on Social Security. The codes cover various aspects of employment relations and working conditions and seek to make India more employer-friendly. Only the Code on Social Security provides some security for remote platform workers in section 2(57).¹⁵

3.2. Implementing effective monitoring systems for remote workers

Efforts to protect remote workers' rights by implementing legal solutions are likely to meet with limited success if there is no effective way of monitoring and enforcing compliance with new regulations. Historically, monitoring workers' performance and conduct has been relatively straightforward. For the vast majority of employment relationships, it has been possible for management to directly observe employees' behavior. If we had to keep an eye on someone, what they are doing, simply we could assess that by looking at them. However, working at the same place, doing office work, does not take away the possibility that an employer could keep an eye on an employee, what they are doing. But this thing gets changed when work is something not to be done in a fixed place. Similarly, formal systems of monitoring work have typically been based on observation of work settings with subsequent discussion between workers and their immediate supervisors of the work that has taken place. These historical methods of monitoring workers' performance can be applied to remote workers, but that is not effective as there are drastic changes in the means and methods of today's increasing technology. All workers today are equipped with a variety of communication devices such as telephones, mobile phones, fax machines, and computers enabling them to work outside the traditional office. These technologies help facilitate the growing trend by modern employers to have workers work remotely, either from home or elsewhere. In order to effectively monitor work conducted by remote workers, employers are increasingly resorting to the use of various forms of surveillance and monitoring of workers' home work environments. This raises a number of privacy and other legal concerns for remote workers.¹⁶

¹⁴ Kumar, S. & Choudhury, S. (2021). Migrant workers and human rights: A critical study on India's COVID-19 lockdown policy. *Social Sciences & Humanities Open*. [sciencedirect.com](https://www.sciencedirect.com)

¹⁵ Nikita, L. & Ilona, V. (2021). Remote work and platform work: The prospects for legal regulation in Russia. *Russian Law Journal*. cyberleninka.ru

¹⁶ Madhav, A. S., & Tyagi, A. K. (2022). The world with future technologies (Post-COVID-19): open issues, challenges, and the road ahead. *Intelligent Interactive Multimedia Systems for e-Healthcare Applications*, 411-452. [researchgate.net](https://www.researchgate.net)

3.3. Providing support for work-life balance and mental health

The government and employers need to formulate policies where women should not be compelled to work overtime or engage in any work that might be detrimental to their health and safety. It should also be made mandatory for employers to ensure their safety and avoid work that may be dangerous for women workers. This is particularly relevant in today's context where remote work may continue for a prolonged period. Failure to do so is punishable with imprisonment or a fine, which will serve as a deterrent for default among employers. In this view, women workers can appoint Health and Safety inspectors under the Factories Act to check if the provisions of the Act are complied with.¹⁷

Under the Indian Factories Act, 1948, there is no limitation for women to work overtime. There is also no law that specifically prohibits women from being given certain types of work or work in certain situations. However, long hours of busy work with no rest are restricted for women only, as well as employment in certain dangerous operations. This situation might adversely affect the health and safety of women workers. Although these laws are specific to jobs for women in factories, they are still relevant today. Now, women are engaged in jobs at home and working longer hours while simultaneously doing the housework, which proves to be more taxing than work in the office.¹⁸

The Covid-19 pandemic has blurred the lines between work and home for many Indian workers, as they are now operating from home, and the balance between work and life is disturbed.

Doctor Abhishek Swamy, Associate Director and Head of the Strong Mental Health Program at United Way Mumbai, says, "I am concerned about the women who are working from home but are burdened with excessive household work. They feel pressurized, and more often than not, their official work suffers due to the lack of a defined boundary between office work and housework."¹⁹

4. Conclusion

India's legal system has been deficient in foreseeing new technological and industrial transformations and in providing for the needs of the emerging society. It is therefore pertinent for the state to take measures to regulate the 'New Economy' which is marked by increased usage of technology and globalization. The present legal framework pertaining to the establishment of employer-employee relations, working conditions of the employees, social security benefits, and resolution of disputes largely caters to the traditional mode of working. As the nature of the employer-employee relations and the concept of a workplace undergo a change, it becomes essential to interpret and redefine the existing laws in order to make them applicable and effective for the workforce engaged in non-traditional work arrangements. Failing which, the lacunae in law would give employers an opportunity to circumvent the law and reduce labor costs by engaging in various non-standard work arrangements. This might lead to a situation where the benefits and protection available to a certain category of workers are less than what is available to 'traditional workers', thereby creating a divided labor market. To avoid such a situation, it is necessary to ensure that all workers are provided with equal protection and benefits on par with

¹⁷ Das Swain, V., Gao, L., Wood, W. A., Matli, S. C., Abowd, G. D., & De Choudhury, M. (2023, April). Algorithmic power or punishment: Information worker perspectives on passive sensing enabled ai phenotyping of performance and wellbeing. In Proceedings of the 2023 CHI Conference on Human Factors in Computing Systems (pp. 1-17). [acm.org](https://www.acm.org)

¹⁸ Shukla, S. & Dewan, Y. (2021). Provisions Regulating Employment of Women in Factory: Factories Act, 1948 & Social Security. *Supremo Amicus*. supremoamicus.org

¹⁹ Jain, S. (2021). Work life balance: Issues and challenges during COVID-19. *Journal of Management Studies and Academic Research*, 6, 5-10. sdmcbm.ac.in

'traditional workers'. This would require a combination of legislative reforms and judicial interpretation of the existing laws.

4.1. Summary of key points

Rising trend of remote work seen in the wake of Covid-19 pandemic, many employment relationships are becoming disembodied from the traditional, physical workspace. This has created significant challenges in the sphere of regulation and protections for workers. With the exceptions of a few laws specifically targeted at certain types of teleworkers, who can be far removed from the employer's place of business, labour and employment laws were written for onsite work and presume a workspace where employers exercise a fair amount of control. In response to current situation the Indian government has changed the definition of 'workman' in The Industrial Disputes Act, 1947 from being a person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire reward. While it is to provide job security to workers employed in IT and IT enabled services who enjoy a supervisor of any protected category while working onsite, this change may have the unintended consequence of excluding onsite IT workers from the protection of the statute. This definition presumes a fixed place of work. It makes it uncertain whether a software developer or other IT workers who do not directly fall under definitions for manual, clerical or supervisory work, and who may no longer be reporting to any fixed place of work, would be considered workman and therefore eligible for statutory protections. The absence of a clear definition for remote work and a requirement for employers to maintain terms and conditions of employment when allowing employees to work outside the office can cause potential issues a multitude of Indian labour laws. Terms and conditions are maintained under various laws such as the Industrial Employment (Standing Orders) Act, 1946, which requires employers to define conditions of work in writing and file it with the certifying officer, and The Payment of Bonus Act, 1965 which requires maintenance of the same bonus payment conditions. Failure to uphold these terms and conditions for remote work could be considered a unilateral change in the conditions of employment. This is a punishable offence under various laws and also an adverse change to the employees' conditions of work in The Industrial Disputes Act, 1947. An adverse change to conditions of employment is very broadly defined and could include various indirect measures which affect job security or resources available for performing work. Due to it being a somewhat complex and fact specific determination, several types of dispute arising from it. Including non-compliance with specific statutory requirements and what exactly constitutes adverse change in conditions of employment, any issues addressed in Industrial Disputes Act 1947 fall under the purview of the Industrial Tribunal system, creating a somewhat lengthy and costly method of resolution for employees.

4.2. Importance of adapting laws to the changing work landscape

Ambiguity in the classification of employees and identification of the employer has created situations where there is a lack of clarity on who the law is supposed to be enforced against. For example, it is very difficult to establish who is the employer when work is being subcontracted or when a supervisor in a company engages a casual worker from a labor supplying agency. This makes it very difficult for the worker to enforce rights and for the agency or principal employer to fulfill duties, which is detrimental for workers and employers. But it is necessary to bring clarity without depriving protection to these categories of workers.

But these changes have not yet fully percolated the existing labor laws. Due to a lack of clarity on the status of the relationship between the worker and employer in various new forms of employment it

creates, and given the heavy protective nature of most labor laws, it makes it difficult for an employer to avail flexibility in employment.

The high court has stated that if the economy and society are dynamic, the law must also be dynamic. The changing nature of the work setting is a typical example of the same. The concepts laid down in the industrial era of a master-servant relationship between the employer and employee have undergone a sea change.