

Adapting Labour Laws to Remote Work and Digital Nomadism

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Introduction

Work used to consist of physical offices with employees commuting back and forth every working day. However, everything changed with the emergence of advanced technology, and with the outbreak of the COVID-19 pandemic, remote work became the perfect solution. This is a shift from the norm, with employment models allowing more flexibility and an enhanced equilibrium between personal and work life. The contemporary work scenario is characterized by the absence of physical offices, with employees working from various locations. This includes teleworking, telecommuting, and people working any way as long as the work is done. This is a permanent feature in workforce sustainability brought by the digital age, where remote working is gradually becoming the norm. Employers spend less on the office infrastructure, while employees save commuting time. Also, the wider remote working network fosters a diverse and inclusive workforce. Aside from the benefits, remote working also has risks that need to be addressed. This paper specifically engages with the facts of remote workers. It is important to state that teleworking labour has been and is still governed by office policies¹.

BACKGROUND

The onset of the COVID-19 pandemic has drastically transformed the employment landscape globally. With companies shutting down, the shift from voluntary remote work to mandatory remote work was prompted. The International Labour Organization (ILO) estimates over 557 million workers were doing remote work at the height of the pandemic, which is indicative of the scale of this sudden shift (ILO Report 2021).

¹Int'l Labour Org., World Employment and Social Outlook: Trends 2021 (2021), https://www.ilo.org/global/research/global-reports/weso/trends2021/WCMS_771749/lang--en/index.htm

Remote work has many significant benefits to, including less time spent commuting, better work-life balance, and a larger pool of talent globally. Remote work also exposes remote workers to new vulnerabilities, such as blurred boundaries around and monitoring of the hours they work; job instability; and less access to social protection systems. Additionally, a new concept emerged termed “digital nomadism,” which is a lifestyle that emerges whereby employees or freelance workers are able to travel while working online. Consequently, countries such as Estonia, Portugal, and Croatia have recently designed and implemented “digital nomad visas” to attract remote workers and thus, realize the economic benefits (SpringerOpen 2024).

As amazing as the benefits may be, much of the existing labour law does not adequately protect remote workers or digital nomads, including rights around jurisdictional law, taxable status, and insurance and “right to disconnect.” In addition to other emerging forms of work, the changing employment landscape necessitates re-evaluating and adapting the laws as needed.

RESEARCH QUESTIONS

- 1 In what ways has the emergence of remote work and digital nomadism impacted the global labour market?
- 2 What challenges and risks currently facing remote workers and digital nomads remain unaddressed under the current legal frameworks?
- 3 How are different jurisdictions addressing difficult legal issues already encountered by remote workers such as taxation, social security, and jurisdiction?
- 4 What legal reforms, at both the national and international levels, are necessary to protect this new category of workers?

OBJECTIVES OF THE STUDY

- 1 To investigate how remote work and digital nomadism have changed and evolved following COVID-19.
- 2 To examine whether there are gaps in the existing labour law framework that fail to address new forms of remote work and digital nomadism.
- 3 To consider international best practices and comparativism.
- 4 To identify legal changes and policy recommendations that would protect labour rights in digital workspaces.

IMPORTANCE OF THE STUDY

This study is significant in addressing one of the most urgent challenges to work in the modern world. This study contributes to debates about policy issues related to technology- law, labour (workers, employees, and employers), and producing policies that protect workers while also supporting innovation. The

recommendations in this study are directed towards supporting legislators, employers, and international organizations to design fair systems for remote, visiting international workers, and/or digital nomads. In order to do this, the authors hope they establish a starting endpoint for writing fair, just, equitable, and sustainable work policies for all workers, no matter where they work or visit for work.

EVOLUTION OF WORK AND LABOUR LAW FRAMEWORKS

For a significant portion of the twentieth century, the concept of labour law was framed in relation to traditional employment, in which workers performed work in a centralized and fixed physical workplace and under the direct supervision of their employer. This model assumed particularities of authority structures, working hours, and legally-defined obligations under a contract of employment, which established the relationship between the employer and employee and constrained the regulation of labour law.²

FEATURES OF TRADITIONAL EMPLOYMENT MODELS

1 **Centralized Workplaces:** Employment was primarily tied to a factory, office, or other fixed physical location. Workers were required to commute to work and be physically present at the workplace.

2 **Standardized Working Hours:** Labour laws developed in respect to standard hours (e.g., a 8-hour workday and a 48-hour workweek) which ensured predictability to the working schedule.

3 **Direct Supervision:** The employer was effectively in control of how, when, and where tasks were conducted, expressing the doctrine of master and servant.

4 **Formal Contracts of Employment:** Most workers were in employment relationships with formal contracts stipulating their wages, duties, and entitlements, providing certainty to their legal rights.

5 **Industrial Relations:** Ensuing from traditional employment was the prominence of trade unions and collective bargaining in the context of employment law, meaning that workers had mechanisms for raising grievances.

LABOUR REGULATIONS BASED ON THE WORKPLACE

Labour law was originally developed in both economically developed and developing countries around these traditional models. Regulation typically covered:

²nt'l Labour Org., *The Future of Work in a Global Economy* (2019).

Occupational Safety and Health Administration (OSHA), *Employer Guidance on Home-Based Worksites* – OSHA

1 **Wage and Work Hours:** Legislation on minimum wage, overtime pay and less than excessive work hours.

2 **Occupational Health and Safety:** Employers were legally required to provide a safe workplace, reflecting the risks of losing physical employment (whether in factories or offices).

3 **Social Security and Benefits:** Regulations required contributions to pensions, health insurance, and unemployment benefits, generally conditioned on physical employment.

4 **Trade Union Rights:** Regulations, including the Indian Trade Unions Act, 1926, and the United States National Labour Relations Act, 1935, defend rights to bargain collectively.

5 **Jurisdictional Clarity:** Since work is tied to a physical space, it was easier to establish which country or state laws apply.

CONSTRAINTS OF THE TRADITIONAL MODEL

While they were well-suited to an industrial economy, these laws reflected assumptions about a static, place-based existence, and did not consider the emergence of remote, digital, or mobile work. As remote work and digital nomadism emerged, new limitations developed. Uncertainty in respect of working time for employees located in different parts of the world. Difficulty applying health and safety standards when work is performed outside of a centralized workplace. Lack of protection for social security when workers cross borders. Challenges of jurisdiction and taxation, as digital work may not be limited to one country. Overall, while existing employment models initially established a framework for labour protections, they are now under pressure to adapt to the reality of remote and digital work.³

EFFECTS OF GLOBALIZATION AND TECHNOLOGY ON WORK PATTERNS

Globalization and technological advancements have posed a major shifting-point in how work is organized, carried out, and regulated throughout the world. Rather than the fixed category of employment limited by geographic location and hours of work, globalization and digital technologies have established new forms of flexibility, mobility, and connectivity that simultaneously open possibilities and vulnerabilities in today's labour markets.

³Government of India, Labour Codes, 2020 – Ministry of Labour and Employment

GLOBALIZATION AND THE NEW WORLD OF WORK⁴

Globalization has resulted in the integration of economies where goods, services, and labour can easily cross the borders of individual states. Multinational corporations are now operating in multiple jurisdictions and shifting work off-shore and outsourcing work to save money. In the modern world of work, we increasingly see a global, interconnected labour market where workers in developing economies often provide services to firms in developed economies. Example: Call centres and information technology (IT) outsourcing sites in India and the Philippines became global beneficiaries of demand for this temporary work. This state of connectedness also increases competition between labour and reduces collective bargaining power in some contexts, and confuses jurisdiction over legal protections.

ADVANCEMENTS IN WORK PATTERNS THROUGH TECHNOLOGY

Technological advancement, particularly that of the internet, cloud computing, artificial intelligence, and digital collaboration platforms, has redefined work as a location-independent activity. Verbal communication tools like Zoom, Microsoft Teams, and Slack make real-time collaboration possible across continents. Cloud services and AI-enabled project management allow businesses to assess their processes and become decentralized organizations that allow for remote work and a gig economy. Freelancing-type services like Upwork and Fiverr show how technological enhancement enables digital labour selling to international businesses and clients. Related to this development is the rise of a digital nomad lifestyle where workers use high-speed internet connections and mobile technologies that provide the opportunity to work while travelling internationally. Digital nomad workers reflect the interaction of globalization (movement across borders) and technology (digital connection).

OPPORTUNITIES CREATED

1 **Flexibility**- Workers can create work hours according to their "life" needs in all cases, especially applicable to the integration of work and life opportunities.

2 **Diversity and Inclusion** - Employers have the opportunity to recruit talent from outside their geographical location for jobs and career options, which promotes marginalized populations to receive job opportunities.

3 **Innovation and Productivity** - Technology produces increased efficiency and enhanced cross-cultural collaborative work.

Emerging Challenges

⁴Eurofound and ILO, Working Anytime, Anywhere: The Effects on the World of Work (2017). ILO-EU Joint Report

1 **Regulatory Gaps:** Employment law continues to be national in scope, yet digital work is global.

2 **Job Insecurity:** Gig and remote work often lack benefits, social security, or a stable form of employment.

3 **Surveillance and Data Privacy:** Digital monitoring raises questions about worker autonomy.

4 **Digital Divide:** Not all workers have the same ease of access to reliable technology, leading to inequality barriers.

INTERPLAY OF GLOBALIZATION AND TECHNOLOGY

Globalization and technologies have been working in tandem to create a labour market that is more fluid, competitive, and transnational than at any other point in history. Even though these trends create new opportunities for innovation and employment, they bring into sharp focus the need for employment law that takes cross-border employment, remote working, and labour utilising digital platforms into account.

COMPARATIVE PERSPECTIVE: VARIATIONS BY JURISDICTION ON REMOTE WORK⁵

The swift growth of remote work has seen many governments around the world having to restructure their legal framework. At a fundamental level, the challenges are much the same (work/life balance, digital rights, taxation, and social security), yet responses have differed greatly by jurisdiction.

EUROPEAN UNION (EU)

The EU has tended to a more proactive approach in addressing the rights of remote workers, positioning teleworks as part of a larger agenda of decent work.

1 EU Framework Agreement on Telework (2002): Common principles for voluntary telework, equal treatment, health and safety, and privacy for teleworkers was established to address these elements.

2 Right to Disconnect: Certain EU countries, France (2017), Italy (2017) and Spain (2018) have adopted legislation offering workers the right to disconnect from work communications after office hours.

3 Occupational Safety: Employers have responsibilities (duty) for the working conditions of their employees regardless of whether the employee works from the office or in their homes as teleworkers.

⁵European Comm'n, Framework Agreement on Telework (2002).

Eurofound, The Right to Disconnect in the European Union (2021).

Occupational Safety & Health Admin., *Employer Guidance on Home-Based Worksites* (2020), <https://www.osha.gov/telecommuting>

4 Social Dialogue: the EU employs social dialogue at the national level and with employers to negotiate telework.

UNITED STATES (USA)⁶

The way the U.S. has organized remote work is decentralization, relying on employer policies to fill in the gaps, with no unified federal remote work system.

1 Fair Labor Standards Act (FLSA): While the FLSA provides protections for remote employees, it focuses on minimum wage guidelines and overtime pay.

2 Occupational Safety and Health Administration (OSHA): OSHA does provide limited guidelines for home offices, but it still requires an employer to provide a safe workplace.

3 Equal Employment Opportunity (EEO) Laws: There are no specific EEO laws for remote working scenarios, but it does prevent discrimination based on remote status or access to opportunities.

4 Tax and Benefits: Tax and benefits are largely determined by state rules and employer policy. There is no federal "right to disconnect."

5 Corporate Practice: Many employers are offering hybrid models, flexible schedules, and wellness support in their talent retention strategies.

INDIA⁷

In India, remote work gained legal and policy consideration as a result of the COVID-19 pandemic.

1 Labour Codes (2020): The Codes do not refer to remote work directly, but provide a framework for wages, social security, and occupational health and safety both to codify labour protections for all workplaces.

2 Policies Related to IT/ITES Sector: States like Karnataka and Maharashtra issued guidelines that included the recognition of remote work as a legitimate model for flexible employment for IT companies, acknowledging a growing role of remote work in this sector.

3 Social Security Code, 2020: This Code extends social security protections to gig and platform workers, but remote employees (in cross-border situations) are not addressed.

CONCERNS: There are complaints about the lack of explicit statutory provisions about remote work contracts, the liability of employers for health and safety at home, and even the right to disconnect from the workplace.

⁶ U.S. Dep't of Labor, Fair Labor Standards Act (FLSA), <https://www.dol.gov/agencies/whd/flsa>

⁷ Ministry of Labour & Employment, Government of India, Labour Codes, 2020 NASSCOM, COVID-19 Remote Work Guidelines for IT Sector (2020)

JUDICIAL TRENDS

The Indian courts have conferred rights in unique cases regarding rights for remote and contractual workers under the broader context of Article 21 (Right to Life) and the welfare of labour laws, though a cohesive jurisprudence has not yet developed.

CURRENT WORK LAWS, LIMITATIONS AND CHALLENGES

The rapid rise of remote work and digital nomadism has revealed many significant weaknesses in work laws that were intended for locality-based employment. These weaknesses risk worker protections, fair treatment, and legal certainty across jurisdictions. The main challenges are described below.

1 Many jurisdictions have a binary categorization of “employee” and “independent contractor.” Employees have legal protections (e.g., minimum wage, overtime, social security benefits) while independent contractors do not.

2 Remote workers, especially freelancers or platform workers, often find that they fall into a “grey area”, performing employee-like work but classified as independent contractors. By classifying workers in this way, employers are able to bypass the benefits and legal protections associated with an employee classification. For example, in the United States, the classification of gig workers has recently led to lots of legal disputes, including California Assembly Bill 5, 2019 and Uber v. O’Connor. The dispute is an example of the tension between flexibility and protection for workers.

3 In India, the Social Security Code, 2020, while recognizing gig and platform workers, includes most remote workers employed by international clients.

Work Hours, Overtime, and the 'Right to Disconnect'⁸

Remote work makes it difficult to distinguish between work time and personal time. Although traditional labour laws outline standard work hours (e.g., 8 hours a day), working remotely may carry an expectation of being 'always on.' This leads to excessive work, digital fatigue, and overall stress, with little oversight of overtime rights. European Union: France, Spain, and Italy have all recognized the "right to disconnect" into law; that is, employees have the right not to engage in work-related emails, chats, and/or messages outside of standard working hours (Eurofound, 2021). USA: There is no federal right to disconnect; working hours are determined by employers in accordance with the FLSA. India: Labour Codes regulate the maximum hours of work, but there are no specific protections for remote workers.

⁸Ministry of Labour & Employment, Government of India, Labour Codes, 2020.

SOCIAL SECURITY, HEALTH BENEFITS, AND INSURANCE SHORTFALLS

Labour legislation has historically associated social security systems, health insurance, and pension benefits with a physical employment relationship in a single jurisdiction. Remote workers, and digital nomads in particular, are typically outside the purview of national programs because they do not necessarily live in one country or contribute to that country's system for a sufficient time. Freelancers and contractors are additionally excluded from health insurance or pension benefits funded by their employer. In the developed world (EU/USA), there are several employers that provide benefits to remote workers; that said, in developing countries such as India, the situation is less favorable, and benefits may not be available at all. ILO (2021) warns that remote workers are at risk of becoming “socially invisible,” in that their labour is recognized, but not formally protected.

ISSUES RELATED TO JURISDICTION IN CROSS-BORDER REMOTE WORK⁹

Increasingly in remote work, cross-border arrangements arise. Propositions arise as to which country's law applies. For example, a digital nomad is employed by a US company and resides in Portugal. Which country's labour laws govern the working conditions of the employee? Labour laws have traditionally been territorial in nature, meaning that rights and obligations are tied to a physical place of work. This leads to ambiguity for purposes of a dispute, taxation, and benefits. The EU has tried to bring some order through cross-border labour mobility rules, but often these workers (digital nomads) do not fall within these regimes, if they exist at all. In India, there is no or limited clarity in respect of a framework to provide direction for remote work performed for foreign employers.

TAXATION AND COMPLIANCE CONCERNS FOR DIGITAL NOMADS

.1 Double Tax Obligations: Nomads may be required to pay taxes in both their home country and the country they are temporarily residing in. Some agreements exist to resolve this potential double taxation, but most are not designed for a digital nomad's short visit.

2 Employer Issues: Companies that hire nomads are also at risk, as their employees could trigger a “permanent establishment” status in another jurisdiction, creating the potential for corporate taxes to be owed.

⁹Argyro Avgoustaki & Hans Frankort, Remote Work During the Pandemic and Beyond, PMC9186428 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9186428/>

3 Visa and Residency: Some countries, such as Estonia, Portugal, and Croatia, have implemented digital nomad visas as a means of attracting workers who want to live in their jurisdictions, but they still outline the tax that could potentially be owed. However, it is unclear in most jurisdictions regarding taxation obligations, leaving those workers in limbo in a legal sense.

4 In relation to India, the taxation of income derived from remote work for clients located in another country is generally captured under the Income Tax Act, 1961. However, there are no explicit rules or guidelines relating specifically to tax obligations for nomads, which creates complications for the employee and their employers.

REMOTE WORK

The reach of remote working has considerably expanded in India due to the COVID-19 pandemic, granting growth mainly in the IT/ITES and the service industry environments. There is no specific statute on remote working in India, but the Labour Codes, 2020 (Wages, Social Security, Industrial Relations, and Occupational Safety) provide a broad legal framework to apply even though there is no specific discussion of telework. Courts and state circulars have begun to develop a framework to bring clarity through case law and regulatory enforcement.

CASE-BASED DISPUTES AND JUDICIAL TRENDS¹⁰

(a) Classifying Employment Status and Entitlement to Benefits

Indian courts have wrestled on the issue of classifying workers in non-traditional employment. Although these disputes are not squarely focused on "remote work," findings with contractual and gig workers are meaningful precedents.

Zomato Delivery Partners Case (Karnataka HC, 2021): In this case, delivery partners attempted to prove employee status to benefit from statutory benefits for the vulnerable delivery partners. The court provided no legislative clarity regarding the classification of work status.

Shramik Aghadi v. State of Maharashtra (2020): During COVID-19 lockdowns, courts directed state and local governments to ensure informal and remote-style workers were paid, emphasizing the governments' welfare obligations under Article 21.

b) Working Hours & the Right to Disconnect¹¹

¹⁰Zomato Delivery Partners Case, High Court of Karnataka (2021), reported in The Hindu BusinessLine

Shramik Aghadi v. State of Maharashtra, (2020) Bom. H.C.

¹¹Occupational Health & Safety Ass'n v. Union of India, (2014) 3 S.C.C. 547 (India).

To date, no statute has been recognized by Indian Courts for a "right to disconnect." However, the interpretive power under Article 21 (Right to Life and Livelihood) has been used by courts to build protections not to be exploited as it relates to working circumstances.

In **Occupational Health & Safety Association v. Union of India (2014)**, the Supreme Court stated that it had a duty to the State to ensure that workers had humane working environments. This duty would likely be interpreted as relevant to those working remotely who are subject to digital exploited overwork.

(c) Workplace injury & remote situations

There has been no reported ruling from the Supreme Court or High Courts which would define a "home office accident" as a workplace injury. However, under the Employees' Compensation Act, 1923, and the ESI Act, 1948, liability for a work injury could arguably extend to a remote situation, provided of course the injury is tied to employment.

POLICY-LEVEL CHANGES AND DIGITAL NOMADISM IN INDIA

1 The Social Security Code, 2020 acknowledges gig and platform workers, but remote workers employed by foreign entities (a normal digital nomad circumstance) are not included in this law.

2 IT/ITES Guidelines: Some states, such as Karnataka and Maharashtra, provided some relaxation during the pandemic, allowing 24x7 service and working from home.

3 Digital Nomadism: Unlike Estonia or Portugal, India does not have a special "digital nomad visa." Foreigners who work remotely while in India might violate the conditions of their visa, because the law that exists does not allow for residency just because you are employed by a foreign company

ALIGNING DOMESTIC LAWS WITH GLOBAL STANDARDS

The international character of remote work will require congruence with global standards for work, primarily the International Labour Organization's Home Work Convention, 1996 (C177) and its 2021 report on remote work, which has articulated some standards like fair treatment and equal rights as on-site workers, access to social security, and protections to occupational health and safety laws. Countries can ensure remote work contributes to development that is sustainable and equitable, rather than exploitative, by aligning domestic laws to these standards.

CONCLUSION

Remote work and digital nomadism are not passing trends but rather are more significant structural shifts in the global labour force. There are substantial opportunities for innovation, productivity, and inclusion in these practices, but they

pose risks of producing new inequities if left unregulated. The future of work will hinge on the new design of labour laws and corporate responsibility that prioritizes the human aspects of technology, which will allow technology to work for human wellbeing and not against it. Remote work, provided it is proactively legislated, and firms make responsible decisions around remote work, can become a vehicle for inclusive and sustainable growth in the digital economy

RECOMMENDATIONS

1 Implement Proper Legislation for Remote Work

Governments need to implement explicit legal protections for remote work. This legislation should clarify working hours, overtime reimbursement, reimbursement for remote work tools (internet, equipment) and clearly describe employer responsibility for occupational health and safety in a remote or flexible work location.

2 Provide a “Right to Disconnect” Statute (EU Model)

The EU model provides a clear framework for other countries to consider. Countries including France, Spain, and Italy guarantee employees the legal right to disengage from digital communication (emails, calls, messaging apps) after working time. This is a sound way to prevent over work and deskilling in an “always online” environment both from a mental health perspective, and work-life balance perspective. India and other countries should adopt a similar law protecting remote workers "right to disconnect" after work, which can ensure the health of remote workers who often combine both work time with down time.

3 Enhance Employment Classification and Social Security

Remote employees often exist in a grey area between “employee” and “independent contractor,” thus governments should create distinct criteria to prevent misclassification at different levels of government and extend minimum protections — regardless of employment classification — such as minimum wage, leave, grievance redressal, etc. Additionally, social security and benefits insurance should be made portable to follow workers regardless of employer or jurisdiction.

4 Implement Digital Nomad Visa and Taxation Platforms

Inspired by Estonia, Portugal, and Croatia, national governments should create digital nomad visas that recognize remote workers as legal residents and clarify tax obligations. Bilateral tax treaties should also be updated to avoid double taxation and ensure efficient compliance for workers and employers.

5 Encourage Corporate Responsibility and International Convergence

Embracing fair and responsible remote working policies is a must for employers—transparent contracts, equitable access to opportunities, and ergonomic and mental health benefits. Governments, on the other hand, should align their national laws with International Labour Organization (ILO) standards (e.g., ILO Home Work Convention, 1996), ensuring that remote employees receive equality of treatment as on-site employees.

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