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# Work from Home in times of COVID-19: Economic and Legal Exigencies

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## ABSTRACT

*The onset of the COVID-19 pandemic has brought in a paradigm shift in the economic and social structures of every strata of the society. Whereas the employers are figuring out new strategies to maintain a stable business, employers have to adapt themselves to the relatively new concept of 'Work From Home.' This article analyses the impact faced by three stakeholders – the employer, the employee and the government – and the viability of the 'Work From Home' model in the Indian context, considering the absence of any legislation to regulate its implementation. The article will study the status quo in the Indian business community so far, the existing infrastructure and various steps that have been considered by establishments for their own 'Work From Home' model and also analyse the response of the government in order to facilitate conduct of business for preventing major economic setbacks to companies. We also peruse through the legal aspects associated with contract, insurance, labour, privacy and workplace laws and how they impact the employer-employee relations in light of various notifications issued by several ministries for stable functioning of the economy. Supported by the latest data and surveys conducted by international bodies, this write-up will make a cost-benefit analysis of the 'Work From Home' model and its long-term viability in India as an alternative model of business which can bring to the centre-stage many a workforce left out of the economic business cycle.*

## I. INTRODUCTION

According to the philosophical school of thought expounded by Ayn Rand through her various literary works like “The Fountainhead” and “Atlas Shrugged”, *objectivism* centers around a man as a heroic being, with his own happiness as the moral purpose of his life, with productive achievement as his noblest activity and reason as his only absolute. The aforementioned principles, with believers and dissenters alike, centered around making the optimum utilization of the resources available to a man for his overall happiness come to a halt in times like ours, where all factors responsible for a normal conduct of life go haywire.

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With the advent of the pandemic forcing a substantial chunk of the workforce to carry out their official duties from their places of abode in order to enforce social distancing, this essay will address the modalities of ‘Work From Home’ (*WFH*), the various challenges it presents to the employers, the cost-benefit analysis of WFH keeping in mind the stakeholders in this situation – the employer, the employee, the government, and the various legal issues which will crop up when the lockdown enforced throughout the country is annulled.

## II. STATUS QUO

Acknowledging the impact that the nationwide lockdown would have on the employers and the employees, the Ministry of Labour and Employment, Government of India *vide* advisories issued on March 19, 2020 and March 20, 2020, has asked the proprietors and managers to “*encourage the staff to work from home wherever feasible*”<sup>3</sup> and “*to not terminate their employees particularly casual or contractual workers from job or reduce their wages.*”<sup>4</sup>The advisory also mentioned that if during the period of lockdown the place of employment were to be non-operational, the employees of such unit will be deemed to be on duty.

The Ministry of Corporate Affairs on March 23, 2020 issued a CAR (Company Affirmation of Readiness towards Covid-19) form as a measure to check the preparedness of various business organizations to deal with the ongoing crisis. This included a reassurance from the employers about having a system of WFH in place for the ease of conduct of business.<sup>5</sup>

Apart from these advisories issued by the government, Indian laws on employment policies do not address the concept of WFH directly. In the absence of such laws, it has been left to the employers to decide on their own, keeping in mind the interest of both the stakeholders. However, when we refer to the employees who would carry out their duties through WFH, we refer to workers who are engaged in traditional jobs like information and technology, law, consultancy, companies and limited liability partnerships. This excludes various informal or non-traditional sectors of work, which would bear the harshest brunt of the lockdown due to non-availability of resources needed to carry out their daily tasks.

## III. HOME BASED WORKERS

There is a whole different sector of ‘home based workers’ which refers to the general

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<sup>3</sup>File No. Z-11025/1/2020-LC titled “*Preventive measures to be taken to contain the spread of Novel Coronavirus (COVID-19)*”, March 19, 2020,

<https://labour.gov.in/sites/default/files/Preventive%20measures%20against%20COVID-19%20outbreak.pdf>

<sup>4</sup>File No. M-11011/08/2020-Media titled “*All Employers’ Associations*” dated March 20, 2020, [https://labour.gov.in/sites/default/files/Central\\_Government\\_Update.pdf](https://labour.gov.in/sites/default/files/Central_Government_Update.pdf).

<sup>5</sup>Ministry of Corporate Affairs, ‘*Company Affirmation of Readiness towards COVID-19*’ on March 23, 2020, [http://www.mca.gov.in/Ministry/pdf/Car\\_22032020.pdf](http://www.mca.gov.in/Ministry/pdf/Car_22032020.pdf).

category of workers, within the informal economy or ‘unorganized sector’, who carry out remunerative work within their homes. This includes agricultural produce processing, fish processing, seed preserving, sorting and processing of minor forest produce, livestock rearing and tending, coir goods making, spice making, leaf plate making, oil extraction to junk and tin smithy, metal work, zariwork, carpentry, bangle making, shoe making, papad making, Agarbatti rolling, paper goods making, packing, labeling and assembling micro-electronics, etc.<sup>6</sup>

India has signed but not ratified the ILO Convention 177<sup>7</sup> (of 1996) which entails provisions regarding workers based out of their homes. Article 3 of the Convention states that “*Each Member which has ratified this Convention shall adopt, implement and periodically review a national policy on home work aimed at improving the situation of homeworkers, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations concerned with homeworkers and those of employers of homeworkers.*”

There was a draft National Policy on Home-Based Workers drafted by the Ministry of Labour in 1999- 2000 which has yet not been formalized, in the absence of which, this sector would put in peril the lives around 37.4 million workers<sup>8</sup>, mostly women, who depend on this industry for survival. Hence, apart from the formalized sector, which this essay will address, the need to protect and save the informal sector is the burden which the government must undertake.

#### IV. COST-BENEFIT ANALYSIS OF “WORK FROM HOME”

- Infrastructure- Not having to work in an office will present a new set of problems for the workers vis-à-vis the availability of resources necessary to fulfill their tasks. Having a strong Internet connection is paramount in today’s age for carrying out any official duty assigned to the employees. In a survey<sup>9</sup> conducted by global research firm Gartner, Inc. said that 54% of human resources (HR) leaders in a snap poll indicated that poor technology and/or infrastructure for remote working is the biggest barrier to effective working.<sup>10</sup>

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<sup>6</sup>SEWA. 2014. “*Home-Based Workers in India: Need for Protection under Law.*” WIEGO Law and Informality Resources. Cambridge, MA, USA: WIEGO.

<sup>7</sup>Home Work Convention, 1996 dated June 20, 1996,

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312322](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312322)

<sup>8</sup>National Sample Survey Organization (NSSO) Ministry of Statistics and Programme Implementation Government of India. NSS 68th Round, July 2011 - June 2012, [http://mospi.nic.in/sites/default/files/publication\\_reports/nss\\_report\\_554\\_31jan14.pdf](http://mospi.nic.in/sites/default/files/publication_reports/nss_report_554_31jan14.pdf).

<sup>9</sup>Jackie Wiles, “*With Coronavirus in Mind, Is Your Organization Ready for Remote Work?*” GARTNER, Mar 3, 2020, <https://www.gartner.com/smarterwithgartner/with-coronavirus-in-mind-are-you-ready-for-remote-work/>.

<sup>10</sup>Nandita Mathur, “*Will India Inc.’s mandate to work from home work?*” LIVEMINT, Mar 18, 2020,

- In most of the metropolitan cities, employees who are trying to make ends meet, barely spend a lot of time in their place of residence owing to the office atmosphere and the perks accompanying it. This also includes an easy access to the documents, files and books, which are kept in their workplaces for perusal. Employees who reside with their families or share a place of abode also may find intermittent interruptions delaying their work. Organizations, which use software for storage of files in their office system, would be apprehensive to share such data to WFH employees on their personal systems.

- Cost Saving-WFH may also come as a boon to both employer and employee in terms of cost saving. Outside Mumbai's central business districts, a barebones office space that can seat 500 people can cost 10 crore in annual rent, which is 2 lakh per employee. Then comes the cost of staff transportation, air-conditioning and ventilation, furnishing and cafeteria.<sup>11</sup>A considerable amount of money is spent by an organization in order to run an office. In contrast, the employees also will have a substantial reduction in their expenditure on travel, food and miscellaneous costs. Hence reduction in these expenses can help the companies divert such resources towards areas that need overhauling or improvement, and for the employees, it can be utilized towards augmenting their standards of living.

- Remuneration Retrenchment- Owing to the economic burden faced by businesses during the pandemic and the market factors, it may seem that many organizations may go for retrenchment in salaries or termination in the employment as a means to stay afloat in business but the data available shows otherwise. According to the 'Willis Towers Watson Covid-19 India Readiness Survey 2020<sup>12</sup>' conducted among 4.17 lakh employees from 103 organizations during 20-31 March 2020, 77% organizations have indicated that there will be no reduction in salaries, 33% performance appraisals and bonus pay-outs will happen as planned, 53% cases have seen no adjustment to the sales incentive pay-outs.

- Policy Framing-Employees in an institution are paid for the amount of work done by them in the office and a record of their hours and days at work is kept as evidence of their service. Since there is no active WFH policy in place in many institutions, it may lead to a rise in cases that put the parties in peril. For example, there is no mechanism to compute the

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<https://www.livemint.com/news/india/will-india-inc-s-mandate-to-work-from-home-work-11584555247860.html>.

<sup>11</sup>Shelley Singh, "Companies see work-from-home as a viable long-term option if regulatory issues can be addressed" THE ECONOMIC TIMES, Apr 05, 2020, <https://economictimes.indiatimes.com/news/company/corporate-trends/companies-see-work-from-home-as-a-viable-long-term-option-if-regulatory-issues-can-be-addressed/articleshow/74985839.cms>.

<sup>12</sup>India COVID-19 Readiness Pulse Survey, WILLIS TOWERS WATSON COVID-19 INDIA READINESS SURVEY 2020, Mar 20-31, 2020, <https://www.willistowerswatson.com/en-IN/Insights/2020/04/india-covid-19-readiness-pulse-survey>.

hours spend by a person doing work during WFH. In ordinary circumstances, if an employee goes over and above his office hours in completion of his assigned work, he's remunerated for the same but in a WFH scenario no such computation is possible and hence even now, many employees feel that they are allotted more work than what used to be assigned to them in their office spaces.

- Human Aspect- Since India has one of the youngest workforces in the world not acclimatized to working in seclusion, this sudden isolation may have psychological effects on their mind which, in turn, could truncate their productivity leading to losses. To counter this, many organizations are seeking professional help for alleviating such circumstances and keeping the morale of their employees high. Microsoft, P&G and Deloitte are among companies that have sought professional assistance to help employees tackle the turmoil due to social distancing.<sup>13</sup>

## V. LEGAL MODALITIES OF WFH

- Contractual Obligations- The existing employment contracts between the employer and the employee need to be revisited in order to make them suitable to the needs of both the parties in the event of an extended lockdown. In cases where the contractual obligation on part of either parties cannot be performed owing to the impossibility induced by the pandemic, it may also go into litigation. The 'Force Majeure'<sup>14</sup> provisions can also be invoked from Sections 32 and 56 of the Indian Contract Act, 1872 which prevent a party from liability if, due to circumstances out of their control, it becomes impossible for them to perform a contractually agreed obligation. Presently, the Ministry of Finance has by way of an office memorandum (O.M. No. 18/4/2020-PPD) issued on February 20, 2020 clarified that the disruption of the supply chains due to spread of coronavirus in China or any other country should be considered as a case of natural calamity and "force majeure clause" may be invoked, wherever considered appropriate, following the due procedure.<sup>15</sup>

- Insurance- Policies related to insurance need to be revamped keeping in mind the impediments which both the worker and the employer face during a WFH situation. Organizations need to examine whether the economic setbacks faced by them can be claimed

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<sup>13</sup> Sachin Dave, "Is work from home stressful? Companies rope in psychiatrists, experts for counselling" THE ECONOMIC TIMES, Mar 26, 2020, <https://economictimes.indiatimes.com/jobs/companies-rope-in-psychiatrists-experts-for-counselling/articleshow/74818704.cms>.

<sup>14</sup> Satyabrata Ghose v Mugneeram Bangur & Co. (1954) AIR 44

<sup>15</sup> Poorvi Sanjanwala and Kashmira Bakliwal, "What is force majeure? The legal term everyone should know during Covid-19 crisis", THE ECONOMIC TIMES, Apr 29, 2020, <https://economictimes.indiatimes.com/small-biz/legal/what-is-force-majeure-the-legal-term-everyone-should-know-during-covid-19-crisis/articleshow/75152196.cms?from=mdr>.

under the present insurance policies on which they function whereas the employees will focus on whether their health and life insurance policies, generally provided for by the Employees' State Insurance Corporation or Life Insurance Company, would cover the costs triggered by the medical expenses that they may suffer in the lockdown while working from home.

- Labour Laws- In our country, between the Union Government, the State Governments and the various Union Territories, there are about 416 Labour Laws and Rules, with filing requirements of about 278 kinds and approximately 1000 different formats of Registers. There has arisen a need of a new organization to keep a record of these niceties which work in conformity with many laws such as Minimum Wages Act 1948, Contract Labour Regulation and Abolition Act 1970, Equal Remuneration Act 1976, Factories Act 1948 etc. These acts control the various provisions regarding payment of wages, holidays that can be availed and terms and conditions of work which need to be reevaluated and bring in conformity with WFH conditions keeping in mind the current working situation.

- Corporate Regulation- The government has already eased out rules for companies for easy conduct of their usual proceedings but more needs to be done in order to build confidence in the business community. The Ministry of Corporate Affairs through its circulars dated April 8<sup>16</sup>, April 13<sup>17</sup> and April 21<sup>18</sup>, 2020 addressed various issues regarding difficulty in holding annual general meetings (AGMs) for companies whose financial year ended on 31st December, 2019 due to COVID-19 related social distancing norms and consequential restrictions linked thereto. The circulars clarified that if the companies whose financial year has ended on 31<sup>st</sup> December, 2019, hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation. The circular also states that for the Financial Year 2019-20, if the independent directors are unable to convene a meeting, it shall not be considered to be non-compliance under the Companies Act, 2013.

- Information Security-Organisations providing remote access of sensitive information to their employees for purposes related to work need to overhaul their existing provisions regarding protection of the data of their organisation, their employees or any third party. In

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<sup>16</sup>File No.-2/1/2020-CL-V titled “Clarifications on passing of ordinary and special resolutions by companies and rules made thereunder on account of threat posed by COVID-19”, Apr 8, 2020, [http://www.mca.gov.in/Ministry/pdf/Circular14\\_08042020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf).

<sup>17</sup>File No.-2/1/2020-CL-V titled “Clarifications on passing of ordinary and special resolutions by companies and rules made thereunder on account of threat posed by COVID-19”, Apr 13, 2020, [http://www.mca.gov.in/Ministry/pdf/Circular17\\_13042020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf).

<sup>18</sup>File No.-2/4/2020-CL-V titled “Holding of annual general meetings by companies whose financial year has ended on 31st December, 2019”, Apr 21, 2020, [http://www.mca.gov.in/Ministry/pdf/Circular18\\_21042020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular18_21042020.pdf).

that regard, the Information Technology Act, 2000 read along with the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 albeit provides some clarity but is considered largely inadequate considering the problems we are facing in today's time of remote handling of sensitive data. After the introduction of the Data Protection Bill in the parliament, major controversy erupted as concerns stemmed from the fact that the new law may require firms to store copies of personal data in India. The law, which emboldens the 'right to privacy' as a fundamental right, in contrast, contains provisions which grant an exemption to the employers from obtaining the consent of the employees, in certain matters. Exemptions have also been granted to the government on ambiguous pretexts which could violate the emboldened right and put the privacy of the individual in jeopardy. The law not only affects technology giants like Facebook, but also companies who happen to have their employee benefits processed in India.<sup>19</sup>Hence, the abovementioned laws need to detail the procedure to be followed while conducting WFH.

## **VI. WORK FROM HOME: A LONG-TERM GOAL?**

About two-thirds of the 4.3 million IT-BPO workforce across the country have moved to a work-from-home model to keep services uninterrupted during the lockdown. Experts say some companies are likely to move to WFH permanently. It will also encourage more women to join the workforce, as the hassles of travelling daily would disappear.<sup>20</sup> A lot of non-traditional sectors of industry, with workers based primarily out of their homes would also benefit from a centralized procedure which would reward their competence and also bring them out of the economic backwardness that they have been subjected to at the hands of a cartelized system profiting from their skill while providing a meager sum in return.

Induction of people from various strata of the society would help in making the labour industry into a diverse sphere and would also open its doors to people who have, till date, been bereft of the financial inclusion they aptly deserve. As mentioned above, it would give a morale boost to the women of our country to make a living for themselves and provide them financial independence, which, due to the societal constraints in many parts of our country, becomes a grueling task for many.

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<sup>19</sup>Chinmayi Arun, "Three Problems with India's Draft Data Protection Bill" CFR, Oct 3, 2018, <https://www.cfr.org/blog/three-problems-indias-draft-data-protection-bill>.

<sup>20</sup>Shelley Singh, "Companies see work-from-home as a viable long-term option if regulatory issues can be addressed" THE ECONOMIC TIMES, Apr 05, 2020, <https://economictimes.indiatimes.com/news/company/corporate-trends/companies-see-work-from-home-as-a-viable-long-term-option-if-regulatory-issues-can-be-addressed/articleshow/74985839.cms>.

## VII. CONCLUSION

While Ayn Rand bolstered the concept of *laissez-faire* capitalism through her philosophy of objectivism, where she rejected the notion of government regulating the economy and the laws associated with it, it is safe to conclude that such objectivism in our financial system would be impossible when seen in the backdrop of the current scenario where without a uniform policy on part of the government, there would be immense violation of the rights of both the employer and the employee.

‘Work from home’ which is a relatively new concept in the professional world of today, if regulated properly, presents a barrage of opportunities which would not only provide a substantial cost-effective method of conducting business while benefiting the employee in maximizing his potential but also induct various factions of society by providing them a new platform for emboldening their business prospects in the secure walls of their homes.

That being said, a lot remains to be done with regard to a regulatory policy for WFH on part of all stakeholders. The existing laws, which affect the conditions of employees, employers and the state machinery, need to be revised so that they fit well with the conditions prevailing now, considering the fact that the laws in place do not address the concerns of the stakeholders at the moment.

The government, especially, needs to get in place a set of rules which would govern the aspects of working from home even after the pandemic fades away while the employer needs to overhaul the structure of conduct of ‘remote’ business in order to make it suitable for the employees to bear with the pressure. The last and the most vulnerable link in the chain, the worker, would be expected to get accustomed to this new venture and provide his maximum output and utmost co-operation in the conducive atmosphere of his home, while also keeping his professional and personal life stable.

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