

# THE INSIGHT

Weekly Newsletter from HR Vidyalaya Corporate Services LLP

**Volume: 125**

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Visit [www.hrvidyalaya.in](http://www.hrvidyalaya.in)

For previous volumes

HR Vidyalaya Corporate Services LLP, was started as a Registered Knowledge Process Outsourcing company, 2 years ago, in July 2020, when the Pandemic Period was in Peak. We have now completed Two years and going steady. It is dual delight that we are publishing our 125<sup>th</sup> volume of Weekly newsletter, today.

## Objective of this Start-up:

If an individual is an Artist or a Sculptor, with his/her Core Skill he/she can “Create or Make” and Sell it, on his/her own.

But, where a person had to involve others for producing or providing a service or sell through a premise, he/she had to establish a business organization.

Where other individuals are engaged and involved themselves in producing or providing services or selling, such business organization needs to conform with Regulatory legislation and various other labour related provisions.

If such individual, who has to perform the Core Job with his/her expected capabilities, he/she cannot perform the job of conforming with regulatory and labour law provisions, which is complex and alters, periodically.

Towards this Purpose, HR Vidyalaya Corporate Services LLP was established to partner with such business organizations in performing Regulatory and HR related conformations, allowing the Principal Partner to concentrate on the CORE.

More than providing appropriate Solutions to our Partners, we are delighted to share with you the Knowledge and Expertise acquired by us. Thank you patrons.

Team HR Vidyalaya

We, HR Vidyalaya Corporate Services LLP are not STAR  
(and never want to be.... to go beyond your reach)

We will remain as Candle, at your reach, to serve you as a  
Partner, re-generate for you



Safety @Workplace is my Right

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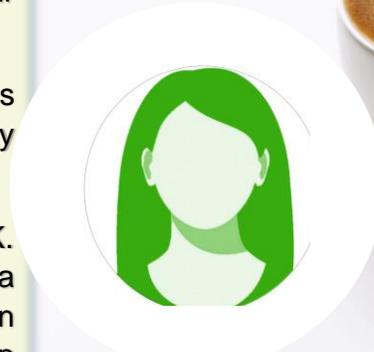
Dear “The Insight” Readers,

We have launched a new column “AskSree” to answer your questions regarding work life.

**Organizational Psychologist Gayathiri Sridharan** uses Psychological Researches to answer your everyday dilemmas.

She received her training from Loughborough University, UK. As an Organizational Development Consultant with almost a decade of experience in various realms of Strategic Human Resource Management, she is committed to help organizations maximize their effectiveness.

Send your queries to @ [itsmegayathiri@gmail.com](mailto:itsmegayathiri@gmail.com)  
Solutions will be published in “The Insight”



**AskSree**



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### This week’s Solution for Yamini’s Quest

#### Quest

Dear Sree,

My organization is changing its office location and it is very far from my home. The employer has given the option of working from home. I have worked from home during COVID time and I like working from home but still not able to decide. Could you please help?

- Yamini

#### Solution

Dear Yamini,

**Though Work From Home seems very attractive, it is not wise to choose Work From Office, if you have or foresee the following concerns:**

1. **If your organization is not having a clear and transparent policy regarding promotion guidelines for work-from-home employees.**
2. **If you are not confident enough with your boss or manager on how you will be treated.**
3. **If you are single or married without kids or having kids who is not dependent on you or if you have no particular reason, it is better to have work from office option than working from home.**
4. **If you wish to be around people. Some people may have the feeling of being with people even if they don't talk much. Just being in the presence, enables them to carry out their work.**

**The work-from-home option would be very alluring initially but if you choose it without a purpose and a plan, it may have an impact on mental wellbeing.**

**A new survey revealed that 80% of people in UK felt working from home has had a negative impact on their mental health.**

**Reference: <https://www.nuffieldhealth.com/article/working-from-home-taking-its-toll-on-the-mental-health-relationships-of-the-nation>**

Dear Anandan,

My heartfelt congrats for 125<sup>th</sup> Volume from HR Vidyalaya and your Organization is the one which always think of HR fraternity!!! It is time, that, Human Resources, Employer and Establishments needs to get aware of the impacting legislative provisions, which you are continuously sharing it to the HR fraternity.



Even though there are many laws and statutes in its place, few Entrepreneurs never see the other side, human side!!!

There are still petitions filed before Hon'ble Courts for the deprivation of Pensions, Gratuity and employee compensation. There are as many cases filed because of non-payment of Full and final settlements.

In other scenario, many MNC's are allowed to operate their business houses in manufacturing and service sectors. But they do not fully understand the industrial climate of India and this make hardship for the people of India. As they are not aware of Labour statutes, they do not conform to the required legislative provisions, which leads to closure of business houses in India.

There are many political dramas which hampers productions in the plant resulting havoc on employment. The social media too had, extended their hand into industrial zone and they promote Industrial unrest rather than settlement of unrest. They ignore their social duty of preserving harmony in the State.

There are incidences of Discrimination in gender at workplace, which goes unnoticed by everyone, including authorities and makes major blow for employer, later.

The Freedom of association and speech is used as weapon by unions and makes turmoil which is also a major disturbance for growth in the industry.

There are many issues like this and external disturbances likes Russian war etc. which makes industry restless. Considering the above all, we all wait for Government of India to implement New Labour codes.

Taking this opportunity to thank your team and looking forward to more such volumes of Awareness and Education in the field of Human Resources.

**T Muralidaran**  
Seasoned HR & IR Professional

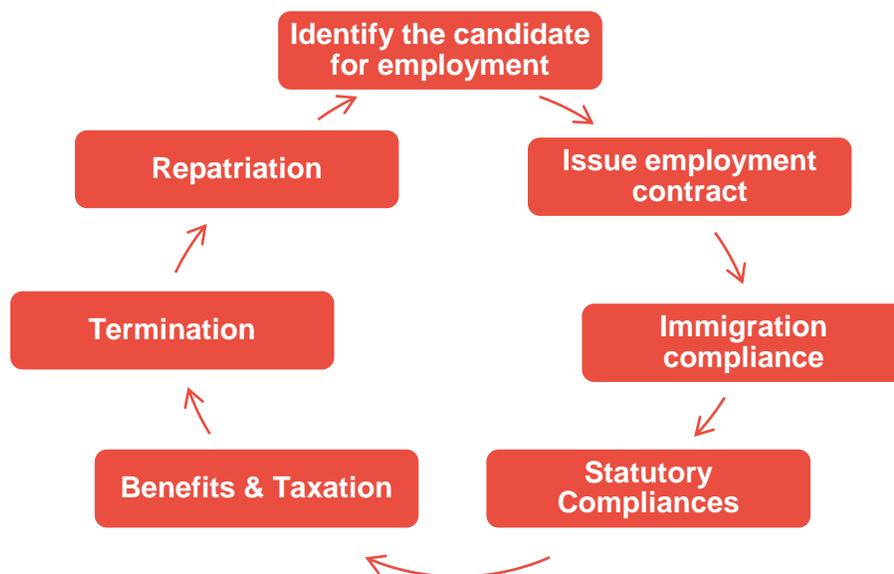
# Indian Expatriate's Compliance from India Tax & Immigration Perspective

## 1. Expatriates – A Brief

By way of practice, people who hold foreign passport(s) and render employment services in India are categorised as expatriates. In India, there are Inbound (i.e., people coming into India for the purpose employment) and outbound (i.e., people going outside India for the purpose of employment) employees. In this section of the article, we will be concentrating on the various compliance challenges in relation to tax and immigration compliance for Foreign Nationals.



## 2. Various Stages on employment of Foreign National



## 3. Brief on Compliances

### 3.1 On Identifying the candidate for employment

A company wants to recruit a foreign National for one of the following reasons:

- ≡ Their Head Office/ Branch/ Division wants their representative's presence in India for the specified role
- ≡ There are no suitable candidates in India who satisfy the basic requirement or have the required expertise

It is imperative that every company take the necessary steps to ensure that there are no suitable candidates to fill the said job profile. This is a basic requirement to be complied at the time of immigration. The said clause is also required to be disclosed

at the time of providing support letter (letter from Indian employer to the Indian Embassy/ consulate in support of employment of the individual in India).

Non-Compliance of the same, could lead to questioning the process of recruitment and denial of employment visa.

*If an expatriate wish to change employment from Company 'A' to Company 'B' both of which are present in India during his employment in India, the expatriate will have to repatriate to her/ his home country and come back on a fresh employment visa because the employment visa is linked to the employer.*

### 3.2 **On employment contract**

An employment contract is required to be comprehensive, be it a secondment agreement or an employment contract. The clauses on job location, job profile, taxation, liabilities, obligations, responsibility everything has to be defined in detail to ensure that there is no ambiguity in relation to the same. Additionally, the minimum salary condition should have been satisfied as per the Immigration authorities.

### 3.3 **On Immigration compliance**

An individual coming to India should determine the nature of work proposed to be carried on India and apply for the suitable visa while coming to India and based on the stamping on the visa/ requirement should register with the Foreigner's Regional Registration Office (FRRO)/ Foreigner's Registration Office (FRO) within 14 days of arrival.

Any delay in relation to the same could result in levy of penalty/ fine. Additionally, it could also lead to complications for the company/ individual for subsequent registrations. It should also be ensured that there are no variations in applications, any variations could hamper the registration or renewal process in totality.

### 3.4 **On Statutory Compliances**

The employee although will be rendering services in the same premise as other employees will have additional compliances.

For e.g., the expatriates/ foreign National employees will be classified as international workers from a social security perspective. The companies will have to analyse the validity of the Social Security Agreement and contribute to the Provident Fund as applicable. PF cannot be on basic wages for such employees. A separate IW return has to be filed recognising such individuals.

Every expatriate shall also be entitled to all the basic benefits a regular employee is provided and cannot be alienated from the same.

### **3.5 On Benefits & Taxation**

The common perception is what is paid to the expatriate's bank account is what is taxed. But it should be noted that the following shall also be taxable:

- ≡ Benefits received by an expatriate from employer like car with driver, accommodation, maid, gardener, children school fees etc
- ≡ Employee share of taxes borne by employer
- ≡ Employee share of PF borne by employer
- ≡ Benefits like Stock Options/ salary/ bonus etc., received outside India during the course of employment in India

### **3.6. On Termination and repatriation**

The process of termination should be followed as per the employment contract and all the settlements should be completed before his repatriation to his home country.

Once all dues have been settled, an intimation should be given to the FRRO/ FRO on such termination/ end of employment contract which will cancel the balance validity of the employment visa.

In addition to the above, tax clearance certificate is recommended to be applied/ obtained dependent on location of India before the permanent repatriation of such expatriate employees from India.

## **4 Way forward**

It shall be prudent on the part of the company to review the compliances carried out by them for the expatriate employees and ensure that they are in compliance. As most expatriates hold managerial positions and are pertinent to the operations/ management of the company.

Additionally, the Income tax return of such expatriate which fall under employee perspective should also be looked into. To put it bluntly, ITR 1 form will never be applicable for a foreign National employee but many companies erroneously file ITR 1 for their expatriate employees and where ITR 2 forms are filed, there have been cases of non-disclosures, both leading to tax notices and demands which are triggered after the repatriation of the employee as per the Income Tax Act and Black Money Act. It shall be prudent to ensure the acts are reviewed and tax returns are filed as per Instructions/ notifications circulated by the CBDT.

**Rajasekhar AJ**  
**Legal Professional & Consultant**  
**HR Vidyalaya Corporate Services LLP**

**Reach out to us for Immigration services & EPF International Worker Services**

## IT/ITES – A class apart under labour laws?

Post 1992, the Indian Govts liberalization, privatization and globalization policy paved way for quantum growth of services sector in the country bringing in foreign direct investments & opening of special economic zones etc. IT/ITES industry has reaped major benefit of this, helping the nation economically and providing vast employment opportunities with nearly 5 million strong workforces today. Whilst the labour laws have remained largely unchanged except some tinkering by amendments.



This article focuses on the two recent widely publicized news articles viz. on non-compete clause by a IT company precluding its employees from joining its competitors, and the decision against another IT major by a Labour Court in Chennai directing to reinstate a terminated employee with back wages & benefits.

It is common in IT/ITES sector to incorporate a “*Non-Compete*” clause in the employment agreement. Simply put, it’s a restrictive covenant, where the employee agrees not to compete against the employer, but such clauses come in various forms and degree of restrictiveness. In the instant case, the Company restricted its ex-employees from working for the same client at a competitor company for at least six months after they exit. In the backdrop of certain employees receiving notices for joining such named competitors, a Pune based IT union took up this with the Union labour ministry and presently this matter has been referred to relevant State authorities requiring the Company to defend itself. While the Company has defended this clause citing the uniqueness of IT/ITES sector, global practices, to protect its interests, employees willingly accepting to such covenant at the time of joining etc., but this must be tested against the applicable Indian laws viz. Indian Contract Act which voids any agreement in restraint of trade and labour laws like Standing Orders Act, if applicable, has defined service conditions in the form of model standing orders without any provision for such post-employment restrictions.

It is no secret regarding involuntary separations viz. retrenchment at IT/ITES industry owing to performance issues, benching, workforce restructuring, redundancy or simply for profitability etc., but such actions are seldom disputed before any authority or in a court of law, considering the employees just move on & hunt for a new job to safeguard their future avenues. In the instant case, a tenured employee was terminated in 2015 with a months’ notice citing performance gaps and as part of the larger workforce restructuring at the Company. The employee assailed this by fighting a 7 year long legal battle with the labour court at Chennai recently ordering in employees’ favor by reinstating his services along with back wages & attendant benefits. The contentions raised by the Company stating the employee was not a “workman” as defined under the Industrial Disputes Act, therefore this case not being maintainable, & was terminated per agreed terms of employment did not stand in the court.

From the above, it is amply clear that, IT/ITES & other similar knowledge-based industries are not alien to Indian labour laws. And any employment clause or service conditions to be compliant with the applicable laws and while retrenching any of their employees for any reason, due process is followed along with payment of retrenchment compensation as enshrined under Industrial Disputes Act including giving due notice or pay in lieu of such notice.

While there cannot be a singular solution to the above, but with the upcoming Labour Codes, there could be a solution, considering all establishments including IT/ITES with 300 or more workers to get standing orders certified from the authority, which may govern issues as above and would be interesting to see if the authority certifies standing orders with such post-employment restrictive covenants & also “at-will” termination of employment.

**Anuk R,**  
**Legal Professional and ER Professional**

# Balcony View and Recruitment



"Hmm...I think we can take this house. I really love the balcony view". This was my wife's foremost reason to take up that house. Me too bought into the idea as I was also impressed with the balcony. It had a view to the playground surrounded by trees, filled with youngsters playing different games like cricket, kabaddi and few of them doing some exercises.

In Chennai, a house in the heart of the city (Kodambakkam) surrounded by trees and a playground with an active group of people is like a cream cake with a cheery on top. Though it was little bit higher than our budget, we just jumped in and booked the house for rent thinking that 'Magic Bricks' is bringing in some magic with it.

With the help of 'Lynk' the shifting took place with less time and cost. Among all the items, only the a/c compressor and the wet cloth dryer stand were lucky enough to take their seats in the balcony. As we both of us are working (making a house affordable to live in the metro city), we opted 'Urban Clap' to set the house on our behalf. From plumbing to making some moderate changes, their work ended with netting the entire balcony to prevent pigeon's encroachment.

In the evening, we came back little early to inspect the works done by the 'Urban Clap' professionals and to make payment. Once the professionals left our new house with a hefty amount, we decided to have our first ever *chai* in the balcony. The sun was half way down somewhere in the orange garden. We laughed how the space constraints has changed our initial idea of placing sofa in the balcony degraded to having a chair and at last left us to stand beside each other. "we should not have allowed them to put this net" I said to my wife feeling somewhat sad as the arrangement disturbed our view into the trees and the playground. "If you are fine with the pigeon and their stuff, we can have them removed" she said to me pulling my tie. I know it was not just my tie that she pulled. The chat along with the chirping sounds of birds made it special and it led us to promise one another to spend more time like this in the balcony in the coming days.

Flowers blossomed and fell. We became pretty busy. I got a good offer in a MNC and the work station become little farther than the earlier one. This created lot of changes in our everyday schedule. Earlier I used to pick her up from my work and we together reached home at least by

7.30 in the evening. But as we travelled in an opposite direction, my self-commutation made me to reach home around 9 pm.

Though Saturday is a holiday for both of us, there were reasons for the corporate world to drag either of us to work. The orange garden sun hardly saw us together in the same balcony. But I am sure, it would have witnessed our maid many times because she was the one who used the balcony to dry our clothes and take back them to ironing once they are damp. Sundays we usually went outside or slept for long hours depending on our mood and energy level.

A day arrived where we had to call it a day for the house. More than commutation, the water scarcity ignited our search engines. Though we are used to the exhausting ritual of leaving the house, searching a new house and shifting, this time we felt bad as the purpose of taking the house never materialized.

We thought the playground will motivate us to stay healthy, pick up a sport as a hobby, connect with new people, bring some quality together time. But all these never happened. Might be because we did not or had no plans of how we could make things the way we wanted. We ended up paying high price for the expected benefits.

This scenario is pretty sure is a case in many organizations right now.

They hire or want to hire candidates with some lavish degrees from premier Institutes. But once the organization hire them, before the management plans on how they are going to use the premier candidates, half of them leave for another organization and many of them starts feeling frustrated.

It's not that they should not be hired. If you have a plan and very sure that only premier candidates can carry out the work, then go ahead and hire them.

*But if the same work could be carried out by another candidate with a right attitude, what is the point in having beautiful balcony view apartment and letting your maid to use it for drying the clothes.*



**Sridharan Jeyachandran**  
**Associate HR Director @ CMS Info Systems**

## BEST PRACTICES WHILE ENGAGING WOMEN IN NIGHT SHIFTS

### Cab Facility

- ≡ Cab facility is to be provided for pick-up from residence and drop.
- ≡ No woman employee shall be picked-up first or dropped last. If this is unavoidable, an escort/security guard must accompany the employee in the cab.
- ≡ If it is an escorted trip, women employees have to sign-off upon safe arrival at destination.
- ≡ Women employees should not sit in the front seat.
- ≡ Regular random breath checks of the driver/escort are to be done, to avoid instances of drunk driving.
- ≡ The company shall have a control room to oversee the transport facilities
- ≡ Adequate precautions to be taken during the Maternity – in the course of transportation & @workplace

### Others

- ≡ Telephone number and address of women employees shall not be disclosed to unauthorised persons.
- ≡ Sufficient restrooms, washing facilities, water supply shall be provided separately for women employees.
- ≡ Work place and other areas to be well-illuminated.
- ≡ There shall be not less than 12 consecutive hours' gap between shifts whenever a woman worker is changed from one shift to another.
- ≡ Employees can be engaged on rotation basis only.
- ≡ Employer shall obtain bio-data of each driver and conduct pre-employment antecedent verification.
- ≡ Employer shall, on its own or through the agency employing the personnel, conduct pre-employment antecedent verification of security personnel/escort.

### *In the Workplace – Duties of employer*

- ☑ To take all steps to prevent any acts of sexual harassment in the office
- ☑ Shall maintain a complaint mechanism in the office itself.
- ☑ The women workers shall be allowed to raise the issue of sexual harassment in the workers' meetings.
- ☑ Shall provide proper lighting in and around the workplace.
- ☑ Shall ensure that women workers employed in the night shift shall not be less than adequate number (3 or 5) – Suggesting – not less than two third of the total strength of workers. One third of the supervisors/ shift in-charge shall be women.
- ☑ Shall provide sufficient women security at the entry and exit points and sufficient work sheds for the women workers employed in night shift.
- ☑ Shall provide separate dining facility and separate safe transportation from the office premises to the nearest point of their residence to the women workers in night shift.
- ☑ Shall arrange necessary medical facilities and also make these facilities available at any time of urgency in case of injury or incidental acts of harassment, by providing necessary telephone connections.
- ☑ Shall ensure that there shall not be less than twelve consecutive hours of rest between the last shift and the night shift whenever a woman worker is changed from day shift to night shift and from night shift to day shift.
- ☑ Shall appoint not less than two women workers per night shift who shall go round and work as Special Welfare Assistants.
- ☑ Shall exhibit these guidelines in a prominent place so that the women workers can be aware of their rights.
- ☑ Adequate toilet with water facility shall be provided to the women workers, conveniently situated and easily accessible, containing all basic amenities and safety measures to the workers.