

Labour Law Reforms to Information Technology Industry in India

Dr. Virender Negi (virendernegi07@gmail.com), Corresponding Author

Associate Professor Laws, University Institute of Legal Studies, Panjab University Chandigarh, India

Dr. Monika Negi (monikasinghpu@gmail.com)

Asst. Prof. Laws, University Institute of Legal Studies, Panjab University Regional Centre, Hoshiarpur, India

Rahul Sharma (rahulsharma2596rs@gmail.com)

Research Scholar, Department of laws, Panjab University, Chandigarh, India



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Abstract: *Industrial laws—also called employment or labour laws—are set of regulations that control employment, the employer–employee relationship, problems at work, the payment of wages and other benefits, as well as other labour welfare legislation. Labor laws are a set of rules that control how the working population is treated. The most significant resource for any business is its workforce, and labour regulations are strictly adhered to in order to protect workers from exploitation and ensure that their rights are protected. It has authority over companies, workers, and labour unions. If the organization violates the law, penalties may be imposed. Legislation protecting labour rights was achieved in the nineteenth and twentieth century thanks in great part to a number of prior successful campaigns. The resolution of industrial disputes, working conditions, labour compensation, insurance, child labour, equal pay, etc. are only a few of the concerns covered by India's numerous labour laws. Its usefulness varies from industries including manufacturing, IT, services, and baking. In this paper we will study how labour law is applicable to the IT industry. IT sector is still exempted from many labour laws applicable in country to compete with high competition.*

Keywords: Economic Growth, Employment, Indian IT Industry, Labour Law Reforms

Introduction

A massive business in India, information technology includes consulting, outsourcing, and information technology services. Multifood expansion in the IT sector contributed to the nation's economy's acceleration by directly or indirectly creating millions of well-paying employments. Software and services, technology hardware and equipment, and semiconductor equipment are the three main industry areas that make up the IT sector. The industries and sub-industries that make up these three industry categories are further broken down. Businesses associate themselves with a certain sub-industry that best defines their main or most lucrative business.

“The number of software companies in the nation has reached a crucial point at over 500, and there are also an additional 1,000 start-up businesses.”¹

India is one nation nowadays that provides affordability, excellent quality, high dependability, quick delivery, and, above all, the use of state-of-the-art technologies in software industry.

“The year 1995-96 was a boom year for the Indian computer industry and the Information Technology (IT) industry of India really exploded in that year.”²

Indian IT industry is also governed by labour laws in which employment and labour laws, are rules that govern employment, the employer-employee relationship, workplace conflicts, the payment of wages and other benefits, as well as other labour welfare legislation. The application of labour laws is unknown to the employees. IT specialists are unaware of their ability to form associations. Every member of the nation is nevertheless permitted to organize associations or unions under Article 19(1) (c). The question of that

¹The Top 100 Software Companies of 2021, 12-Jul-2021, <https://www.thesoftwarereport.com/the-top-100-softw...> visited on August 26, 2022.

²N Singh, [Information Technology and India's Economic Development](https://citeseerx.ist.psu.edu/viewdoc/download), <https://citeseerx.ist.psu.edu/viewdoc/download>, visited on August 26, 2022

whether an employee is a workman or not is one that the court should consider. Labor laws, which cover employment, salaries, insurance, security, etc., tend to lessen the sufferings that workers must endure.

Labour law and Information Technology

In each mode of development there are different elements that foster productivity in the production process. In the agrarian economy, land and labour along with capital become the determining factor for increasing surplus. As technological and commercial improvement takes place product markets begin to develop and labour market undergoes a change. In the information technology the sources of productivity lie in the technology of knowledge generation, information processing and symbol communication. The main source of productivity in information technology is the accumulation of knowledge. The structural change in the information economy is that it transforms the labour market and generates specific demands for specific skills worldwide. The character of labor shifts from manual labor to intellectual labor. In the information economy, economic growth would depend on economic 'human capital' and less on physical capital.³ Multinational corporations entering the Indian market have expressed serious concerns about the country's complicated labour rules. Employers in India have been advocating and pushing for years for simplification of employment / labour regulations as greater mobility and flexibility in the labour markets become the need of the hour. Successive governments have worked relentlessly to enhance the entire business environment in India with a focus on "Ease of Doing Business in India," which has led to a liberalized and stable regulatory structure, a streamlined licensing regime, and straightforward and balanced employment legislation.

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Current Scenario of Indian IT industry

The Indian IT industry has crossed the \$200-billion mark in revenue this fiscal year of 2022, creating a watershed moment for India's technology services sector, according to a report by NASSCOM⁴. It also cemented its position as the largest private-sector employer in India, accounting for 5 million direct jobs, with over 2 million added in the last 2 years. Of this, 450,000 was added in the FY2022 alone, the highest addition ever as companies stepped up hiring to meet the rising demand. Close to 1.8 million were women employees, with 200,000 hired in FY22, according to the Strategic Review report released by the IT industry body NASSCOM on February 15. The industry, which includes IT services, BPM and captives, added \$30 billion in incremental revenue and grew 15.5 percent, highest ever since 2011. This came at the back of rapid pace of technology adoption and migration to cloud post-pandemic boosted the demand for outsourcing services.⁵

With the outbreak of Coronavirus pandemic, Indian organizations have been relying heavily on digitization in order to sustain and overcome business challenges.

“Exports from the Indian IT industry stood at US \$ 149 billion in FY21. Export of IT services has been the major contributor, accounting for more than 51% of total IT export (including hardware). The computer software and hardware sector in India attracted cumulative foreign direct investment (FDI) inflows worth US\$ 81.31 billion between April 2000-December 2021. In 2021, PE investments in the IT sector stood at US\$ 23.4 billion. India's IT start-up ecosystem has received record investments of nearly US\$ 36 billion in privately held companies in 2021, up from US\$ 11 billion in 2020.”⁶

Consequently, the humungous growth figures of Indian Information technology system show the strength of Indian strong economy.

³ Rakesh Basant and Uma Rani, “Labour Market Deepening in India's IT: An Exploratory Analysis”, *Weekly* Vol. 39, No. 50 (Dec. 11-17, 2004) *Economic and Political Weekly*, pp. 5317-5326

⁴ The National Association of Software and Service Companies (NASSCOM) is an Indian non-governmental trade association and advocacy group, focused mainly on the technology industry of India.

⁵ Swathi Moorthy & Chandra R Srikanth, “Indian IT industry crosses \$200 billion in revenue with 5 million direct employees”, Moneycontrol.com (February 15, 2022), available at: <https://www.moneycontrol.com/news/opinion/indian-it-industry-crosses-200-billion-in-revenue-with-5-million-direct-employees-8099841.html> / visited on 18-06-2022)

⁶ Indian IT sector top revenue generator, job creator THRWorld, 28-Jul-2022, available at <https://hr.economictimes.indiatimes.com/...> Trends (visited on August 26, 2022.)

Legislation and IT Industry

Any industrial relations not only affect the interests of labour and management, but also the social and economic guarantees needed to be provided by the state. Thus, it entrusts within the functions of state frame these relations in socially desirable channels. There is wide differences regarding implementation of labour laws in developing and develop countries, in case of develop countries state has minimum intervention, strikes or work stoppages to settle claims may not have much impact. These states with advanced and liberal market economy lay down simple rules for observance of employers and workers giving them freedom to settle their disputes.⁷ Whereas, developing countries need to have state control on the enforcement of labour laws, state always want to achieve reasonable growth rate in the economy and to ensure the equitable distribution. This process become more difficult in a state where a democracy is flourishing that allows fundamental individual freedoms to its countrymen. Consequently, the developing countries have to maintain a balance between the content of work rules and with the framing of rules relating to industrial discipline, training, employment, etc.⁸

The makers of democratic Indian constitution were fully aware about the consequences that will arise due to welfare state embodying federal arrangement. Entries about labour dealings occur in all the three lists⁹ in the constitution. There are industrial and labour disputes, trade unions and many aspects of social securities and welfare like employer's liability, employees' compensation, provident fund, old age pensions, maternity benefit etc. Therefore, the Industries Disputes Act 1947, the Minimum Wages act, 1948, the Employees' State Insurance Act, 1948, etc. come under the concurrent lists. Most Central acts on labour relations have been amended by the states. This flexible framework created by the constitution has tended to lessen the tensions and frictions between the centre and the state enabling them to coordinate their efforts in resolving their complex and varied problems.

Analysis of Problem

Employee costs account for approximately 50% of revenues in the labour-intensive Indian IT services sector, which also requires relatively little capital expenditure. It is a rather constant conflict between wages for employees and profit margins for the companies. The average work experience of IT employees has remained constant at around five years despite the rapid growth in revenues and manpower. Employees with lower experience levels command lower wages and therefore help in maintaining the abnormally high margins of profit of the IT service companies.

In times of a global recession, it makes eminent sense for the companies to fire the more experienced and "costlier" worker in order to maintain their super profit margins. It is under these circumstances that terms like "involuntary attrition" are used liberally to fire thousands of workers, and companies have long held that these employees are not 'workmen' as defined under the Industrial Disputes Act.

"Workmen" is defined under section 2 (s) of Industrial Disputes act¹⁰. The definition has a wide coverage. It comprehends apprentices¹¹, skilled, unskilled, technical and clerical employees. The person must be employed or an apprentice for hire or reward performing the type of work stated in the definition. The terms

⁷ K.M. Pillai, *Labour and Industrial Laws p.12* (Allahabad law agency, 16th edn.,2015)

⁸ *Ibid*

⁹ Central, State and Concurrent lists.

¹⁰ "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

¹¹ Apprentices Act, 1961, Section 2(a) defines apprentice to mean a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship.

of employment can be expressed or implied. The person concerned must have been employed or engaged in an activity which is an industry defined in section 2(j)¹² of the Act.

The main task is to identify that an IT employee be termed as an 'employee' or a 'workman'. The identification depends upon factors such as his wage, his post in the respective department of company, his decision-making powers, involvement with the business of his company, and supervising authority, etc.¹³ One can see the on-going economic downfalls has led to job-cuts and changes in hiring structure, which is not in the best interests of freshly recruited IT workers. In year 2013 an event showcases a change in trend, where the fresh employees of HCL Company forming a union and demonstrating protest for changing the joining date regularly. As a result, unions like the All India IT Employee Association experience a dramatic increase. It has to be seen whether or whether this has a wider impact on society.

Applicability

The employees are unaware of application of labour laws. IT professionals are not aware of the fact that they can make associations. However, Article 19(1) (c) enables every citizen of the country to form associations or unions. An employee being a workman or not is a matter of concern for judicial examination. Labour laws tends to reduce the hardships faced by the workers, it deals with employment, wages, insurance, security etc. Various codes are applicable in different manner with required need of the workers.

The Minimum Wages Act, 1948

As all the workers of a Commercial Establishment falls under Entry 17 of the Schedule of the Act, therefore it applies to Commercial Establishments. This code directs the state and central government to make sure a basic minimum wage as per the job profile of worker. Any worker who is working under commercial establishment is covered under the Minimum wages act. This Act was created to give employees the bare minimum support they need during tough times like financial emergency.

Equal Remuneration Act, 1976

The act Equal Remuneration Act applies to all the Establishments to whom appropriate government has directed notice. The IT and ITES industries are covered under the domain of this Act by the notification issued on 02 March 1977, numbered S.O. 144 (E). Section 4 of the act explains that no discrimination will be done regarding wages between opposite sex performing the same job or of similar nature.

¹² " industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,--

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes--

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment. but does not include--

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation.-- For the purposes of this sub- clause," agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body or individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co- operative society or a club or any other like body of individuals, if the number of persons employed by the co- operative society, club or other like body of individuals in relation to such activity is less than ten;]

¹³<https://ilsijlm.indianlegalsolution.com/applicability-of-labour-law-in-it-sector-drishiti-miglani/> (visited on- 09-07-2022)

The Employee Compensation Act, 1923

Earlier known as Workmen Compensation as it covered Workmen but as of now, to cover employees, amended as Employees Compensation Act. The purpose of the code is to provide financial assistance to worker who is employed by the company and faces any kind of injury or casualty during the course of work.

The Employees' Provident Fund & Miscellaneous Provisions Act, 1952

The Employees' Provident Fund was established on November 15, 1951, when the Employees' Provident Funds Ordinance was passed. Employees' Provident Funds Act, 1952, took its place as its replacement. The aim of the code is to provide social and financial security. Employees can contribute to some amount of money for fixed period, and they will get good amount of interest on those savings.

The Employees' State Insurance Act, 1948

The ESI Act offers self-funding social safety to cover workers' dependents in case of crises, such as illness, pregnancy, death, disability, or a work-related disease. Additionally, because the ESI funds are a self-financing programme, employer payments will be the main source of growth. Employees are also paid on a monthly basis at a set percentage of compensation.

The Maternity Benefit Act, 1961

The Maternity Benefit Act does social justice to the pregnant woman. Who are, or have given birth, or suffered a miscarriage. This law is based on the idea that giving birth is morally right. She does it for the benefit of society as a whole, not just herself.

The Sexual Harassment of Women at Workplace Act, 2013 (Prevention, Prohibition, and Redressal)

The code strictly assigns employers to provide protection woman dignity against sexual harassment in their workplace. The Act has provisions for dealing with complaints and enquiries, protection of victims. Additionally, prescribes punishment for sexual harassment, and also punishes false complaints of harassment. An employer who violates this Act may be subject to a fine of up to Rs 50,000; termination of the right to conduct business operations.

Payment of Gratuity Act, 1972

This act is applicable to any establishment if the workers employed are ten or more than ten. A certain amount of gratuity is provided to the worker. It is based on the moral and equitable principle which is in favour of both the employer and employee. If the prerequisites of ongoing employment and other requirements are met, the IT personnel will be granted access to it. This rule controls the gratuity that must be given to each employee who has worked for at least five years. It is paid to employees once they leave their jobs, retire, quit, retire early, reach superannuation, pass away, become harmed, or are no longer able to perform their duties. In case of death or disability, it is not necessary that the person should have worked for more than 5 years. To enjoy the benefit of the gratuity, in case of disability, it must be proved that the disability has been caused by any accident that occurred in due course of action. In case of death, the gratuity will be paid to the nominee of the deceased. Section 13 of this Act provides express protection. No gratuity payable to an employee or workmen shall be liable to attachment in execution of any decree or order passed by civil, revenue or criminal court. The aggrieved employer may approach the Labour Commissioner and file a complaint if payment delays.

The Contract Labour Act, 1970

It applies to all those employments carried out by the Commercial Establishment for the purpose of loading/unloading, Security, Cleaning, etc. the registration is mandatory in this Act. In case of the Contractor, where the number of employees is 20 or more then also the registration becomes mandatory. The Principle Employer is solemnly responsible for the payment of wages and all statutory compliances. It even also applies to the Households hired by the Establishment for the upkeep and other mental duties.

Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946, covers industrial establishments wherein 100 or more workmen are employed with the discretion of the state government to apply it to establishments with lesser employees. The purpose of the Act is to mandate that employers in industrial establishments specify the rules and conditions of employment under them with sufficient specificity and that they make them known to workmen/employees. Some states such as Karnataka have exempted the IT and ITES companies from the application of this Act.

The Payment of Bonus Act, 1965

The Payment of Bonus Act applies to every factory and establishment which employs 20 or more persons. The statutory bonus payable under this enactment is as a matter of right and not linked to the performance of the employee. The Act lays down a scheme for the calculation of bonus, payment of maximum and minimum bonus, deductions from the bonus, etc. Recently, the wage threshold for determining the eligibility of employees has been revised from Rs. 10,000 to Rs. 21,000 per month, thereby bringing a larger pool of employees under the coverage of the Act.

Shops and Establishments Act

The Shops and Establishments Act is enacted by every state in India. IT and ITES companies in a particular State are covered within the definition of 'commercial establishments' under the Shops & Establishments Act of the State. These state laws control working conditions in establishments and set forth the legal responsibilities of employers and employee rights in the unorganized labour market and other types of workplaces. In addition to maintaining certain records, the enactments also provide for the following:

- Working hours per day and week.
- Guidelines for opening and closing hours, closed days, national and religious holidays, overtime work, spread-over, rest interval.
- Rules for employment of women, children and young persons.
- Annual leave, casual leave, sickness leave, maternity leave, etc.
- Rules for employment and termination of the same.
- Maintenance of registers and records and display of notices.
- Duties of employers and employees.

Conclusion

Indian IT sector has made our country proud by exporting software services to world. IT sector being one of the highest contributors to GDP and creating opportunities for huge employment attracts certain privileges that are not provided to other sectors. The main goals of labour legislation are to legalize trade unions, to control their operations, and to give them a framework in which to operate. The applicability of this law is minimal, according to Ground Reality. In comparison to the overall number of workers in the country, a very small portion of the workforce is covered by this statute. This sector is exempted from following many labour laws to enjoy full autonomy. Autonomy provided to IT industry relaxes them to hire cheap labour, extend the time limit of workers, violate work ethics etc. To compete with the highly competitive market of IT services there is dire need to get exemption from the strict Indian labour laws but at the same time government need to keep an eye that the basic fundamental rights of these workers are not to be violated. Government policies are not being in contravention with the IT industry because this sector is consistently providing skilled jobs and contributing to the economic growth of country. Consequently, the state cannot afford to slow the growth of this sector due to certain legal impediments. The IT industry is significant in contemporary online era, as software packages developed within the sector can transform work in other sectors; for example, leading to labour displacement in other sectors like manufacturing. The major risk to the IT workers is the potential labour displacement within the industry in the event of structural transformations such as changes in business models and the adoption of new technologies. This is relevant because IT workers are different from traditional workers, viz. cognitive, exhibitivite and spatial components. The other issue is with regard to the working hours and Technological advancement which has perpetuated

job precocity in contemporary capitalism. Therefore, IT workers are anxious about the stability of their jobs. Contrary to celebratory claims about employment generation, the chief concern among workers is job insecurity. Thus the Policymakers need to address these issues. The standards of the developed industrial societies should be met by Indian labour law by establishing minimum wage standards, social security benefits, workplace health and safety standards, and more.

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