



Study on Problems of Shops and Establishments Workers Related With IT Sector

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Abstract

This paper reveals that Labour market institutions play a pivotal role in the formation and implementation of laws and regulations to protect the worker's rights and interests. Ironically, as most of them are applicable only to organized form of employment majority of the workers are devoid of their benefits. In India, workers of the Information Technology industry which represents one of the most sophisticated form of workplace are also devoid of the benefits of many labour laws due to the exemption of the industry from applicability of labour laws. This paper attempts to examine the nature of labour regulations in India and their prospective applicability to the Information Technology industry. Secondary objective is to examine conditions of work in the industry and discuss their variation across gender and other socio-demographic characteristics. The concept of decent work has been used to examine the actual working conditions of workers in the IT industry. Data has been collected from 272 IT employees using snowball sampling method and the results have been used to discuss the deficiencies in the work conditions given the existing labour regulations.

Introduction

Every country's constitution provides some basic rights to the workers by enacting labour laws under various acts. Indian labour laws generally divide the industry into two groups, factory and Shops and Commercial establishments. IT industry comes in the category of Shops and Commercial Establishments and is thus not governed by the laws applicable to factories. Being a nascent industry which came up in the early 1990s after the economic reforms, IT industry in India has long been exempted from labour regulations in order to facilitate its rapid growth and competency in the global market. Although this is a sound argument in the wake of our developing economy struggling to sustain and expand economic growth in post-recession period, yet it needs to be examined whether the burden is not being borne by the industry's labour force. Many IT leaders agree with the view that labour regulations as such are not a requisite for this industry because of its flexi-time work culture and globally standardised workplace. In fact, there has been a proposal from the industry experts to allow them to formulate and regulate their own employment and labour policies. Interestingly this issue has been dealt with rigour and interest in some of the studies highlighting the malpractices that are widely prevalent in IT industry of India to account for such proposals. 'Decent' work is a revolutionary agenda of International Labour Office and requires a comprehensive set of indicators to assess it objectively. With the help of selected indicators, provision of decent work can be assessed in different ways in IT industry. Contemporary research in the area of decent work has focussed on assessment of actual conditions of work in various sectors of an economy and



developed appropriate methodologies for measurement of decent work. It is worthy to be noted that an assessment of the gap between what are the actual working conditions and what need to be the ideal working conditions of a particular sector needs to be undertaken and given importance so as to understand the systematic flaws in theory and practice.

Recent studies on the current status of decent work in the IT industry of India have unfolded the real picture. A primary study was conducted in 2013 using the following broad indicators of decent work at micro level - Adequate earnings and productive work, stability and security of jobs, decent hours, safe work, work-life balance, fair treatment at employment, social security, social dialogue and complacent work. Measurement of decent work helps to understand the actual working condition in industries and such results can be used to examine the applicability of a country's labour laws in protecting the interests of the workforce.

This paper has four broad objectives with respect to applicability of labour laws in the IT industry. First of all, the paper examines the labour laws pertaining to workers existing in the India and discusses its applicability with respect to workers in IT industry. Thereafter the paper analyses the conditions of work in IT industry and actual provisions at work to the IT workers. The paper thereafter examines the differences in conditions of work and decent work across different communities and genders. The paper also argues whether existing labour market institutions protect and promote worker's rights such as the right to organize, right to freedom from discrimination, right to acquire skills, right to security of work and income. A discussion about the possible solutions to the existing problems among workers marks the end of the paper.

Worker's Rights in India

This section attempts to examine the rights of workers in India and to what extent they are being used in the IT industry apparently. In many cases these rights are directly or indirectly discouraged by the organizations or nature of work. In other cases, workers are not aware of their rights which call for the need of rights awareness programs to be organized at regular intervals in public spaces. Few of the worker's rights have been mentioned and their current status in IT industry has been debated on logical grounds

Right to organize (Article 19(1)C)

This right gives the freedom to the worker to form a group and organize regular meetings to discuss different issues pertaining to worker's welfare. The IT industry does not discourage its workers to form trade unions or formal worker unions for the aforesaid purpose. Still the industry does not have any formal trade unions registered for the purpose. The characteristics of the employees need to be analyzed to understand as to why they do not form trade unions. First of all, workers are of relatively younger age group, highly educated and technically skilled coming from diverse regions of the country. There is transparency in the employee-employer relationships in the service industry as the organisation is connected through a common network and any grievance or complaint can be filed directly to the highest authority in the organisation via email services. This is in contrast to the traditional manufacturing industries where the employees were in general disconnected from



the employers and were required to unite and use their collective bargaining power to forward their agendas to the management.

Right to freedom from discrimination

This right entitles the worker to be treated fairly in all spheres of his work life and not be differentiated on the grounds of gender, caste, religion, race or circumstances. Recruitment practices in the IT industry are generally based on academic performance and interviews at entry-level. Promotions depend on performance appraisals which are subject to inter-personal relations between the employee and their immediate authority. Instances of discrimination on the basis of gender, caste, religion and even paternity/maternity leaves have been found in IT industry. Most of the companies do have grievance cell where employees can register their grievances. However it is left to the organisation to take a suitable action in each case.

Right to acquire skills

Sustenance in IT industry requires an employee to constantly upgrade his technical skills. In doing so, an employee needs to upgrade his/her educational qualifications, knowledge, skills, statistical knowledge and the organization needs to provide ample scope to the employee to upgrade the same. This includes organization providing skill specific training, organizing workshops and seminars for knowledge up gradation, financially supporting employees in attending workshops/seminars/educational classes elsewhere. This right enables an employee to improve his/her productivity which is directly beneficial to the organization. In India, many IT companies do provide skill-specific trainings to the new employees and also allow them to pursue courses/programs to upgrade their skills subject to some specific conditions. This includes adopting exit-restricting policies so that the organization benefits from the acquired knowledge and expertise of the employee.

Right to security of work and income

This right enables the knowledge worker to have access to work which is stable and gives adequate income. Security of work implies absence of risk of losing job in the near future and transparency in the termination policies of the company. Any type of work that gives stability and security of work to the employee is likely to increase his/her productivity which is again directly beneficial to the organization. IT industry generally provides contractual employment to its employees where in contracts are of long-term nature i.e. greater than 3 years and provides higher incomes compared to other industries hiring the same type of employees.

Labour Regulations and India's IT Industry

The role of a state is important in deciding application of labour laws to different industries. Karnataka, which is better known as the IT hub of the country recently renewed the exemption of the IT industry from labour regulations. On the other hand, its neighbouring state Tamil Nadu has recently given a nod to formation of labour/trade unions in the information technology sector receiving mixed responses from the employer and employee community. Tamil Nadu has allowed this industrial sector to be covered by Industrial Disputes Act 1947 which allows formation of trade unions and grievance address mechanism. This move has come in response to the dismissal of around hundreds of employees in an IT giant in early 2015 which led to the



formation of an employee wing known as IT employees wing. Critics are of the view that the IT industry does not operate in the same manner as the manufacturing sector and so do not require formation of trade unions. It has also been said that formation of trade unions was never stopped/discouraged and as the industry ensures good conditions of work and take care of employee's needs, the employees never chose to form unions on their own.

Contracts Labour Act applies to all those establishments that are using services of 20 or more workmen as contract labour in the preceding twelve months. The Act requires making arrangements for the health and welfare of contract labour, ensure timely payment of wages, appointment of inspecting staff, etc. It is interesting to note that IT industry can be brought under this act as in many cases the employees are sent to the on-site premises to deliver the required work. It is then open to debate whether an IT company is a contractor in that case who is using the services of its employees to cater to the requirements of its client.

The Payment of Gratuity Act passed in 1972 gives a statutory right of gratuity to all the employees in addition to any retiral benefits that already exist and are available to the employees. This Act has been enacted as a measure of social security and its significance lies the acceptance of the principle of gratuity as a compulsory statutory retiral benefit. It provides financial assistance to post-termination or retirement period. It is applicable to factories, shops or establishments employing ten or more persons in the preceding twelve months, any shop or establishment that has once been governed by the Act. Thus the Act is wide enough to bring the entire organized sector within its scope. However in case of IT industry, this act is applicable to only those employees who have worked for more than 5 years in a company. In the recent years, attrition rate in the industry has been very high due to which less proportion of employees are eligible for gratuity in the companies. However this act continues to bring financial relief to the employees eligible for the scheme in IT companies.

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has been enacted to provide financial assistance for the future of an industrial worker after his retirement or early death. It encourages employees to save some proportion of their income regularly and mandates the employer also to contribute 12% of the wages, dearness allowance, etc if the establishment employs 20 or more persons and 10% of the basic wages, dearness allowance if less than 20 workers are employed. A part of the contribution is remitted to the Pension Fund and the remaining balance remains in Provident Fund Account. As IT companies generally employ 20 or more persons, they need to adhere to this act and provide provident fund facilities to their employees. Research evidence has found that IT companies do provide financial provisions through Provident Funds to their employees and hence the industry is getting governed by the act.

Conditions of work in India's IT Industry

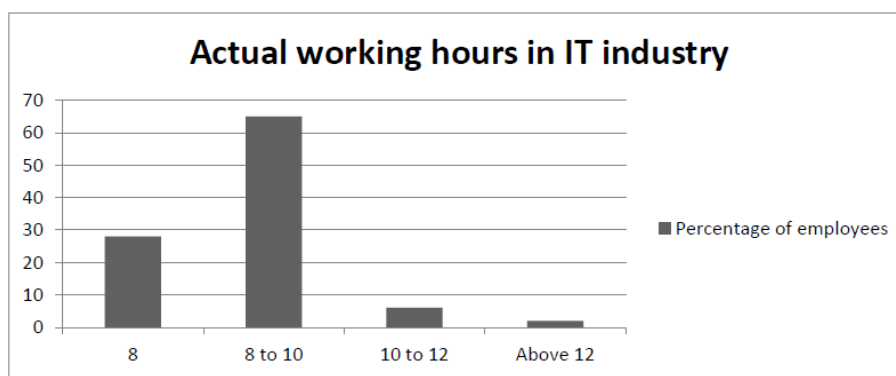
A primary study was conducted on measurement of decent work in IT industry which has given the real picture of work conditions in the IT industry. Data was collected from 272 IT employees working in IT companies in and around Bengaluru, Mumbai, Pune, Hyderabad and Delhi NCR. The research methodology comprised of

snowball sampling technique of non-random sampling. Employees were requested to fill a questionnaire about their work conditions and the results of the study were surprising.

Working Hours

The working hours in IT industry are generally longer. In many cases, due to difference in time-zones, employees have to stay back beyond office hours to ensure completion of deadlines or to communicate with their offshore clients.

Chart 1 Actual working hours in IT Industry



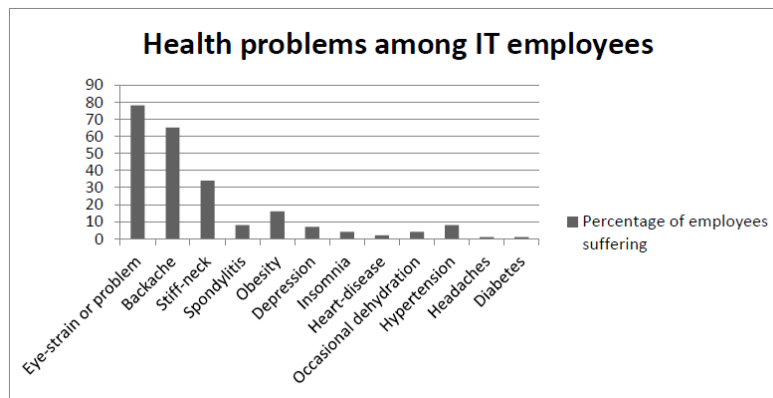
Source: Primary study

It was found that only 28% of the employees actually worked for 8 hours. 65% of the respondents worked for 8 to 10 hours, 6% for 10-12 hours and 2% for more than 12 hours. This implies that majority of the workforce in IT industry are working for longer hours. Frequency of work on holidays or public holidays was also found to be higher and majority of the employees did not receive overtime for working for beyond office hours.

Safety of work and impact on health

Nature of work in IT industry is apparently safe as it requires use of knowledge and logical abilities of the employees in place of physical labour. As work is generally delivered through computers, it is essentially a sitting job and the study attempted to measure these aspects in detail. Majority of the employees reported higher levels of work-induced stress.

Chart 2 Health problems among IT Employees



Source: Primary study

78% of the employees suffered from Eye-strain/weak eye-sight and the proportion of employees suffering from frequent backaches was also found to be relatively high at 65%. The constant sitting exposure often leads to stiffness of neck region and this was found in about 34% of the employees. As stiff neck can lead to cervical spondylitis, this health problem was found in 8% of the employees. Lack of physical activity leads to unhealthy weight gain and in this respect obesity has also been complained by 16% of the employees, showing the deteriorating fitness levels of the younger-generation age group. Lack of exercise often is related to longer working hours and disturbed work-life balance. Depression and Insomnia were found to be in about 7 % and 4% employees which are the consequences of the same factors – longer working hours, disturbed work-life balance, unproductive work, unfair treatment at workplace, etc. This result presents the indirect impact of work in this industry on the health of its employees and is an issue of concern given the fact that the industry employs relatively younger age employees.

Adequate wages

It was found that 62% of the employees found their current earnings adequate and stable as per their qualifications and work experience. The salary of a typical IT employee though sufficient, is often linked to a variable component which constitutes 13-15% of the gross pay. This variable component changes according to the company’s profits, net earnings, etc.

Harassment at workplace

It was found that 65% of the IT employees faced harassment of different kinds at their workplaces. These results imply that harassment is on a rise in IT industry and this needs stringent and fair measures at organisations to control it.



Table 1: Harassment among IT employees

Type of harassment	Percentage of employees (who faced)
Physical harassment	8
Stalking	25
Offensive phone-calls or email messages	4
Exclusion/isolation from professional activities	29
Persistent negative attacks on personal or Professional	29
Deliberate or unsolicited physical contact	13
Manipulation of personal/professional reputation	50
Persistent undermining of work	12
Unreasonable or inappropriate monitoring of Performance	25
Setting objectives with unreasonable targets	17
Questions or insinuations about private life	4
Unreasonable refusal of leave	6
Biased perception	2

Source: Primary study

Almost half of the employees reported being subjected to manipulation of their personal or professional reputation by their peers or seniors which is a serious case of mental harassment. Complaints of stalking, exclusion from professional activities, persistent negative attacks on personal or professional life, unreasonable or inappropriate monitoring of employee’s performance and setting of objectives with unreasonable targets were also reported by a majority of employees.



Employment contract

It was found that 91% of the employees had regular employment and only 9% of them had contractual employment. This poses a satisfactory picture as far as stability of career in IT industry is concerned. A regular employment contract was defined as the one where employee receives a formal confirmation of his services, the contract is not less than 3 years and prior notice is given by the employer in case of termination of services.

Amenities at workplace

The study also examined the kind of amenities available to the employees which included access to telephone for use, existence of grievance settling mechanism, existence of sexual harassment committee, crèche facilities at workplace. It was found that 68% of the employees got access to telephone for personal use whereas 78% of the employees also had grievance-settling mechanisms at their workplaces. Facilities of crèche as well as permitting employees to bring their children at workplace were found to be less.

Leave entitlements

Employees were asked whether they were able to use their entitlement to personal leaves, medical leaves and emergency leaves appropriately whenever they needed. It was found that only 37% of the employees were able to use their leave entitlements always and whenever they wished to. However 21% of them could use them frequently while 39% of IT employees were able to use them only sometimes. 3% of the employees could never use their leave entitlements.

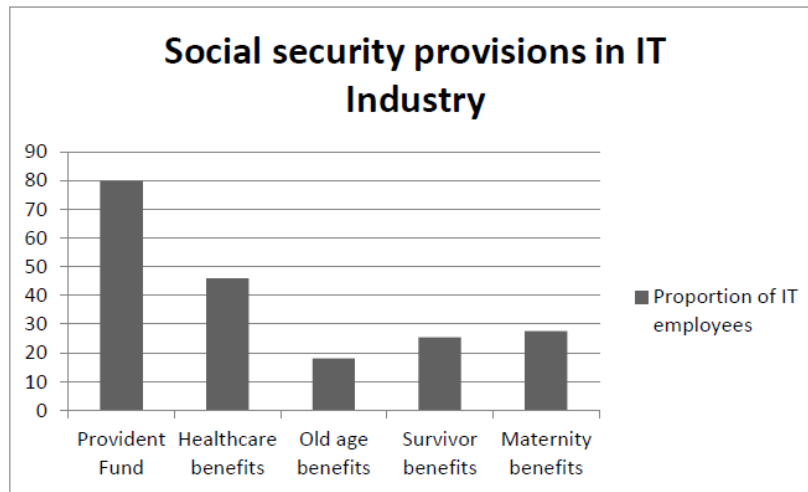
Discrimination at workplace

It was found that 70% of the unfair treatment took place on account of the employee's caste and approximately 30% due to their religion and regionality. Further, it was observed that 26% and 34% discrimination was reported respectively due to race and gender. Many a times when employees go on paternity/maternity leaves, their absence is not well entertained and can get reflected in their slow progress on the job-ladder. Almost 16% of the employees admitted being discriminated on these grounds in this study.

Social security

It was found that only 80% of the IT employees were covered under the scheme of Provident fund and received some form of social security through this. Deficit in social security measures were found in this industry which shows room for improvement in this area. The following chart shows the proportion of employees who have been able to avail social security provisions from their companies.

Chart 3 Social security in IT Industry



Source: Primary study

It can be observed that only 28% of the employees had access to maternity benefits at their workplaces and 46% of the employees were entitled to healthcare benefits.

DISCUSSION

Major issues remain in the world of work (especially in developing countries like India) which need a silent thought-over, action-plan and fair implementation of labour laws and regulations. The foremost is creation of employment opportunities vis-a-vis provision of decent work. Creation of employment opportunities is often a secondary task for IT companies which employs roughly 8% of India's workforce, because of the vulnerability of global trends. IT companies, in times of recession report decline in projects and availability of work. Provision of decent work has therefore taken a backseat in this industry and at times it also tends to erode job security in the minds of existing employees. In reality, there is no trade-off between employment creation and decent work because providing decent working conditions is not a costly affair, rather it just requires some consolidated efforts from the organisational front. Application of labour laws to the IT industry can legally protect the interests of the IT workers.

There is a need to make social dialogue mechanisms more effective. Decent work and social dialogue are inter-linked as the latter ensures the freedom of opinion. Social dialogue is a basic labour right. It is important that employers in any industry provide an enabling environment at their workplaces to encourage (or at most not discourage/bring hurdles in) setting up of social/worker's forums, invite participation from employees in decision-making, give them freedom to unite and bargain. IT employers were found to be providing such mechanisms at their workplaces and also on social networking sites.

For ensuring fair employment and promotion practices, employers have revealed that the attributes which they examine in a prospective employee in the order of their preferences are work experience, logical and analytical ability, academic record, educational institution, family background, nationality/race, age and gender. This



indicates a decent recruitment practice. The most common modes of recruitment were found to be employee-referrals, job advertisements and campus recruitments in the decreasing order of their rankings. Factors highly related to promotions in the company were found in the decreasing order of their preference to be work experience, number of projects handled, age/seniority, academic record, add-on qualifications and gender. If all the IT companies effectively follow such recruitment and promotion policies, then fair treatment at employment can add to the reputation of the industry too, thereby uplifting its image at the global level.

Decent work provision in countries like India requires strong political and legal support system that ensures that there are no loopholes being taken advantage of by the employers. Several issues as discussed above are the hurdles in the way of decent work provision. It is so because broader problems require the intervention of the policy-makers and law-enforcement agencies which is a long and tedious process. It is important to make this process people-centric and devise mechanisms for efficient and speedy solutions for the affected workforce. It also needs to be understood that decent work is a milestone in social upliftment and economic development of a country. Countries that provide decent work are in truest sense developed economies as by doing so they are creating a better world for the mankind.

The deficits in decent-work provision hold a bearing on the part of the strategists and management of the industry on one hand and the policy-makers as well as law regulation authorities on the other hand. The factor analysis of the various indicators of decent work and their sub-indicators have thrown light on few issues that can be easily dealt with and give way for adoption of decent work practices in any industry. IT industry no matter is one of the most successful emerging industries of Indian economy in the 21st century. However work conditions in IT industry are somewhat similar to that of Business Processing Management (BPM) and other ITES industries too. The technical analysis of the study has exposed various dimensions of decent-work deficits in the India's IT industry which can be addressed by reformulating employment policies from time to time. For the adoption of decent work practices, following points may be noted:- An employee is a human being first and every human being has aspirations in life related to family, career, education or self. That work which meets the aspirations of the worker can be rightly considered as decent as it gives a sense of fulfilment. To be able to provide such a thing, companies need to become sensitive towards their workforce and their interest areas as well as their specializations and then assign or distribute work accordingly.

Companies need to evolve mechanisms for social dialogue between the employees of all scales/grades and the top management. In order to inculcate the sense of belonging among the employees, the management need to follow the policies promoting participation in the decision-making process. Every effort needs to be taken to ensure that there is no glass ceiling between the employees and the employers as far as social dialogue is concerned.



Conclusion

Security and stability of employment for an employee is a critical constituent of decent work. Measures adopted by the companies to tackle high attrition rate have been enactment of employee-friendly and family-friendly employment policies, active policies for decent work, improved employer-employee relations and by giving salary hikes and promotions. In-depth questions about attrition rate gave the view that attrition was highest among males at the lower level, among females at the middle-level and again amongst male employees at the highest level. Retrenchment based on appraisals and tied to business cycles erodes the job-related security in the minds of IT employees and encourage them to search for better jobs on-the-job leading to their eventual exits and high attrition rates of the companies. Hence before dispensing with the services of any employee, companies should give advance notices to the concerned employees so that he/she can find an alternative job during that period rather than suffering a sudden loss of income. It is to be noted that retrenchment can take place due to two reasons- either due to uncertainty of project availability or due to the mismatch between constantly changing technology and skills of the employees. As the requisite skills in the industry are dynamic in nature, employees have to constantly update their skills and knowledge to secure their employment. Employers can confront such retrenchment-related issues by taking concrete steps to impart training, research and development skills to their employees which would further enhance the productivity of the industry and control the attrition rate too. Meanwhile after retrenchment/resignation by the employee from the company's post, the provision of social security benefits such as PF fund amount, etc. should be made at the earliest.

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