

Employment Problems In Information Technology Industry: A Legal Analysis

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ABSTRACT

The Information and Communication Technology (ICT) sector of India is a billion dollar industry which is contributing immensely to the national GDP of the nation. The Information Technology sector has grown exponentially in the last two decade post economic liberalization. As per the NAASCOM data Information technology sector is growing at the rate of 7.7 percent and it will reach 10 percent by the end of 2025. Some of the notable IT companies of India are Wipro, Infosys, TCS, Capgemini, and HCL. Every year lakhs of students from different Engineering College get hired by these companies through campus placements. Majority of the workforce of the Information Technology sector are young and technically skilled. The Information Technology sector is perceived to be a high paid sector and full of skilled staffs. It is considered to be free from employee union interference. The employment relations perceived to be more flexible from the perspective of flexible employment contracts and HR policies. The employment relationship is going through a phase of transition and it has changed drastically because of Liberalization, Globalization and Privatization. The present paper is focused on the analysis of the employment problems and the law's position with respect to that.

Keywords

Information Technology, Information Technology & Enabled Services, Liberalization, Employment Relationship, Covid-19

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Introduction

The Information Technology sector in India is considered to be a sector which recruits the highest number of young computer science engineers through campus interview from engineering colleges. The hiring pattern followed in the Information Technology sector is mainly divided in two categories the first category is called as "campus hiring" where in all the big software companies' recruit' fresher final year engineering students from campus. The second category is called as "lateral entry" hiring. This hiring practice is followed to fill up the senior positions of the company. The Information Technology sector compensation offering to employees is considered to be decent and high compared to other Industry. The Information Technology Sector is driven by Knowledge and skills for this reason Indian software engineers have high demand in the developed countries. The Information Technology sector has been flourished all these years because of the government patronage. The Information Technology sector is governed by all the existing labour laws of the land. This sector is regulated and governed by State Shops & Commercial Establishment Act. Globalization and the rapid growth of IT sector have significantly impacted the employment relationship. Like other industry the employees of the IT sector are facing challenges in employment. The IT sector in India, by and large, is free from Trade Union intervention. So the employee cannot exercise collective bargaining in negotiating their rights. IT employment in India is governed by several labour laws, passed both by State and Central Government. However, some of the state like Telengana, Andrapradesh, Karnataka and Maharashtra have exempted IT sector from their purview. The recent Covid- 19 upsurge has severely impacted the Industries including the Information Technology Sector in a great way. Amid this

uncertainty in the business environment Information technology Sector has started to lay off employees from their projects. Companies like IBM and Cognizant are in the process of laying off thousands of employees to reconcile their business interests. Under this uncertainty of Job employment, it is imperative to know the legal protection of employees against the employer who are terminating the employees at convenience. The present paper is focused on the analysis of the employee's problems working in the IT Industry and the standing of the Law on the various facets of those problems faced by the employees.

Objective Of The Paper

- To find out the employment related problems of employees working in IT Sector.
- To take the response of the employees on the common problems they are facing.
- To analyze their employment problems from legal perspective.

Literture Review

Employment Contract:

The employment contracts in the Information Technology Sector has provision of Non Compete and Non Solicitation clauses which restricts an employee to join a similar industry after leaving the employment of similar nature. Similarly the Non Solicitation clause restricts the employees to take employees with them for employment which are known to them. These are restrictive covenants which are incorporated in the employer contracts with narrow definition which helps to protect the interest of the employer. "Employers use to incorporate restrictive

covenants in the agreement to protect their confidential information and to protect their business interest. But any kind of restrictive covenant falling under the scope of section 27 of the contract Act, then the agreement is considered to be restraint of trade". Sometimes execution of strict employment bonds restricts the right of employees to break the employment contract before the agreed time period.

Illegal Termination/ Lay Off:

The human resources policies and practices of the Information Technology are more development oriented and flexible in nature. The average talent pool in the Information Technology sector ranges from 20 years to 30 years of age. The hiring pattern in this Industry is fully dependent on skills and competency. The employees in the IT industry are hired for different ongoing and prospective projects. When the projects get over and new projects were not there in the pipeline, then employees get fired from their job "There is no standard process followed to terminate an employee in India. An employee may be terminated according to the individual labour contract between the employer and employee, if the contract defines a process of termination. Employers should be aware, however, that labour laws supersede the provisions of labour contracts- any termination policy or clause outlined in a contract should be checked against the law by a professional". There seems to be a misconception that Information Technology Sector is free from Labour and Employment laws but in practical terms they are covered under all the existing Labour and Employment laws of the state. Software Industry in Bangalore has requested the State Government to relax the clause of Working Hours mentioned in the State Shops & Establishment Act. Flexi working hours will help the companies to cope up with the competition with other companies. This severely impacts the employee's social security. The Information technology Sector in India is free from Union interference in large. However, the recent cases of lay off from industry have given the opportunity to the affected employees to form employee unions.

Occupational Stress & Harassment At Workplace:

"A study on professional stress, depression and alcohol use among Indian software professionals, observe that the software employees are professionally stressed and are at 10 times higher risk of developing depression and also significantly increase the incidence of psychiatric disorder". Employees in IT companies develop health problems because of physical and mental stress at work place. Stress is high in software industry because of their nature of work targets, achievements, night shifts, over work load. The employees are working more than the prescribed working hours but without any overtime compensation. "Many Indian Software companies face sex scandals; however, a few have come to public notice. According to study of Annual Reports of 46 Nifty companies by the Economic Times in September 2015, almost 38 out of 50 Nifty companies have 415 sexual harassment cases against them". In IT industry sexual harassment cases are often unreported. Vani Kola Managing Director of kalaari capital wrote in his

blog that sexual harassment cases are not reported because "This is understandable, as we lack the confidence in the organization to handle such issues comprehensively, and fear of retaliation." Indian companies reported 14 % more cases of sexual harassment in financial year 19 in comparison to previous year data. "Techie drags IT companies to court over long working hours and bad leave policy". The increase in employer's demands and the ambitions of the employees are the main causes of employment stress.

Exemption Of It Industries From Labour Laws:

Some of the states like Karnataka, Telengana, and Maharashtra have exempted the Information technology industry from the provision of the Labour laws for generating surplus revenue for the states. This severely affects the employee to work under unregulated regulations. The new labour codes enacted by the parliament has given more powers to the states to exempt new industrial units from "any or all provisions of the code" "unconditionally" for a specific period of time as it thinks fit through a notification. In recent past the state of Uttar Pradesh has proposed a Ordinance that will exempted all the factories and establishment engaged in the manufacturing process from 'all Labour Laws' for a period of three years. The state of Gujarat has announced to give 1200 days of exemption to new industry to 'boost economic activity'. States like Karnataka have exempted the IT industry's for a long period of time against the provisions of Industrial Standing Order Act of 1946. Such kinds of relaxations to industry will severely undermine the rights of the employees.

Trade Union:

The Information technology Industry is considered to be a skill based industry and the industry is driven by talented work force. Because of the flexibility of employment relationship and the newness of the Industry Unionization was not a preferred choice of employment dispute redressal. For two decades the Information technology Industry was free from Unionization. However with the growth of the Industry and employment challenges lay off, Working Hours, Less Compensation has given a choice to the employees to form Unions and use Collective Bargaining to protect their interest. The formation of first recognized trade Union in the name of KITU (Karnataka State IT/ITES Employee Union) is the indication of the changing nature of employment relationship.

Methodology

A questionnaire was designed with the help of past literature on employment problems of employees working in the Information Technology Industry, which includes newspaper and internet blogs. More information about the problems of the employees was collected from personal interviews with the IT company employees, which includes fresher employees to experienced employees. With the help of these inputs, a questionnaire was designed with 10 questions on employees facing problems in the Information Technology Sector and the responses of the employees were

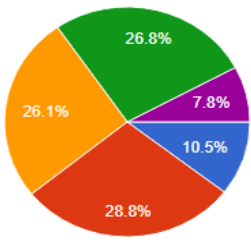
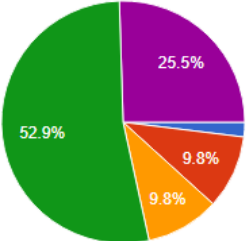
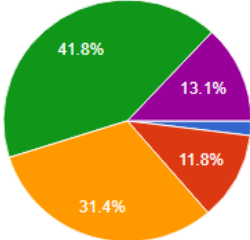
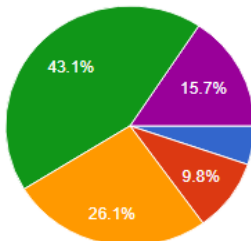
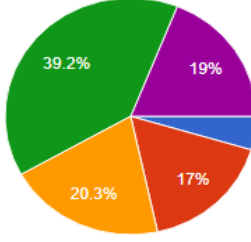
recorded for analysis. The response of each of the questions was recorded in the Likert scale of 1-5 (1- Strongly Disagree, 2- Disagree, 3-Neutral, 4- Agree, 5- Strongly Agree). The questionnaire was sent to 153 employees of the Information Technology industry through Google forms to record the respondent response. The respondents were randomly selected from a list of software engineers. The analysis was done through SPSS which is graphically presented in the Data Analysis with the help of Pie Charts. All the Pie charts are representing the percentage of the responses recorded from the respondents.

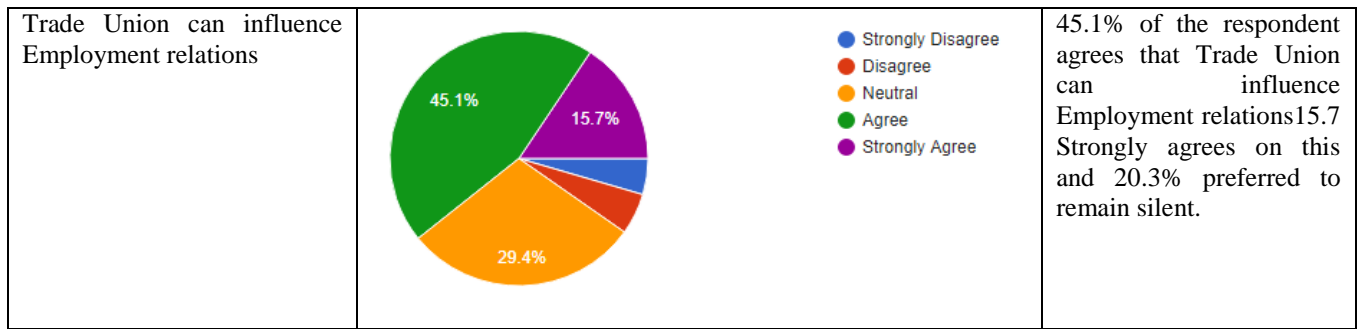
Data Analysis

The present research was carried out among software engineers working in the Information technology Industry.

The survey data was received from 153 respondents comprising of 75 (Male) and 78(Female). To find out the common problems of the employees 10 questions were framed basing upon literature available in the internet and personal interview with employees of the IT Industry. For the data analysis descriptive statistics was used. The statistical tool of SPSS was used for the analysis. The responses received from the respondents are highlighted in the below table. All the responses received are further analyzed as per the current provisions of Law.

QUESTIONS	RESPONSE	RESULT
Existing labour and Employment Protection laws are adequate to protect the interest of the employees	<p>Legend: Strongly disagree (blue), Disagree (red), Neutral (orange), Agree (green), Strongly agree (purple)</p>	27.5 Percent of the respondent agrees that the existing labour laws are not adequate for the protection of the employees. 25.5% have shown their disagreement. 7.2% have shown strong disagreement and 34.6% respondent preferred to remain neutral.
A new employment Law is required to protect employees of the IT Industry	<p>Legend: Strongly disagree (blue), Disagree (red), Neutral (orange), Agree (green), Strongly agree (purple)</p>	49% of the respondents feel that a new employment Law is required to protect employees of the IT Industry. 26.8% of employees have shown strong agreement and 20.9 % of respondent Proffered to remain Neutral.
Employees are protected against extended working hours for employer business interest	<p>Legend: Strongly disagree (blue), Disagree (red), Neutral (orange), Agree (green), Strongly agree (purple)</p>	24.2% of the respondent agrees Employees are protected against extended working hours for employer business interest. 7.2% respondents strongly agree to this. 26.1% shown their Disagreement. 17.96% shown their strong disagreement and 24.8% remain Neutral.
Employees are legally protected to receive fair compensation	<p>Legend: Strongly disagree (blue), Disagree (red), Neutral (orange), Agree (green), Strongly agree (purple)</p>	24.8% of the respondent agrees that Employees are legally protected to receive fair compensation. 7.8% Strongly agrees on this. 26.1% shown their disagreement. 11.1% have shown strong Disagreement and 30.1% preferred to remain silent.

Employees are protected against unfair termination by employer for business Interest	 <p> Strongly Disagree Disagree Neutral Agree Strongly Agree </p>	26.8% of the respondent agrees that Employees are protected against unfair termination by employer for business Interest. 7.8% Strongly agrees on this. 26.8% shown their disagreement. 10.5% have shown strong Disagreement and 26.1% preferred to remain silent.
Employees of IT Industry are sexually protected against sexual harassment at workplace	 <p> Strongly disagree Disagree Neutral Agree Strongly agree </p>	52.9% of the respondent agrees Employees of IT Industry are sexually protected against sexual harassment at workplace. 25.5% Strongly agrees on this. 9.8% shown their disagreement and 26.1% preferred to remain silent.
“Non Compete” clause in contract restrict the right of employees to join similar industry after leaving company	 <p> Strongly Disagree Disagree Neutral Agree Strongly Agree </p>	41.8% of the respondent agrees “Non Compete” clause in contract restrict the right of employees to join similar industry after leaving company. 13.1% Strongly agrees on this. 13.1% shown their disagreement and 31.4% preferred to remain silent.
Employment contracts are favourable to Employees	 <p> Strongly disagree Disagree Neutral Agree Strongly agree </p>	43.1% of the respondent agrees Employment contracts are favourable to Employees. 15.7% Strongly agrees on this. 9.8% shown their disagreement and 26.1% preferred to remain silent.
Employment Bonds restricts the right of Employees	 <p> Strongly disagree Disagree Neutral Agree Strongly agree </p>	39.2% of the respondent agrees Employment Bonds restricts the right of Employees. 19% Strongly agrees on this. 17% shown their disagreement and 20.3% preferred to remain silent.



Pie Chart 5.1(Source Primary data)

Legal Analysis:

The labour protection laws in India are enacted for the protection of the employees from employer against all kind of exploitation. These laws are enacted specific to the requirement of employees in a particular setup like Factories Act of 1948, Industrial Dispute Act of 1947, Shops & Commercial Establishment Act etc. There is no law specific to the Information Technology sector which is meant to protect the employees of the Information Technology Industry. In various instances the courts of India have attracted all the provisions of the existing labour laws (IDA ACT 1947, FACTORIES ACT 1948) in deciding employment disputes of IT industries. The Information Technology Industry is new and in a stage of constant growth. So, it is important to find the standing of laws and judiciary on the identified problems (Employment Contract, Illegal Termination, Occupational Stress and Harassment at Work Place) of employees working in the Information Technology Sector.

The Contract of Employment between the employee and the employer in the Information Technology industry is not binding by any regulations. However, the principle of the contract has to be in line with the Indian Contract Act of 1927. The employees of IT industry have to abide by the restrictive covenants like “Non Competitive” and “Non Solicitation agreements. These agreements restrict an individual to join similar kind of industry after leaving the present employer and restricted to take his colleagues as employees of his new place of work. The Article 19 of the Constitution of India has guaranteed all the citizens the Right to practice any profession, trade or business. In determining the bargaining power of the employer and employee, the honourable courts have relied on the terms of the contract to be reasonable for each of the parties. The Apex court in the case of **Niranjan Shankar Golikari Vs. Century Spy & Mfg. Co. Ltd.** illustrated the test to determine the validity of the restrictive covenants in reference to the provisions of the Indian Contract Act of 1947. In the case of **Kumar Apurva vs. Value First Digital Media Pvt. Ltd.** Hon’ble Supreme Court of India have restricted the employee to carry any activity which goes against the interest of the employer. In the case of **Percept D’ Mark (India) Pvt. Ltd. vs. Zaheer Khan & Anr.** it was held by the Hon’ble Apex Court that “a restrictive covenant beyond the terms of the contract is void and not enforceable”. The court also held that “the doctrine of restraint of trade does not apply during the continuance of the contract of employment and it applies only when the contract comes to an end.

The Industrial Dispute Act of 1947 has provisions against illegal termination. Some of the important provisions with respect to the problem of Illegal Termination of employees from job is as follows;

Section 2(oo) of the IDA Act, 1947 says “retrenchment means the termination by the employer of the service of a work man for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include (a) voluntary retirement of workman (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or..”

Section 25(F) of the IDA Act, 1947 has laid down the provision to be followed before retrenchment “any workman with continuous service for not less than one year has to be give one month’s of notice the reasons of retrenchment and payment of wages equivalent to fifteen days average pay is applicable in lieu of that notice period”.

Section 25 (G) of the IDA, 1947 act has laid down the procedure of retrenchment, which says “any specific category of workman if needed to be retrenched in the absence of any agreement, in that case the employer should retrench the last person employed in that category otherwise to record if any other category of employee is retrenched”.

The Shops & Commercial Act also laid down various provisions with respect to termination, like an employer cannot terminate an employee who has worked more than three months in an establishment without serving 30 days notice period except in cases of misconduct. The provisions of Shop & Commercial Establishment Act are differently enacted by states as per their requirement. The Information Technology sector is covered under Shops & Commercial Establishment Act. There is no specific law designed for the protection of employees against lay off and governance of the employees of the Information Technology Sector. It is important to find the judicial approach to the problems of employees working in the Information Technology sector. In India Information Technology Sector is mostly regulated by Shops & Commercial Establishment Act which varies from state to state. But in some of the employment disputes the employees have contested in the courts as “Workmen”. Section 2(S) of the Industrial Dispute Act of 1947 defines “a workman as any person (including as apprentice) employed in any industry to do any manual, unskilled, Skilled, technical, operational, clerical or supervisory work, for hire or reward, terms of employment be express or implied and included any such person who has been discharged, dismissed or retrenched in connection with, or as a consequence of dispute”. The definition excludes employees

holding administrative/supervisory responsibility and drawing wages more than rupees 6500 per month. The existing Labour law in India are designed specific to Industries, factories, Mines, Plantation and Establishment. The Apex court in India has given landmark judgment on “illegal termination” from job. In the case of **M.Rajan Issac Vs. The Chairman & Managing Director**, the Hon’ble held that the grounds of termination may be objective and due process of law has to be followed before termination of employee. In the case of **A. N.Shukul vs. Philips India & Others** the Hon’ble court held that, the employer has a right to terminate the employment contract for business plans if it is part of the terms mentioned in the employment contract. In the case of **Jayantibhai Roojibhai Patel Vs. Municipal Corporation, Narkhed & Ors**, the Hon’ble court held that any employee being unlawfully terminated is entitled to get back wages. In the case of **K Ramesha vs. HCL Technologies** the labour court had given relief to the employee as per the provisions of the Industrial Dispute Act of 1947 and ordered for here reinstatement with full wages. In the case of **Intertek India Pvt Ltd Vs. Priyanka Mohan** the Hon’ble Delhi High Court laid down that a suit for illegal termination of person in private service is maintainable.

The Exploitation at Workplace cases have increased over the years in the IT Industry because of its extended working hours. The harassment cases include sexual harassment case, bullying, extended working hours and less compensation. The employees are succumbing to work related stress and business targets which has significantly affected their health. In the **Visakha Vs State of Rajasthan** the Hon’ble Supreme Court of India has laid down clear guidelines on the protection of women against sexual harassment. In the case of **Praveen Pradhan vs. State of Uttaranchal & Others**, the Hon’ble High Court of Uttaranchal observes that “under the pretext of administrative control and discipline a senior is not entitled to humiliate a junior staff inhumanely .” In the case of **Madan Mohan Singh vs. State of Gujrat & Ors.** , The Hon’ble court held that if the prosecution will be allowed with all the cases biased in nature, it would be difficult for the superior official to work and the court quashed the proceeding against the superior official. In the case of **Dr. Prasad Pannian Vs. Central University of Kerala** the Hon’ble High Court of Kerala held that “The very concept of sexual harassment in a workplace against a women should start from an express or implied sexual advance, sexual undertone or unwelcoming behaviour which has a sexual tone behind it without which provision of Act 2013 will not apply”. In a landmark judgment the Hon’ble Supreme Court Of India observed that “Sexual harassment at workplace is an affront to the fundamental rights of a women to equality under Article 14 and 15 and her right to live with dignity under Article 21 of the Constitution of India as well as her right to practice any profession or to carry out any occupation, trade or business”. The Indian Penal Code, 1860 under Section 354 & 509 has laid down provision to protect women from sexual harassment. Section 354 “deals with the case of assault or criminal force to women with intent to outrage her modesty. Sec. 509 of the India Penal Code, 1860 “deals with gestures or act intent to insult the modesty of women”.

Conclusion

The changing nature of employment relationship in the Information technology is in transition and keeping the mammoth size of the workforce working in the Information Technology Sector it’s highly imperative for the law makers to enact a law which can largely cater to the interest of the employees of the IT sector. The Information Technology Industry is significantly contributing to the GDP of the nation. The growth is possible because of the skilled manpower working in the IT sector and it is necessary that their employment rights have to be protected by the legislature and Judiciary. The harmony of employment relationship can be achieved when both the interests of the employer and employees are served with proper magnitude. The government has brought in four labour codes by merging old codes governing the Industry, Factories and Establishments. These new Labour Codes are named as The code of Social Security, 2020; The Industrial Relations Code, 2020; The Occupational Safety, Health and working Condition Code, 2020 and The code on Social Security, 2020. These codes are passed by both the houses of the parliament and got the Presidential accent to be a Law. It’s an optimistic move from the Government to bring clarity in the governance of the Employment Relationship. The time will tell how these reforms are going to yield better results for the Industrial Employment Relations.

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