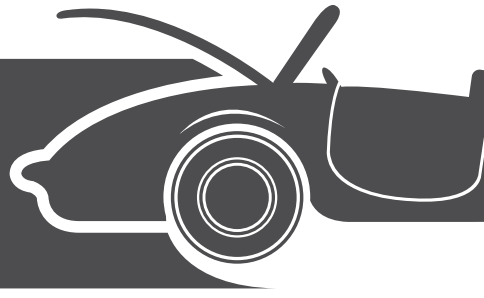


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The IT and ITeS industry may finally
get its own ACT together

By Ganesh Chella



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Introduction

For the last several months, the IT majors in Bangalore and the Government of Karnataka have been engaged in intense debate and discussions about the applicability of the Industrial Employment (Standing Orders) Act, 1946 to the IT industry in the State.

The technical debate that went on for a while was about how and why the above act was in the first place made applicable to establishments registered under the Karnataka Shops & Establishments Act. The debate was also about why the industry should be granted further extension from the provisions of the Act, at least for a few more years.

In squabbling over technicalities the IT and ITeS majors were failing to acknowledge the elephant in the room – **the USD 100 billion IT and ITeS industry which employs over 2.8 million employees directly is functioning without any labour governance framework.**

The current situation

All major and significant industries in India are covered under an industry specific legislation. So, factories are covered under the Factories Act, plantations under the Plantations Labour Act, mines under the Mines Act, port workers under the Dock Workers (Regulation of Employment) Act, construction workers under the Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, and so on.

What about the 2.8 million employees in the IT and ITeS industry? Well they are currently covered by the Shops and Commercial Establishments Act which was really intended to

address the needs of small units of establishments like a retail shop or trading establishment, a bank, an insurance establishment, an office or a hotel, restaurant, a cinema or any other place of public entertainment. From this perspective, it appears a huge error of omission that the IT industry has been left uncovered or covered by a highly inappropriate piece of legislation – an error that in many ways made things easy for the industry.

The Industrial Employment Standing Orders Act which works in conjunction with these Industry specific Acts requires industrial establishments to formally define, publish and on that basis implement uniform and transparent rules and conditions that should govern all the workmen employed by it.

This includes things like categories of employment, leave, attendance, holidays, the manner in which the organisation will deal with termination and the manner in which it will deal with misconduct and punitive actions as well as with grievances. It also deals with the manner in which records will be maintained.

The Government of Karnataka in its wisdom found it necessary to cover the IT industry under this legislation but had granted exemption to the industry from the provisions of the Act. This ten year exemption expired in August 2011.

Around this time, the Government received representations from a few employee bodies pleading that the exemption must come to an end and that the IT industry should adopt the Act. The Government responded and said that the exemption will end and the companies must conform to the requirements in six months time.

Meanwhile there were hectic representations that the exemption should continue.

The debate finally culminated in the Karnataka Government declaring its intention to create a customized Employment Standing Orders for the IT, IT-enabled services and the hardware and electronics sectors in the State. Industry leaders have finally welcomed it as a wonderful initiative.



The larger context

To understand the real issues it is important that we transcend technicalities and see the big picture – the larger context. There are at least five aspects to this larger context that come to my mind:

The IT industry is extremely large today

The IT industry has become extremely large today. In FY 2012, the Indian IT-BPO industry-aggregate revenues crossed the USD 100 billion mark, with exports at USD 69 billion. From a workforce size that was around half a million in 2000 it has grown nearly six fold to around 2.8 million.

When we make any plea about the need for flexibility and freedom from any piece of legislation, we must keep this size in mind.

IT / ITeS employee more closely resemble workmen today

From a time when the IT workforce was seen as consisting only of highly educated and skilled engineers doing complex technical work, its workforce increasingly resembles any other industry – a large contingent of skilled and semi-skilled workmen who are doing a huge amount of routine, repetitive work and a smaller contingent of technical specialists, managers and leaders.

Today, competitive forces have made pay, benefits and employment conditions in the industry a lot tougher and a lot less glamorous.

Thanks to years of de-skilling efforts to contain costs, IT employees have become less employable in a relative sense.

From being a source of employment for the urban elite, it has now become the bank or government job of the 21st century, attracting large numbers who seek job security and stability.

From a time when everyone in the industry belonged to one homogenous group, we are beginning to see the growth of a very large pool of IT workers who may never make it to real management jobs in a long time. Many in fact may not even want to.

Stress is a huge factor

Unlike industries that have a problem with only physical strain, the IT and ITeS industry is plagued by issues of stress which is caused by a combination of factors including long working hours, odd shift timings, living with multiple cultural identities, in addition to special problems that women employees face in balancing work with their personal needs, not to mention issues of sexual harassment.

Combined with other socio-cultural factors, employees in this industry more than any other are widely reported to suffer from mental health issues (evident from increase in suicides, breakdown of marriages and other stress induced consequences).

Job losses, market driven practices and corrective actions are a huge factor

Given global economic cycles, the IT industry has seen a lot of layoffs over the years. Given that these are white collared employees, these layoffs are executed in copybook American style.

Given that they hire in thousands and as a consequence face quality problems in the hiring process, they do routinely terminate employees for falsification and poor performance in much the same way.

For an industry that offers relatively much higher pay and working conditions, market oriented practices around performance, pay and separation are common but are not always implemented in a fair and transparent manner. In recent years, especially during difficult times, issues around this have often cropped up.

Similarly, issues of fraud and corrupt practices in employment constantly crop up. Read this scathing article that gives us chilling details about the rampant corruption in the IT industry for jobs.

(<http://businesstoday.intoday.in/story/recruitment-racket-fraud-it-companies/1/187011.html>)

In the face of mounting public opinion, industry has not taken any affirmative action

Unfortunately, having enjoyed exemption for over 10 years but not having taken any affirmative action to establish an alternate labour governance framework, the current plea of the industry seems less than convincing.

It took the Supreme Court to come up with the Vishaka Guidelines on sexual harassment. It was not initiated by the industry despite employing a large percentage of women employees.

It took several suicides for these firms to wake up and reach out to set up Employee Assistance Programs. Even today, most of these programs do not receive adequate attention from top management.

Over the years, at least a few employee representative bodies have begun to emerge, mostly to address issues raised by employees. These include UNITES, The ITEC (IT and ITeS Employees Centre), a support group for IT professionals, and ITHI, a forum of women employees in IT and ITeS and so on. Beyond these, several self-interest groups keep emerging from time to time, especially using social media to address specific issues.

Over the years studies have routinely pointed out that all is not well as far as employee wellbeing in the IT industry is concerned. For example an ASSOCHAM report pointed out that 55% of IT employees suffer from lifestyle diseases.

(http://articles.timesofindia.indiatimes.com/2012-08-07/chennai/33082407_1_spicy-food-lifestyle-disorders-respondents)



Unfortunately, for an industry of such a large size, there is no system of external audit of working conditions or support systems. Nor are there any good practices guidelines issued by NASSCOM, the industry body. For example the UK has guidelines and good practices recommended for the Call Centre industry through the Local Authority Circular based on the research undertaken by the Health and Safety Laboratory. Nor are there uniform guidelines to deal with such contentious issues as grievances, termination and dismissal for misconduct.

The core issue and need

In the face of these larger contextual factors, things like employee rights and responsibilities need to become more formally defined and cannot be left vague and open, the way you could leave it when each of these organisations employed 1000 and not 100000 people.

Yes, it is true that the Government got its diagnosis of the need right but its solution wrong. It is true that the current SO Act may not offer the most appropriate legal framework for the IT industry.

It is however not tenable for the industry to resist existing legislation but also not take the effort to suggest an alternate framework.

Having obtained exemption a decade ago when the context was so different, the IT Industry leaders must have recognised the larger implications of running an industry with such high mobility without a legal framework to govern its workforce. They should have proactively come up with a framework that they thought would work.

It is one of the most fundamental elements of corporate social responsibility to deal with your own employees in a socially responsible manner. At a time when citizens have the right to information, the least is to give employees a right to know the rules by which they will be governed. Your employees must know their rights and of course their obligations.

For an industry with such great talent and such a huge equity with the Government and all other stakeholders, it should not be too difficult a task to come up with a world-class framework.

Such a framework should cover the obvious areas like working conditions. It should also cover the contentious issues relating to grievance redressal, termination and disciplinary procedures. Most certainly, industry should be empowered to terminate employees with due notice should there be a need.

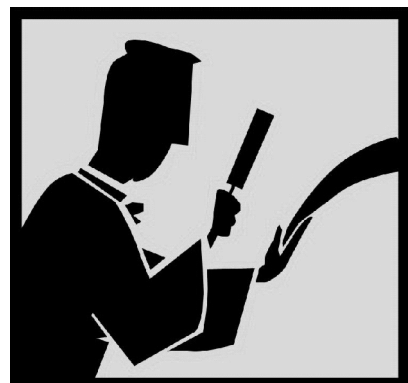
Given the nature of special issues that knowledge workers face, the legislation should pay special attention to aspects that impact physical as well as mental health and psychological well being.

It should also cover aspects relating to diversity and inclusion.

I believe that a sensible legislation will only further enhance the image and stature of the industry. Since the big firms are supposedly doing better than the law, complying with it should not be difficult for them, just as the hundreds of large and reputed manufacturing companies in our country seldom have trouble complying with the various stringent Acts that apply to them. It might make them more competitive and prevent the less credible sweat shops from setting up and running IT businesses.

Also, we must see this as a national issue and not as a problem in the state of Karnataka because a national IT organisation cannot do things in isolation for one single state.

If the current announcement does become a reality, that will be a big step forward in the IT industry got its own ACT (together)!



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totus HR School offers a comprehensive range of courses that have been designed to enhance Business and Functional, Professional and Leadership skills and competencies for professional development.

totus HR school is therefore deeply committed to retaining the focus on humanness in all its endeavours. Our offerings will pay attention to the scientific origins of psychology and sociology and also emphasise the development of critical human facilitation skills.

About Under the Bonnet

totus HR School brings out a research-based quarterly journal called Under the Bonnet, which is distributed to the community of Business Leaders, CEOs and HR professionals.

Under the Bonnet is our contribution to thought leadership and adding to the knowledge about people.

Almost all of the few publications in India that explore the subject of Human Resources look at HR from the dashboard, in terms of how things are supposed to be. What Business Leaders and practicing HR Managers are looking for is inputs and insights on why things don't work the way they are supposed to and why things go wrong. They really want to look "under the bonnet".

This is what we aspire to do with Under the Bonnet. We take one important issue or theme at a time and look at it in depth.



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