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AN OVERVIEW OF THE CHALLENGES FACED BY ITES /BPO EMPLOYEES IN INDIA AND THE NEED FOR NATIONAL LEGISLATURE TO PROTECT EMPLOYEE RIGHTS OF THIS SECTOR

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ABSTRACT

Business Process Outsourcing (BPO) is a growing industry that is garnering interest from all other sectors such as government, business, and academicians. India has the most number of BPOs in the world and this sector in India is growing at the rate of 40-50 percent since inception. This paper is an attempt to explain the problems faced by the ITES / BPO workers within the legal context in which they work. It also tries to bring to fore, the problems faced while implementing the legislature and the consequences of exemptions granted by state level laws to encourage ITES sector. Flexible timings, counseling services, stress management trainings, job rotations, provisions for child care and creation of opportunities for individual growth are some ways in which the inherent monotony of work in BPOs can be addressed. This will also help in managing the high attrition rate affecting this sector.

KEYWORDS

BPO, ITES, legislature, outsourcing.

INTRODUCTION

India has the largest number of BPO companies in the world and has now become a prominent destination for outsourcing in the services sector. Outsourcing to India began with the growth of IT industry and today BPO has become a very important part of the export oriented IT software & Services environment. While BPO services have helped to put India on the map for outsourcing business, it has also created a host of new problems such as burnouts and changed family structures in the society. This paper discussed various problems faced by the employees of ITES/ BPO sector and the local legislations which cover this sector. The paper also discusses some of the concerns facing the sector like attrition and work organization and concludes with some suggestions on how some of the problems particularly can be addressed

BPO

Business Process Outsourcing is a broad term referring to outsourcing in all fields. BPO is the allocation of one or more IT intensive business processes to one or more external provider that in turn owns administers and manages the selected process based on defined and measurable criteria. A BPO organization can also be seen as performing a process or a part of a process for another business organization, in order to gain in productivity or save on costs. A call centre on the other hand, performs that part of the client's business which involves handling telephone call. These are called voice based BPOs and usually used for sales, customer service or support activities. Call Centre can be seen as a 2d services industry.

NEED AND IMPORTANCE OF THE STUDY

BPO industry is still in its nascent stage in India and although it is booming today, it has not been without its share of problems. BPO/ ITES sector requires people who have basic skills at entry levels and therefore the average age is 20-23 and the job profile is usually generating revenues or troubleshooting over the phone. Employees are trained to speak in foreign accents to talk to their customers and they have to work odd hours to reach their overseas customers. This is important aspect of BPO work as it means taking advantage of different time zones to maximize on productivity and costs. However the stress and unnatural hours are adversely affecting not only the physical and mental well-being of the employees but are also affecting our social structures. The problems associated with ITES industry need to be understood in relation to the demands and nature of the this industry. Moreover this being new sector legislation at national and state level also needs to be fine tuned to cover this industry and offer protection of fundamental rights to the employees. As ITES sector is growing at a rapid stage various states like Bengal and Karnataka are offering exemptions to encourage the sector locally. All this needs to be considered in the light of long term sustainability of the industry. Therefore there is an urgent need to understand the problems facing workers of this sector and work out solutions that will help and promote the sector at the same time ensure basic rights to its employees.

GROWTH OF BPO IN INDIA

BPO has emerged as one of India's most promising sectors and has been growing at a rate of 40-50 per cent since inception. Taking advantage of the abundant skills and low cost benefits, a large number of BPOs have sprung up in India in recent years as many well established companies have started BPO divisions. Outsourcing has increasingly gained popularity because of reasons like cost advantage, economy of scale, business risk mitigation, superior competency and utilization competency

As per the Nasscom website India has a 55% share in global sourcing and the IT BPO industry accounts for 26% of India's exports and 11% of the services revenues while directly employing 2.54 million professionals. BPOs in India offer different types of services like Customer support, Technical support, Telemarketing, Employee IT helpdesk, Insurance processing, Data Entry, Medical transcription, Data Processing & Date conversion services, Form processing, Book keeping and Online Web research services. BPO in India has grown rapidly as compared to software services as the advantages offered by the country were well known and tested in IT outsourcing. Most of the required infrastructure was already in place and the companies only needed to set processes to get BPO going in India. The evolution of BPO can be seen in three phases:

- Large multinational companies set up their captive centers in country. American Express, GE and Citibank were the pioneers followed by numerous banks, financial services manufacturing companies who set up captive centers for back office operations and customer services.
- These captive centers were followed by setting up of BPO operations often backed by Venture capitalists.
- IT majors such as IBM with experience in managing offshore IT operations ventured into India BPO market to tap the opportunity.

PROBLEMS IN BPOS IN INDIA

The average age of a BPO staffer is between 20-23 years and the work profile is generally trouble shooting, sales or revenue collection done through tele-calling. Since the work profile is not skill specific, young people with little or no experience are attracted to this industry to make quick money. They are totally unprepared for working in high pressure environments and more particularly working at odd hours. Indian BPOs often service multiple geographies and hence work in varying time zones. Therefore a BPO employee might work in night shifts starting anywhere from 10pm to 2 am and ending at 6am to 10am. There is also a graveyard shift starting at 4am. Working such odd hours has started to show hazardous results on the health of the Indian youth such as irregular sleep, unhealthy food habits, nausea, chronic fatigue, body ache, headaches, dry eyes, violence, infertility etc. When these are coupled with stress brought on by high targets it results in psychological problems like nervousness, insomnia, anxiety, hypertension, restlessness and even depression. Indian call centre workers are also increasingly facing racism abuse from Americans resulting from outsourcing.

Stress of talking to foreigners in fake foreign accent, solving other people's problems, facing and handling anger and abuse is thus resulting in high attritions rates within BPO centres. According to a survey by Dataquest (2004) an average agent in a BPO puts in 11-12 hours per day which sometimes extends to 14 hours. Operational Heads regularly work 17-18 hours per day basis staying back for customer conference calls.

With no time for personal life, erratic schedules that disturb family life and monotonous work of business process outsourcing, employees are increasingly showing signs of frustration and instability. Due to the unnatural hours, family ties become weak and the person gradually becomes socially isolated. BOSS – Burn out syndrome is a common syndrome among BPO employees and includes chronic fatigue and insomnia due to change in biological rhythm. Incidences of loss of identity are also on the increase. Due to the increasing gap between supply and demand of the talent for BPOs the companies are doing their best to attract more young people and struggling to retain them.

Despite these concerns BPOs have often been seen as a boon as they have provided bulk employment to largely unemployed graduates. However a bigger problem looming over the horizon is sustainability of this workforce given the high stress levels and limited educational and professional opportunities after a few years.

As a result of the prolific growth of off-shoring services, research regarding off-shored work from the perspectives of globalization of labor has been extensively discussed, however studies relating to off-shoring have not focused much on its legal aspects. A review of the legislations relevant to the ITES/BPO sector will help to relate the problems discussed above as well as bring to the fore the need for specific legislation for ITES and better enforcement policies.

It is hoped that it will highlight the urgent need to provide a balance of work life and personal life to employees of this sector through strong legislation and thus in turn support the growth of this industry.

LEGISLATIVE PERSPECTIVE

The Constitution of India gives the citizens many rights and protections, some of which are particularly relevant to labour such as the right of equality before the law, prohibition against discrimination, right to form associations or unions, the freedom to practice a profession and to carry on any trade or occupation. (articles 14, 15, 19). The Constitution clearly distinguishes the activities of the central and state /territory legislatures and also specifies the independent powers and shared powers of the Central governments and State / territory governments.

The Constitution also covers conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits (Constitution of India 1949 articles 22-24). However Indian labour laws have often been called too rigid and too protective to allow the country to take full advantage of its entry into the global market, and there has recently been much discussion on the need to modernize labour laws and practices, in order to enhance competitiveness in a globalizing world (Second National Commission on Labor 2002).

For the purpose of this article however, the main question is whether or not these numerous Indian labor laws provide adequate protections for BPO/ITeS workers with respect to working conditions, terms of employment, salary, leaves, working hours, work-life balance and so on given the specific and demanding nature of work of the ITES sector.

LEGISLATIVE PROTECTIONS

Central laws in India provide for minimum wage levels, arrangements for payment of wages, hours of work, paid holidays and sick leave, maternity leave, termination of employment, workers' compensation, health insurance, provident funds (superannuation), gratuities (reward for long service), bonuses (profit sharing), freedom of trade union membership, and prohibition of unfair labor practices.

In India, some legislations protect 'workmen' as opposed to supervisors and managers, some apply only to workers whose employers do not otherwise provide such protections at a higher level, while some legislations protect only workers below certain wage levels. Some national legislations do not apply where state laws cover the same area.

The extent to which BPO/ITES workers are covered by central legislation thus depends upon their status, their location, their wage levels, and the conditions under which they work. In addition to the general Indian legislation, there are myriad legislations covering specific industries, as well as state legislations governing the same issues and a broad range of other topics. Specific legislations relating to workers in BPO/ITES are generally state-based, most commonly falling under a state Shops and Commercial Establishments Act, or similar. Such legislations lay out the provisions of employment in commercial establishments, which are sometimes specified, and sometimes simply assumed, to cover ITES establishments and the workers therein. State of Karnataka has been one of the pioneers in designing its legislation to promote the potential growth of this sector. Karnataka Shops and Commercial Establishments Act 1961 which covers ITeS industry defines Commercial establishment as "a commercial or trading or banking or insurance establishment, an establishment or administrative service in which persons employed are mainly engaged in office work, a hotel, restaurant, boarding or eating house, a café or any other establishment and includes such establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act"

In Karnataka, the Shops and Commercial Establishments Act 1961 covers BPO/ITES workers except those 'occupying positions of management' (Shops and Commercial Establishments Act 1962, s. 3(1) (h)). Maximum daily and weekly hours, and hours of overtime are prescribed by the Act (s. 7), as are penalty rates for overtime (s. 8), requirements for rest periods (s. 9), and limits on the spread of hours (s. 10). The Act allows a minimum of 13 days paid holiday (s. 15(1)) and 12 days paid sick leave per year (s. 15(3)). The Act also provides a measure of job security i.e. no employee who has worked for the employer continuously for 6 months shall be removed or dismissed 'except for a reasonable cause', and 'unless or until one month's notice or pay in lieu' has been given (Shops and Commercial Establishments Act 1961, s. 39(1)).

Under other provisions of Karnataka Shops and Establishments Act all shops and establishments must remain closed on one day per week (Shops and Commercial Establishments Act 1961 s. 12), and the government may fix the opening hours of shops and establishments (s. 11). The legislation, however, specifically provides that IT establishments, and IT-enabling services or establishments, are exempt from these provisions, and can thus be open seven days a week, and for any number of hours. Further, IT and IT-enabled services have been exempted from prohibitions in the Act against night work for women and young people (Shops and Commercial Establishments Act 1962, s. 25), subject to employers providing transport and security for those working at night.

West Bengal's IT Policy in addition to relaxing restrictions on opening hours, weekly closures, and women's work hours allows BPO/ITES employers to 'self-certify' their compliance with legislation such as the Payment of Wages Act, Minimum Wages Act, Shops and Commercial Establishments Act, Workers Compensation Act, and Employees State Insurance Act (Department of Information and Technology, Government of West Bengal 2003).

The IT Policy of Uttar Pradesh exempts ITES businesses, as 'constituents of the knowledge industry', from routine inspections such as those for excise, labour and pollution compliance. ITeS in some areas has been declared a 'public utility,' bringing the sector under extremely restrictive provisions with regard to strikes and other industrial actions.

It appears that the law at least formally offers substantial protections to BPO/ITES workers but the exemptions granted to encourage the industry at state level are undermining the protection built into the legislature. Moreover legislative protection is only one aspect of the environment within which labor is situated. To make an evaluation of the real protections offered by any legislative regime, it is also necessary to examine also how well such laws are enforced. Enforcement of labor law is a major concern in India. Corruption is seen as a serious problem (Centre for Media Studies and Transparency International India 2005), and corruption of labor inspectors is reported to be even more frequent than corruption of other inspectors (Ahsan 2006)

TRADE UNIONS

Unions in the BPO/ITES sector have not been taken seriously by employers and by the employer representative National Association of Software and Services Companies (NASSCOM). BPO/ITES workers on the other hand fear employer backlash against those joining trade unions. Unlike many countries where trade unions are seen to be closely aligned to the 'left' parties, in India all political parties are likely to have a union base. Consequently, trade unions are not viewed well by both employers and employees in private enterprise, and tend to have low membership levels. Further, because off-shored service work is a recent development in India, and is done exclusively by private companies, there are few unions covering such workers. Some have however been established recently,

mostly with sponsorship from national or international unions. For example, the Centre for Indian Trade Unions (CITU) sponsored the establishment of the IT Services Union in West Bengal (WBITSU). The US-based Communications Workers of America, and Jobs With Justice, has been collaborating with India's New Trade Union Initiative (NTUI) to research the situation of ITeS workers, and to identify and connect the common interests of workers in the developed and less developed world.

Union Network International (UNI) sponsored the establishment of the IT Professionals' Forum (ITPF) for both IT and BPO/ITeS workers, as well as UNITES, solely for BPO/ITeS workers. This union has managed to negotiate six collective agreements with BPO/ITeS employers. Although these agreements do not deal with specifics such as hours and wages they have laid a foundation for a dialogue between union and company to recognize the union as the employees' representative, to abide by relevant health and safety standards and charters, and to follow agreed procedures for the resolution of grievances. NASSCOM and employers have claimed however that unions are neither needed nor wanted by ITeS workers. The formation of BPO/ITeS unions has been seen as 'counter productive' (Karnik 2005) and a 'retrograde step' which may damage the industry and scare away current and potential ITeS investors (Roy 2006). NASSCOM also considers such moves unnecessary, as the hierarchy in BPO/ITeS firms allows any employee to 'approach senior management with his/her problem' (Karnik 2005). The Bengal Chamber of Commerce and Industry claims that 'companies can take care of their employees much better [than trade unions] and each company can ably handle its own affairs' (Roy 2006).

Unions on the other hand suggest that BPO/ITeS employees need and desire unions, but are often scared to join owing to hostility from employers. In a study of UNITES members, more than half of those surveyed reported employer opposition to unionism as an important obstacle to joining, while a similar percentage thought that the fear of being sacked would stop colleagues from signing up. Thus whatever freedom employees are given under legislation to form and join trade unions will be ineffective in practice so long as workers fear reprisals for pursuing them.

In addition, unions accept that it is difficult to form unions and to recruit members while the sector is new and booming, and high-paying jobs are plentiful. In such circumstances, many employees may not yet see the advantages of unionization. These advantages are more likely to be realized when growth in the sector slows, in the case of a general market downturn, or when jobs begin to move from India to cheaper overseas competition.

Labor in the BPO/ITeS sector in India is subject to a high level of formal legal protection, yet enforcement is lacking. As a result of corruption, exemptions, delay and high cost of litigation workers often move to new employment rather than trying to enforce their rights. Trade unions are protected, and rights to membership are guaranteed, yet trade unions are often not recognized by employers, and union members continue to suffer victimization.

In addition to the legal environment, the work itself and its organization contribute to workers' difficulties. Employers offer good pay and benefits in modern working environments, but the work is often dull and dead-end, carried out under extreme pressure, with little autonomy and little scope for progression. Nevertheless while workers leave their employment in droves, two-thirds of them take another job in the same sector.

MODE OF EMPLOYMENT

It is generally believed that permanent employees tend to reap the benefits of labor regulation, while others (temporary, fixed term, casual employees, and non-employees) are often excluded from its protection. It is also observed that even though most of the ITeS employees are permanent employees, they do not necessarily gain the advantages of permanent employment. This could be because employees do not work with one employer long enough to go beyond the probationary period and thus never gain the benefits of permanent employment.

Attrition: Attrition in this sector is another problem emerging as a major concern for future growth and stability. At a recent NASSCOM summit, representatives of the BPO/ITeS industry pointed out that the staff attrition had emerged as a key problem for companies and was as high as 50 per cent in some organizations (NASSCOM 2007). One major reason for high attrition rates in this sector is the sheer availability of alternative jobs. The constant growth of the sector means that more and more alternative opportunities are available. Although organizations constantly decry the problems resulting from high attrition, they inadvertently encourage it with their policies of giving bonuses to employees who can recruit others and paying out the notice periods of prospective new employees to attract them to leave their current employers.

Attrition has two major effects on the legal protections available to and sought by BPO/ITeS workers. Firstly, it means that many workers do not stay with one employer long enough to gain entitlements to legal rights and protections. Secondly, because so much work is available, many workers simply leave jobs and take up new ones rather than trying to enforce rights against their employers. Workers have reported leaving jobs to take holidays or bear children, rather than trying to enforce rights to maternity or annual leave. The difficulty of accessing rights, coupled with the easy availability of alternative employment, encourages attrition. Another factor encouraging attrition is the nature and organization of the work itself.

BPO/ITeS WORK

While the BPO/ITeS sector encompasses many types of work, much of the actual work is unattractive. It appears that the 'higher-end' the process is, the less attrition there is (Tejaswi 2007), and attrition seems to be a much larger problem in voice operations such as call centres, than in other BPO/ITeS work. Work in outgoing call centres particularly those working for the international market, does not allow much autonomy or opportunity to use initiative, there is constant surveillance followed by high level monitoring of performance but worst of all there is little opportunity to progress within and beyond the call centre.

Widely expressed concerns from workers in the sector include constant shift work; heavy monitoring; frequent performance reviews; and lack of opportunities for learning, skills development and use of initiative. In addition, workers are frequently over-educated for the roles they are asked to play resulting in wastage of human resources and de-skilling of workers.

Researchers have suggested ITES / BPO work may be improved through rotating jobs between workers, rotating shifts, and giving all employees some opportunity for non-scripted work or non-standard jobs during some of their working hours. Likewise surveillance may be necessary for security, monitoring of work may be necessary for quality control, and night work may be necessary to cater to the overseas market however performance targets need not be set so high that stress and burn-out are almost inevitable.

CONCLUSIONS

Labor in the BPO/ITeS sector in India is subject to a high level of formal legal protection and yet, it is suffering because enforcement is lacking. Corruption, exemptions and delay are not only affecting workers' constitutional rights but will eventually affect the future prospects of the industry. In addition to the legal environment, the work itself and its organization, is contributing to workers' difficulties.

Good pay and benefits in modern working environments are not making up for work which is not challenging and is often carried out under extreme pressure. Little autonomy and virtually no scope for progression are adding to the woes. So while attrition is high so is recruitment.

Organizations can address these problems by initiating practices which help employees de-stress and help them enjoy a better work life balance. Offering good counseling services and flexi timings can help address lot of problems created by the nature of work and odd hours. Provisions for child care for women employees will also encourage more women to join the forces and make life easier for those already with the organization. Employees across the sector need to be organized and need to have a collective voice to present their problems and ensure practical solutions are worked out.

While it is undeniable that ITES / BPO has contributed extensively to providing employment and is contributing to the economy, the prevailing work conditions and lack of a strong national legislature that protects ITES/ BPO employee's rights is negatively affecting India's first generation of ITES employees.

Thus the need of the hour is to ensure legislative protection and proper enforcement of the laws nationally and pave the way for a healthier and stronger IT generation for tomorrow.

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