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[Website: journal.lexresearchhub.com]

[Email: journal@lexresearchhub.com]

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TOPIC: PROTECTING THE BPO WORKER.

AUTHORED BY: YASHVI GANERIWAL, 5TH YEAR STUDENT OF B.A.LL.B (Hons.) AT WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCE, KOLKATA.

I. ABSTRACT:

This essay explores a section of the working population namely persons employed in the BPO industry, their working conditions, the legal framework applicable to these employees and the way forward to ensure better protection of persons employed in this sector. This essay first delves into the working conditions of a BPO employee in India. This is followed by an analysis of the applicability of various labour legislations such as the Shops and Establishments Act, the Industrial Disputes Act, the Sexual Harassment Act etc. to determine the degree of rights and protection conferred by these statutes on employees in this particular industry. The focus then shifts on to the hurdles faced by employees in this industry despite the presence of protectionist labour legislations. The essay also presents some plausible solutions to the problems currently faced by BPO employees.

Keywords: BPO, employee, labour, protection, call-centre workers/employees, Industrial Disputes Act, Shops and Establishments Act, Sexual Harassment, unionization, collective bargaining.

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II. INTRODUCTION:

The Business Processing Outsourcing (*hereinafter* referred to as BPO) sector has constituted a major source of employment for the Indian workforce for over two decades now. BPO is an umbrella term used to refer to outsourcing in various fields. It has been defined as ‘the allocation of one or more IT intensive business processes to one or more external provider that it in turn owns, administers and manages the selected process based on defined and measurable criteria’¹. India has become the most attractive destination for foreign companies to use as an external provider of such processes due to the presence of abundant skill in its workforce and the same being available for a much lesser cost.

The influence of this sector on employment and on the economy has been profound post the 1991 liberalization policy adopted by the Indian government. The industry emerged as a major source of relief for the educated-unemployed population of the country² by catering to the needs of the low-skilled workforce³. In fact, India is home to the largest number of BPOs in the world at present, which also lends credit to the belief that the biggest beneficiaries of globalization have been developing countries.⁴ BPOs have become an integral part of the export oriented Information Technology (*hereinafter* IT) and Software industry. This expanding scope of the industry as well as the nature of jobs offered by the sector have made it an attractive source of employment for a huge section of the population.

¹ Anjali Pashankar, *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*, 3 IJRCM 139 (2012).

² Asia Monitor Resource Centre, *Challenges for Organizing the BPO Workers in India*, September 1, 2010, available at <http://www.amrc.org.hk/content/challenges-organizing-bpo-workers-india>.

³ The Economic Times, *IT Sector to Lose 6.4 lakh ‘low-skilled’ Jobs to Automation by 2021: HFS Research*, July 5, 2016, available at <http://economictimes.indiatimes.com/jobs/it-sector-to-lose-6-4-lakh-low-skilled-jobs-to-automation-by-2021-hfs-research/articleshow/53052040.cms>.

⁴ Sarosh Kuruvilla, Aruna Ranganathan, *Economic Development Strategies and Macro and Micro-level Human Resource Policies: The Case of India’s Outsourcing Industry*, 62 ILR REV 40 (2008).

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Given this expanding scope of this industry and the nature of competition involved, the workers of the sector are also prone to certain problems that are specific to this industry. They face a number of health hazards as well as employment related concerns. However, the applicability of labour laws in this industry has been inadequate at best. The industry enjoys exemptions from various labour law provisions and this proves to be a huge problem for the workers in the industry. The plight of the workers is aggravated by the absence of unionization and reluctance on the part of both the employer and employees to encourage unions in the industry. This essay is aimed at understanding such issues and problems that have emerged in the industry as well as the causes behind such problems. Suggestions for the resolution of such problems and their viability shall also be discussed.

III. RESEARCH QUESTIONS:

The following research questions have been employed in this essay:

1. What is the present situation/working conditions of the BPO workers in India?
2. To what extent do the labour laws in place, apply to these workers?
3. Are the BPO workers adequately protected at the moment? What is the way forward for the workers in this industry? Is unionization a plausible and viable option?

IV. ANALYSIS:

In 2003, a lecture by Susan Sontag titled ‘The World as India’ sparked a major controversy and debate regarding BPO workers in India.⁵ In response to this lecture, Harish Trivedi highlighted the exploitative nature of call-centre work and coined the term ‘cyber-coolies’ for these workers. His claims were strongly refuted by Gurcharan Das who was of the opinion that “English remains the

⁵ISHITA DEY, RANABIR SAMADDAR, SUHIT K.SEN, BEYOND KOLKATA: RAJARHAT AND THE DYSTOPIA OF URBAN IMAGINATION 170 (2013).

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passport for every youngster who dreams of becoming the master of the universe”⁶. However, a number of surveys and researches conducted in this sector explained how the industry is not nearly as beneficial and pro-workers, as proposed by Das or Sontag. For decades now, the BPO sector has enjoyed considerable freedom from a stringent application of labour laws.⁷ These lapses in implementation of labour legislations are starkly manifested in incidents of sexual harassment at the workplace, arbitrary termination of employment etc., occurring at a regular basis in call-centres.⁸ The reason behind such a lackadaisical attitude towards the application of these laws has been identified to be the lack of awareness about their rights among the workers.⁹ However, from the perspective of the employer as well as the state, the reason behind such loose implementation has been the need for the continued advantage that India has over other countries as a source of cheap labour in this off-shore call-centre industries.¹⁰ This is linked to the amount of foreign exchange that flows into the country because of the BPO industry.¹¹ This has led to a situation wherein the government of India has been extremely encouraging of an expanding BPO sector in the country, yet, the protection offered to the BPO workforce through legislations has been scanty.

Now, the continuation of the golden goose advantage¹² by India is brought about through a very important phenomenon unique to the BPO sector i.e. the lack of unionization. The aim is to ensure that India doesn't lose the advantage that it has garnered due to the absence of unions in call-centers over other competing South-East Asian labour markets.¹³ The next section contains an

⁶ The Times of India, *Cyber Coolies or Cyber Sahibs?*, September 7, 2003, available at <http://timesofindia.indiatimes.com/home/sunday-times/all-that-matters/Cyber-coolies-or-cyber-sahibs/articleshow/169677.cms>.

⁷ The Economic Times, *IT Sector to Lose 6.4 lakh 'low-skilled' Jobs to Automation by 2021: HFS Research*, July 5, 2016, available at <http://economictimes.indiatimes.com/jobs/it-sector-to-lose-6-4-lakh-low-skilled-jobs-to-automation-by-2021-hfs-research/articleshow/53052040.cms>.

⁸ Livemint, *Sporadic Legal Battles Point to Labour Issues in IT, BPO Sectors*, September 11, 2008, available at <http://www.livemint.com/Politics/ljFMZSsbTQxE7dAGGNvbK/Sporadic-legal-battles-point-to-labour-issues-in-IT-BPO-sec.html>.

⁹ *Id.*

¹⁰ Santanu Sarkar, *Trade Unionism in Indian BPO-ITeS Industry-Insights from Literature*, 44 IJIR 78 (2008).

¹¹ Manoj Kumar Jena, *Indian IT Industry and Work: A Study of Health Risk Among BPO Workers in Bangalore*, 18 LABOUR & DEVELOPMENT 38 (2011).

¹² SARKAR, *supra* note 10, 76.

¹³ TIWARI, *Infra* note 22, 27.

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elaboration upon the reasons why the BPO sector has been reluctant to accept unionization for a long time now.

V. WHO IS A BPO WORKER?

One of the biggest obstacles to the formation of unions in the BPO sector have been the employees of the sector itself. The employees have been hesitant and in a manner, averse to associating with unions. The primary reason behind this is the kind of employees in a BPO. In India in particular, this industry has been a source of income for urban, educated middle-class youth¹⁴ who are considered to be an informed and satisfied group of workers. These are people who unlike manual labourers in factories etc. are from relatively privileged background. Therefore, these are white-collared workers and unlike the blue-collared 'poorer' workforce, the BPO office is viewed by them as a mere extension of their college space or campus, therefore a fun activity as opposed to a serious job on which their sustenance depends.¹⁵ As a result, these workmen who consider themselves to be educated 'executives' and 'professionals' perceive the idea of trade unions as an affront to their status and dignity.¹⁶ This has been perceived as the weapon of 'illusory empowerment' by creating a superior image, vibrant ambience of workplace, attractive designations, impressive salary structures etc.¹⁷

This confused identity of an executive and professional is a legitimate concern while one analyzes the reasons for mobilization constraints in the industry. However, at this juncture, one needs to stop and consider this notion of being an executive and hence, refusing to be part of unions as well as not having protective legislations in place. Here, the author would like to draw an analogy with

¹⁴ Manoj Kumar Jena, *Indian IT Industry and Work: A Study of Health Risk Among BPO Workers in Bangalore*, 18 LABOUR & DEVELOPMENT 31 (2011).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ IndianMBA.com, *A Study on the Worklife of BPO Employees and the Various Human Resource Practices in a BPO - A Case Study of Convergys*, June 21, 2006, available at http://www.indianmba.com/Faculty_Column/FC391/fc391.html.

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journalists who are also elite, white-collared workers who are an informed and empowered collective. Yet, they not only have protection in the form of the Working Journalists Act but also collectivize in the face of any exploitation by their employers.¹⁸ When these journalists, despite being educated and informed do collectivize in the face of oppression, why then are these BPO workers so reluctant to do the same? The author would like to argue that the answer to this very pertinent question lies in the latent forms of oppression that these workers are subject to.

A further consideration of the socio-economic and demographic profile of these workers reveals that their jobs at the BPO industry are not even long-term or permanent. In fact, there are supportive statistics which indicate that the average tenure of a BPO worker's job is 1.98 years only.¹⁹ This lends credence to the fact that since the employees are anyway not going to work at the same office for a long duration, they see no tangible benefit in joining hands with a union. In the event that they are dissatisfied with their work or in the presence of a dispute with the administration, they employ the easy escape route of exiting the job and opting for a new one. This is encouraged by the flexibility in terms of employment of the industry. It must be remembered that this flexibility exists due to the non-application of labour laws in a stringent fashion. It can also be argued that this flexibility and temporary nature of employment is not a necessarily a desirable attribute for the employee. After all, gaining employment in a developing nation that is already plagued by the perils of unemployment is not cakewalk. Moving in and out of jobs is also not the easiest experience mentally. In the presence of such factors, one may propose that the transient nature of employment is nothing but a construct of the industry through its many schemes and mechanisms. One may draw a parallel here with the garment workers of textile industries in the U.S., wherein the employers preferred to employ young, female workers as opposed to men. This was an extremely tactical move on the part of the employees since they knew that young women in the age group of 19-23 in those days would sooner or later get married and move out of employment. The absence of a long term of work would mean that these workers would never be

¹⁸The Working Journalists & other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955.

¹⁹SARKAR, *supra* note 10, 84.

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able to collectivize or unionize against the employees. The employees could then continue to exploit these workers through the payment of paltry wages and would not have to face any opposition. The BPO sector seems to be functioning on similar lines through the employment of special Human Resource mechanisms, which leave little space for any opportunity for these workers to obtain a collective bargaining power against their employers. Another reason why BPO workers refrain from associating with trade unions at present are that the two entities are Ideologically different.²⁰

VI. INDIVIDUALISM LEADING TO LACK OF UNIONIZATION:

The above analysis is a true manifestation of the many evils perpetrated by neo-liberalism in today's world. This section is an attempt at understanding the tactical measures used by employers of BPO workers to prevent them from coming together as a union. All BPO companies in the country strive to create a 'productively docile'²¹ set of workers for the industry. To achieve this goal, this industry functions on the philosophy of individualism. From the travel to the arrival at the office as well during the working hours, there is barely any scope for socialization and interaction between co-workers. Many companies provide travel arrangements for the workers whereby the vehicle receives them from the doorstep of their residence, drops them inside the premises of the workplace and then drops them back home. Therefore, no scope for social interaction during transit exists. Even at the workplace, the companies use strict mechanisms of surveillance through the computers and other equipment. This controls the duration of breaks taken by the employee. This form of control and supervision is further linked to the emphasis on performance placed by these companies. Therefore, the employees are compelled to work in an environment of little or no social interaction with their colleagues. This lessened socialization in

²⁰ Babu P. Remesh, 'Cyber Coolies' in *BPO Insecurities and Vulnerabilities of Non-Standard Work*, 39 EPW 492 (2004).

²¹ *Id* at 493.

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turn results in isolation of the worker. This individualism also adds to the employees' unwillingness to become a part of a collective such as unions.²²

The isolation is furthered by the competitive atmosphere that prevails in these companies. Performances are rewarded with incentives and often failure to meet the target entails punitive measures, thereby aggravating the stress upon individuals. The companies then make use of Human Resource practices that provide for shock-absorption. This leads to a situation whereby the employees don't even need an alternate avenue to vent out their grievances before. The management itself takes care of problems even before they arise. For instance, instead of using disciplinary action in the failure of any employee to meet his/her target, the companies opt for counseling sessions. Additionally, they have recreational outings such as picnics etc., and create such an integrated firm atmosphere that even in the absence of socialization, the workers themselves consider unionization to be an unethical practice. Further, the employees are made to adapt an understanding whereby they view their employers or the administration as being supremely concerned about the well-being of its employees.²³ The aim is to ensure that the individual is never in a position to develop into a collective.

In addition to such management practices, even the sacking mechanisms in the industry are such that they lead to isolation and greater depression among the employee. Companies also utilize measures whereby promotions are granted on the basis of the employees' relationship with the management and not on the basis of a strict assessment of performance. This leads to a situation wherein the workers are further dis-incentivized to collectivize or do anything that could hamper their relationship with the management.

²² SANJAY TIWARI, ASHISH SHARMA, BHUPENDRA UPADHYAY, LABOUR SECTOR REFORMS IN INDIA 31 (2007).

²³ *Id.* at 27

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While the dominant ideology in the sector is still averse to unionization, in the recent years, there has been a shift in this ideology and the sector has witnessed the formation of a few unions.²⁴ This need arose in the wake of some of the oppressive practices indulged into by BPO companies coming to the fore. Major concerns regarding the health of BPO workers and their working conditions also began to make appearances. These harsh working conditions and the consequent health risks and other disturbances that BPO workers are continuously exposed to, are discussed in greater detail in the following section.

VII. HEALTH RISKS AND OTHER IMPLICATIONS:

In the recent past, the Indian IT industry has experienced an upsurge in employment and so, has been a source of contribution to both Indian and off-shore economies. The sector is dominated by young workers with its workforce mostly in the age-group of 18-25 years. The accompanying high remuneration is a reason underlying the attraction offered by the BPOs. However, the work culture in BPOs contains some inherent risks to the health and well-being of the employees. Both the physical and mental health of these workers is under considerable strain, which in turn also affects their personal and familial relationships. Other implications include an impact on their career in the form of higher education being compromised upon.

There exist a number of causes behind these health problems. The most emphatic and dangerous of these is the prevalence of the ‘working the sun model’ in the industry.²⁵ Since the workers deal with a customer base from foreign countries, the differing time-zones mandate the workers to work night shifts. This results in a need to adjust their biological clock accordingly. Issues related to eyesight, spinal cord and stress are commonplace in the industry. Such work-shifts not only impact the physical well-being of the workers but the erratic work hours also imply a neglect in familial responsibilities by the workers.²⁶ These health hazards combined with the stress and pressure of

²⁴SARKAR, *supra* note 10.

²⁵JENA, *supra* note 14, 35.

²⁶*Id.* at 37.

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failed social relationships leads to the Burn Out Stress syndrome.²⁷ Further, the extensive surveillance mechanisms and monitoring of workers proves to be a huge source of stress and psychological impact. It is for such reasons that workers from this sector are seen to indulge in greater consumption of alcohol and other toxic substances. The absence of proper mechanisms to help deal with such stress aggravates the problem. A common practice in most of these companies is to not provide sick leaves if claims of illness are not substantiated by medical documents. Therefore, even in psychologically burdensome situations, the employees are compelled to continue with work and are granted no respite. In the presence of such grave health-related consequences, it is startling to know that there exist no protective mechanisms or legislations for BPO workers. The only response of the sector to such grave issues has come in the form of vigilant mechanisms such as awareness generation about healthy lifestyles. The industry is taking no concrete steps towards eradication of such health risks. The government too, remains silent and has enacted no law, which would attribute some sense of responsibility on the employer to compensate for and help cure the health hazards that result from the work at call-centres.

However, some factors have heralded an era of collectivization in this sector. First, the industry witnessed an increase in the average age of its workforce. So, the BPOs were no longer a stopgap measure or temporary source of income for a young, reckless population but a source of permanent income for middle-aged workers as well. Secondly, the education qualifications of the workers improved with time leading to the formation of a more informed and aware work population. Third, there occurred a change in the composition of the workforce, which began to shift base from an 'urban creamy layer' to rural areas and smaller cities. As a result, the 'elite' image of BPO workers underwent a transformation. In response to these transitions, a new epoch of collectivization dawned in places such as in Kerala, where BPO workers are now provided information on job opportunities, Information Technology policies and global trends by these unions. They also provide the workers with an interface with academia and professionals and so on. However, the

²⁷ *Id.*

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emergence of unions in this sector was not merely a reaction to the changes mentioned above, law too has had a role to play, as explained below.

While there exist many lacunae in the applicable legislations in this sector²⁸, there are some statutes that the BPO sector is not exempt from. However, even these essential statutes are not properly adhered by in this industry. The next section examines these legislations and the extent to which their present form of implementation grants leeway to the BPOs to exploit their workers.

VIII. THE SHOPS AND ESTABLISHMENTS ACT, 1953:

The Indian Constitution has placed the BPO sector under the ambit of the concurrent list and hence, both the state and the centre enact laws on this subject-matter.²⁹ The Shops and Establishments Act is a state legislation under which each state makes its own rules, to suit the particular needs of its denizens. The BPO industry is governed by this Act. It is important to understand some of the rules framed by certain states and through this discussion, the author would like to highlight how some of these rules themselves and/or their violation results in the hidden oppression of BPO employees.

Karnataka, which is the hub of the IT industry in India, under this Act, exempts BPOs from the requirement of every establishment remaining closed for one day of the week. BPOs under the Karnataka rules have complete autonomy to function on all days of the week, for twenty-four hours. While one may argue that the nature of the industry itself demands such an exemption, the health hazards that it results in raise serious questions about granting such freedom to BPOs. It is argued that there needs to be a legislative mandate whereby BPOs too shut off for one day at least. In the wake of the problem that there exists no particular legislation such as the Occupational

²⁸ India Learns, *Labour Laws for BPO Sector*, October 20, 2010, available at <http://www.indialearns.info/2010/10/labour-laws-for-bpo-sector.html>.

²⁹ ERNESTO NORONHA, PREMILLA D'CRUZ, EMPLOYEE IDENTITY IN INDIAN CALL CENTRES- THE NOTION OF PROFESSIONALISM 44 (2009).

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Hazard Act in this industry and the grave consequences that ensue as a result of the work conditions and durations in such establishments, mandating a day off could serve as a useful remedy.

In addition to allowing a relaxation in terms of work hours etc., the West Bengal rules provide for a model under which the BPOs can 'self-certify' their compliance with important labour legislations such as the Payment of Wages Act, the Workmen's Compensation Act, Minimum Wages Act among others. Such rules snowball into the larger issue plaguing the BPO industry today, that of non-compliance or inadequate compliance with essential labour statutes. It is horrifying to know that the governments are allowing the sacrifice of crucial rights at the altar of economic prosperity by allowing such rules to exist and apply. One look at the West Bengal Government's policy in this regard would expose the pro-neo-liberal stance of the government having little or no regard for the well-being of the employees.³⁰

Further, the Karnataka rules also exempt BPOs from the provision under which women and young people cannot work during night-shifts subject to the condition that travel and security of these workers is ensured by the employer. A similar exemption also exists in the state of West Bengal and most recently in the state of Chattisgarh.³¹ While this may be an extremely protectionist move under the feminist jurisprudence, it still does not serve the purpose that it has set out to do. In the absence of strict requirements and proper guidelines, the employer's responsibility ends with the provision of transport and some security measures. The credibility of such measures however, more often than not defeats the purpose of having such a rule in place. Therefore, there is a need to supplant such a rule with a proper set of guidelines as enunciated by the Courts in *Vishakha vs. State of Rajasthan*³². Some of these measures include having a GPS tab on the cabs transporting

³⁰The West Bengal IT Policy 2003 has its core objectives based on the premise that the IT industry shall unleash enhanced opportunities in the coming decades. The aim is to make the State the most attractive destination for IT investments.

³¹The Hitavada, *Now, Women Staffers in IT Firms Can Work Night Shifts*, May 11, 2016, available at <http://thehitavada.com/Encyc/2016/5/11/Now,-women-staffers-in-IT-firms-can-work-in-night-shifts.aspx>.

³²AIR 1997 SC 3011.

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the employees, making background checks on the drivers of the vehicles for criminal records etc.³³ In the absence of such guidelines accompanying the rules, the rules remain toothless.

Therefore, a logical conclusion to draw with respect to this Act is the lack of uniformity in the rules across states. This creates a further problem of states making their rules as industry-friendly as possible to avoid a situation where the industry moves out of the state to another state. The persons who suffer most as a result of this are the workers in this industry.

IX. THE SEXUAL HARASSMENT AT WORKPLACE ACT, 2013:

While the BPO sector has been excluded from the ambit of the Industrial Standing Orders Act for the next five years in Kerala, the same has come about at the pre-condition of the industry abiding by the Sexual Harassment at Workplace Act, strictly. However, the industry has failed to incorporate the provisions of this necessary Act as well. It has often been argued that the BPO industry is particularly vulnerable to instances of sexual harassment. The rationale behind this assertion lies in the nature of the industry, which hires a number of women employees under the age of 30. Female employees also view the BPO sector as an attractive source of employment since the industry can incorporate flexible hours of work to meet the childcare needs of women.³⁴

Additionally, to perpetrate its policies of restricting its employees' socialization and simultaneously provide travel assistance to its employees, 'late night ferrying of women' is a common phenomenon in the industry.³⁵ Another contributing factor, which has already been mentioned above is the policy whereby promotions and perks are granted on the basis of the employee's relationship with the management and are not strictly performance based.³⁶ Therefore, it wouldn't be incorrect to argue the BPO sector witnesses heightened vulnerability towards sexual

³³ Academia.edu, , *Sexual Harassment at Workplace – Special Reference to BPO Companies*, https://www.academia.edu/1521329/SEXUAL_HARASSMENT_AT_WORK_PLACE-SPECIAL_REFERENCE_TO_BPO_COMPANIES

³⁴ Id.

³⁵ Id.

³⁶ REMESH, *supra* note 20, 493.

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harassment. In fact, sexual harassment has been considered as one of the ‘dark sides’ of the call-centre industry.³⁷

A survey conducted by the Centre for Transforming India revealed that around 88 percent of working women in the IT and BPO industry have had to bear the brunt of sexual harassment at some point of time. The survey also goes on to show that 50 percent of these women have been harassed physically or through sexually abusive language.³⁸ But the problem does not end here since what is more disturbing is the fact that 47 percent of these employees were not aware of a mechanism to address their grievance.³⁹ One of the reasons behind this as disclosed by some of these workers is the lack of any concrete sexual harassment policies at the time of hiring the workers. Worse still, about 91 percent of these victims were petrified to even take action against their perpetrators.⁴⁰ These statistics have been corroborated by a number of such incidents that have occurred in renowned BPO companies in the recent past.⁴¹

It is essential to address that it is not only women who are affected by such problems of harassment at the workplace.⁴² Men too, in this industry, fall prey to such acts.⁴³ This menace of sexual harassment can be curtailed by BPO companies by simply adopting and adhering by the provisions of the Sexual Harassment Law. The primary issue at present is the manner in which these

³⁷ Merinews, *Sexual Harassment: One of the Dark Sides of Call Centres*, December 27, 2011, available at <http://www.merineews.com/article/sexual-harassment-one-of-the-dark-sides-of-call-centres/15863175.shtml>.

³⁸ OneWorld South Asia, *India: 88% Women Victims Of Sexual Harassment At Workplace*, November 15, 2010, available at http://southasia.oneworld.net/news/india-88-women-victims-of-sexual-harassment-at-workplace#.V_PEHCF97IV.

³⁹ Helpline Law, *Sexual Harassment at Workplace in India*, available at <http://www.helplinelaw.com/recent-judgments/SHWI/sexual-harassment-at-workplace-in-india.html>

⁴⁰ The Citizen, *Sexual Harassment i Workplace*, July 5, 2015, available at <http://www.thecitizen.in/index.php/OldNewsPage/?Id=4268&Sexual/Harassment/in/the/Work/Place>.

⁴¹ Livemint, *Wipro's Sexual Harassment Case Points to Larger Problem*, October 8, 2015, available at <http://www.livemint.com/Industry/fwx2oUpWRTir90D7xVMLnL/Wipros-sexual-harassment-case-points-to-larger-problem.html>; The Hindu, *BPOs Lag in Action on Sexual Harassment*, January 5, 2013, available at <http://www.thehindu.com/news/cities/chennai/bpos-lag-in-action-on-sexual-harassment/article4273822.ece>.

⁴² The New Indian Express, *Now, BPO Male Employees Stripped, Sexually Assaulted in Bengaluru*, October 8, 2015, available at <http://www.newindianexpress.com/states/karnataka/2015/oct/08/Now-BPO-Male-Employees-Stripped-Sexually-Assaulted-in-Bengaluru-826380.html>.

⁴³ Merinews, *Sexual Harassment: One of the Dark Sides of Call Centres*, December 27, 2011, available at <http://www.merineews.com/article/sexual-harassment-one-of-the-dark-sides-of-call-centres/15863175.shtml>.

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complaints are dealt with by the companies. A multi-national BPO in Chennai for instance, issued a circular to tackle sexual harassment problems. While this shows some sort of an effort by the company, the contents of the circular paint a completely different picture. The circular, unfortunately called for preventive measures in the form of women dressing appropriately at the workplace.⁴⁴ This guideline bears testimony to the problem of companies and the society at large being escapist and blaming the victim for such incidents instead of taking stringent, concrete measures against the guilty. An official from the same company went on to disclose that ‘warnings, counselling, transfers and in extreme cases, suspension’ is the way in which the company deals with harassment related complaints.⁴⁵ Another important requirement under the Act is that the Internal Complaints Committee formed for the resolution of disputes should be half constituted by women. This requirement is being flouted by BPO employers since the establishment itself lacks the presence of women in leadership roles.⁴⁶ Therefore, Instead of taking steps for the effective implementation and enforcement of such legislations, the call-centres mostly tread an escapist path or simply fire the aggrieved woman.⁴⁷

X. THE INDUSTRIAL DISPUTES ACT, 1947:

BPO employees fall within the definition of ‘workmen’ as per the Industrial Disputes Act.⁴⁸ However, persons from managerial cadres are again excluded from the scope of this Act. The bigger problem with respect to this Act and this sector is that there has been a tendency to declare these BPOs as ‘public utility services’ and the consequent restrictions on their right to strikes and

⁴⁴ The Hindu, *BPOs Lag in Action on Sexual Harassment*, January 5, 2013, available at <http://www.thehindu.com/news/cities/chennai/bpos-lag-in-action-on-sexual-harassment/article4273822.ece>.

⁴⁵ *Id.*

⁴⁶ Livemint, *Wipro’s Sexual Harassment Case Points to Larger Problem*, October 8, 2015, available at <http://www.livemint.com/Industry/fwx2oUpWRTir90D7xVMLnL/Wipros-sexual-harassment-case-points-to-larger-problem.html>.

⁴⁷ Merinews, *Sexual Harassment: One of the Dark Sides of Call Centres*, December 27, 2011, available at <http://www.merineews.com/article/sexual-harassment-one-of-the-dark-sides-of-call-centres/15863175.shtml>.

⁴⁷ The Hindu, *BPOs Lag in Action on Sexual Harassment*, January 5, 2013, available at <http://www.thehindu.com/news/cities/chennai/bpos-lag-in-action-on-sexual-harassment/article4273822.ece>.

⁴⁸ GARY DESSLER, BIJU VARKEY, *HUMAN RESOURCE MANAGEMENT* 41 (2008).

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lock-outs.⁴⁹ This can be viewed as another means to prevent any form of collective action in this sector so that the country can retain its advantage over other competing nations.

Another important provision under this Act is one which recognizes collective bargaining as a method of dispute resolution in industries. Moreover, BPO employees too have an inalienable right to collectivize.⁵⁰ However, the employers as well as employees have refrained from exercising this right and using it for gaining remedial action for the workers.

The analysis presented above is testimony to the perils that an inefficient enforcement of labour laws in the BPO sector is capable of inflicting. At this juncture, it becomes imperative to glance at the changes that certain unions are attempting to bring about in this sector. At present, there are three major unions in the BPO sector in the country and they have raised some legitimate issues that cast serious aspersions on the nature of work in the BPO industry.

XI. CHANGES IN THE INDUSTRY:

The problem concerning long working hours surfaced at the instance the Union for Information & Technology Enabled Services (*hereinafter* UNITES), which sought to cater to the particular needs of professionals in the BPO sector by creating a ‘community of professionals’.⁵¹ A more comprehensive set of concerns was raised by the Centre of Indian Trade Unions (*hereinafter* CITU) in October, 2005.⁵² Important issues such as the working hours exceeding twelve hours a day, arbitrary remunerations, several cases of sexual harassment and molestation, were discussed in this letter by the CITU.

⁴⁹S. 22, Industrial Disputes Act, 1947.

⁵⁰ The Hindu Business Line, *Labour Laws, Unions and BPOs*, November 1, 2005, available at <http://www.thehindubusinessline.com/todays-paper/tp-opinion/labour-laws-unions-and-bpos/article2194046.ece>.

⁵¹ Philip Taylor, Ernesto Noronha, Dora Scholarios, Premilla D’Cruz, *Employee Voice and Collective Formation in Indian ITeS-BPO Industry*, 43 EPW 39 (2008).

⁵² People’s Democracy, *CITU Demands Implementation of Labour Laws in IT Sector*, October 16, 2005, available at http://archives.peoplesdemocracy.in/2005/1016/10162005_citu-pandhe.htm.

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Clearly, the industry is no longer the safe haven for young, carefree workers as it used to be in the past. As a logical consequence of this, reports have shown that the industry is already facing undergoing degeneration in India. The lack of incentives in the industry, coupled with the pitiful working conditions has led to a severe deterioration in the quality of the pool of employees.⁵³ The sector also suffers from the problem of high attrition rates. This results in the creation of dissatisfaction and hopelessness in the industry.⁵⁴ More importantly, it has become a reason for foreign companies to relocate and abandon BPO activities in the country. The temporary nature of the employment and the high rates of attrition mean that the sector keeps hiring new workers. The cost of training these new workers is exponential and as a result the overall profit of the company suffers. In such a situation, India ultimately stands to lose its competitive advantage and is witnessing a withdrawal of foreign companies from its BPO sector. In such a scenario, reforming the industry as well as the legislations governing it becomes essential. Some plausible solutions to the problems highlighted in the essay have been discussed in the following section.

XII. POSSIBLE SOLUTIONS:

A number of solutions, some of which have also been discussed above, for the emancipation of BPO workers, are possible. The first of these is a stronger model of collectivization and unionization. Such unionization need not necessarily be adversarial to the management⁵⁵ but should play the role of a facilitator, bringing about greater awareness in the workforce about the working condition and cooperating with the employers to initiate changes.⁵⁶ The second solution could be enacting cohesive policies and through unions, workers gaining a voice in the policy changes. This could go a long way in providing some stability to the industry. Another suggestion

⁵³India Today, *Last Call*, March 15, 2013, available at <http://indiatoday.intoday.in/story/bpo-industry-call-centre-culture-dying-in-india/1/258032.html>.

⁵⁴ Asia Monitor Resource Centre, *Challenges for Organizing the BPO Workers in India*, September 1, 2010, available at <http://www.amrc.org.hk/content/challenges-organizing-bpo-workers-india>.

⁵⁵This would also be in consonance with the Industrial Disputes Act, under which the purpose of collective bargaining is to ensure amicable settlements between the parties.

⁵⁶Tapomoy Deb, *Reforming Labour Legislation on Working Conditions for Competitive Advantage: An Empirical Study*, 46 IJIR 204 (2010).

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is that a single central law, setting uniform standards for the industry should be brought into place, rather than allowing states to enact various rules.⁵⁷

XIII. CONCLUSION:

It would be safe to conclude that India's flagship sunrise industry is no longer bright and sunny. In a race to maintain its competitive advantage over other countries, the government and legislature have compromised on the laws applicable to the BPO industry. Unfortunately, while the economy and even the employees may have benefited from this, the benefits are now accruing at a cost that no welfare state should have to pay. The essay above clearly highlights the pathetic working conditions that employees in the sector are subject to. What is even more alarming is the manner in which the employees have to come to accept such conditions and adapt to them. This, along with other reasons has left the workforce in the industry bereft of a major tool for garnering workers' rights, the tool of collective bargaining. There has been a positive change in this regard in recent times with the formation of organizations such as the Forum for IT employees (F.I.T.E.) and the Karnataka State IT/ITES Employees Union (K.I.T.U.) but no profound change has been achieved by these organizations. It would be incorrect to singularly blame the workers for their reluctance to unionize for the analysis above reveals how this reluctance has also been conditioned by those at the helm of affairs in the sector.

In such a situation, the only avenue for redressal and protection of these workers are the labour legislations, which include social security statutes. Fortunately for the employees, almost all the relevant labour statutes are applicable to them and hence, there exists no formal reason for their pitiful working conditions. The problem then is two-fold: first, the exemptions that are bestowed upon this industry from statutory provisions and second, inadequate implementation of the

⁵⁷ Livemint, *Management Shops and Establishments Rules Need to be Updated, Made Uniform*, April 14, 2008, available at <http://www.livemint.com/Politics/9vfzDV2zmPFRacUeUHLLoO/Management--Shops-and-establishments-rules-need-to-be-updat.html>.

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applicable provisions. Some solutions to these problems have been suggested above. It is important for the industry to realize that non-implementation of such solutions is going to result in a degeneration of the entire sector and similar trends are being observed in the country already. Therefore, adopting such employee-friendly measures is also going to benefit the industry as a whole, in addition to protecting the labour force.