Off-Shored Services Workers: Labour Law and Practice in India

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Abstract

The growth of information technology has enabled the 'off-shoring' of many business processes, and such off-shoring has grown exponentially in the past decade. India has been a major recipient of such off-shored work. To understand the effects of this phenomenon on off-shore workers, it is necessary to understand the legal context within which such work is undertaken.

This article thus explains the labour law framework of India, from Constitutional protections down to local laws, policies and rules. It then examines labour practices, and identifies the gaps between formal labour law and actual practice in this sector. The article notes that some of these gaps between law and practice are a result of public matters, such as corruption, legal exemptions, and lack of law enforcement; but others are due to features of the sector itself, such as its newness, the types of work it offers, and the ready availability of alternative jobs.

Introduction

This article[1] is the third in a series reporting on research conducted by the author in India and Australia between 2005 and 2008. The first part, published as 'Trade union responses to white collar off-shoring' (Penfold 2007) discussed the methods used by trade unions in both developing and developed nations to deal with the movement of services work as a result of globalisation. The second part, published as 'Off-shoring and decent work: Worlds apart?' (Penfold 2008) evaluated work in the Indian off-shored services sector against the ILO's 'decent work' agenda. This third part examines labour law and practice in off-shored services in India, explaining the legal regulation of employment in this sector, and comparing it with labour protection in practice.

The opening up of world markets and the development of information and communications technology have led to a huge increase in the purchase by organisations, in North America, Western Europe and Australia, of business processes and information technology-enabled services (BPO/ITeS), primarily from places such as Eastern Europe, Central America, and Asia (Farrell et al. 2005). This 'off-shoring' is occurring in disparate fields such as banking and finance, health, insurance, IT, sales, human resources, public relations, and trans-

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port. The work itself varies widely, ranging from the most basic telephone sales work, to booking travel, assessing insurance claims, or even creating animations. Arrangements for purchasing off-shored services also take many forms. A firm may, for example, set up its own off-shore operations, buy services from an off-shore operation, or buy services locally from a provider which off-shores. The common thread in all of the above is that the work is performed remotely, or 'off-shore,' enabled by modern information and communications technology.[2]

With the advantage of a large, well-educated, English-speaking work force, India has been the recipient of much of this work from countries such as the USA, the UK, and Australia. India's services exports rose by over 30 per cent per year during the five years 2001 to 2006, during which time they rose from 29 per cent to 38 per cent of total exports (Department of Foreign Affairs and Trade 2008). While not at the forefront of the off-shoring phenomenon, Australia is now steadily increasing its service imports from countries such as India (ibid). In fact, Australia's services imports from India have grown solidly since 2002–03, averaging a growth of around 13 per cent per year, and up almost 20 per cent between 2005–06 and 2006–07.

As a result of this growth of services off-shoring, research into the area has proliferated. Studies abound regarding off-shored work from perspectives such as the globalisation of labour (Farrell et al. (eds) 2005), decent work (Sasikumar and Varma 2004; Penfold 2008), human resource management (Chatterjee 2007), and trade union participation (Penfold 2006; Taylor et al. 2007). Much of this work has looked specifically at call centres within this sector (Taylor and Bain 1999, 2000, 2005; Ramesh 2004; Batt et al. 2005; Pradhan 2005; Nornoho and d'Cruz 2006, 2007).[3]

While labour law and practice are central to the conditions under which off-shored work is performed, studies relating to off-shoring have not focused on its legal aspects. This article thus discusses labour law and practice in the off-shored services sector, in order to complement existing work on BPO/ITeS, to offer another perspective from which to view the topic, and to allow a fuller understanding of the context within which this work is undertaken. The article examines relevant Indian labour laws from the highest level — the Constitution — down to State legislation, rules, and policies. Where appropriate, it compares these laws with those covering comparable workers in Australia. It then examines employment practice in the sector, noting the gaps between formal legal protections and the practical realities for workers in BPO/ITeS.

National Context

While India has over a billion people to Australia's 20 million, and is seen as a developing country while Australia is seen as developed, the two countries nonetheless share many features. Both have been British colonies, are predominantly English speaking, have written constitutions, have bi-cameral parliaments, have central and state governments, have legal systems based on British common law, and share many institutions: legal, political, and social. In both places, employment conditions and protections are based on a mix of common

law contracts, legislation, and industrial instruments or standing orders, all of which interact with one another.

The Constitution of India affords citizens many rights and protections, some of which are particularly pertinent to labour. These include a guarantee of equality before the law, prohibition against discrimination, the right to form associations or unions, the right to practice a profession, and to carry on any occupation, trade or business (*Constitution of India 1949* ss 14, 15, 19).

The Indian Constitution also directs that state policy should seek to secure to citizens a right to an adequate means of livelihood, to ensure equal pay for equal work, and to make provisions, within the limits of economic capacity and development, for securing the right to work. The Constitution requires state policy to secure to all workers a living wage, provide conditions of work ensuring a decent standard of life, and take steps to ensure the participation of workers in management (*Constitution of India 1949* ss 39, 41, 43, 43A). Thus it can be seen that the Indian Constitution is strongly and explicitly protective of labour rights, a protection which finds no counterpart in the Constitution of Australia.

Like Australia, the Indian Constitution specifies the boundaries between the activities of the central and state/territory legislatures. The Australian Constitution specifies the powers of the central government, but names very few concurrent powers, leaving the rest to the states. The Indian Constitution lists the powers of the central government, those of the state/territory governments, and the powers to be shared concurrently. Whereas the Australian government has no direct power to legislate over employment-related matters, it has none-the-less done so through the use of alternative powers such as the conciliation and arbitration power, the foreign affairs power, and most recently, the corporations power (*Commonwealth of Australia Constitution 1900* ss 51(xxxv), (xxix), (xx)). While the latter power has been interpreted broadly to allow federal legislation to cover all those who work for corporations, the Australian Commonwealth still lacks any general industrial- or employment-related power.

The Indian Constitution, by contrast with the Australian, specifically empowers both state and central governments to legislate regarding labour, by including within the list of concurrent powers trade unions, industrial and labour disputes, social security and social insurance, employment and unemployment, and welfare of labour. It covers conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits (*Constitution of India 1949* ss 22–24). Thus in India, both the central and the state/territory governments have considerable and explicit power to make labour laws.

In India as in Australia, there has recently been much discussion of the need to modernise labour laws and practices, in order to enhance competitiveness in a globalising world (Second National Commission on Labour 2002). Indian labour laws have been pronounced too rigid and too protective to allow the country to take full advantage of its entry into the global market, with over 45 labour-related statutes in force at the central level alone, and numerous state laws also in force. For the purpose of this article however, the main question

is whether or not these numerous Indian labour laws provide adequate protections for BPO/ITeS workers.

Legislative Protections

Generally, the breadth of legislative protection for Indian workers is not dissimilar to that available to workers in Australia (when both state and federal laws are taken into account). 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 labour practices.

In India, such protections are primarily designed for workers at the lower end of the scale. For example, some legislation protects 'workmen' as opposed to supervisors and managers. Some applies only to workers whose employers do not otherwise provide such protections at a higher level. Some legislation protects only workers below certain wage levels. Some national legislation does 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 this general Indian legislation, there is myriad legislation covering specific industries, as well as state legislation governing the same issues and a broad range of other topics. Specific legislation relating to workers in BPO/ITeS is generally state-based, most commonly falling under a state *Shops and Commercial Establishments Act,* or similar. Such legislation lays out the provisions of employment in commercial establishments, which are sometimes specified, and sometimes simply assumed, to cover ITeS establishments and the workers therein.

When looking at the provisions of such legislation, Karnataka law is an appropriate starting point, as Bangalore, a well-known hub of IT and BPO/ITeS work, lies within this state. Karnataka has been one of the front runners in establishing and adjusting its legislation to take account of the potential growth of this sector. In Karnataka the *Shops and Commercial Establishments Act 1962* (Karnataka) covers BPO/ITeS workers, except those 'occupying positions of management' (*Shops and Commercial Establishments Act 1962*, s. 3(1)(h)). Consequently, the employing establishment must be registered under the *Act* (*Shops and Commercial Establishments Act 1962*, s. 4), and employees must receive a notice of appointment which sets out their designation, wage, and terms and conditions of employment (*Shops and Commercial Establishments Act 1962*, s. 6A). 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. Although employees found guilty of misconduct may be summarily dismissed, without misconduct 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 1962*, s. 39(1)). An employee may appeal against dismissal to an appellate authority, and again to a District Judge, on the ground that there was no reasonable cause for his or her dismissal (s. 39(2) and (4)). The above are minimum requirements only, and do not derogate from the protections offered by any other law, award, agreement or contract (s. 39(7)).

In Karnataka, the State Government may also establish a labour inspectorate under the *Act* (*Shops and Commercial Establishments Act 1962*, s. 26). Officers of this inspectorate have rights of entry, and rights to inspect records and premises (s. 27). Contravention of the *Act* may lead to fines and imprisonment (s. 30), and unpaid wages may be claimed by workers under the *Payment of Wages Act* 1936 (Central) (*Shops and Commercial Establishments Act 1962*, s. 18). Remedies for wrongful termination include compensation, capped at one month's pay per year of service, and re-instatement (*Shops and Commercial Establishments Act 1962*, s. 39(3)).

It can be seen from the above that the law, formally at least, does offer substantial protections to BPO/ITeS workers. However, legislative protection is only one aspect of the environment within which labour is situated. To make an evaluation of the real protections offered by any legislative regime, it is necessary to examine also how well such laws are enforced.

Enforcement

While legislation seems to offer significant protection to BPO/ITeS workers, enforcement of labour 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 labour inspectors is reported to be even more frequent than corruption of other inspectors (Ahsan 2006). In one study, 20 per cent of those surveyed reported that 'unofficial payments' could be used to reduce the number of visits from labour inspectors, and that the average reduction in visits after unofficial payments were made was over 50 per cent (Ahsan 2006). The same study reported that, in addition to corruption, there are major delays in resolving labour disputes in labour courts or tribunals. Proceedings in labour courts have been reported to be, on average, of ten years duration. In Karnataka alone, almost 17,500 labour cases were pending in 2005, with almost 3000 of those having been pending for over ten years! In an attempt to deal with delay and to expedite proceedings of the courts, alternative dispute resolution processes have recently been introduced in Karnataka (Mayo 2007). The Chief Justice of Karnataka has commented that corruption, and delay in disposing of cases, are two of the major reasons for loss of faith in the judicial system (indlawnews.com 2007). Clearly, the current enforcement regime can offer little realistic hope to employees seeking to remedy their workplace problems, nor would employers be overly fearful of prosecution when offending against the legislation.

Exemptions

While it is clearly difficult to enforce existing labour laws, it should also be noted that some labour legislation which would otherwise apply specifically exempts BPO/ITeS workers from its coverage. For example, under the Karnataka *Shops and Establishments Act* all shops and establishments must remain closed on one day per week (*Shops and Commercial Establishments Act 1962* 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 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.

Such exemptions can be seen to be significant not only for individual workers, but for Indian society at large. Whereas women have not previously been permitted to work at night except in narrow areas such as nursing and hospitality, relaxing such laws for a new industry ushers in a real change in social conditions. Thus to attract IT and BPO/ITeS businesses, the Karnataka government boasts that:

> [T]he State is committed to simplify [sic] all the relevant enactments for the [BPO/ITeS] sector. The barriers including employment of women at night, flexi-working hours and mandatory weekly off have all been removed … to create an optimal environment for the growth of the … sector in the state (Directorate of Industries and Commerce, State Government of Karnataka n.d.).

Such exemptions have impact well beyond the workplace, and have an effect on the social and cultural practices of the society. Allowing women to work at night goes against many social mores, while not allowing them to work at night raises the question of equality. This issue is not exclusive to the BPO/ITeS industry but is being played out in this context, adding fuel to the debate over the pros and cons of work in the BPO/ITeS sector, the benefits it brings to India, and the damage it does.

Other exemptions also raise questions about the protection offered by, and the enforcement of, labour law in BPO/ITeS. In addition to relaxing restrictions on opening hours, weekly closures, and women's work hours, West Bengal's IT Policy 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). In addition to exemptions similar to those outlined above, Andhra Pradesh's Policy on Information Technology Enabled Services aims to 'create the most optimal environment for ITeS companies'. This will include new legislation with BPO/ITeS-specific labour policies, and a single interface to the government (Information Technology and Communications

Department, Government of Andhra Pradesh 2002). 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 (Department of Information Technology and Electronics, Government of Uttar Pradesh 2004). This is not to suggest there is anything sinister about these policies, but it does raise issues regarding how far governments will go to encourage the BPO/ITeS industry into their states.

Trade Unions

The Constitution assures Indian citizens of the right to form associations or unions, with specific provision contained in the Central Government's *Trade Unions Act 1926*. Under a 2001 amendment to this Act, no trade union may be registered unless at least ten per cent or one hundred of the 'workmen' — whichever is less — engaged or employed in the establishment or industry are members, and at least seven of them are engaged or employed in the establishment or industry with which it is connected (*Trade Unions (Amendment) Act 2001*). Registration as a trade union gives the union's officers and members immunity against civil and criminal proceedings in many circumstances.

Nevertheless, while India is a member of the International Labour Organisation (ILO), it has not ratified the *Freedom of Association and Protection of the Right to Organise Convention 1948* (No. 87), nor the *Right to Organise and Collective Bargaining Convention* (No. 98). The Indian Ministry of Labour and Employment claims however that:

> [T]he guarantees provided for under these two Conventions are by and large available to workers in India by means of constitutional provisions, laws and regulations and practices … Freedom of expression, freedom of association and functional democracy are guaranteed by our Constitution. The Government has promoted and implemented the principles and rights envisaged under these two Conventions in India and the workers are exercising these rights in a free and fare [sic] democratic society (Ministry of Labour and Employment, Government of India).

While there may be some truth in this, real protection for freedom of association in India is questionable. It may be noted firstly that no time is specified within which an application for registration must be processed, and hence even those correctly applying for registration may wait years for the registration to take effect.[4] Secondly, ITeS in some areas has been declared a 'public utility', bringing the sector under extremely restrictive provisions with regard to strikes and other industrial action (Department of Information and Technology, Government of West Bengal 2003).

Thirdly, it is clear that the legal protection against harassment and victimisation assured to trade unionists by the *Trade Union Act*, is 'not sufficiently observed or enforced … Employers are often hostile towards trade unions and use intimidation, threats, beatings and demotion' (International Trade Union Confederation 2007: 4). While there are no reports of such extreme behaviour

in relation to unions in the BPO/ITeS sector, unions have certainly been subject to derision by employers and by the employer representative National Association of Software and Services Companies (NASSCOM). BPO/ITeS workers also fear employer backlash against those joining trade unions (Taylor 2007).

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. Unions are often seen more as a way of mobilising electoral backing for a political party, than as protecting their members in their working lives. 'An [sic] unique feature of Indian IR (industrial relations) has been the dominance of political parties sponsoring unions. Union membership has been the most popular breeding ground for politicians … Such politicisation has generated conflicts and rivalry creating mayhem …' (Chaterjee 2007).

Consequently, trade unions are commonly poorly regarded 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 (WBITSA). The US-based Communications Workers of America, and Jobs With Justice, have 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 (Jobs With Justice n.d.). 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. In addition to offering the usual union services to members, UNITES offers training for disadvantaged youth trying to break into the BPO/ITeS employment market, using donated computers and government training materials.[5] Additionally, this union has managed to negotiate six collective agreements with BPO/ITeS employers.[6] While these agreements do not deal with specifics such as hours and wages, they do demonstrate effective dialogue between union and company, and include for example commitments to build relationships between the two, to recognise 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, which are invariably politically oriented and self-interested, 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). Further, such a move is portrayed as inexplicable: 'Look at the salaries people engaged in the IT and ITeS sector get … their working conditions are not harsh. Then why are the trade unions trying to destabilise an industry that has recorded the fastest rate of growth by any industry segment …?' (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. Respondents saw a real possibility of termination for anyone who spoke up or was seen as a trouble maker, whether or not they were union members (Taylor 2007). While those responses came from unionists, the findings were supported by a more general survey, where workers stated that trade union membership would negatively affect their employment, that group formation of any kind was discouraged, and that trying to form an employee group would lead to termination (Centre for Education and Communication et al. 2006: 82–88). Thus whatever rights employees are afforded under legislation to form and join trade unions, such rights will undoubtedly 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 unionisation.[7] These advantages are more likely to be realised when growth in the sector slows, in the case of a general market downturn, or when jobs begin to move offshore from India, lured by yet cheaper overseas competition.

Mode of Employment

In both Australia and India, as elsewhere, permanent employees tend to reap the benefits of labour regulation, while temporary, fixed term, or casual employees, and non-employees such as contractors, are often excluded from its protection (Stone 2004). Thus, as a general rule, one would expect those in standard permanent employment to be the best protected, and those outside that category to be less well looked after. While precarious or non-standard work was once uncommon in the formal sector, there are suggestions that throughout the world precarious work is becoming more and more a standard form of engagement of workers (Stone 2004).

It is difficult to know whether this general trend is being mirrored in the BPO/ITeS sector in India. Research conducted in 2004 found that 95 per cent of Indian call centre workers held permanent full time jobs — 99 per cent in the case of those working in call centres for the international market, and 92 per cent of those working in domestic call centres (Batt et al. 2005: 10). Another study found that 'more than 75 per cent reported their employment as 'permanent' (Centre for Education and Communication et al. 2006: 51), while a further study found that 62 per cent of respondents were 'regular' employees (Ramesh 2004: 13). The variation in these figures may result from the fact that the former study collected data from managers in BPO/ITeS, while the latter two studies asked BPO/ITeS workers themselves about their employment

status. The figures may also reflect different perceptions of 'ongoing' or 'permanent' status, with employees seeing a contract terminable on short notice as non-permanent, while employers may see the same contract as on-going. Each study however found that the mode of employment in BPO/ITeS is most often an on-going contract. Other researchers have also found that BPO/ITeS has fewer short duration or project specific contracts than the IT sector generally (Sasikumar and Varma 2004: 13).

Nonetheless, it appears that even when ITeS employees are called permanent or on-going employees, this is not perceived to afford them job security, for a number of reasons. Firstly, many employees do not work in one BPO/ITeS job for long enough to get beyond the probationary period, meaning that they never gain the protections of longer term employees (Ramesh 2004: 12). Further, many of those on employment contracts formally defined as ongoing or permanent, or specifying a notice period for termination, state that practice does not often mirror the written contract, and that their jobs are vulnerable regardless of the wording of their contracts. One study reported that although most respondents claimed their employment status was 'permanent,' in conversation many said that they could be 'thrown out of employment at any time' (Centre for Education and Communication et al. 2006: 51).

Unfortunately then, while employment mode would usually allow some insight into regulatory coverage and worker protection, the BPO/ITeS sector mode of employment seems to be a poor indicator of worker protections and job security. In addition, given the exemptions from regulation allowed to this sector, and the low levels of enforcement of labour law generally, even employment as on-going, permanent employees may offer little real protection.

The foregoing discussion has established the legal framework under which BPO/ITeS work is performed in India, and has highlighted some of the gaps arising between law and practice in this area. In addition, two particular features of the BPO/ITeS sector, while not in themselves raising legal issues, add to the complexities of realising sound worker protection. These features are attrition, and the nature and organisation of the work in this sector.

Attrition

It may be thought that in a country of virtually unlimited labour supply, workers would be far more concerned than employers about job security, but in fact this is not the case in the BPO/ITeS sector. While there are literally millions unemployed in India, there are not so many with the skills required for the BPO/ITeS industry. This is illustrated by research showing that call centres, for example, hire only 17 per cent of job applicants (Batt et al. 2005: 11). Noshir Kaka of MacKinsey and Co. says that only 5 per cent of India's annual 2 million graduates are employable by call centres; of the remainder, 15–20 per cent are trainable, while 80 per cent are not even trainable (AFP 2004). Madan Padaki of MeritTrac echoes this: 'On a cumulative rating based on all parameters, 10 per cent of the total applicant population meets the industry expectations' (Basu 2006). So we find that those wishing to work in BPO/ITeS are often not those suitable or ready for this work.

On the other hand, many who apply for, and are accepted for, BPO/ITeS work find that they don't want the job! Attrition has been estimated at anything up to 40 per cent, meaning that in any one year 40 per cent of staff will stop working for the employer.[8] At a recent NASSCOM summit, representatives of the BPO/ITeS industry pointed out that staff attrition had emerged as a key problem for companies, and was as high as 50 per cent in some organisations (NASSCOM 2007). Amongst other concerns at the summit, 'the importance of reducing attrition … [was] emphasised over and over again by participants' (NASSCOM 2007).

One major reason for high attrition rates in the sector is the sheer availability of alternative jobs. 'Workers in this sector are keen on moving away from one firm to the other, searching for higher wages, better learning opportunities and improved work environment' (Sasikumar and Varma 2004, p. 169). The constant growth of the sector means that more and more alternative opportunities are available. Firms themselves lament attrition, while at the same time encouraging it with their policies, such as 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. These practices have become so prevalent and costly that NASSCOM is currently working on an ITeS-BPO 'Code of Ethics in Hiring.' Under the code, signatories will try to 'improve the overall manpower resource situation and ensure fair play in manpower hiring and retention' by, amongst other things, 'actively prevent[ing] their recruitment agency from poaching staff and employees', and discouraging payments to new staff which compensate them for leaving other employment early (NASSCOM 2007).

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 (Working Life 2006).[9]

The difficulty of accessing rights, coupled with the easy availability of alternative employment, encourages attrition. A further factor encouraging attrition is the nature and organisation of the work itself.

BPO/ITeS Work

While the BPO/ITeS sector encompasses many types of work, much of the actual work is unattractive (Upadhya and Vasavi 2006: 134). 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. Outgoing call centres are reputed to be the worst workplaces, where union activists claim '[employers] are looking for two kinds of people. People who are completely brain-dead, who accept commands and carry them out. And then they want a smaller number of "believers in" who

will become managers and trainers' (Moody in Gentleman 2005). While some BPO/ITeS work, even for telephone operators, will involve higher level skills, for those in outgoing call centres working for the international market, there is little autonomy, little opportunity to use initiative, constant surveillance, high level monitoring of performance, and little opportunity to progress beyond the call centre. Although there are opportunities to become a call centre manager or supervisor, studies show that less than one per cent of call centre staff are promoted beyond the call centre into other parts of the same company (Batt et al. 2005: 20). While respondents to one survey rated career prospects as high, in that promotion occurred faster in this sector than in others, they also noted that there was severe competition for promotions, as the number of low level employees completely outweighed the number of posts available for promotion (d'Cruz and Norohna 2007: 271).

As mentioned above, the BPO/ITeS sector includes many types of work, from stimulating and innovative jobs to repetitive process work, from complex technical jobs to scripted telesales. While there is work in this sector which offers some level of personal autonomy and skill development, unfortunately much of it does not. 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, leading to 'wastage of human resources and de-skilling of workers' (Ramesh 2004: 26).

It may be worthwhile however to distinguish BPO/ITeS work itself from the conditions under which the work is done. Even boring, repetitive, and irrelevant work may be improved by re-organisation, such as 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. But it should be remembered also that work that is boring, repetitive, irrelevant and overly structured, is not the exclusive domain of the BPO/ITeS sector, nor of India.

Other conditions may also be improved to reduce the negative effects of working in the BPO/ITeS sector. 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. But there may be no need to set performance targets so high that stress and burn-out are almost inevitable, to monitor and report on performance hourly or daily rather than weekly or monthly, or to prohibit workers from taking a toilet break outside assigned break times.

Unattractive work and poor work organisation may lead to short term employee commitment and high levels of attrition, which, as discussed above, may in turn reduce the availability of legal protections and the enforcement of legal rights.

Conclusion

From a distance, Australian and Indian labour laws appear to have much in common. Both have British-based institutions of government and of law, pow-

ers constitutionally divided between federal and state levels of government, regulation consisting of a mix of common law, legislation, and industrial instruments, and the labour laws of both India and Australia cover much of the same subject matter. In practice, however, the similarities may be fewer.

Labour 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, and delay, workers often move to new employment rather than trying to enforce rights. Trade unions are protected, and rights to membership are guaranteed, yet trade unions are often not recognised by employers, and union members continue to suffer victimisation.

In addition to the legal environment, the work itself, and its organisation, contribute to workers' difficulties. Employers offer good pay and benefits in modern working environments, yet the work is often dull and dead-end, carried out under extreme pressure, with little autonomy and little scope for progression. But while workers leave their employment in droves, two-thirds of them take another job in the same sector. UNITES, the union for BPO/ITeS workers, decries the poor treatment of workers in the sector, while at the same time running training courses to prepare disadvantaged youth for this very work.

This article has shown that high levels of formal protection for BPO/ITeS workers in India often exist hand in hand with low levels of protection in practice. Labour law and practice, along with work type and work organisation, create a particular environment within which this work is carried out, and which needs to be taken into account in any analysis of the circumstances of off-shored labour. It is clearly not appropriate to assume that legal protections flow on to become real protections, nor that labour laws in this sector will be complied with, monitored or enforced. This understanding provides a better context within which to view labour issues relating to the off-shored BPO/ITeS sector in particular, and the globalisation of work more generally.

Notes

1. This article is based on elements of an invited address to the NSW Industrial Relations Commission Conference, Bowral, September 2008.
2. For the purpose of this article, BPO/ITeS refers to business processes, call centres etc. Higher level services, such as medical diagnostics, financial analysis, or legal compliance work are also commonly off-shored, but such work, now known as 'knowledge process outsourcing' or KPO, is beyond the scope of this article.
3. As also the symposium, 'Working in call centres', in the 2008 special issue of *The Journal of Industrial Relations*, 50 (2).
4. Delhi Labour Commissioner 2008, Interview with the author, 26 February, Noida.
5. Shekhar, K., General Secretary of UNITES 2005, Interview with the author, 15 December, Bangalore.
6. Shekhar, K., General Secretary of UNITES 2008, Interview with the author, 4 April, Sydney.

7. Shekhar, K., General Secretary of UNITES 2005, Interview with the author, 15 December, Bangalore, and Sen, T., Secretary, Centre of Indian Trade Unions 2007, Interview with the author, 27 July, Delhi.

8. While attrition has been a major concern of the ITeS industry, there is little statistical information regarding this problem. 40 per cent attrition in ITeS is the figure given in personal communication with one HR manager in the BPO/ITeS industry in Chennai, January 2006. Between 30 and 50 per cent attrition in BPO/ITeS overall is a figure commonly reported anecdotally but unsourced.

9. HR Manager, BPO/ITeS sector, 2006, Interview with the author, January, Chennai.

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