Hire First and Fire Next

R.Vigneshwaran [1]

Synopsis

[1] Student, Tamil Nadu National Law School

Abstract

"*What is needed is not freedom for the companies to wantonly fire workers from their but; it is legally respected where a legal regime whereby companies or firms can write different kinds of contracts with their workers depending on their needs*"**.** Indian Labour and Employment laws is among one of the most multifaceted in the world, so the employers has to exercise great caution before **Hiring** and after **Firing**the employees. Companies that hire employees, it is mandatory to conform to various central and state regulations that ensure employees are well protected and has access to various benefits. But the real scenario that pertains in the society is that many Information Technology Company (IT) are not bounded by the Indian Labour law, since they are setup by the Foreign Multinational Company (MNC). They act according to their own Rules and Regulations framed by their head office, this creates a case where no assurance to the "Job Security", and the members of the company or the firm are "Fired" with no claims and redressal.

Here is the issue which draws the author to write up on the topic that "**Whether or Not, the IT professionals come under the definition of "Workmen" under Section 2(s) of the Industrials Dispute Act, 1947**". If yes, what are the ways in which the IT professional who is "**Hired First and then Fired Next**", without any proper reason claim for the benefits. Is there any compensation that can be claimed or whether he has the right to file a civil against the company, is still a pondering riddle. At the end, the employees life is the "Beginning of the nightmare" and end up with "Many suffer in silence".

INTRODUCTION:

The Industrial laws in India governs relationship between the labours, employment and their disputes, especially disputes regarding workman (Employee) and management (Employer). These are mainly concerned with determination of the terms of employment and conditions of employment.

When the term "Conditions of Employment" is looked into, it is important to analyse the concept of "Hire and Fire", which is going to be one of the important amendment in the labour legislation and these are recommended by the Modi Government for the improving standard of labour legislations and working system. This leads to another area of vagueness and improbability where there is no job security for the IT professionals especially in India.

In regard to firing of the employees from the IT industries, it is very prevalent in India, that there are so many techies who are well qualified but are not given with the job opportunity to show their talent and in spite of this, without even considering the potential of the employees, they are randomly fired from the company, in order to escape from paying high salaries to them.

The main motive behind firing of the employee is that, in order to pay more salary to the experienced person, the IT Companies always possess a prenotion that instead of paying a single person more salary, they always have an open gate to recruit more and more fresh techies who are badly in need of work by paying less salary and with more number of working hours in comparative to the experienced person who work less hours and also receive more salary.

The Labour laws in India are very stringent, where there is no hope given to the IT employees who are wantonly fired from the company without any proper notice also for any dispute arising out of their flaw and foul relations, they have no protection under the Indian labour legislations to claim remedies, since they are not treated as "Workmen" under the Industrial Dispute Act.

So, this paper tries out to consider the IT Employees to come under the definition of Workman, through precedents and interpretation of the Statutes.

ELEVENTH FIVE YEAR PLAN:

According to the Constitution of India, **Article 43**[2] of the Indian Constitution imposes upon the state obligations to "***ensure work to all labourers with decent standard of living, wages and also condition of work***". Also **Article 43A**[3] highlights on the "***participation of workers in the management of undertaking establishment or other organisations engaged in any industry, providing minimum standard of working conditions".***

The above two important Articles enshrined in the Indian Constitution, gave way for the numerous number of implementation in labour legislations and also determined the relationship of employer-employee.

Labour plays an important role in increasing productivity. So the management on the other side have to help create conditions in which workers can make maximum contributions towards their objective. For the upliftment of Indian Economy and certain other important areas, every five year plan proposes certain improvements, the 11th Five year plan is considered to be one of the significant proposal by the planning commission. One of the main task in the Five Year Plan is to evolve practical ways in which they can make an increasing contribution to **national development** and **national policy**.[4]

The 11th Five Year Plan from 2007-2012[5], which focuses on the idea of "**Hire & Fire**", this plan is strongly against it and also highlights that **this approach is not at all desirable for the growth of the Industrial Relations and as well as labour policies**.

According to this plan under the sub heading of "The Employment Challenge", this plan emphasised by saying that "*Rapid growth focused on labour-intensive industries*

---

[2]**Article 43**: "*To secure to all workers, agricultural, **industrial**, or otherwise, **work**, a living, wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular the State shall endeavour to promote cottage industries on individual and cooperative basis in rural areas",*

[3]**Article 43A**: "*The state shall take steps by suitable legislations or in any other way to secure the **participation of workers in the management of undertaking establishment or other organisations engaged in any Industry** provided to the working class for achieving a decent living condition and also opportunity to progress".*

[4]*Human Resource Management, Industrial Relations, Labour Relations and Achieving Management Objectives,* International Labour Organization ACT/EMP Publications ILO, http://www.ilo.org/public/english/dialogue/actemp/downloads/publications/srshrm.pdf

[5] Planning Commission of India, *Eleventh Five Year Plan 2007-2012 -Inclusive Growth* , Volume 1 http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v1/11th_vol1.pdf

and small and middle enterprises will create employment opportunities in the manufacturing and services sectors. The ability to create jobs will be enhanced by greater labour flexibility which may require some changes in labour laws. This is a controversial issue on which it is difficult to reach a consensus but the weight of evidence suggests that while outright ***hire and fire approaches may not be desirable, there is room for creating greater flexibility,*** *short of this position."*[6]

Therefore, it is clearly as pointed out by the 11th Five year plan that "Hire and Fire" policy is the not the solution to bring reforms in the current labour legislation and to eradicate the unemployment. Labour markets policies are clearly relevant in this context. In the changing economic scenario, global as well as national, **labour flexibilityis viewed as an essential attribute of competitiveness**. **All over the world efforts are being made to introduce greater flexibility while at the same time protecting the legitimate interests of labour. It must be emphasised that labour flexibility does not mean "Hire and Fire".**[7]

According to the opinion of the RuddarDatt, a famous Indian Economist, made a review on the "Eleventh Five Year Plan and Inclusive Growth", suggested that "***the issues of labour flexibility does not mean hire and fire***. *There are many aspects of labour laws where greater flexibility is needed and would be in the interest of labour as a whole in the sense that it would actually generate large volumes of employment in the organized sector by encouraging employers to expand employment..."*[8]

RECENT ISSUES:

On June 13th, 2016, the Tamil Nadu Government's clarification that IT employees are being covered by the Industrial Dispute Act, **forum for IT Employees salutes Tamil Nadu government's decision to uphold the democratic rights of IT employees**. Principal Secretary of Tamil Nadu Labour and Employment Department Kumar Jayant said "***IT Company employees also are free to form Trade Union and redress***

[6]*Ibid* p. 3

[7] Planning Commission of India, *Towards Faster and More inclusive growth – An approach to the 11th Five Year Plan,* (2006), http://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/apppap_11_1.pdf

[8]RuddarDatt, *Eleventh Five Year Plan and Inclusive Growth*(2008), http://www.bjp.org/images/upload/publications/ruddar_datt_e.pdf

their grievances through evoking the provisions of the Industrial Disputes Act 1947."[9]

Tamil Nadu Government's clarification has provided hope for IT employees and to other states as well which vouches to take the struggle of IT employees forward to secure democratic and just rights of IT employees.

On May 11, 2016, **IT Employee is a 'Workman'**, the court held by saying that maintaining that **a person working in an Information Technology company can be termed a "Workman"**, the Additional Labour Court presiding Officer S. Nambirajanordered the IT Company to reinstate the petitioner with continuity of service and to pay full back wages and all other benefits from the date of dismissal to the date of reinstatement. The court strongly held that:

"***Any person doing a skilled job is a workman under the definition of that terms. So the court held that the HCL employee is considered as a Workman under the definition of Section 2(s) of the Industrial Dispute Act".***[10]***"The job of the HCL employee in a software company (IT industry) involves skills and technical knowledge. Therefore, the job of a software engineer can be termed as skilled or technical one. The court held that, skilled or technical one are of the terms accepted under the definition of Workman".***[11]

ARE IT COMPANIES INDUSTRIAL ESTABLISHMENT:

Recently, the ambit of the definition of the Industry is widened underSection 2(j) and also under the Factories Act under Section 2(m), it includes IT and Software companies as Industry and Factory respectively and the Court hold that there exist Manufacturing process, Economic Activity and Trade Activity is taking place. **The three important ingredients in order to say an establishment as Industry/ Factory, it is important to conclude that there need to be:**

[9]T.K.Rohit, *IT Employees free to form Union: Labour Department – No Company can claim exemption from Industrial Disputes Act,*THE HINDU, (Chennai ed., June 9th, 2016) 7

[10]*IT Employees is a Workman, says court,*THE HINDU, (Chennai ed., May 11th, 2016),

[11] A. Subramani, *HCL asked to reinstate sacked employee on Chennai Court's order,* ECONOMIC TIMES,(Chennai ed., May 11th 2017), https://tech.economictimes.indiatimes.com/news/corporate/hcl-asked-to-reinstate-sacked-employee-on-chennai-courts-order/52216604Last visited on 14th October 2017

- Manufacturing Process taking place.
- Economic Activity and
- Trade Activity.[12]

The landmark case of *Assistant Director, ESIC v M/s Western Outdoor Interactive Pvt. Ltd. & Others*[13] Software Development/ IT Companies is a "**Manufacturing Process"** and the firms involved in creating Computer Software are "**Factories"** under the Employees' State Insurance Act, 1948. This is the Second attempt made by the Supreme Court that the IT companies are factories under the Employees' State Insurance Act and this helped in further using this Judgement as an precedent to conclude that IT companies are Industrial Establishment, and the employees i.e. IT Professionals comes under the definition of Workman under Section 2(s) of the Industrial Dispute Act, 1947.

According to the Employees' State Insurance Act, 1948 the motive of the Act is to "***provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto".***[14]So the Appellant in this case try to seek benefits under this Act stating that Software Developers and IT Professionals are employees under this Act and they are also subjected to the benefits from the Act and the another main contention of this petition is that, software development and IT companies comes under the definition of the factories, so held in favour of the appellant and said that **Software Developments/ IT Companies comes under the definition of Factories.**

It is the recent ruling that, while determining the applicability of the Employees' State Insurance Act to a Software Company, the Bombay High Court took a view that:

1. "Software development is a manufacturing process and the premises where computers are involved in such a manufacturing process is a factory for the purpose of the Employees' State Insurance Act is concerned".

[12]1 DR E M RAO, THE LAW OF INDUSTRIAL DISPUTES, Lexis Nexis, New Delhi(7th ed. 2015)
[13]Assistant Director, ESIC v M/s Western Outdoor Interactive Pvt. Ltd. & OthersFA No. 143 of 2012, pronounced on 11 July, 2012.
[14]*Employees' State Insurance Act*, 1948, Act No. 34 of 1948, (5th October 2017), http://nclcil.in/infobank/act/TheESIAct1948.pdf

2. It was noted that the definition of factory under the Factories Act, provides for 'Explanation II' which was introduced in 1987 and states that "the mere fact that an electronic data processing unit or a computer unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof".[15]

So it is concluded that the IT Companies are considered as Factories, this judgement is unlikely to change the position in relation to coverage of software establishments significantly. This is because in the present context, most of the State Government has made the IT Companies and Software Companies comes under the definition of Factory.

The author is of the opinion that, this ruling could extend to other labour legislations and enhance the benefit in favour of the Techies who are fired from the company for no reason and there is no civil remedy available to them as of now properly.

Another landmark judgement by the Supreme Court of India, with respect to the issue of whether IT Companies fall within the definition of "Industry" under the Industrial Dispute Act. The answer to this highlighted by the Supreme Court that the IT Companies falls under the definition of the Industry establishment under the Section 2(ka) of the Industrial Dispute Act, 1947 in the famous case of *Seelan Raj and Others v. Presiding Officer, I Addl. Labour Court, Chennai and Others*[16].

The court in this case held that, "*the intrinsic value thereof includes the cost of blank medium as well as instructions or knowledge recorded thereon through the intellectual process of manpower. Thus, the manpower deployed for data processing is required to use its expertise to convert a blank medium into a valuable commodity. Therefore, the entire value of blank medium is changed by manufacturing process adopted. Thus it results in a manufacturing process. The court strongly said that the preparation of software is a manufacturing process and the IT Companies comes under the definition of "Industrial*

[15]LalitBhasin, *Software Development is a 'Manufacturing Process' and Firms involved in creating Computer Software are 'Factories' Under the Employees' State Insurance Act, 1948 and Factories Act,* Tri Legal Law Review (26th July 2016), http://www.techlaw.org/wp-content/uploads/2010/07/Software-Development-is-a-Manufacturing-Process-and-Firms-Involved-in-Creating-Computer-Software-Are-Factories-Under-the-Employees-State-Insurance-Act-1948-July-2012.pdfLast Visited on 15th October 2017

[16]Seelan Raj and Others v. Presiding Officer, I Addl. Labour Court, Chennai and Others(2001) 89 FLR 342

Establishment" and it is considered as "Industrial Establishment" under Section 2(ka) of the Industrial Dispute Act, 1947".[17]

So the next question that have to be answered is "are IT professionals falling under the definition of Workman".

ARE IT PROFESSIONALS FALLING UNDER THE DEFINITION OF WORKMAN:

For an employee to be considered as a 'Workman' under the Industrial Disputes Act, 1946, there are two basic essentials.

- Firstly, **the establishment has to be considered an "Industrial Establishment"** according to definition of "Industrial Establishment" and
- Secondly, **the employee has to be a "Workman" within the definition of a 'Workman'** under Section 2(s) of the Industrial Dispute Act, 1947.[18]

According to Section 2(ka) of the Industrial Dispute Act, which states that "Industrial Establishments or undertaking in which any industry is carried on: Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries …".[19]So this definition has to be read further for clarification with respect to the definition of Industry, which is specified under Section 2(j)[20] of the Industrial Dispute Act. The author clarified that all IT Establishment, either electronic data processing or computer software development companies fall under the definition of 'Industry' under the Industrial Dispute Act, 1947 and also factor under the Factories Act with two famous landmark Judgments.

---

[17]*Ibid* p. 3, para 1.

[18]The Institute of Company Secretaries of India ICSI, *Study Material on Industrial, Labour and General Laws* , Module II, Paper 7 (5thOct,2017)http://www.icsi.in/Study%20Material%20Executive/Executive%20Programme-2013/INDUSTRIAL,%20LABOUR%20AND%20GENERAL%20LAWS%20(MODULE%20II%20PAPER%207).pdf

[19]MALLICK M.R,Section 2(ka),*Labour and Industrial Law Manual,* Professional Book Publishers, Delhi

[20] Section 2(j) of the ID Act, 1947 "*industry means any business, trade, undertaking, manufacture, or calling of employers includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen*"

In order to understand that the IT professionals comes under the definition of Workman under Section 2(s) of the Act, it is important to understand the scope of the definition of 'Workman'.

Though definition of 'workman' in Section 2(s) is exhaustive and includes an interne, since the section opens with the words "**unless the context otherwise requires**",[21] this signifies and gives the scope of the judiciary to widened the definition of the Workman, if the legislature defines a term, in the absence of clear indication to the contrary, those terms shall be used as proposed. But where there is a context otherwise required, the terms or the words shall be given a meaning different from that defined in the statute and thus comes into play the part of interpretation. The definition many a times contains phrases like "**unless the context otherwise requires**" or "**unless there is anything repugnant in the subject or context**". In these situation, a contrary context may be used for the purpose of the situation in the case. And even **if it has not been expressly states in the definition, it is imperative to make the interpretation of the words so used if so required.**[22]

Keeping in view the interpretation of the above definition, it has two parts. In the first part "**Workman**"[23] has been defined to includevarious kinds of work but according to our interpretation the three kind of work done by the IT employees in order to conclude them into the definition of the Workman are ***skilled, technical, operational*** and Such hire or reward must be fixed under a contract between the employer and employee.[24]

The Courts in India, with regard to the ambit of a 'Workman' under the Industrial Dispute Act, have quite evidently followed the precedent laid down in the two famous cases in *HR Adyanthayavs v Sandoz*[25]and in the case of *Raj Kumar v Director of Education*[26]. In these two cases, it was held by the Supreme Court that "*that merely being excluded of the four exceptions enlisted in the definition of 'workman' under section*

[21]Mukesh k. Tripathi v Sr. Divisional Manager, LIC, (2004) 8 SCC 387, para 37: AIR 2004 SC 4179: 2004 Lab IC 3688.

[22]2. JUSTICE G P SINGH,PRINCIPLES OF STATUTORY INTERPRETATION, (14th ed. 2016), Lexis Nexis, Haryana

[23] Section 2(s) of the Industrial Dispute Act, means any person employed in any industry to do any *manual unskilled, **skilled, technical, operational,** clerical or supervisory work for hire or reward.*

[24]Steel Construction Company v Workmen, 26 FJR 338 (Mys.)

[25]HR Adyanthayavs v Sandoz1995 ILCJ 303: AIR 1994 SC 2608

[26]Raj Kumar v Director of EducationAIR 1997 SC 1425

2(s) of the Industrial Dispute Act does not necessarily make an employee a workman. For being considered a workman, an employee must be doing a job that is be ***skilled,*** *unskilled,manual,* ***technical,*** *operational or clerical in nature".*

Reading down these two and other important precedent it is important to discuss the concept of "**Triple Test"** as laid down in the Bangalore Water Supply Case[27], the idea behind triple test to prove that the IT professionals comes under the definition of the 'Workman' under section 2(s) of the Industrial Dispute Act, 1947, and also it is easy to say that the IT Companies are Industries, the triple test provides that:

a) "It should be a systematic activities has to be taking place to determine the relationship that there exist employer-employee.
b) Organised by cooperation between employer and employees.
c) For the production of goods and services calculated to satisfy human wants and wishes would constitute industry."

The case also held that the main test is the nature of activity with emphasis of employer-employee relationship therefore all organised activities that satisfy the triple test will constitute industry including undertakings, callings and services, adventures analogous to the carrying on of trade or business.[28]

Justice Krishna Iyer, also held that, the statute (Industrial Dispute Act, 1947) as a whole has two objectives;

- ***"Protection of labourer interests and***
- ***Resolution of industrial disputes and the statue is to be interpreted in such a way as to support the objectives."***

According to the author, this two basic test and precedentshelps to the conclude, that the IT professionals shall be considered as Workman under the definition of Industrial Dispute Act, 1947.

WIDE SPECTRUM OF EMPLOYER-EMPLOYEE RELATIONSHIP:

The Act is written on the canvas of employer and employee. It operates in respect of persons who are employees and answer the definition of 'workman' in Section 2(s).

[27]Bangalore Water-Supply & Sewerage Board, Etc. v R. Rajappa& Others 1978 AIR 248, 1978 SCR (3) 207, 1978 SCC (2) 213
[28]*Ibid.*

The status is determined from the primary duties of an employee and the dominant purpose, aim and object of the employment. *Even if the whole undertaking be an industry, those who are not workmen by definition may not be benefited by the said status.*[29]So interpretation has to be given in such a way that helps and favours the labourers.

It stands established that *the industrial law revolves on the axis of master and servant relationship.*[30] There is some variation in the language of the definition of 'worker', 'workman' and 'employee' in different labour legislations. But it will be found that the cases which have come up before the court on a dispute about tilt existence of master-servant relationship, the question is examined from the view point:

1. ***"Of the nature of activity and its relation with industry; or***
2. ***Of jural relationship and in the context of control of exercised by the employer."***[31]

There are various test to determine the employer-employee relationship, but this project is confined only with respect to the IT professionals and other aspects, very briefly, the three important test are:

1. Control Test.[32]
2. Integration or Organisation Test[33] and
3. Multiple Test.[34]

The above test helps the readers to come to a conclusion on how to determine the relationship of employer-employee. In order to prove that IT professionals comes

[29]HussainMithuMhyasvadkar v Bombay Iron and Steel labour Board, (2001) 7 SCC 394: (2001) SCC (L&S) 1190: (2001) II LLJ 1520: AIR 2001 SC 3290

[30]Puri Urban Co-operation Bank v MadhusudanSahu, (1992) II LLJ 6: AIR 1992 SC 1452: (1992) 3 SCC 323

[31] 2 GYANENDRA SARAN, LAW ON INDUSTRIAL DISPUTES WITH CENTRAL AND STATE RULES, 499 (4th ed. 2014)

[32]Yewens v Noakes(1881) 6 QBD 530; the House of Lords in this case it held that **the control test would clearly be satisfied "*if a person controlled both what another i.e. employee did and How he did, then control test is proved*."**

[33]Stevenson, Jordan and Harrison Ltd v MacDonald and Evans[1952] 1 TLR 101; Lord Denning developed this test that "*under a contract of service a man employed as part of the business and his work is done as an integral part of the business*", **the underlying principle of this test is that the more the worker is integrated into or is part of the business organisation the more likely he or she can be considered as employee.**

[34]Ready Mixed Concrete v MPNI [1968] 2 QB 497 the court held that "*the multiple test is considered as* ***the test of economic reality test. Nowadays this test is more relied upon where it considers several factors in order to determine the employer-employee relationship.*** *These factors such as remuneration by way of payment, membership of company, wages, salary, bonus, control by employer and various other aspects.*

under the definition of employee, it is important to note the third test which is primarily called as the Multiple test and it has wide approach of using it. It is also called as the **test of economic reality**, where in it takes every aspect which is given or applicable to the employee to determine that the relationship is employer-employee, so once this relationship is proved it implies that the employee comes under the definition of Workman under Section 2(s) of the Industrial Dispute Act, 1947.

So, here is the second conclusion made by the author that, the nature of relationship that exist in the IT sector is the employer and employee and the IT professionals are to be termed as workman and they are into the definition of the Workman under section 2(s) of the Act, it is important to note in the case of *Management or Sonepat Co-operation, Sugar Mills Ltd v Ajit Singh*[35], the Supreme Court, while dealing with the case of a legal assistant, observed that a person would come within the purview of the definition 'workman' if he:

i. Is employed in any industry;
ii. Performs any manual, **skilled**, **technical**, **operational**, clerical work.

A person who performs one or the other jobs mentioned in the section only would come within the purview of the definition of the 'Workman'. So **the IT professionals satisfies the above two conditions that, the IT Companies are industrial establishments and the work they do are skilled, technical and operational, so they should be termed as workman under the definition of section 2(s) of the Industrial Dispute Act, 1947.**

The recent issue which connects our discussion to say that IT employees comes under the purview of the definition of Workman. Madras High Court stays TCS to terminate a women employee i.e. I.T. Employees is **a ray of hope for many.** The Madras HC held that restrained software major TCS from retrenching its analyst who has been issued termination order by the Company.

According to the report it specifies that, TCS has planned to retrench 25, 000 engineers, and one such engineer has moved the court stating that they are fired

[35]Management or Sonepat Co-operation, Sugar Mills Ltd v Ajit SinghAIR 2005 SC 1050: (2005) 3 SCC 232: (2005) I LLJ 1122 (para 15,16)

without any reason. She said contending that the retrenchment move was illegal and in gross violation of Industrial Dispute Act, 1947. The Madras HC accepted "***her plea and granted interim injunction restraining the company from retrenching her***".[36]

The court accepted to the contention of the petitioner that, she is a 'workman' within the meaning of Section 2(s) of the Industrial Dispute Act, 1947, as her main duties and responsibilities are technical and clerical in nature. The job of I.T employees in TCS and other IT Companies involves receiving and collating information about software/ application to be developed, analysing requirements and designing and developing software or application based on client company's needs.

The court also pointed out that, the company namely TCS had taken an "unfair decision" to terminate the service of 25,000 workers holding designation of Assistant Consultant and above and to recruit 55,000 persons predominately fresher's on the basis of campus interview and other less experienced persons with a view to cutting costs.[37]

The author wants to point out that, instead of giving high salary to the experienced person, it is enough to give that experienced salary to the more number of newly recruited person and get the job easily done. So these kind of company fire the people at their own will, which is considered to be unfair and so that only, the IT employees has to be considered under as the workman under the Industrial Dispute Act, so that they can take some protection and claim civil remedy.

This is the pathetic situation of IT employees/ Techies but Modi and his government overhauls labour laws and launches "Hire and Fire" policy, which is going to be serious of immense threat to all the IT employees and the author is cent percent sure that, there will be large number of unemployment in the country.

On April 29 of 2016, the Labour Ministry issued a notification publishing draft rules to amend the Industrial Employment (Standing Orders) Central Rules 1946 being

[36] A Subramani, *Madras High Court stays termination of TCS Employee,*THE TIMES OF INDIA(Chennai ed. Jan 13th, 2016).

[37]*HC restrains TCS from retrenching its analyst,*OUTLOOK (The Hindu), (Chennai ed. January 13th, 2016).

proposed by the Central Government inviting suggestions/ objections within 45 days.[38]

"The amendment aims at introducing "fixed term employment" with the unfettered right of the employer to retrench without notice and compensation."

The author would like to oppose the above stand taken by the government that if the company/ industry under Section 2(j) or 2 (ka) of the Industrial Dispute Act, hire a particular person and suddenly if they retrench the employee without and notice and for heaven sake compensation is mentioned and that compensation who knows the employer will pay the employee or not is the another question that the court has to decide on it and the litigation suit for the case of compensation goes for years and it also adds to the backlog of cases, before these points.

It is important to note that, if an employee or an workman defined under the section 2(s) of the Industrial Dispute Act, his/ her "*Right to life*" guaranteed by the Indian Constitution is violated because the residuary right that falls under the right to life is the Right to livelihood and Right to adequate means of standard of living confers by right to life is violated and very importantly "*Right to Equality*" is violated which indicates that for no reason, the employee who is been working all through the days in par with other employees "Equally" is retrenched from the company without any notice and it is clear cut violation of the Right to Equality under Article 14.

The clause of amendment says the employer can retrench the employee **without notice.** This is clearly violation **Section 25F** of the Industrial Dispute Act, 1947 and it says that **Condition precedent to retrenchment of workmen: "*... one month notice in writing indicating the reason of retrenchment and the period of notice has expired ...*" [39], if the amendment says that without notice they can retrench the employee, the employer at his own whims and fancy and at their own discretion can exercise this power in an irrational and illegal way to retrench all the good employees,**

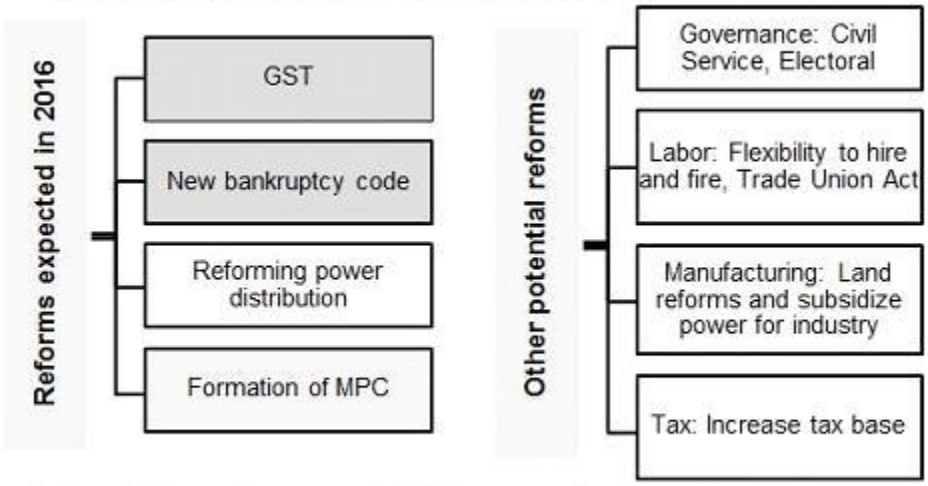
[38]*Centre's new push soon on 'Hire and Fire' law Jobs,* NDTV News, (Chennai ed. September 22nd, 2016), https://www.ndtv.com/india-news/centres-new-push-soon-on-hire-and-fire-law-to-boost-jobs-1465236

[39]Section 25(F),Mallick M.R, *Labour and Industrial Law Manual,* Professional Book Publishers, Delhi

who badly has to sustain their life in this contemporary competition world. This is completely unfair policy in the democratic state like India.

This policy of implementation of this new reform in labour laws have slammed by more and more number of trade unions as they are found to be violative and gives the industry unhindered power to "**hire and fire"** workers on the pretext of improving the ease of doing business through the so called **Labour Reforms.**

Exhibit 3: Progress on reforms in 2016 in line with our expectations



Dark grey indicates reforms completed, light grey are reforms which have made significant progress

As proposed earlier by Modi, this labour reforms will take into effect very soon and the concept of Hire and Fire will ruin the working labour force and it may lead to large of IT employee getting lay-offed every month and sure it will not reduce the unemployment, rather this will lead to increase the unemployment with large number of potential workers left unemployed.

Even if Modi, wanted to impose this in a good way, yet the corporate people and other industry will definitely misuse by firing the employee without any notice and reason, and this is done so because, **in order of paying him high salary, with that one person salary new can recruit two or more employees through campus interview, or any other mode, this is fine for the newly appointed employee that job opportunity is given, but this same situation will happen to this newly recruited employee, within a year, or two or three, this clearly proves that there is no "JOB SECURITY", in case of the newly imposed 14 pointes labour law recommendations.**

The said proposal of code on wages and industrial relations will be introduced in the monsoon session of the Parliament, and it is passed as "**The Code on Wages, 2017"**[40]

CONCLUDING REMARKS &SUGGESTIONS:

The detailed paper that is discussed above is fully author's own understanding by reading down various cases, statutes, case laws and other relevant materials.

In light of the above discussion it can be understood that the IT Employees should come with in the definition of the Workmen, there are various precedent cases and state's laws also. Yet there are two difficulties:

a) The definition of Workman is not so conclusive to include the IT professionals under that since the definition deals with skilled, technical, operational works basing on these various courts held that the IT employees comes under the definition of the Workman, yet according to the author suggestion that the definition has to be amended and it has to include one more type of work that is **Knowledge based work**, then it can be concluded with cent percent nature that IT employees come under the definition of workman.

b) The second and the most important aspect to conclude that the salary which the IT employees receive is more than 10,000 rupees, this is very important to note here that the definition and according to the 2010, Amendment of Industrial Dispute Act says that any employees, who gets salary which is less than 10,000 can be considered as and protected under Section 2(s), so in order to make the I.T. employee come under this definition it is important to raise the salary amount and slab so that we can make the techies come under the definition and take protection under the Industrial Dispute Act.

c) Finally, yet these are the two important decisions, but on the other sight looking at the plight of the IT employees who are fired from the company without any reason, we have to consider them under the definition of Workman and protect their life.

"We Want To Change, We Want To See, We Can"

[40] Press Information Bureau, Government of India, *Ministry of Parliamentary Affairs* – ***Monsoon Session 2017 Concludes,*** (11th August, 2017), http://pib.nic.in/newsite/PrintRelease.aspx?relid=169897