

# Contractual Loopholes and Labor Law Exemptions: How India's IT Sector Circumvents Overtime Pay and Maximum Working Hour Regulations

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## Abstract

The rapid growth of India's IT sector has cemented its position in the global market. This has also given rise to significant labor concerns. A common concern is the pervasive issue of unpaid overtime where companies utilize contract terms, legal exemptions and workplace expectations to force employees to work extended hours without compensating them appropriately. Ironically, this is a phenomenon that is spread across countries, jurisdictions and industries, yet continues to exist unchecked.

Indian labor laws including the Shops and Establishments Act which applies to IT and IT enabled services (ITES), set clear limits on work hours and mandate overtime pay to prevent exploitation of employees. In spite of this, many IT companies find ways to bypass these regulations by taking advantage of the existing loopholes in the regulations. They exploit employees' unfamiliarity with their rights. One of the common tactics employed by IT companies to avoid paying overtime is by encouraging an unsaid expectation among its employees that they do not report their overtime hours or underreport their hours. As a result, it is common for employees to officially log out but continue working on work assignments in their personal time or even avoid logging overtime altogether. This makes it difficult to measure the true extent of overtime hours accurately. Vague clauses such as 'flexible working hours' or 'performance-based requirements' are fairly common in the IT industry. Such terms indirectly put immense pressure on employees to work beyond standard hours to meet project deadlines without complaining because employees understand that complaints related to excessive work and lack of work life balance would reflect poorly in employee appraisal reports. Employees generally do not wish to not fall behind in the race for incentives and promotions and end up being indirectly coaxed into working overtime. It is evident that these terms are one-sided, seem to favor only the employers, and are unconscionable from the employee's perspective. To sum it up, they go against public policy, as they create an unstated expectation of availability beyond regular hours, which impacts employees' well-being and denies them fair compensation for their work and efforts. In competitive industries like the IT industry, employees fear repercussions like poor performance appraisals, low year end bonuses and hikes and a stagnant career devoid of growth opportunities if they voice their concerns about the persistent culture of overtime and the poor work-life balance that exists in the industry. As a result of these fears, the culture of unpaid overtime in the Indian IT industry continues to exist, unregulated and unmonitored.

In spite of clearly stated provisions related to overtime and standard working hours, improper enforcement allows companies to extend working hours without any repercussions. In order to attract domestic and

foreign investments, state governments generally grant exemptions to IT/ITES. But these exemptions are only from select provisions of the Shops and Establishments Act and are also subjected to certain conditions. Many employees misinterpret that IT/ITES companies are entirely exempted from labor regulations, causing them to accept unpaid overtime without resistance.

Additionally, the “always-available” workplace culture prevalent in the IT industry has normalized unpaid overtime. Employees often feel pressured to stay available after work hours to meet client needs across different time zones or to keep up with challenging project deadlines. Remote and hybrid work models have only made the situation worse. The boundaries between work and personal life have faded away with these new work models, making it difficult for employees to fully disengage or switch off from work.

The effects of these practices on employees' mental health are becoming more and more evident. Research indicates a significant prevalence of anxiety, work-related stress and suicides among professionals in demanding sectors like IT, where extended working hours are expected as the norm.

Despite the labor and contract laws in India which are designed to protect employees against exploitation, insufficient monitoring of IT companies' compliance of these safeguards often prove ineffective in practice. There is an urgent need for legislative reforms to hold IT/ITES establishments violating labor laws accountable, and setting a standard for compliance across the industry. Additionally, tighter enforcement and monitoring of working hours are crucial to protect employees' rights and support their physical and mental well-being.

This paper explores factors that influence employees in the IT industry to comply with unpaid overtime. This research brings to light the need for stronger regulatory enforcement of maximum working hours in the tech sector, and also highlights the need for enhanced employee education to create awareness of their rights around working hours and overtime pay. The paper advocates for reforms to reduce health risks associated with prolonged work hours and to support the well-being of employees in one of India's most crucial industries.

## Chapter 1

### Introduction:

The rapid growth of India's IT sector has cemented its position in the global market<sup>1</sup>. This has also given rise to significant labor concerns. A common concern is the pervasive issue of unpaid overtime where companies utilize contract terms, legal exemptions and workplace expectations to force employees to work extended hours without compensating them appropriately. Ironically, this is a phenomenon that is spread across countries, jurisdictions and industries, yet continues to exist unchecked.<sup>23</sup>

Indian labor laws including the Shops and Establishments Act<sup>4</sup> which applies to IT and IT enabled services (ITES), set clear limits on work hours and mandate overtime pay to prevent exploitation of employees. In spite of this, many IT companies find ways to bypass these regulations by taking advantage

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<sup>1</sup> [https://www.researchgate.net/publication/47669218\\_India\\_-](https://www.researchgate.net/publication/47669218_India_-_A_Dominant_Global_Outourcing_Hub_SWOT_Analysis_of_Emerging_Technology_Sectors)

[\\_A\\_Dominant\\_Global\\_Outourcing\\_Hub\\_SWOT\\_Analysis\\_of\\_Emerging\\_Technology\\_Sectors](https://www.researchgate.net/publication/47669218_India_-_A_Dominant_Global_Outourcing_Hub_SWOT_Analysis_of_Emerging_Technology_Sectors)

<sup>2</sup> <https://journal.ump.edu.my/ijim/article/view/9001/2690>

<https://www.jstor.org/stable/10.13169/workorgalaboglob.7.1.0076>

<sup>3</sup> <https://www.jstor.org/stable/10.13169/workorgalaboglob.7.1.0076>

<sup>4</sup> <https://labour.telangana.gov.in/content/ActsRules/TELANGANASHOPSANDESTABLISHMENTSACT1988.htm>

of the existing loopholes in the regulations. They exploit employees' unfamiliarity with their rights.<sup>5</sup> One of the common tactics employed by IT companies to avoid paying overtime is by encouraging an unsaid expectation among its employees that they do not report their overtime hours or underreport their hours. As a result, it is common for employees to officially log out but continue working on work assignments in their personal time or even avoid logging overtime altogether. This makes it difficult to measure the true extent of overtime hours accurately. Vague clauses such as 'flexible working hours' or 'performance-based requirements' are fairly common in the IT industry. Such terms indirectly put immense pressure on employees to work beyond standard hours to meet project deadlines without complaining because employees understand that complaints related to excessive work and lack of work life balance would reflect poorly in employee appraisal reports. Employees generally do not wish to not fall behind in the race for incentives and promotions and end up being indirectly coaxed into working overtime. It is evident that these terms are one-sided, seem to favor only the employers, and are unconscionable from the employee's perspective. To sum it up, they go against public policy, as they create an unstated expectation of availability beyond regular hours, which impacts employees' well-being and denies them fair compensation for their work and efforts. In competitive industries like the IT industry, employees fear repercussions like poor performance appraisals, low year end bonuses and hikes and a stagnant career devoid of growth opportunities if they voice their concerns about the persistent culture of overtime and the poor work-life balance that exists in the industry. As a result of these fears, the culture of unpaid overtime in the Indian IT industry continues to exist, unregulated and unmonitored.<sup>6</sup>

In Spite of clearly stated provisions related to overtime and standard working hours, improper enforcement allows companies to extend working hours without any repercussions. In order to attract domestic and foreign investments, state governments generally grant exemptions to IT/ITES<sup>7</sup>. But these exemptions are only from select provisions of the Shops and Establishments Act and are also subjected to certain conditions. Many employees misinterpret that IT/ITES companies are entirely exempted from labor regulations, causing them to accept unpaid overtime without resistance.<sup>8</sup>

Additionally, the "always-available" workplace culture prevalent in the IT industry has normalized unpaid overtime. Employees often feel pressured to stay available after work hours to meet client needs across different time zones or to keep up with challenging project deadlines. Remote and hybrid work models have only made the situation worse. The boundaries between work and personal life have faded away with these new work models, making it difficult for employees to fully disengage or switch off from work.

The effects of these practices on employees' mental health are becoming more and more evident<sup>9</sup>. Research indicates a significant prevalence of anxiety, work-related stress and suicides among professionals in demanding sectors like IT, where extended working hours are expected as the norm.<sup>10</sup>

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<sup>5</sup> <https://journal.ump.edu.my/ijim/article/view/9001/2690>

<sup>6</sup> <https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece>

<https://www.foxmandal.in/News/s-e-law-exemption-for-it-ites-establishments-in-telangana/>

<sup>7</sup> [https://www.ipe-berlin.org/fileadmin/institut-ipe/Dokumente/Working\\_Papers/ipe\\_working\\_paper\\_134.pdf](https://www.ipe-berlin.org/fileadmin/institut-ipe/Dokumente/Working_Papers/ipe_working_paper_134.pdf)

<sup>8</sup> <https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece>

<https://www.foxmandal.in/News/s-e-law-exemption-for-it-ites-establishments-in-telangana/>

<sup>9</sup> <https://www.jstor.org/stable/40967619>

<sup>10</sup> <https://pmc.ncbi.nlm.nih.gov/articles/PMC10236684/>

<https://www.iwh.on.ca/plain-language-summaries/working-unpaid-overtime-linked-with-high-stress-and-burnout-iwh-study>

Despite the labor and contract laws in India which are designed to protect employees against exploitation, insufficient monitoring of IT companies' compliance of these safeguards often prove ineffective in practice.<sup>11</sup> There is an urgent need for legislative reforms to hold IT/ITES<sup>12</sup> establishments violating labor laws accountable, and setting a standard for compliance across the industry. Additionally, tighter enforcement and monitoring of working hours are crucial to protect employees' rights and support their physical and mental well-being.<sup>13</sup>

This paper explores factors that influence employees in the IT industry to comply with unpaid overtime. This research brings to light the need for stronger regulatory enforcement of maximum working hours in the tech sector, and also highlights the need for enhanced employee education to create awareness of their rights around working hours and overtime pay. The paper advocates for reforms to reduce health risks associated with prolonged work hours and to support the well-being of employees in one of India's most crucial industries.

## Chapter 2

### Prolonged working hours opposed to public policy

Studies consistently show that schedules involving overtime, prolonged daily or weekly hours, and unconventional shifts like the graveyard shift increase the likelihood of fatigue, stress, injuries, and various medical ailments. These intense schedules give rise to various physical and mental ailments, including depression and other psychological disorders, affecting employees' behaviors, and their social relationships. Working long hours also contributes to risky behaviors and increased dependence on alcohol and tobacco. There is also a higher rate of isolation and family problems among those who suffer from mental health issues. Long work hours cause harm not only employees but also to their families and communities. It disrupts family dynamics, strains relationships, and weakens community bonds. This is especially true for women and primary caregivers. Research also indicates a higher rate of depressive symptoms in children whose parents work extended hours. Increased divorce rates have also been observed among couples where one partner works long hours putting a strain on the relationship. Rising suicide rates among professional workers have been linked to excessive work pressure.

When employees are forced into unsafe schedules that endanger their well-being, "fundamental rights" and "societal priorities", such as health, family, and community connections, are jeopardized. Moreover, such risks extend beyond the individual, with fatigue-related errors in critical public safety roles potentially endangering the broader community.

The cumulative impact augments the issue of long working hours to a matter of public policy and societal concern and raises ethical and legal concerns about employers' obligations to provide fair and safe working conditions. Additionally, it also highlights the legal concerns of employment contracts that compel overtime without fair compensation or choice, a practice often observed in the IT sector.

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<https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece>

<sup>11</sup> <https://www.foxmandal.in/News/s-e-law-exemption-for-it-ites-establishments-in-telangana/>  
[https://labour.gov.in/sites/default/files/factories\\_act\\_1948.pdf](https://labour.gov.in/sites/default/files/factories_act_1948.pdf)

<sup>12</sup> [https://www.ipe-berlin.org/fileadmin/institut-ipe/Dokumente/Working\\_Papers/ipe\\_working\\_paper\\_134.pdf](https://www.ipe-berlin.org/fileadmin/institut-ipe/Dokumente/Working_Papers/ipe_working_paper_134.pdf)

<sup>13</sup> <https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece>

Employment laws are designed to protect workers' health, personal lives, and family time, aligning with broader public policy goals. Contract law and labor law aim collectively to prevent agreements and regulate working conditions that compromise individual rights, health, and societal welfare.

Many IT firms violate labor laws by not compensating employees fairly for overtime and by indirectly pressuring them to accept long hours. Ineffective enforcement and weak implementation of overtime laws allows such exploitation to continue, and raises questions about the corresponding legality and ethics.

Addressing the challenges posed by extended working hours in IT requires legal reforms and stronger enforcement of labor protections. Ensuring fair compensation and safe schedules is not just a legal obligation but a moral imperative, reflecting a society's commitment to the physical and mental welfare of its workforce. Prioritizing these reforms will foster a productive and healthier workforce.<sup>14 15 16</sup>

### Chapter 3

#### How IT companies circumvent labor laws

In India, several legislations regulate overtime pay. According to these laws, employees who work more than 48 hours per week are eligible for overtime, which is paid at twice the rate of their normal wages. However, certain categories of employees like managers, and supervisors, are exempted from these provisions. Additionally, employees working on a contractual or freelance basis may not be entitled to overtime pay.<sup>17</sup>

The Factories Act, 1948<sup>18</sup>, is a comprehensive piece of legislation covering all aspects related to factories, including approval, licensing, and registration of factories; the authorities responsible for inspections; and provisions for health, safety, welfare, working hours, and the employment of adults and children, as well as annual leave and penalties.

The Factories Act contains provisions for protecting employees from exploitation. Article 54 sets the daily work hour limit at 9 hours. Article 55 mandates that the work period in a factory should not exceed five hours without a rest interval of at least half an hour. Article 51 establishes a weekly working hour limit of 48 hours, and mandates a full-day holiday for workers whose shifts extend beyond midnight. Article 59 requires employers to pay overtime at twice the ordinary wage rate for hours worked beyond the standard limit.

However, in the tech industry, it is common practice for employees to work 10-18 hours a day on a regular basis without being paid overtime<sup>19</sup>. IT employees often work weekends to support project-related activities, such as code deployments and maintenance tasks, which are usually carried out outside standard hours to minimize business disruption. However, the language of the Factories Act specifically applies to "factory workers" or "workers," creating ambiguity regarding its application to IT sector employees, who do not fall under the traditional "factory worker" classification.

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<sup>14</sup> <https://www.jstor.org/stable/40294784>

<sup>15</sup> <https://www.britsafe.in/safety-management-news/2022/sounding-the-alarm-on-suicide>

<https://www.consultancy.in/news/4168/young-mckinsey-consultant-commits-suicide-due-to-work-pressure>

<sup>16</sup> <https://www.jstor.org/stable/40294784>

<sup>17</sup> <https://unacademy.com/content/bpsc/study-material/general-awareness/factories-act-1948/>

<sup>18</sup> [https://labour.gov.in/sites/default/files/factories\\_act\\_1948.pdf](https://labour.gov.in/sites/default/files/factories_act_1948.pdf)

<sup>19</sup> <https://www.consultancy.in/news/4168/young-mckinsey-consultant-commits-suicide-due-to-work-pressure>

<https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece>

The provisions in the Factories Act of 1948 were originally designed to ensure the health and well-being of factory workers. Similar provisions should be instituted for the IT sector, where employees routinely work long hours and face significant risks of developing physical and mental health issues.

The Shops and Establishments Act of 1988<sup>20</sup>, which is implemented by each state to consolidate and amend the laws governing work conditions and employment in shops, commercial establishments, and other workplaces, includes provisions similar to those found in the Factories Act. For instance, the Telangana Shops and Establishments Act, 1988<sup>21</sup>, specifies in Article 16(1) that no employee in an establishment should work more than eight hours in a day or 48 hours in a week. Article 16(2) requires employers to pay overtime wages for any period worked beyond these limits, up to a maximum of six hours per week. Article 17 mandates that an employee's total time at work, including any rest or break intervals, should not exceed twelve hours in a single day.

Unlike Article 51 of the Factories Act, 1948, the Telangana Shops and Establishments Act does not mandate a holiday for employees working shifts that extend beyond midnight. Although not all tech employees work night shifts, many start work early to accommodate meetings, and for the majority, work extends beyond standard hours, often lasting past midnight, leaving them without adequate sleep or rest. To attract domestic and foreign investment and facilitate business, various state governments, including Telangana, often grant exemptions to IT/ITES sectors. For example, the Telangana government extended its exemption for IT and IT-enabled services establishments from certain provisions of the Telangana Shops and Establishments Act<sup>22</sup>, 1988, for another four years starting May 30, 2024. This exemption includes provisions related to opening and closing hours (Section 15), daily and weekly work hour limits (Section 16), special protections for young persons and women (Sections 21 and 23), and the mandated nine holidays per year for employees (Section 31).

The Telangana government grants these exemptions under two clauses of Article 73 of the Telangana Shops and Establishments Act.

- Clause 4 allows the government, by notification, to exempt any establishment or class of establishments or persons from any provision of the Act, either permanently or for a specified period, subject to conditions as deemed appropriate.
- Clause 5 allows the government to apply, modify, or cancel any provision of the Act for any class of persons or establishments, except those mentioned in Clause (b) of Subsection (1).

However, these exemptions are subject to conditions, as outlined in the June 7, 2024, notification. Conditions include payment of overtime wages for hours worked beyond the weekly limit of 48 hours, a weekly day off for employees, adequate security and transportation for young and female employees working night shifts, and compensatory holidays for employees working on designated holidays. The notification specified that non-compliance with these conditions may result in revocation of the exemption without prior notice. Such exemptions have been extended repeatedly over the years.

Based on the analysis above, several questions arise:

- Why does the Shops and Establishments Act lack provisions mandating a holiday after a night shift? Such a mandate might discourage IT employers from requiring employees to work beyond standard hours, especially beyond midnight.

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<sup>20</sup> [https://labour.gov.in/sites/default/files/factories\\_act\\_1948.pdf](https://labour.gov.in/sites/default/files/factories_act_1948.pdf)

<sup>21</sup> <https://labour.telangana.gov.in/content/ActsRules/TELANGANASHOPSANDESTABLISHMENTSACT1988.htm>

<sup>22</sup> <https://labour.telangana.gov.in/content/ActsRules/TELANGANASHOPSANDESTABLISHMENTSACT1988.htm>

- Why are IT establishments allowed to flout labor laws on working hours and overtime pay without being held accountable or being penalized?

#### Chapter - 4

##### **Expectations and Exploitation: The Pressure of Unpaid Overtime in the IT Industry**

IT companies often promote an implied expectation that employees should underreport their working hours, subtly pressuring them to forgo accurate tracking of time worked. Consequently, employees may officially clock out yet continue working off the record, or simply refrain from recording overtime altogether. This practice obscures the true scope of overtime, allowing companies to minimize recorded hours and sidestep compensation requirements.

Additionally, many IT firms bypass overtime pay obligations by classifying employees under categories that typically lack standard working hour protections under the Shops and Establishments Act, 1988<sup>23</sup>. Employees accept titles that imply managerial responsibilities, even if their actual duties do not align with these roles as they are unfamiliar with the legal implications of these classifications. These designations exclude them from overtime benefits and allow employers to avoid compliance with fair pay standards. Furthermore, IT employment contracts frequently incorporate vague clauses such as 'flexible working hours' or 'performance-based requirements,' indirectly pressuring employees to exceed regular hours in order to meet demanding project deadlines. These contract terms are heavily weighted in favor of the employer to bypass employee protections around working overtime. From the employee's perspective, these terms are unconscionable and skewed against fair treatment. By fostering an environment where extended availability is assumed, companies undermine public policy intended to protect employee well-being, especially in competitive settings where individuals may feel compelled to comply out of fear of repercussions or missed career advancement.

Moreover, unpaid overtime is now normalized in the IT industry, where employees are expected to be 'always available'. Employees often feel obliged to stay accessible beyond regular working hours to meet client demands across time zones. The adoption of remote and hybrid work models has further exacerbated this issue by making it challenging for employees to fully disengage from their duties outside of working hours.

The adverse impact of these practices on employees' mental health has become increasingly evident. Studies show a high prevalence of stress, work-related anxiety, and suicides among professionals in demanding fields like IT. Excessive working hours along with the absence of sufficient employee protections fosters an environment that compromises employee well-being.<sup>24</sup>

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<sup>23</sup> <https://labour.telangana.gov.in/content/ActsRules/TELANGANASHOPSANDESTABLISHMENTSACT1988.htm>

<sup>24</sup> <https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece>

<https://pmc.ncbi.nlm.nih.gov/articles/PMC10236684/>

<https://www.cpsgroupuk.com/news-archive/why-do-tech-workers-suffer-more-from-mental-health-issues/>

<https://www.consultancy.in/news/4168/young-mckinsey-consultant-commits-suicide-due-to-work-pressure>

<https://economictimes.indiatimes.com/tech/information-tech/it-staff-forced-to-work-50-hours/week-to-meet-deadlines-experts/articleshow/105337011.cms?from=mdr>

<https://www.forbes.com/sites/kristinstoller/2021/04/28/employees-are-working-an-extra-day-in-unpaid-overtime-each-week/>

## Chapter- 5

### The Global Epidemic of Unpaid Overtime: A Challenge to Fair Labor Practices

Let us explore the overtime practices and regulations in other countries.

#### Japan

The Japanese company system is often praised as a model of democratic and participatory workplace practices. However, the ILO World Labour Report of 1993 revealed that Japanese workers endure high levels of stress due to long working hours, even facing *karoshi*, a term meaning "death from overwork." The ILO report concluded:

"Stress has become one of the most serious health issues of the twentieth century—not only for individuals, in terms of physical and mental disability, but also for employers and governments, who are beginning to assess its financial impact."

"Job burnout is frequently associated with individuals who have become 'workaholics,' working up to 80 hours a week. Such extended hours can strain the body, though the damage may only become evident later. In Japan, this issue has been highlighted by claims of *karoshi*, or death from overwork. Japanese employees work longer hours than those in most other nations, with the work year often extending due to unpaid overtime."

*Karoshi* is a socio-medical term widely used in Japan, particularly in applications for workers' compensation, especially in cases of cardiovascular disease caused by excessive workloads and occupational stress. Dr. Tetsunojo Uehata, who introduced the term, defines *karoshi* as "a permanent disability or death brought on by worsening high blood pressure or arteriosclerosis, resulting in diseases of the blood vessels in the brain—such as cerebral hemorrhage, subarachnoid hemorrhage, and cerebral infarction—and acute heart failure and myocardial infarction, caused by ischemic heart disease."

The Labour Standards Act, revised in 1993, sets the general framework for working conditions in Japan, and limits the maximum working hours to 8 hours per day and 40 hours per week. However, small to medium-sized companies and service sectors like transportation, are not bound by this law. With over 64% of the Japanese workforce employed by such companies, many employees regularly work beyond the prescribed limits of 8 hours a day and 40 hours a week. Furthermore, there is no official regulation to limit overtime work<sup>25</sup>.

The issue of unpaid overtime has escalated globally, exacerbated by the COVID-19 pandemic. According to a study by the ADP Research Institute, one in ten employees reported working more than 20 hours of unpaid overtime weekly, a figure that has doubled since the start of the health crisis. On an average, workers now log 9.2 hours of unpaid overtime weekly, which is up from 7.3 hours the year before. This study, conducted by ADP Research Institute, surveyed over 32,000 working-age adults across 17 countries to gauge employee sentiment in response to the pandemic.<sup>26</sup> This research demonstrates that unpaid overtime is a widespread phenomenon, affecting not only India but also many other countries globally.

#### China

China's tech industry faces increasing criticism for its extreme work culture, typified by schedules like "996" (9 a.m. to 9 p.m., six days a week) and the even harsher "896" (8 a.m. to 9 p.m., six days a week for 100 consecutive days). A Fujian-based company implementing the "896" schedule sparked widespread

<sup>25</sup> <https://www.jstor.org/stable/43294355>

<sup>26</sup> <https://www.britsafe.in/safety-management-news/2022/sounding-the-alarm-on-suicide>



outrage online for violating labor laws. Observers highlight how such enforcement perpetuates a toxic work culture prioritizing productivity over well-being, disregarding basic labor rights.

Prominent tech leaders like Jack Ma and Richard Liu have defended long hours, with Ma describing "996" as a "blessing" and Liu citing his own early career efforts. However, these views have been met with widespread public backlash that emphasize the harmful effects of overwork.

The generational divide is also evident with younger workers advocating for work-life balance, in stark contrast to older leaders who see long hours as essential for success. Cases of employee exhaustion like Jack Forsdike, a British employee at NetEase, have further spotlighted the issue.<sup>27 28 29</sup>

### India

India's work culture, particularly in the technology and startup sectors, is characterized by extended working hours similar to China's demanding "996" schedule. Employees often work extended hours leading to high stress levels, burnout, and blurred boundaries between personal and professional life.

In the IT sector, employees average 45 to 60 working hours per week, exceeding the standard 40-hour workweek. Contributing factors include an emphasis on time spent over productivity and high-pressure environments with tight deadlines. These conditions exacerbate stress and health issues among employees. Although the IT sector has experienced revenue growth, productivity per rupee spent on employee compensation has remained flat. Data indicates that revenue returns on labor costs have stagnated, highlighting inefficiencies in workforce utilization.

The culture of long hours raises concerns about sustainability and employee well-being. Experts suggest that improving work-life balance, focusing on productivity rather than hours worked are essential for creating a healthier and more efficient work environment.<sup>30 31</sup>

### USA and Australia

As per a recent study published in 2023, in the USA, a quarter of men and a tenth of women were working more than 48 hours a week. These proportions had risen over recent decades. In common with EU member states, managers were the most likely to work long hours.

In Australia, around one-third of men were working long hours, which represented a significant increase from one-fifth in 1984. Also, 15 percent of women worked more than 48 hours a week. As with the USA and EU member states, long hours work in Australia was concentrated amongst managers.

Studies indicate that partnered women who work long hours often continue to shoulder the primary responsibilities for household tasks such as cleaning and cooking, which elevates their risk of poor health and increased mental stress. This dual burden is associated with higher levels of mental stress, particularly when sustained over extended periods. Consequently, long working hours exert a more substantial negative impact on women's health, well-being, and life satisfaction compared to men.<sup>32</sup>

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<sup>27</sup> <https://www.scmp.com/news/people-culture/trending-china/article/3267322/china-tech-firm-enforces-extreme-overwork-exceeding-contentious-996-model>

<sup>28</sup> <https://www.scmp.com/tech/tech-trends/article/3281118/british-man-finds-fame-china-after-revealing-gruelling-996-work-schedule-tech-job>

<sup>29</sup> <https://www.caixinglobal.com/2019-04-17/tech-titans-need-to-give-grueling-work-hours-a-rest-101404792.html>

<sup>30</sup> <https://timesofindia.indiatimes.com/business/india-business/like-china-india-also-has-a-gruelling-work-culture/articleshow/69182355.cms>

<sup>31</sup> <https://economictimes.indiatimes.com/tech/information-tech/it-staff-forced-to-work-50-hours/week-to-meet-deadlines-experts/articleshow/105337011.cms?from=mdr>

<sup>32</sup> <https://www.employment-studies.co.uk/report-summaries/report-summary-working-long-hours-review-evidence-volume-1-%E2%80%93-main-report>

## UK

A survey by Moneypenny reveals that 84% of UK employees feel pressured to work additional hours to meet job demands, with the average worker clocking up 23 hours of overtime each month. In the Information and Technology sector, this figure rises to nearly 31 hours monthly.

More than a quarter of respondents reported that overtime negatively impacted their physical health, while 23% cited adverse effects on their mental health. Additionally, over 15% experienced relationship issues due to extended working hours.

The prevalence of unpaid overtime is also alarming. A report indicates that over 75% of UK workers are contributing an extra 19 million days of unpaid overtime each month, averaging five and a half hours per person.<sup>33 34 35</sup>

## Chapter - 6

### The Risks of Unregulated Overtime: Lessons from Japan's Karoshi Crisis for India's Workforce

If overtime remains insufficiently regulated in India, the country risks facing a crisis similar to Japan's, where excessive work hours have led to severe health consequences and even fatalities.

Despite the provisions in the Shops and Establishments Act, which sets an 8-hour daily and 40-hour weekly limit, loopholes have allowed IT companies to demand longer hours without fair compensation. With weak enforcement, overtime has become normalized, exerting devastating effects on employee health. If India's labor laws remain loosely enforced, particularly in high-demand sectors like IT, the country may see a comparable increase in health issues associated with chronic overwork, including burnout, cardiovascular problems, and even premature mortality just like Japan.

Establishing clear overtime standards and strengthening labor law enforcement, can safeguard India's workforce from the negative consequences observed among overworked employees in Japan.<sup>36</sup>

## Chapter - 7

### Case Laws related to payment of overtime wages

Let us examine a few cases related to overtime wages to understand how courts interpret and enforce the associated legal provisions.

In the case of Security Printing & Minting Corporation of India Ltd. & Ors. v. Vijay D. Kasbe & Ors.<sup>37</sup>, decided on April 18, 2023, the Supreme Court of India addressed whether supervisory employees in industrial establishments are entitled to Double Over Time Allowance (DOTA) under the Factories Act, 1948. The Court ruled that supervisory employees do not qualify for overtime allowances under Section 59 of the Act, as they do not meet the statutory definition of "worker." The Act applies only to workers directly involved in or incidental to manufacturing processes, excluding those in supervisory or managerial roles. The Court concluded that there was no violation of labor laws by the employer, as supervisory staff are not entitled to benefits intended for workers under the Act. Consequently, the Supreme Court

<sup>33</sup> <https://www.techdigest.tv/2023/12/it-workers-clock-up-over-30-hours-of-overtime-every-month.html>

<sup>34</sup> <https://www.managementtoday.co.uk/productivity-employee-impacted-overtime-epidemic-says-report/indepth/article/1874538>

<sup>35</sup> <https://www.employment-studies.co.uk/report-summaries/report-summary-working-long-hours-review-evidence-volume-1-%E2%80%93-main-report>

<sup>36</sup> <https://www.forbes.com/sites/kristinstoller/2021/04/28/employees-are-working-an-extra-day-in-unpaid-overtime-each-week/>

<sup>37</sup> [https://scourtapp.nic.in/supremecourt/2018/45815/45815\\_2018\\_15\\_1501\\_43678\\_Judgement\\_18-Apr-2023.pdf](https://scourtapp.nic.in/supremecourt/2018/45815/45815_2018_15_1501_43678_Judgement_18-Apr-2023.pdf)

overturned the decisions of the High Court and the Central Administrative Tribunal (CAT) that had granted such allowances.

The Supreme Court's stance on overtime wages in *The VVF Ltd. Employees Union v. M/S VVF India Limited & Another*, decided on April 09, 2024, emphasized the necessity of properly addressing the inclusion of overtime wages in the computation of allowances. The Supreme Court observed that this issue had not been adequately examined either by the Industrial Tribunal or the High Court. By setting aside the previous judgments, the Supreme Court directed the Tribunal to reassess the case, specifically ensuring that the treatment of overtime wages is carefully reconsidered.

In *The Secretary, Public Works Department & Others v. Tukaram Pandurang Saraf & Others*, decided on September 19, 2024, the Supreme Court of India addressed a dispute concerning employees under the Converted Temporary Establishment governed by the Kalelkar Award. The employees sought public holidays, second and fourth Saturday holidays, and overtime wages, which the employer denied, citing a 1996 government circular. The Court held that the Kalelkar Award explicitly entitled all employees, except daily-wage workers, to these benefits, including overtime pay at 1.5 times their salary. It rejected the employer's reliance on the circular, clarifying it did not apply to the employees in question. Upholding the Industrial Court's and High Court's rulings, the Supreme Court dismissed the appeal and directed the employer to comply within eight weeks. This judgment emphasizes the sanctity of labor awards and the precedence of specific entitlements over administrative directives.

In *Philips India Ltd vs Labour Court, Madras & Ors*, (1985)<sup>38</sup>, it can be understood from the Supreme court's ruling that overtime needs to be paid at twice the rate of normal wages as per Shops and Establishments Act, 1947.

In *Union Of India And Another vs G.M. Kokil And Others*, (1984)<sup>39</sup>, the Supreme Court interpreted Section 70 of the Bombay Shops and Establishments Act to mean that the provisions of the Factories Act, including Section 59 on overtime wages, apply to all persons employed in a factory, regardless of their classification as 'workers'. Additionally, it was held that the inclusion of a non-obstante clause in Section 70 ensures that the Factories Act's provisions override any conflicting stipulations.

In *Union Of India And Anr. vs B.D. Rathi*, (1962)<sup>40</sup>, the Court held that the Minimum Wages Act applies to all scheduled employment, including monthly-rated employees, irrespective of whether their wages exceed the statutory minimum. It clarified that the "ordinary rate of wages" mentioned in Rule 25 refers to the statutory minimum wage fixed under the Act and not the contractually agreed wages, even if the latter are higher. The Court emphasized that the Act's primary objective is to ensure that employees receive the statutory minimum wage for both regular and overtime work. Employers paying above the statutory minimum are not exempt from complying with the Act's overtime provisions.

In *Railway Employees Co-Operative Bank*<sup>41</sup>, ... vs *The Presiding Officer*, (1960), the High Court noted that while the Labour Commissioner's decision precluded claims based on pre-1948 working conditions, workers could still claim overtime for hours worked beyond the statutory limits of 48 hours per week under Section 31 of the Shops and Establishments Act or any explicit agreements regarding overtime pay.

<sup>38</sup> <https://indiankanoon.org/doc/1993683/>

<sup>39</sup> <https://indiankanoon.org/doc/120241/>

<sup>40</sup> <https://indiankanoon.org/doc/527892/>

<sup>41</sup> <https://indiankanoon.org/doc/1880834/>

In *Hindustan Machine Tools Ltd. vs Labour Court And Anr* (1993)<sup>42</sup>, the court upheld the Labour Court's finding that the 1977 settlement between HMT and its employees was partially invalid, as it contravened the mandatory provisions of Section 59 of the Factories Act, 1948. The court also stated that settlements cannot override statutory rights designed to protect workers and that the employees were entitled to overtime wages at twice their ordinary rate for work exceeding the limits set under Section 59 (9 hours per day or 48 hours per week). The court's ruling also underscores the principle that employers cannot exploit their bargaining position to impose unfair terms that contravene workers' rights.

In *State vs Baijnath Balsarai*, (1960)<sup>43</sup>, the court concluded that the manager of Shree Digvijay Woollen Mills, Baijnath Balsarai, violated Section 63 of the Factories Act, 1948, by requiring workers to work beyond the scheduled hours displayed in the factory's notice, despite paying overtime wages under Section 59. It held that compliance with Section 63 is mandatory and cannot be overridden by provisions allowing overtime payment.

In *The Joint Director, Esi Corporation And ... vs Riddhi Siddhi And Chemicals Ltd*, (2003)<sup>44</sup>, the appeal under Section 82(2) of the Employees' State Insurance Act, 1948 (ESI Act) was filed by the ESI Corporation against an order of the Employees' State Insurance Court, Hubli, which exempted Riddhi Siddhi and Chemicals Ltd. from paying interest on delayed ESI contributions for overtime wages during the period January 1991 to August 1992. The court concluded that Riddhi Siddhi and Chemicals Ltd. was not liable for interest on delayed ESI contributions for the period before November 6, 1996, as the prevailing legal precedent (*Hind Art Press*) excluded overtime wages from the definition of "wages" under the ESI Act. However, after the Supreme Court's judgment in *Indian Drugs Pharmaceuticals Ltd.* on that date clarified that overtime wages were part of "wages," the company became liable for interest on delayed contributions. Accordingly, the company was directed to pay interest for the period from November 6, 1996, to December 14, 2000, when the contributions were finally paid.

The case *Union of India vs. Ram Pal Singh K. and Others*<sup>45</sup> (2001) involved railway employees who filed claims under Section 33-C(2) of the Industrial Disputes Act for overtime wages during outstation halts between 1980 and 1995. The employees, appointed as first-class coach attendants but assigned duties in air-conditioned coaches, argued their entitlement to overtime under a Railway Board letter dated 11-6-1974. The employer contended that a subsequent letter from 1985 applied and also argued that the claims were delayed and records for the period were destroyed. The Labour Court dismissed most claims due to delay but allowed limited relief for one employee. On appeal, the High Court held that Section 33-C(2) does not impose a limitation period, setting aside the Labour Court's rejection of claims due to delay. The court also ruled that the 1974 letter applied as the employees were not officially appointed as air-conditioned coach attendants. The case was remanded to the Labour Court to compute the dues, ensuring the employees' entitlement to legitimate overtime wages.

The case *Jagannath Pandurang and Others vs. Bombay Gas Company Ltd.* (1967)<sup>46</sup> involved two groups of employees seeking wages under the Payment of Wages Act: one group claimed overtime wages under the Bombay Shops and Establishments Act, 1948, while the other sought wages for weekly off days. The Bombay Small Cause Court dismissed both claims, holding they were barred by a 1950 industrial tribunal

<sup>42</sup> <https://indiankanoon.org/doc/505651/>

<sup>43</sup> <https://indiankanoon.org/doc/976301/>

<sup>44</sup> <https://indiankanoon.org/doc/1414682/>

<sup>45</sup> <https://indiankanoon.org/doc/1109705/>

<sup>46</sup> <https://indiankanoon.org/doc/780472/>

award. The High Court reversed this, finding that the tribunal's award did not preclude specific claims under the Shops and Establishments Act, especially as a 1961 amendment extended the Act's protections to the employees. For the weekly off-day wages, the court clarified that the claim was consistent with both the award and the Shops and Establishments Act. The court reinstated the employees' entitlements and directed the authority to calculate the due overtime wages while ordering the employer to bear the costs. In *Panambur Vishnumurti Narayan vs. C.P. Fernandes (1956)*<sup>47</sup>, an employee of a bakery claimed overtime wages under Section 63 of the Bombay Shops and Establishments Act, 1948, for working beyond 48 hours per week. The Payment of Wages Authority initially rejected the claim, reasoning that the bakery's exemption from Section 14, which limits working hours, nullified the claim for overtime. The High Court clarified that Section 63 operates independently of Section 14, with the 48-hour weekly limit under Section 63 solely determining overtime eligibility and wages. This judgment affirmed employees' entitlement to overtime wages under Section 63, even when exempt from Section 14's prohibitions. The above cases highlight that courts consistently uphold the mandatory nature of statutory provisions for overtime wages, reinforcing employees' rights to fair and just compensation for work performed beyond the prescribed hours.

## Chapter- 8

### Conclusion

This research highlights that IT companies in India (and across the globe) frequently exploit contractual loopholes and labor law exemptions to circumvent regulations on working hours and overtime pay. Ambiguities in the application of The Factories Act<sup>48</sup>, 1948, and exemptions granted under state-specific acts, such as the Telangana Shops and Establishments Act, allow companies to sidestep essential protections. The impact on employees includes significant physical and mental health risks, undermining the core intent of labor laws.

To ensure fair treatment and well-being of workers in India's IT sector, it is crucial to close these legal gaps through clearer standards, enforce compliance rigorously, and limit exemptions that compromise the safety and health of employees.<sup>49</sup>

### Recommendations

#### 1. Anti-Retaliation Protections:

- Enact strict laws prohibiting employers from retaliating against employees who refuse to work unpaid overtime or take legal recourse to address violations.
- Introduce mechanisms to safeguard employees from indirect repercussions, such as career stagnation, negative performance reviews, or termination.

#### 2. Mandatory Disclosure of Rights:

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<sup>47</sup> <https://indiankanoon.org/doc/1846523/>

<sup>48</sup> [https://labour.gov.in/sites/default/files/factories\\_act\\_1948.pdf](https://labour.gov.in/sites/default/files/factories_act_1948.pdf)

<sup>49</sup> <https://frontline.thehindu.com/news/india-archaic-labour-laws-tech-companies-mnc-jobs-employees-exploitation-long-hours-overtime-pay-remote-work/article68604431.ece>  
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- Employers should be legally required to inform employees about their rights under labor laws, including the right to refuse overtime without fear of retaliation.
  - Transparent employment contracts should explicitly outline overtime policies in compliance with statutory provisions.
- 3. Whistleblower Protection Mechanisms:**
- Establish confidential channels for reporting labor law violations, ensuring that employees can raise concerns without exposing themselves to risk.
  - Implement penalties for employers who retaliate against whistleblowers.
- 4. Strengthened Enforcement and Oversight:**
- Introduce industry-specific frameworks for IT/ITES sectors to ensure compliance with labor laws, particularly those governing working hours and overtime pay.
  - Enhance enforcement mechanisms to hold employers accountable for violations, including routine audits and inspections.
- 5. Unionization and Collective Representation:**
- Encourage unionization or create platforms for IT employees to collectively voice concerns and negotiate better working conditions without fear of employer reprisal.
- 6. Promoting Cultural Change:**
- Advocate for a shift in workplace culture that values work-life balance and discourages the normalization of unpaid overtime.
  - Recognize and reward organizations that uphold ethical labor practices.
- 7. Clarify and Expand Legal Coverage for IT Employees:** The ambiguity in labor law application to IT sector employees should be resolved. Clear legislation or amendments should be introduced to extend the protections of the Factories Act, including working hour limits and mandatory overtime pay, to IT employees.
- 8. Limit Exemptions or Strengthen Conditions for Exemptions:** State governments should limit the frequency and scope of exemptions granted to IT/ITES establishments under the Shops and Establishments Act. Any exemptions should come with stringent conditions, ensuring that overtime pay and rest periods are strictly enforced.
- 9. Introduce Mandated Holidays Following Night Shifts:** The Shops and Establishments Act could be amended to include provisions similar to those in the Factories Act, such as a mandated holiday following a shift that extends past midnight mitigating health risks associated with irregular and extended work hours, especially for employees involved in night shifts.
- 10. Regular Monitoring and Penalties for Non-compliance:** A more rigorous enforcement mechanism is needed to monitor and penalize IT companies that violate labor laws regarding working hours and overtime pay. This could involve regular labor inspections, whistleblower protections for employees reporting violations, and penalties for companies found non-compliant.
- 11. Revise Contractual Terms in Employment Agreements:** Employment contracts in the IT sector should be reviewed to ensure they align with labor law requirements, preventing companies from using broad terms like "flexible working hours" to justify excessive work without additional pay.
- 12. Promote Employee Awareness of Labor Rights:** Many IT employees may be unaware of their rights under the labor laws. State governments and companies should work together to educate employees on their legal rights, including working hour limits and entitlement to overtime pay.

**13. Balancing Progress and Well-Being:** Legislation must adopt a long-term perspective, prioritizing the health and well-being of the nation's citizens and future generations over immediate economic gains from the IT/ITES industry. It is imperative to enact laws that strike a balanced approach—one that supports the growth and advancement of the IT/ITES sector while safeguarding the physical and mental health of employees. Such legislation should aim to create a sustainable work environment, ensuring that economic progress does not come at the cost of employee welfare and overall societal health.

By implementing these measures, the law can help eliminate the fear of repercussions, empowering employees to assert their rights without jeopardizing their careers. This would ensure greater compliance with labor standards while fostering a healthier, more productive work environment in the IT industry.<sup>50</sup>  
51 52 53

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<sup>50</sup> <https://hbr.org/2006/12/extreme-jobs-the-dangerous-allure-of-the-70-hour-workweek>

<sup>51</sup> <https://www.karllhughes.com/posts/working-hours>

<sup>52</sup> <https://www.employment-studies.co.uk/report-summaries/report-summary-working-long-hours-review-evidence-volume-1-%E2%80%93-main-report>

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