



INDUSTRIAL RELATIONS & CONTRACT LABOUR IN INDIA

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Introduction

Industrial Relations paradigm in India had dramatically changed following the adaptation of free market policy in the early nineties. With the dawn of liberalization, privatization and globalization (LPG), the country is, by and large, able to preserve a sound and positive industrial relations climate. This is apparent from the statistical figures of Union Government's Labour Bureau, which exhibits drastic decline of industrial disputes from 1,825 in 1990 to 421 in 2008¹, and India being the third most preferred global investment destination. Foreign direct investment inflows to India went up to \$32 billion in 2011, which was a 33 percent increase over the previous year.²

'Liberalization' and 'Globalization' introduced change of business environment, and increased competition among industries for survival. Potential market capacity and availability of workforce lured many MNC's, representing the best brands of the world, to set up their offices in India, giving a tough competition to their counterparts. To compete in this customer driven market economy, industries requires flexibility in managing manpower to address occasional upsurge or slowdown in demand. But the archaic and rigid Indian labour laws, which were enacted 8 – 4 decades back, restricting right-sizing of manpower, are creating hurdles in smooth functioning of industries.

These factors are tending industries to hire more and more numbers of contract labours to have greater flexibility to adjust the number of workforce based on economic efficiency, better utilization of resources, optimization of profit and bringing cost effectiveness, despite the of risk of lower worker loyalties and lousy pay. But primarily we need to know, who is a 'Contract Labour'? 'Contract Labour' can be distinguished from 'direct labour' in terms of employment relationship with the principal establishment and the method of wage payment. A workman is deemed to be a contract labour when he/she is hired in connection with the work or "contract for service" of an establishment by or through a contractor. They are indirect employees; persons who are hired, supervised and remunerated by a contractor who, in turn is compensated by the establishment. In either form, contract labour is neither borne on pay roll or muster roll or wages paid directly to the labour.³

During the recent years, employment of contract labour has become a contentious issue and a key reason for the increasing labour unrest. While strikes and protests are common global phenomena but violence and killing is not at all justifiable under any circumstances as it is a pure case of disruption of law and order situation. This surge in violence disturbing industrial relations has become a concerning situation for all. On September 22, 2008 the CEO of Graziano Transmission India, the Indian unit of an Italian auto component maker, was clubbed to death by a group of 200 workers. In another incidents, in March 2011, a Deputy General Manager (Operations) of Powmex Steel, a unit of Graphite India Ltd. was killed after his vehicle was set

¹ Year 2008 was selected because the statistical figures of 2009, 2010, 2011 & 2012 are still provisional

² 'World Investment Report, 2012', United Nations Conference on Trade and Development (UNCTAD)

³ Report of the 'National Commission on Labour', 1969

afire by irate workers, in November 2010 an Assistant General Manager of Allied Nippon, an auto parts maker, was stoned to death by angry workers, in September 2009 the Vice-President (HR) of Pricol was beaten to death by agitating workers, and many more. The most recent worst form of industrial unrest was witnessed in the Maruti Suzuki India Ltd., Manesar plant, where workers went into riotous, leaving its General Manager (HR) dead and 100 other officials laid up in hospital with serious injuries.⁴

These surging incidents of industrial unrests are for sure denting investor's confidence in the country being a safe investment destination and a preferred global investment hub. It has also led to production and financial losses to companies operating in the country. If left unchecked, this ongoing turmoil will surely send wrong signals to foreign and domestic investors, which will directly affect the country's economy and employment generation targets.

One of the major reasons for the rise in industrial unrest could be increasing dependence of industries on contract labour for requirement of flexibility. This segment of worker due to anxiety of job security, lack of social security, exploitation in the hands of contractors, low wages, unequal treatment by Trade Unions and even abusive behavior of the permanent workers and supervisors develop rebellion feelings.

Despite the consequences, practice of employing contract labour through contractors and other agencies is prevalent across nations and industries in different occupations including skilled, semi-skilled and unskilled work. Today it has become a global phenomenon, and looking into the market driven economy, organisations has to hire short term or temporary skilled or unskilled manpower to address occasional upsurge in demand.

It is all about how we manage the contract labourers today, giving them their right dues. There is no best way but clearly industry associations have to sit down and relook at that equation. Where the contract labour is not paid a decent wage, they have to be paid. It is not possible to bring them up to the same level of regular employees because the skills are different, the kinds of jobs that are done are different.⁵

Historical Background

Before we move on, a quick look at the historical aspect of the contract labours in India would definitely give a clear picture of how the system of employing contract labour came into being. Contract Labour has its root from time immemorial but the size of contract labour in India has significantly expanded in the post-independence period with the expansion of construction activity following substantial investment in the Plans.

During the early period of industrialization, the industrial establishments were always faced with the problems of labour recruitment. Low status of factory workers, lack of labour mobility,

⁴ *Economic Times, Business Standard, Times of India, The Hindu and India Today*

⁵ *Mr. Rajeev Dubey, President, EFI 'Economic Times', July 24, 2012*

caste and religious taboo, language, etc., were some of the problems with which most of the employers in general and British Employers or their representatives, in particular were not familiar. They were unable to solve these problems. Therefore, they had to depend on middlemen who helped them in recruitment and control of labour. These middlemen or contractors were known by different names in various parts of the country.

Contract Labourers were considered as exploited section of the working class mainly due to lack of organisation on their part. Due to this, the Whitley Commission (1860) recommended the abolition of contract labour by implication. Before 1860, in addition to the many disadvantages suffered by the contract labour, the Workman's Breach of Contract Act 1859 operated in holding them criminally responsible in the event of a breach of contract service.

Following this, the Government constituted various committees to study the socio-economic conditions of contract labours.

Committees and Recommendations:

- **The Bombay Textile Labour Enquiry Committee (1938)** stated that “if the management of the mills” did not “assume responsibility for such labour”, there was “every likelihood of its being sweated and exploited by the contractor”; it also recommended the abolition of the “contract system of engaging labour” as soon as possible and “that workers for every department in a mill should be recruited and paid directly by the management”.
- **The Bihar Labour Enquiry Committee (1941)** condemned the practice of recruiting labour through contractors because they said: “the contractors ordinarily lack a sense of moral obligation towards labour which the employers or the managers are expected to have, and, therefore, do not often hesitate to exploit the helpless position of labour in their charge”.
- **The Rega Committee (1946)** found that the system of contract labour are very much in vogue.⁶

As a result of these findings, the scope of the definition of “workers” in the Factories Act (1948), the Mines Act (1952) and the Plantations Labour Act (1951), was enlarged to include contract labour.

In the case of Standard Vacuum Refinery Company Vs. their workmen (1960) the Supreme Court of India observed that contract labour should not be employed where:

- (a) The work is perennial and must go on from day to day;
- (b) The work is incidental to and necessary for the work of the factory;
- (c) The work is sufficient to employ considerable number of whole time workmen; and
- (d) The work is being done in most concerns through regular workmen.

⁶ Report of the ‘National Commission on Labour’, 1969

In the Second Five Year Plan, the Planning Commission stressed the need of improvement in the working conditions of contract labour and thus, recommended for a special treatment to the contract labour so as to ensure them continuous employment where it was not possible to abolish such type of labour. It was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and the general consensus of opinion was that the system of contract should be abolished wherever possible and practicable and that in case where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities. Based on these views “**The Contract Labour (Regulation and Abolition) Act, 1970**” was passed by both the Houses of Parliament and received the assent of the President on 5th September, 1970 and it came into force from 10th February, 1971.⁷

National Quantum

A total of 384 million persons are employed at various levels and out of the total employed 51% are self-employed, while 33.5% are engaged as casual labour and 15.6% are employed as regular wage or salaried employees.⁸ The **VV Giri National Labour Institute** in a study on contract labour has estimated that there are a total of 3.6 crore contract labour in the country and out of them 60 lacs are covered under the Contract Labour (Regulation and Abolition) Act, 1970 in both Central and State sphere. Unfortunately there is no precise estimate of contract labour employed in the country but they constitute a substantial segment of the workforce.

The number of contract labour and the period of their employment depend on the quantum & schedule of work/project and as such no centralised data on the number of contract labour is maintained. The number of contract labourers covered by licenses in the central sphere during the last few years is as under:-⁹

Year	No. of contract labourers
2006-07	1001947
2007-08	1313742
2008-09	1377610*

Sectoral Presence

The concentration of casual labour is highest in agriculture, hunting and forestry sector in comparison to other sectors. The Table below shows the average percentage of worker force employed as casual labours in various economic activities:¹⁰

⁷ 'The Contract Labour (Regulation and Abolition) Act, 1970'; Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2011.

⁸ 66th Round of NSSO, 2009-10

⁹ Ministry of Labour and Employment; 'Annual Report'; Government of India, New Delhi, 2009-10

¹⁰ 66th Round of NSSO

Sl. No.	Economic Activity	Total Percentage
1.	Agriculture and Forestry	46.7
2.	Mining & Quarrying	2.8
3.	Manufacturing	6.9
4.	Construction	14.8
5.	Wholesale, retail etc	4.1
6.	Transport and Storage	3.5

The Labour Bureau, *Ministry of Labour and Employment* conducted a study on the Working Condition of Contract Labours (2000-01) in Cement Manufacturing Industry, Food Corporation of India (FCI) and National Thermal Power Corporation (NTPC) and found that maximum employment of contract workers is in Cement Manufacturing Industry (28331) followed by FCI depots (18112), NTPC units (17900) and Cement Related Mines (1290) but the ratio of contract workers was highest in FCI depots (50.2 percent) and lowest in Cement Related Mines (16.9 percent).¹¹

The Table below shows the estimated number of contract labour employed by the three sectors in the year 2000-01.

Sl. No.	Industry/Estt.	State/Stratum	No. of units in the		Estimation factor (col. 4 ÷ col 5)	Sample units employment of contract labour	Estimated employment
			Frame	Sample			
1	2	3	4	5	6	7	8
1.	Cement Manufacturing	i) Andhra Pradesh	51	6	8.50	685	5823
		ii) Bihar & Orissa	54	7	7.71	719	5544
		iii)Gujarat	27	6	4.50	783	3524
		iv)Madhya Pradesh	23	5	4.60	929	4274
		v)Rajasthan	101	19	5.32	955	5081
		vi)Residual	91	9	10.11	404	4085
		ALL INDIA	347	52	-	-	28331
2.	Cement Related Mines	ALL INDIA	50	10	5.00	258	1290
3.	F.C.I. Depots	ALL INDIA	522	33	-	-	18112*
4.	N.T.P.C.	ALL INDIA	21	10	-	-	17900*

(Source: Labour Bureau, MoLE, 2000-01)

¹¹ Labour Bureau, Ministry of Labour and Employment; 'Report on the Working Condition of Contract Labour in Cement Manufacturing Industry, Cement Related Mines, Food Corporation of India and National Thermal Power Corporation'; Government of India, Chandigarh/Shimla, 2000-01.

N:B:- *Due to humongous numbers of contract workers engaged in various sectors and higher rate of mobility in this form of employment, it is impracticable for the respective authorities to keep a track on the ever increasing number of workers engaged and make the industry/ establishments accountable for it.*

Salient Features of the “Contract Labour (Regulation & Abolition) Act, 1970”

- **“The Contract Labour (Regulation and Abolition) Act, 1970”** provides for regulation of the employment of contract labour and its abolition under certain circumstances.
- It covers every establishment in which 20 or more workmen are employed on any day of the preceding 12 months as ‘contract labour’ and every contractor who employs or who employed on any day of the preceding 12 months, 20 or more contract employee. It does not apply to establishments where the work is of intermittent and casual nature unless work performed is more than 120 days and 60 days in a year respectively (Section 1).
- The Act provides for setting up of Central and State Advisory Contract Labour Boards by the Central and State Governments to advise the respective Governments on matters arising out of the administration of the Act (Section 3 & 4).
- The establishments covered under the Act are required to be registered as principal employers with the appropriate authorities. Every contractor is required to obtain a licence and not to undertake or execute any work through contract labour, except under and in accordance with the licence issued in that behalf by the licensing officer. The licence granted is subject to conditions relating to hours of work, fixation of wages and other essential amenities in respect of contract as prescribed in the rules (Section 7 & 12).
- The Act has laid down certain amenities to be provided by the contractor to the contract labour for establishment of Canteens and rest rooms; arrangements for sufficient supply of wholesome drinking water, latrines and urinals, washing facilities and first aid facilities have been made obligatory. In case of failure on the part of the contractor to provide these facilities, the Principal Employer is liable to provide the same (Section 16, 17, 18, 19 and 20).
- The contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorised representative of the Principal Employer. In case of failure on the part of the contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. The contract labour who performs same or similar kind of work as regular workmen, will be entitled to the same wages and service conditions as regular workmen as per the Contract Labour (Regulation and Abolition) Central Rules, 1971 (Section 21).

- For contravention of the provisions of the Act or any rules made thereunder, the punishment is imprisonment for a maximum term upto 3 months and a fine upto a maximum of Rs.1000/- (Section 23 & 24).
- Apart from the regulatory measures provided under the Act for the benefit of contract labour, the 'appropriate government' under section 10(1) of the Act is authorised, after consultation with the Central Board or State Board, as the case may be, to prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operation or other work.

Sub-section (2) of Section 10 lays down sufficient guidelines for deciding upon the abolition of contract labour in any process, operation or other work in any establishment. The guidelines are mandatory in nature and are: -

- Conditions of work and benefits provided to the contract labour.
- Whether the work is of a perennial nature.
- Whether the work is incidental or necessary for the work of an establishment.
- Whether the work is sufficient to employ a considerable number of whole-time workmen.
- Whether the work is being done ordinarily through regular workman in that establishment or a similar establishment.

Enforcement Setbacks

The primary objective of the Act is to stop exploitation of contract labourers by contractors and establishments. The Act does not provide for a total abolition of contract labour system but it provides for abolition of contract labour in appropriate cases.¹²

The legislation has its own setbacks for there is no clear definition for identifying **Contract Labour** in the **Contract Labour (Regulation and Abolition) Act, 1970**. According to the Act a person can be categories as a contract labour only, when he/she is a workman and employed through a contractor. In addition to it, there exists no other provision in the Act for complete cessation of contract labour system, it was enacted to protect and safeguard the interest of the contract labourers.

It is the responsibility of the Central Government or as the case may be, the State Government with concern to ensure effective implementation of the Act. The respective State Governments with its state labour department is responsible for the overall execution of the Act in their respective states. At central level the enforcement of provisions of the Act and rule is entrusted with the Central Industrial Relations Machinery (CIRM). The Central Government is responsible for the overall administration and implementation of the Act, throughout the nation.

¹² *Supreme Court's judgements on R.K Panda Vs SAIL (1994) and Deena Nath Vs National Fertilizer Ltd. (1992).*

According to a report by Government of India the following enforcement measures were taken during 2005-06 to 2008-09 as cited in the table below:¹³

Sl. No.		Years			
		2005-06	2006-07	2007-08	2008-09
1.	No. of Registration Certificates issued to principal employers.	747	752	819	930
2.	No. of Licences issued to contractors	7317	9280	9587	10389
3.	No. of Inspections conducted	5759	5365	6843	6925
4.	No. of Irregularities detected	60206	77422	104401	94162
5.	No. of prosecutions launched	2991	2648	3675	3573
6.	No. of convictions	1017	887	1228	733
7.	No. of contract labourers covered by licences	983707	1001947	1313742	1377610
8.	No. of Licences revoked/ cancelled	7632	8186	5657	7419
9.	No. of registration certificates revoked	211	51	14	35

The Contract Labour (Regulation and Abolition) Act, 1970 itself is not in a position to address the problems of the contract labourers for only 300,000 of the 80 million people on contract today are in the organised sector.¹⁴ Majority of them being in the unorganised sector are not traceable and numerical information is not available. So, the question of organised versus unorganised employment is more important than the temporary/ permanent or core/ perennial issue.

The \$73 billion automobile sector has witnessed abhorrent industrial unrest in the recent 5 years with disputes in Maruti Suzuki, Hero Honda, Honda Motorcycles and Scooters India, Rico, Hyundai, Ashok Leyland, MRF, Apollo Tyres, Sona Koyo and Toyota Kirloskar Motors Ltd. This sector, to generate double revenue needs a flexible workforce of 25 million with an amicable atmosphere to hire and fire workers to cope with the cyclical swings in demand for cars, trucks and bikes but the archaic labour laws governing employment of contract labour has fan these tensions. This speculates the lack of efficient implementation machinery. Industrial unrests accompanying murders of the executives have also been committed in 2-3 instances recently, demonstrating the urging to address the issue by the social partners.¹⁵

¹³ 'Annual Report'; Ministry of Labour and Employment, Government of India, New Delhi, 2008-09 & 2009-2010.

¹⁴ Manish Sabharwal; 'Debate: Should Contract Labour Laws be Liberalised'; Business Standard, 1 October 2008.

¹⁵ 'Contract labour: A ticking bomb amid auto industry's labour force'; The Economic Times, June 29, 2011

International Practices

The practice of hiring or employing contract/short term workers by industries is prevalent throughout the globe for improving overall competitiveness in the globalised market economy. Increasing labour cost and need for flexibility in managing manpower to be nimble and respond to the market conditions and customer's demands without bearing additional cost, industries prefer to employ contract/short term workers. However, in most of the countries the contract workers are covered under the social security provisions and are paid at par with the permanent workers.

In Canada a variety of short-term employment arrangements exist, including seasonal work, migrant workers programs and fixed-term contracts. During 2009, 12.5% of the workers (1.8 million persons) were in some form of temporary employment and their average hourly wage was \$19.61. There is no any fixed procedure to hire contract workers.¹⁶ Employers may set out the expected length of employment in the employment contract and may simply hire the employee in a short term basis directly or through an agency. The contract workers can be employed in any of the industrial sector but they are most often employed in the construction, natural resources, health-care, educational, trade, public administration and cultural industries. All contract employees are protected under the social security net through a provincial workers' compensation scheme and provincial or private health insurance by making a contribution in the Employment Insurance and the Canada Pension Plan.

Contract labour in Russia is a part of the social regulation's institute of labour relations and is governed under the Labour Code of the Russian Federation, as well as other legal acts of the labour laws from 2001. Contract Labourers can be employed in any activity of the establishment regardless of whether the work is core or peripheral in nature, for a maximum duration of 5 years, and all of them are covered under the social security net. There is no wage disparity between a contract worker and a permanent worker for performing similar kind of job.

The principle of Swiss labour law is freedom of contract but chain contracts are prohibited and cannot be used for achieving long term employment. The contract labourers in Switzerland can be employed in any capacity. They are paid at par with the regular employees and are covered under the social security system.

Coming on to the under-developed countries, in Ghana and Sri Lanka, contract workers are hired directly by the employer or through an agency. In Ghana, a contract worker can be employed upto a maximum duration of 6 months and can be employed in any activities, while in Sri Lanka there is no any specified fixed duration but advised by Employers' Organisation to not to engage contract labourers in core activities. In both the countries, contract workers and permanent workers are covered under the social security net and are paid accordingly with the prevailing National Minimum Wage rate.

¹⁶ *'Temporary employment in the downturn'; Diane Galarneau, Canada*

Whereas in United States, for most of the employment is at will of the employer, and employees can be terminated for any reason, other than an unlawful reason such as discrimination. There is no distinction between employees hired for a period of one week or one month or five years or more, although the law does permit employers to delay some benefits from vesting for a period of time.

In USA, the staffing industry plays a major role in recruiting temporary workers. The workers may be hired directly or through a temporary staffing agency - in which case the worker is *on lease* with the staffing company, but not an employee of the client company that uses its services. Temporary employees may be hired to perform work in a range of industries, such as clerical, labor, education, information technology and healthcare. Some temporary jobs may lead to permanent employment where appropriate - in which case the agency may charge a fee if the worker is hired permanently. More often, companies hire temporary employees for a specific business purpose while avoiding the cost of hiring regular employees.

Temporary employees may work full or part-time, and may work for more than one agency at a time. Although not typically eligible for company benefits, some temporary agencies offer health care and other benefits to their temporary employees.

Finally, in some states, companies which hire temporary employees may be subject to federal discrimination and harassment challenges, and other claims. In addition, the circumstances in which temporary employees may claim rights under the Family Medical Leave Act - which provides the right to take leave while taking care of a child, sick spouse, or elderly parent - depends on whether the company exercised some control over the selection, hiring, and working conditions of the employee, thereby creating an employee/employer relationship.

Industry Perspective & Recommendations

Contracting out job work, services or employing contract employees, provides flexibility, leads to efficient utilisation of resources and improves overall competitiveness. Successful organisations and big trading companies float subsidiary companies to look after the peripheral and non core activities of the organisation to achieve efficiency, cost effectiveness and optimisation of profits and productivity to maintain a competitive edge in the global arena. Business Process Outsourcing (BPO), Knowledge Process Outsourcing (KPO), and Staffing Industries have become a common way of outsourcing work to expert agencies at lesser cost and source of hiring efficient workforce. Considering the emerging market trends and labour dynamism a large number of staffing companies, who are more organised than the usual contractors, have mushroomed in the recent years to provide manpower solution to industries. This human resource industry has grown at a compounded annual growth rate of 21% over the past four years and is pegged to be around ₹22,800 crore. Out of the total manpower supplied by the HR industry, 73% comprises of temporary workforce and 13% permanent staff.¹⁷

¹⁷ Report by Executive Recruiters Association and Ernst & Young, 2012

Due to Government's policy of abolition of Contract Labour from one operation to the other, industry is finding it difficult to engage extra hands to discharge short-term contract including export commitments; as a result, employment generation is also suffering. The Group of Ministers (GoM's) constituted a committee in March 2000 to examine the proposals of the Labour Ministry to suitably amend the provision of the Act with a view to facilitating outsourcing of activities to specialised firms having professional experience and expertise in the relevant area and at the same time to provide for a safety net to contract labour in such outsourced activities. After 3 years of in-depth deliberations, the committee concluded that, "certain activities which form support services of an establishment be excluded from the application of Section 10 of the existing Act, which provides for prohibition of employment of contract labour in certain circumstances." However, the same could not be finalised.

There is wide disparity of views among the employers whether contract labour is engaged for flexibility or as cost saving mechanism. Moreover, a section of employers feel that the contract labours should be paid at par with the regular workers for performing similar nature of work and other observes the contrary. It was unanimous across industries to incorporate the welfare measures including wages, social security etc. for the contract labours but requires flexibility in maintaining the labour force for in today's business scenario industries face intensive domestic and international competition. Despite of higher investment and technological inputs industries face the difficulties arising out of labour enactments which prevent achieving the targeted higher quality output in time and a competitive cost to meet customer satisfaction.

A widespread opinion of the Industry is for deletion of Section 10 of the act, providing for **prohibition of employment of contract labour**, and renaming the Act as **Contract Labour Regulation Act** for, a number of welfare legislations like Minimum Wage Act, Payment of Wages Act, EPF Act and ESI Act have been extended to the contract workers. Even the Equal Remuneration Act safeguards the rights of a contract labour to receive wages equal to a regular employee for the same amount of skill and responsibility. What is required is the application and enforcement of the legislation rigorously. But this aspect has been overlooked many a time and abolition has been seen as the only panacea which seems to be a retrograde step.

The prohibition of employment of contract labour cannot be accepted by industries for the economic imperatives to boost exports, as it would require a flexible labour component and supportive labour policy which can meet business contingencies. Any rigidity in policy which constraints the availability of the human resource or restricts the enterprise from shedding extra manpower during lean season, or on completion of the task, would have negative impact on time and schedule of delivery. This would undermine the efficiency and credibility of the exporting units.

Moreover, with receding employment in the organised sector, contract labour is the main-stay for employment generation to a vast increasing labour force. Abolition of contract labour would reduce the pace of employment generation as industry may not be able to add permanent liability and increase its cost of production to be uncompetitive.

A senior executive of a leading automobile industry of India argued that while industry need to retain the 'flexibility' aspect in business operations, in respect to the wage/salary industry should look at skill & performance related salary structure with a step up road map. He suggested that at entry level, a contract worker and a regular worker should be entitled to similar wages and benefits, but should not be the same for a skilled & experience regular worker. However, social security benefits should be as per law. Social discrimination should be demoralized by practicing a defined professional work environment. The professional recruitment based on clear HR processes & similarly downsizing linked to clear business plans and professionally executed would pave the way for greater acceptance. Last but not the least, deployment of contract labour on direct manufacturing processes is also an aspect of deep review.

Landmark Judicial Pronouncements

The Hon'ble Supreme Court of India had delivered three landmark judgements on the Contract Labour (Regulation and Abolition) Act, 1970 in the cases of Gujarat State Electricity Board, Air India Statutory Corporation and Steel Authority of India Ltd. (SAIL) and recently had given a judgement on Bhilwara Dugdh Utpadak Shakaris Ltd.

Gujarat State Electricity Board Vs Union of India (09.05.1995)

In the Gujarat State Electricity Board, Thermal Power Station, Ukai, Gujarat case the Supreme Court of India recommended that the Central Government should amend the Act by incorporating a suitable provision to refer to industrial adjudicator the question of the direct employment of the workers of the ex-contractor in the principal establishments, when the appropriate Government abolishes the contract labour.

Air India Statutory Corporation Vs United Labour Union & Others (06.12.1996)

In Air India Statutory Corporation case, the Supreme Court held that though there exists no express provision in the Act for absorption of employees in establishments where contract labour system is abolished by publication of the notification under Section 10(1) of the Act, the principal Employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and employee stood snapped and direct relationship stood restored between principal employer and contract labour as its employees.

Steel Authority of India Ltd. (SAIL) & Others Vs National Union of Waterfront Workers and Others (30.08.2001)

In the case of Steel Authority of India Ltd. (SAIL) the Supreme Court, over-ruled the judgement on Air India Statutory Corporation and held that neither Section 10 of the Act nor any other provision in the Act expressly or by necessary implication provides for automatic absorption of contract labour on issuing a Notification by the appropriate Government under sub-section (1)

of Section 10 prohibiting employment of contract labour in any process or operation or other work in any establishment. The Principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

Bhilwara Dugdh Utpadak Sahakaris Ltd. Vs Vinod Kumar Sharma Dead by LRS & ORS (01.09.2011)

In a recent judgment on Bhilwara Dugdh Utpadak Sahakaris Ltd. the Supreme Court of India dismissing the appeal of the appellate hold that, the workmen employed through a contractor are the employees of the Principal Employer and not of the Contractor and added that the judgment on SAIL Vs. National Union Waterfront Workers (2001) has no application in the present case.¹⁸

Central Government's Efforts

The Government of India on various occasions has tried to bring about effective compliance mechanisms in the Contract Labour (Regulation and Abolition) Act, 1970 and rules 1971 for safeguarding the interest of the contract workers. But the fact is, Government itself employs more contract labour than the private sector. Almost 32% of the labour force in public sector is on contract as against 30% in the private sector, while average wage of contract labour in public sector at ₹185.28 is higher than that paid by the private sector at ₹143.45.¹⁹ A large number of casual or temporary workers are also employed by the Government Ministries/Departments and their attached and subordinate offices and there is no legislation exclusively for regulating engagement of casual workers. However, the Central Government has issued guidelines in the matter of recruitment of casual workers.²⁰

It was also in air that the Government might soon ask companies to disclose information on the number and percentage of workers hired on contract, the minimum monthly wages paid to the contractual workers and the non-discriminatory employment policies followed by them. The proposed guideline would be voluntary but for not complying with the request, the companies would have to explain the reasons. In addition to it, firms would be expected to include this information in their annual financial statements. With these provisions the proposed guideline has been made mandatory.²¹

The Ministry of Labour and Employment in 2011 had proposed to provide contract workers same salary and other benefits as regular workers but the proposal was kept on hold by the Cabinet Secretariat, looking at its implications. The proposed amendment would have entitled contract labour to the same wage rate, holidays, hours of work and social security provisions as

¹⁸ *Supreme Court's judgements*

¹⁹ 'Contract Labour: Govt Gains More'; *The Economic Times*, March 10, 2011.

²⁰ 'Casual Workers'; *Press Information Bureau*; January 09, 2012

²¹ *The Economic Times* on 17 January, 2011

that given to regular employees doing similar jobs. The only difference between contract and regular workers would have been security of tenure.²²

The issue of contract labour was widely discussed in the 42nd and 43rd session of the Indian Labour Conference. In the 42nd Session of the Indian Labour Conference a Tripartite Task Force was constituted to examine the provisions in the Contract Labour (Regulation and Abolition) Act, 1970 and to suggest amendment to the Act. But due to wide divergence of views, the Task Force could not arrive to a consensus.²³ However, in the State Labour Ministers' Conference held on 22nd January, 2011, it was proposed to amend the Act and introduce the following provisions as part of the Act:

“In case where the contract labour performs the same or similar kind of work as the workmen directly appointed by the Principal Employer, the wage rates, holidays, hours of work, social security and other conditions of service of contract labour shall be the same as is available to the workmen on the rolls of Principal Employer. In case, same or similar kind of work is not being performed by the workmen directly employed by the Principal Employer, the Appropriate Government will notify the wage rates, holidays, hours of work, social security and other conditions of service.”

There is nothing new in it, as the Central Government rules provide for payment of the same wages to the contract workers as that of a regular employee for similar kind of work. Yet the question of skill differential is not answered by this provision. Besides, it may only open a floodgate of cases claiming performance of similar kind of work. Question like whether the work is of similar kind or not, will not be easy to answer.

Apart from the above, it also needs to be mandated that whenever a contract is given to a contractor, the contract agreement between the principal employer and the contractor should clearly indicate the wages contribution towards social security schemes and other benefits that are to be paid by the contractor to the contracted workman.

But hitherto, the Government has not come to consensus.²⁴

State Governments' Initiatives

Some State Governments are trying to amend and had also amended the Contract Labour (Regulation and Abolition) Act, 1970 for providing greater flexibility of employment to attract higher investment and improve competitiveness in the global market.

The Government of Maharashtra has taken a decision to mandate payments to all labourers, including contract workers through cheque so that the full amount as stated on their pay record

²² *'Tussle Sends Contract Labour Pay Parity Plan to Cabinet Secy'; The Economic Times; December 14, 2011*

²³ *Summary records of the 42nd & 43rd session of the Indian Labour Conference*

²⁴ *'State Labour Ministers' Conference'; Government of India, New Delhi, 2010*

actually reaches them and the government is able to monitor the same. Madhya Pradesh has proposed for a bill to amend the Act to incorporate the Special Economic Zones (SEZs) under the purview of the Contract Labour (Regulation and Abolition) Act, 1970.²⁵

The Government of Andhra Pradesh has moved a step ahead by amending the Contract Labour (Regulation and Abolition) Act, 1970 in 2003. The legislation provides for employment of contract labour not only in the peripheral, but also in the 'Core' areas under certain circumstance. The legislation has defined 12 employments as non-core activities.

Contract Labour: New Perspectives

The Second National Commission of Labour recommended that contract labour should not be engaged for core production/services activities, however, be remunerated at the rate of a regular worker engaged in the same organization doing work of a comparable nature or if such worker does not exist in the organization, at the lowest salary of a worker in a comparable grade, i.e. unskilled, semi-skilled or skilled. The Commission added, to ensure the recommendations are not misused in any manner by the employer, the onus and responsibility of proof to show and ensure that the employer is paying such contract worker the wages of a regular employee doing comparable work or in its absence that of the lowest skilled regular employee, would be on the principal employer.

To guard and check against double fraud by the contractor at the cost of the poor contract workers, the principal employer would also ensure that the prescribed social security and other benefits are extended to the contract worker and should be held responsible for the benefits payable to contract labour because there are many cases where contractors make the deductions from the wages of contract workers as their contribution towards social security, and then absconding without depositing either the contribution realized from the workers or their own contributions towards social security system. The Commission further recommended that no worker should be kept continuously as a casual or temporary worker against a permanent job for more than 2 years unless he is employed on a contract for a specified period.²⁶

Keeping in view the recommendations of the Second National Commission on Labour and the current scenario of contract labour system in India, AIOE-FICCI would like to recommend the following measures to address the contract labour issues:

➤ Creating Central and State Contract Labour Boards

A Central Contract Labour Board (CCLB) be constituted in the centre to implement, administer, monitor and manage the Contract Labourers. In addition to it, every State shall constitute a State Contract Labour Board, which would be the sole authority to register, refer and manage

²⁵ *Summary Record of the 43rd Session of Indian Labour Conference*

²⁶ *Report of the National Commission on Labour; 2002*

the contract labours in the respective state under the supervision of the Central Contract Labour Board.

The State Contract Labour Board (SCLB) would be entrusted with the task of registering contractors and contract workers, issuance of licenses and smart cards, address disputes or grievances (not in the case of regularisation), administer wages and social security.

Workers working as contract labourers under a contractor would directly register himself/herself with the respective SCBL to help the Government on keeping a track on the number of workers employed in contract, formulating social security schemes and promoting effective implementation of the Act. The Board shall regulate social security benefits, regulate the employment of contract labourers and oversee functioning of the contract labour system in India.

The Central and State Boards shall be governed by the three social partners i.e. Government, Employers (Principal Employers) and Workers representatives (Trade Unions).

➤ **Contractors be treated as a separate establishment**

Most of the problems in the existing contract labour legislation arise because of workers being exploited in the hand of unscrupulous Contractors', despite of the welfare initiatives taken by the Principal Employers. A provision be laid down in the Act underlying certain eligibility criteria to be fulfilled by the contractors before obtaining a license from the licensing officer.

The contractor who has met all the criteria and obtained license under the Act be treated as a separate establishment and shall be fully accountable as Principal Employer for any type of compliance/liability. Any failure to make statutory dues like EPF & ESI or in the case of any accident in the workplace where the Occupier has provided and met with all safety & protective measures, the Contractor should be equally held responsible with the Principal Employers.

This move would make the contractors more responsible for his/her deeds and also would create an employer employee relation where the interest of the contract workers can be safeguarded. So, Chapter III and Chapter IV of the Act be suitably amended to abrogate the tyranny of contractors.

➤ **A single point collection of social security contributions from the industry and mechanism of full compliance of all statutory requirements**

The need for setting up of a nationally recognised social security management organisation is felt for a single point collection of social security contributions and single window clearance for the industries. This would not only ensure effective social security coverage to the contract workers but would also save the employer from the bureaucratic hassles. The special proposed vehicle called "**National Social Security Management Authority of India (NSSMAI)**" be instituted for collection of social security contributions and single window clearance platform

for all the Social Security Organisations in India i.e. Employees' State Insurance Corporation (ESIC) and Employees' Provident Fund Organisation (EPFO), and it will be entrusted with the task of facilitation, governed by the Central Contract Labour Board (CCLB) with representatives from ESIC, EPFO and the three social partners i.e. Government, Employers and Workers.

NSSMAI will be entrusted with the following tasks:

(i) Collecting contribution from all the organisation / establishments / factories

NSSMAI will be entrusted with the task of collecting all the contributions from every beneficiary member organisations / establishments / factories through a consolidated demand, on-behalf of all the social security organisations through a single window and issue a certificate of clearance under a single form with receipt to the respective beneficiaries.

(ii) Depositing with the respective social security organisations

It will deposit the collected contributions with the respective social security organisations. The Social Security Organisations like EPF & ESI will continue to manage these funds, enforce implementation of the schemes and oversee the functioning as before.

(iii) Disbursement of benefits

NSSMAI will disburse the benefits of the social security schemes to the beneficiaries through a single window clearance and claiming the benefits from the respective social security organisations through one single form for all the social security schemes (ESI and EPF).

(iv) Issuing smart cards to workers

NSSMAI with the consent of the Central Contract Labour Board (CCLB) will issue biometric enabled smart cards bearing skills rate (if possesses), signature, fingerprints and photograph of the worker to make them avail various social security services and receive cash benefits. The smart card will be technology enabled. NSSMAI will ensure that the card is received by every member/beneficiary and there remains accountable in terms of issuance and usage of the smart card.

➤ **Issuing a 'smart card' to each contract labour, indicating his skill and social security membership**

Biometric enabled smart cards bearing the skills rate (if possesses), work experience, signature, fingerprints and photograph be issued to the contract workers to make them avail various social security benefits, receive cash benefits and employment benefits. The smart card will be technology enabled and regulated by the CCLB or State Contract Labour Board as the case may be.

The Smart Card shall indicate the skills of the worker in a particular area, if he possesses; to provide him/her employment in handy. As his/her skill gets enhanced it will be denoted in his/her record account which could be assessed by an employer from the CCLB or State Contract Labour Boards.

In addition to it, the card would carry the social security account number of the worker, since the contract workers frequently move from one establishment to another and from one place to another. Due to higher rate of mobility it is not convenient for social security organisations to deliver their services effectively and even, the workers are not in a position to avail the benefits. This nationally recognised social security card would address these issues. Through the smart card, the social security organisations will be in a better position to deliver their services and the workers would also avail the benefits irrespective of their locations.

➤ **Payment of additional 4.81% contribution as gratuity to be paid by industry in addition to EPF and ESI contributions.**

A recommendation would be to extend the coverage of payment of gratuity by industry to the contract workers in addition to other social security benefits. An establishment employing contract labours through contractors in both peripheral and non-core activities would pay 4.81% of the workers basic pay as gratuity in the social security account of the worker. Since the social security account would be operated through the technology enabled smart card and institutionalised single window point for collection of contributions, it would be convenient for the industry to deposit their share and also for the workers to avail the benefits from any place in India. Alternatively a passbook system may also be operated, providing for affixing stamps of the value of monthly contribution, en-cashable only after retirement. One more alternative could be to use the monthly gratuity amount as premium to LIC or any other insurance company. Through this initiation the contract workers would be covered under the social security net which would narrow down the gap between a 'regular employee' and a 'contract employee', avoiding controversies.

➤ **Skills level be considered during wage fixation.**

The minimum wages including the perks and benefits of the contract labour be fixed as per the criteria laid down by the Government demarcating unskilled, semi-skilled and skilled labour. This would bring parity throughout the industry and benefit the workers at large. A systematic mechanism be developed to assess the skills of the contract labour by involving the employment exchanges of the respective regions.

➤ **20 per cent above the minimum wages**

The workers those are engaged as contract workers i.e. employed through a contractor are to paid 20% above the fixed minimum wages at entry level.

Conclusion

Although, employment of contract labour in India has attracted debates and raised conflict of interest among the social partners, it has become a significant and growing form of employment, engaged in different occupations including skilled, semi skilled and unskilled jobs. The system of employing contract labour is prevalent in almost all sectors; in agriculture, manufacturing and high GDP yielding service sector.

Liberalisation of market economy in early nineties has necessitated greater flexibility of employment for the industries to compete in the global perspective and antediluvian labour laws have forced industries to hire contract labour to address the cyclical demands and creating business friendly compliance mechanism to survive and compete in the globalised economy. Concomitant changes in the Industrial Disputes Act, 1947 would be necessary to reduce reliance on contract labour system.

Therefore, addressing the issues of contract labour through a sustainable method avoiding future industrial unrest is the need of the time and the only remedy to it is by bringing this segment of workers under social security net.