

Working Paper No. 30



International
Labour
Office
Geneva

**Non-regular workers
in India:
Social dialogue
and organizational
and bargaining strategies
and practices**

K.R. Shyam Sundar

November 2011

Industrial
and Employment
Relations
Department
(DIALOGUE)

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First published 2011

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ILO Cataloguing in Publication Data

Shyam Sundar, K. R.

Non-regular workers in India : social dialogue and organizational and bargaining strategies and practices / International Labour Office. - Geneva: ILO, 2011
1 v. (DIALOGUE working paper ; No.30)

ISBN: 9789221255147;9789221255154 (web pdf)

International Labour Office; Industrial and Employment Relations Dept

contract labour / casual worker / temporary employment / labour flexibility / workers rights / social dialogue / collective bargaining / trade union role / labour legislation / comment / India

13.01.2

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Foreword

This paper is one of a series of national studies on collective bargaining, social dialogue and non-standard work conducted as a pilot under the Global Product on '*Supporting collective bargaining and sound industrial and employment relations*', in collaboration with the ILO Decent Work Team for South Asia. The national studies aim at identifying current and emerging non-standard forms of work arrangements within which workers are in need of protection; examining good practices in which those in non-standard forms of work are organized; analyzing the role that collective bargaining and other forms of social dialogue play in improving the terms and conditions as well as the status of non-standard workers and identifying good practices in this regard.

Since the adoption of liberalization policies in 1991, the labour market in India has seen tremendous growth in the number of non-regular workers, in particular contract workers. Transformation in the labour market has created opportunities, with both workers and employers benefiting from it. But, in many cases, a wider use of non-regular work arrangements has led to greater uncertainty about workers' employment status, giving rise to precariousness and vulnerability among certain groups of workers.

The significant rise in the number of non-regular workers in recent years has prompted changes in trade union strategies, traditionally focused on regular workers. The paper includes a number of examples of trade unions seeking various ways of improving the terms and conditions of work for non-regular workers, particularly contract workers, through collective organization and collective bargaining. The paper shows that a key approach to successful collective bargaining on behalf of contract workers is to ensure involving "principal employers" who hold real power in negotiating and determining terms and conditions of work (multi-employer bargaining), given that contractual employers including contracting firms are often small and medium-sized enterprises facing fierce competition and being under pressure from those with the real power over the contracting process. A variety of ways that multiple-employer bargaining takes place in India are documented in the paper.

The primary goal for trade unions in India in this particular area has been to attain regularization of non-regular workers. When regularization is not achieved, however, they tend to adopt a pragmatic approach to demand for "continuity of employment" even when the contractors change. Trade unions also conduct wage negotiations with the principal employer where possible, and/or with the contractors. Their demands in wage negotiation range from minimum wages, equal pay for equal work, dearness allowances including bonus payment, welfare facilities and safety equipment, to social security benefits.

The paper also contains policy implications for labour law that can strengthen enabling institutional conditions to support the actions taken by the social partners and addresses other industrial relations practices with regard to non-regular workers.

DIALOGUE Working Papers are intended to encourage an exchange of ideas and are not final documents. The views expressed are the responsibility of the author and do not necessarily represent those of the ILO. We are grateful to K.R. Shyam Sundar, Associate Professor, Guru Nanak College, Mumbai University for undertaking the study and commend it to all interested readers.

Tine Staermose
Director,
ILO Decent Work Team for South Asia
and Country Office for India

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Acknowledgements

The debate on aspects of labour regulation has been a part of the debate on globalization. There is a consensus that countries should come together to evolve a system of governance to ensure a “fair globalization”. The economic legitimacy of the non-regular work arrangements has led to the proliferation of the number of non-regular workers and even innovation of their forms. It then becomes important for the social scientists and the policy-makers to understand these “happenings” in the labour market and the industrial relations system in India. This study seeks to do this. It has been done in coordination with the Industrial and Employment Relations Department (DIALOGUE) of the ILO in Geneva and the ILO Decent Work Team (DWT) for South Asia and the Country Office for India. I thank the Director of the ILO DWT for South Asia, the Country Office for India and Tine Staermose for requesting me to carry out the country study on India. In this regard, I am especially indebted to Marleen Rueda, Senior Specialist on Social Dialogue and Labour Administration, ILO DWT for South Asia and Minawa Ebisui in DIALOGUE for their detailed and incisive comments and helpful guidelines, and to the suggestions and comments by an anonymous referee; these helped me to trim and sharpen the focus of the report.

This report necessitated an extensive field study of data collection, interviews, interactions and discussions with social actors, government officials and academics. I am thankful to all the people mentioned in Appendix II for giving their valuable inputs, documents, collective agreements, court awards/judgments, government notifications and statistical data. It has been a huge learning process and this is evident from the high number of quotes I have used in the text of the report. I am particularly thankful to Arvind Shrouthi for organizing my field visits in Pune, to Jane Cox and Sanjay Singhvi for their generous supply of judgments, to Shanmugam in Chennai for his help in several ways and to Prof L.K. Deshpande for his helpful discussions on the subject. I am also grateful to Prof. Alakh Sharma and Prof. Papola for their help in the ongoing project of bringing out a monograph, under my editorship, on contract labour which further educated me on the debate in India. I wish to thank my college authorities for their kind gesture of sanctioning official leave for three days to conduct field studies. This report in a sense acknowledges the tremendous work done by trade unions, consultants, advocates in promoting the welfare of non-regular workers. Given the tremendous rise in the number of these workers in India, it is particularly surprising that the data, the informational and research base relating to them, is rather weak. There is an urgent need to enlarge the workers’ category groups in the government data collection processes to reflect the changing labour market realities.

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Acronyms and abbreviations

BMS	Bhartiya Mazdoor Sangh
BKS	Bhartiya Kamgar Sena
INTUC	Indian National Trade Union Congress
CITU	Centre of Indian Trade Unions
CSO	Central Statistical Organization
HMS	Hind Mazdoor Sabha
AITUC	All India Trade Union Congress
UTUC (L-S)	United Trade Union Congress (Lenin Sarani)
UTUC	United Trade Union Congress
NFITU	National Front of Indian Trade Unions
NFITU (DHN)	National Front of Indian Trade Unions (Dhanbad)
NSSO	National Sample Survey Organization
DGLW	Director General of Labour Welfare
IMF	International Monetary Fund
LPF	Labour Progressive Federation
AICCTU	All India Central Council of Trade Union
REL	Reliance Energy Limited
BHEL	Bharat Heavy Electricals Limited
TNPL	Tamil Nadu Paper Limited
NLC	Neyveli Lignite Corporation
NDA	National Democratic Alliance
UPA	United Progressive Alliance
DMK	Dravida Munnetra Kazhagam
TUCC	Trade Union Coordination Centre
TUCI	Trade Union Centre of India
TUSC	Trade Union Solidarity Committee
SEWA	Self Employed Women's Association
EFI	Employers' Federation of India
SCOPE	Standing Conference of Public Enterprises
IRS	Industrial Relations System
FTE	Fixed-term employment
CDS	Current Daily Status
IUF	Allied Workers' Associations
ILC	Indian Labour Conference
MEEU	Mumbai Electric Employees' Union
CTUO	Central Trade Union Organization

RTI	Right to Information Act
SEZ	Special Economic Zone
SAIL	Steel Authority of India

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Introduction

The industrial relations system (IRS) is a sub-system of a social system as an economic sub-system. Economists consider the labour market as a component of the factor market. The governance and regulation of the IRS and the labour market has been an issue for discussion and debate among researchers and policy-makers. The debate has assumed importance, even a sense of urgency and universality in the current phase of globalization. The globalization process has intensified competition and questioned the relevance and challenged the conventional institutions of regulation, such as labour law, trade unions, collective bargaining and so on.

Labour regulation could be perceived in broad terms to include both formal and informal institutions of regulation, such as labour law, trade unions, collective bargaining and conventions and norms. Labour regulation seeks to: (a) rectify the basic power asymmetry inherent in employer-worker relations; (b) prevent opportunistic behaviour by employers; (c) correct deviant behaviour of workers and ensure industrial discipline and commitment; (d) provide social protection; (e) provide a set of rights to and obligations on workers and their associations and employers; and (f) create “rules” to govern the interaction between the two parties in the labour market. Regulation is required because leaving things to the “market” may produce socially sub-optimal outcomes, such as long working hours and a less than minimum wage. Markets may be imperfect and this may lead to outcomes that are both unfair and inefficient. But, mainstream economists and employers contest the regulatory model and demand deregulation and flexibility, and thus labour market reforms.

The labour reform debate has two sides, viz. the “flexibility school” and the “institutionalist school”. The “flexibility school” regards the perfectly competitive market model with reverence. Workers in competitive markets wanting a job would secure one at the going market rate, which equals their individual contribution to the society. Labour flexibility can be understood as the ease with which employers are able to respond to developments in the product market and changing macro-economic conditions. The employer should be in a position to reduce workers’ strength, change the composition of workers, reduce the price of labour, introduce functional changes, such as workload or work assignment (via technological changes or retrain workers), close down unviable units and reallocate resources to more productive uses, and so on. The labour market institutions should facilitate easy and quick response. Labour regulations introduce distortions and rigidities and cripple the smooth working of the market forces. On the other side of the debate, the “institutionalist school” opposes deregulation and flexibility strategies and points out the dangers involved in them. It is well known that employers left to themselves would act opportunistically, myopically and aggressively, which may result in sub-optimal outcomes, including high labour turnover, low wages and poor working conditions. Trade unions see the demand for flexibility as an attack to weaken union power and individualize employment relationship. Flexible strategies are seen as the “low road” to development, concentrating as it does on cost-cutting measures rather than promoting human resource development. Flexibility is a micro-level arrangement, but it can have macro-economic implications and weaken effective demand, at least in the short run. Even if flexibility creates more jobs in the long run, it will lead to greater job destruction and instability in the labour market in the short run. Flexibility creates insecurity and affects the morale of workers and investment in human capital drops considerably.

1.1 Labour flexibility debate in India

Post-independence, the policy-makers preferred a highly regulated industrial production system (via licences for starting and expanding production) and a mixed economy wherein the public sector would play a dominant role in the domestic economy and import substitution and export pessimism on the trade front. Owing to the inefficiencies of this

model, there have been calls for “economic liberalization”. The economic reform process, which started in the early 1980s, has assumed pace and significance since 1991. Economic reforms covered those with regard to both the domestic economy and the trade sector. On the domestic front, reforms consisted of taking away state controls in the domestic economy by eliminating the need for licences in all but a few industries, removing the controls on the “monopolies” and liberalizing the industrial location policies, among others. On the external front, the government gradually opened up the economy by liberalizing the restrictive regulations on foreign direct investment, allowing, for the first time since 1993, foreign institutional investment, reducing the tariffs and removing the quantitative controls. Labour regulation debate in India covers several issues, including labour flexibility, issues relating to reform of the law enforcement system (inspections, sanctions, litigation etc.), reducing the institutional power of trade unions and simplification of labour bureaucracy. Of these, two issues have dominated the reform debate in India, viz. the right to fire workers and the freedom to close down establishments, and more flexibility in hiring contract labour (see Shyam Sundar, 2005, 2009a, for a detailed discussion of all the issues relating to these two components of reforms).

Employers argue that, in a highly competitive and uncertain market in a liberalized and globalized economic environment, high doses of labour regulation and restrictive practices of trade unions impose “rigidities”, which affect not only economic efficiency, but also workers’ welfare and employment generation. The fundamental advantage afforded by labour flexibility is the freedom for employers to employ and dismiss workers at will. It aids firms to introduce technological improvements and work reorganization that eventually improve productivity and efficiency. Employers in India constantly cite the competitive advantages enjoyed by firms in China owing to the high level of labour flexibility enjoyed by them (see SNCL, 2002). The “China Price Syndrome” (i.e. low price strategy) is reflected in the labour market as well. It is often believed, though not with much support from employers that, in a highly competitive environment, “pursuit of cost reduction” would help firms to retain and even enhance their competitiveness. Employers and neo-classical economists regard the “rigidities”, or the absence of labour flexibility, to be the main reason for the growth of informal jobs in India, such as contract labour (see Dharmarajan, 2010 for employers’ point of view; Ahsan and Pages, 2008 for the academic analysis in the case of the organized manufacturing sector). Hence, employers demand labour flexibility in which they see several advantages.

The institutional framework of the IRS and labour market are mainly covered by central laws such as the Trade Unions Act, 1926, Industrial Employment (Standing Orders) Act, 1948, Industrial Disputes Act, 1947 (ID Act), and Contract Labour (Regulation and Abolition) Act, 1970 (the Contract Labour Act) (see Venkata Ratnam, 2006 for details of these laws) – indeed, there are around 50 central labour laws and more than 100 state labour laws (NCEUS, 2007). The specific criticisms of the labour laws by the employers can be summarized as follows.

Employers argue that dismissal of employees has become difficult either for acts of “indiscipline” or for “economic” reasons. The Industrial Employment (Standing Orders) Act (IE (SO) Act that is applicable to industrial establishments employing more than 99 workers) requires employers to follow an elaborate and extremely rigid procedure (e.g. domestic enquiry) before terminating a worker on grounds of indiscipline. In addition, the judicial process has greatly narrowed the freedom of the employer to terminate workers committing acts of indiscipline.

Chapter V-B of the same Act requires establishments employing more than 99 workers to obtain *prior* permission from the government before effecting lay off, retrenchment of workers or closure of firms. Several provisions in Chapters V-A and V-B in the ID Act pertaining to lay off, retrenchment and closure, apply to workers who have completed “not less than one year of continuous service” which means 240 days in the preceding twelve calendar months (see the definition of “continuous service” under

Section 25-B of the ID Act). According to Section 25-F of the ID Act, if any worker completes 240 days of “continuous service” in a year, that worker is entitled to receive termination notice or compensation (at the rate of 15 days’ average pay for every completed year of continuous service); hence the 240 days of service acquire significance (see Dharmarajan, 2010). These provisions *discourage* employers in India from engaging workers continuously for a period of more than 239 days for fear of receiving demands for their permanency. They have argued that permanency, arising out of trade union support and power and the job protective labour laws, impedes efficiency as it creates complacency and thus affects the productivity of these workers (see SNCL, 2002 for presentation of employers’ views). In contrast, the flexi-category workers, who are constantly on tenterhooks, perform better. Employers demand deletion of the restrictive clause of the prior provisions, arguing that the government rarely ever gives permission for labour separations or closures owing to the political costs involved.

The Contract Labour Act provides for prohibition of employment of contract labour and regulation of their conditions of work. It applies to establishments employing 20 or more contract workers and to contractors employing 20 or more workers. The most controversial clause of the Act is Section 10 (1) which empowers the State government to prohibit, after consultation with the Board, employment of contract labour in any process, operation or other work in any establishment. The appropriate government is required to consider “the conditions of work and benefits provided for the contract labour in the establishment under consideration” and other following [relevant] factors while deciding on “prohibition” of contract labour, whether:

- (a) the process or work is *incidental or necessary* for the industry;
- (b) it is of a *perennial* nature;
- (c) if it is done *ordinarily* by regular workers; and,
- (d) it is *sufficient* to employ a considerable number of full-time workers (Section 10 of the Act).

Employers demand removal of the “abolition” clauses and the provision of greater freedom to employ contract workers to meet fluctuations in market demand and to contract out their “peripheral” activities in order to concentrate on the “core” activities of their firms. The more progressive of them would not mind a strengthening of the “regulatory” aspects (see Shyam Sundar 2010, d, and the references therein).

Trade unions stoutly resist the labour reform demands of employers (see Shyam Sundar, 2005 for a summary of their opposition to employers’ reform demands). They point out that various forms of insecurities, such as employment, income and organizational, have arisen in the new economic circumstances. They contend that the labour flexibility demands of employers could weaken the collective institutions, such as trade unions, strikes and collective bargaining. In fact, they observe that the bargaining power of workers vis-à-vis the employers has declined and strikes are diminishing (see Shyam Sundar, 2009, b, c). Thus, they demand *more* not less State intervention and social protection, on one hand, and strengthening of collective institutions, including the right to strike on the other hand. While employers complain of the labour code becoming *thick*, unions are disturbed about enforcement and compliance becoming *thin*. Chapter V-B of the Industrial Disputes Act, 1947, provides employment security and the unions do not agree to any dilution of it. The contract labour system constitutes an exploitative system and hence its proliferation needs to be checked. They demand that contract workers should be absorbed as regular workers in the event the contract system is abolished in a firm (Mahadevan, 1998). They are against liberalizing the use of contract labour as this will eventually result in substitution of regular workers by contract labour. In short, they demand more regulation, better law enforcement, job and social security, and protection of labour rights.

Several studies have noted that the labour market profile and the composition of employment have changed significantly in the post-liberalization period in a manner that aids labour flexibility (e.g. Deshpande, et al., 2004; Maiti, 2009; Rajeev, 2006). Anecdotal evidence, given by trade unions, employers and others from the field, strongly projects the rapid rise in the growth of non-regular jobs in the manufacturing sector in particular (see for example P&GWFI, 2007) and the growth of the informal economy in general (NCEUS, 2007, 2009). Statistically, commentators have noted the loss of jobs in the manufacturing sector in the order of 1.3 million in the organized manufacturing sector in India during 1997–2003 (see Nagaraj, 2004). The drop in employment in the organized manufacturing sector and the rise and proliferation of non-regular workers have grave implications for labour welfare and various forms of workers' securities, such as voice, employment and income security. Social dialogue has become necessary for the resolution of the differences between the social actors and for designing social protection measures. While conflict and debate rage on labour flexibility issues, some innovative practices have emerged. These include, organizing the hitherto unorganized and non-regular workers, negotiating better conditions of service, tripartite deliberations both at the micro and macro levels. For these reasons, there is a need to study the phenomenon of non-regular workers and the innovative practices in the field of industrial relations.

1.2 Types of non-regular work in India

So far, the terms “regular”/“permanent”, “non-regular”/“informal workers”/“jobs” have been used in a generic sense. It is important here to note the type of worker in the manufacturing sector and those covered in this report. Workers employed in a manufacturing establishment are generally classified into four categories, viz. workers, employees other than workers, like clerks, typists, stenographers (white collar employees), supervisors and managerial staff and other employees (those not falling in the earlier categories). These workers can be further classified into two basic categories, viz. workers directly employed and those employed through intermediaries (contract workers). Taken together there could be nine categories in most industrial establishments, viz.: (i) permanent; (ii) trainees; (iii) probationers (subject to confirmation); (iv) *badlis* (substitute workers for absenting permanent workers); (v) temporary; (vi) fixed-term employment (FTE) employees; (vii) casual; (viii) apprentices (under the Apprentices Act, 1961); and, (ix) contract workers. The categories (i) to (viii) are directly employed and (ii) to (ix) can constitute the non-regular or flexi-category workers.

The terms “regular” and “permanent” are used interchangeably. The Model Standing Orders (Schedule I) attached to the Industrial Employment (Standing Orders) (IESO) Central Rules, 1946, defines a permanent worker as one “who has been engaged on a permanent basis and includes any person who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment”. The term “non-regular” workers is used in this report to include trainees, fixed-term employment workers, contract workers, temporary and casual workers. A distinction must be made between two types of trainees: the trainee workers who are engaged under the Apprentices Act, 1961; and “private trainees”, not covered by this Act. Trainees are workers recruited to undergo training in a given occupation for a given period. They can be terminated “at will” with no prior notice and no compensation (interviews with Rama Subramanian, Soundara Rajan, Kumaraswami, Amre, Shrouiti, Dhokale, et al.). The category FTE was inserted by central government in an order dated 10 December 2003 and withdrawn, owing to protests from the trade unions, by another order dated 10 October 2007. The rules framed then defined the FTE worker as one:

... who has been engaged on the basis of contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits should not be less than that of a permanent workman. He shall also be eligible for all statutory benefits available to a permanent workman proportionate according to the period of service rendered by him even though his period of employment does not extend to the qualifying period required in the statute.

(www.fisme.org.in/Labour%20Notification.pdf, accessed 30 September 2010).

Contract workers are those who work for a contractor or a sub-contractor and are covered by the Contract Labour Act. According to this Act:

... a workman shall be deemed to be employed as “contract labour” in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer (section 2 (b) of the Act). The Central IESO Rules define a temporary worker as one “who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period”. The Central IESO Rules, 1946 defines a casual worker as one “whose employment is of a casual nature.

1.3 Methodology

The objectives of the study are to: (a) review the labour regulatory system and the debate on labour reforms in India, highlighting their implications for non-regular work arrangements; (b) identify the types and nature of non-regular work arrangements; (c) trace the trends in non-regular workers’ employment, including the impact of the financial crisis on non-regular workers; (d) review the extent to which these workers enjoy legal and institutional protection; (e) examine the innovative practices of organization of these workers; (f) identify the strategies and innovative social dialogue practices, especially collective bargaining, which contribute to the improvement of service conditions of these workers; and (g) assess the challenges faced with respect to (e) and (f).

Both secondary and primary sources of information and data have been used. In order to provide the context of the study, data relating to the labour market indicators and employment of some categories of non-regular workers, has been used. For these analyses, the post-liberalization period was covered. The period and the terminal year vary according to the availability of data. The social partners, namely workers and trade union leaders, representatives of employers and government representatives (as noted in Appendix II), were interviewed. Information was, of course, collected from websites, both official and private (such as newspapers, legal websites, etc.), and has been suitably cited. The collective agreements and settlements generally cover the period mid–2000s onwards to enable the recent trends to be analysed. To study the collective agreements and settlements “content analysis” was used.

The report is organized in the following manner. Chapter 2 provides the context in which the phenomenon of “non-regular workers” needs to be analysed. The standard labour market indicators are studied, the principal effects of the recent global financial crisis on the labour market, with special reference to the non-regular work practices, are assessed, the trends in non-regular workers’ employment are traced, and the recent developments in labour regulation, at both federal and regional levels, detailed. Chapter 3 reports various strategies and innovative practices employed by the social actors in recent years with respect to the organization, collective bargaining exercises, tripartite deliberations, and so on, in the case of non-regular workers and it reviews the challenges faced. The report ends with conclusions and policy implications based on the findings and analyses of the study.

2. Recent developments in the labour market and labour market regulation

2.1 Labour market in India

The labour market in India is complex and segmented. It consists of sectors and groups of workers whose characteristics are diverse and co-exist in a region, a sector or in an industry. It is deeply and widely segmented in the sense that the different segments, based

on gender, caste, religion, wages, working conditions and status, co-exist. It is complex in the sense that workers often undertake multiple tasks, for example a wage worker may also be a self-employed person. However, the statistical system has created some stylized pictures and these are noted below.

Table 2.1
Main labour market Indicators, 2004-05
(figures in millions)

Particulars	Numbers
Total labour force	415.2
Male	304.6
Female	110.6
Total work force	381.3
Male	280.9
Female	100.4
Labour force participation rates (LPFR) (%)	
Male	53.9 (304.6 million)
Female	21.5 (110.6 million)
Persons (male + female)	38.1 (415.2 million)
Workforce participation rates (WPFR) (%)	
Male	49.6 (280.9 million)
Female	19.5 (100.4 million)
Persons (male + female)	35.0 (381.2 million)
Unemployment rate (%)	
Male	7.8 (23.7 millions)
Female	9.2 (10.2 millions)
Persons	8.2 (33.9 millions)

Note: The above data is based on current daily status (CDS) concept used by the National Sample Survey Organization (NSSO) (see NCEUS, 2009 for the definitions of this and related concepts and their limitations).

Source: NCEUS (2009, Chapter 3, Tables 3.1, 3.2).

The NSSO counted 415.2 million people working and looking for work (on CDS basis) in 2004–05, of which 381.3 million were at work; 33.9 million were counted as unemployed and thus the unemployment rate was 8.2 per cent. As expected, the male labour force and workforce participation rates were higher than that for females. Researchers noted that, while labour force participation declined over the two decades since 1983 owing to less participation by women, it rose in urban areas. In general, male participation increased, while that for females declined in rural areas and increased in urban areas (IHD and ISLE, 2009). Only 25 to 30 per cent of women in rural, and 15 to 18 per cent in urban areas, participate in labour market activities (GoI, 2010) and the low participation is due to economic, social and statistical factors.

Any discussion of the labour market in India should take note of its informal employment as it predominates in economic activity.

Table 2.2
Trend, extent and incidence of the informal economy in India,
1999–2000 and 2004–05

Formal/informal sector	Total employment (millions)		
	Informal/unorganized worker	Formal/organized worker	Total
	1999–2000		
Informal/Unorganized sector	393.7 (99.5)	1.8 (0.5)	341.5 (10.0)
Formal/Organized sector	23.1 (42.1)	31.8 (57.9)	54.9 (100.0)
Total	362.8 (91.5)	33.6 (8.5)	396.4 (100.0)
	2004–05		
Informal/Unorganized sector	391.8 (99.6)	1.4 (0.4)	393.2 (100.0)
Formal/Organized sector	28.9 (46.2)	33.7 (53.8)	62.6 (100.0)
Total	420.7 (92.3)	35.0 (7.7)	455.7 (100.0)

Note: The figures are based on (UPSS) concept used by the NSSO.

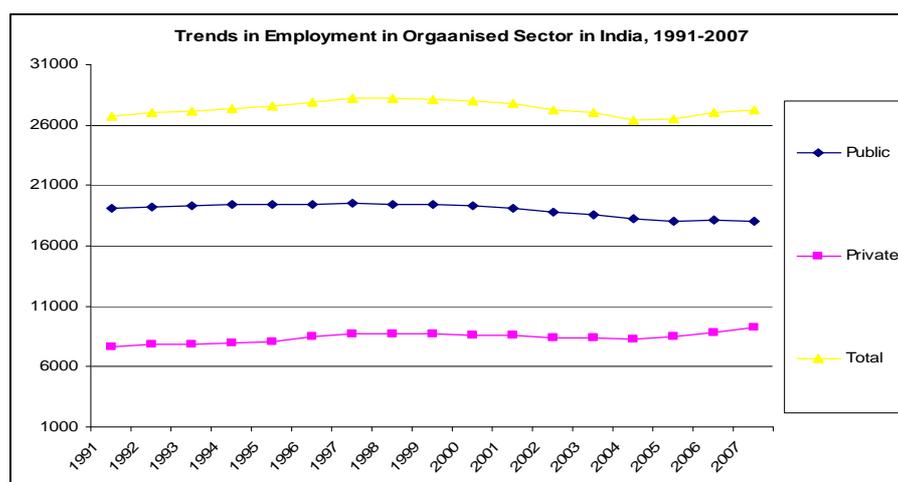
Figures in brackets are percentages (read horizontally).

Source: NCEUS (2009, Table 2.3, p.13),

The NCEUS (2009) defines informal or unorganized employment as follows: “Unorganised workers consist of those working in the unorganised enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment/social security benefits provided by the employers” (NCEUS 2009, p.12). The difference between the informal sectoral and informal economy approaches come out clearly in the above table. The informal sector accounted for 393.2 million workers in 2004–05 while the informal economy counted 420.7 million informal workers also working in the so-called organized/formal sector. In fact, much of the rise (98 per cent) in employment (59.3 million) came from the informal economy (57.9 million). This leads to discussion of employment in the organized sector in a little more detail (see Fig. 2.1).

The organized sector employment, which is generally regarded as enjoying various forms of security, such as employment, income and voice, declined from a high of 28.25 million in 1997 to 26.44 million in 2004 and recovered to 27.28 million in 2007. The drop is higher (1.81 million) if the 2004 figure is taken and lower (0.97 million) if the 2007 figure is taken. The drop in employment is primarily due to the decline in public sector employment (which accounts for two thirds of total employment), though the private sector too witnessed diminution in employment between 1998 and 2003.

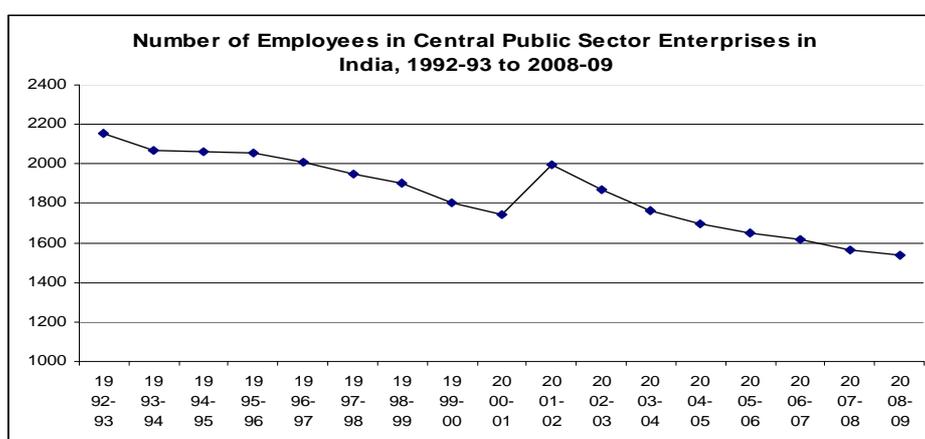
Fig. 2.1



Source: *Economic Survey* (various issues), Government of India, Ministry of Finance, Department of Economic Affairs, Economic Division.

Permanent employment in the central public sector enterprises, which constitutes a significant part of employment in the organized sector in India, also witnessed a steep reduction during the post-liberalization period (see the figure below).

Fig. 2.2



Note: The employment figures exclude casual and daily rated workers.

Source: Gol (2009, b: Annexure 6.4).

2.2 Trends in non-regular workers in India

There is a limited statistical database with respect to non-regular workers in India. Official data are available for only two categories of non-regular workers used in this report; “casual workers” and “contract workers”. These have been supplemented in appropriate places with anecdotal data and some information from other studies. The NSSO and the Annual Survey of Industries (ASI) data are the databases that will be used here and, although dated, give an idea of the trends in non-regular workers in India. The NSSO data is the only source of data on “casual workers”, while the ASI provides data on “contract workers”.

2.2.1 Trends in casual labour in India

It can be seen from the table below that, while the share of self-employed workers increased between 1999 and 2004, after decreasing during 1993–1999, the trends in the casual workers' share showed the opposite trend, in general.

Table 2.3
Percentage distribution of workers by status of employment in India

NSS survey period	Rural male			Rural female		
	Self-employed	Regular	Casual	Self-employed	Regular	Casual
July'93-June '94	57.9	8.3	33.8	58.5	2.8	38.7
July '99-June'00	55.0	8.8	36.2	57.3	3.1	39.6
July '04-June '05	58.1	9.0	32.9	63.7	3.7	32.6
	Urban male			Urban female		
July'93-June '94	41.7	42.0	16.3	45.8	28.4	25.8
July '99-June'00	41.5	41.7	16.8	45.3	33.3	21.4
July '04-June '05	44.8	40.6	14.6	47.7	35.6	16.7

Note: Self-employed include persons who operate their own farm or non-farm enterprises or are engaged independently in a profession or trade on own account or with one or a few partners.

Casual wage labourer is a person engaged in another's farm or non-farm enterprise (both household and non-household) and getting in return wages according to the terms of the daily or periodic work contract.

A casual worker is a person casually engaged in another's farm or non-farm enterprise (both household and non-household) and getting in return wages according to the terms of the daily or periodic work contract for casual wage labour.

A regular salaried/wage employee is a person working in another's farm or non-farm enterprise (both household and non-household) and getting in return salary or wages on a regular basis, i.e. not on the basis of daily or periodic renewal of work contract and includes both full-time and part-time employees.

Source: Kundu and Sarangi (2007).

There are economy-wide aggregate data. In order to understand the incidence of informal jobs, the disaggregated data needs to be looked at and, given that the major focus of this report is the manufacturing sector, it concentrates on this sector.

Table 2.4
Percentage distribution of employment in the manufacturing sector, 2004–05

Category of employment	Organized	Unorganized	Total share (organized and unorganized)
Self-employed	5.59	67.64	50.52
Regular wage workers	70.76	16.23	31.18
Casual workers	23.64	16.13	18.31
Total	100.00	100.00	100.00

Source: Goldar and Aggarwal (2010, Table 1) whose original source of data is unit records of NSS 61st round employment-unemployment survey.

Not unexpectedly, the regular wage workers dominated the organized segment of the manufacturing sector – these workers constitute 70.8 per cent of the workers employed in this segment – while the self-employed workers dominated the unorganized segment of it –

67.6 per cent of the workers in the unorganized segment are self-employed. Casual workers accounted for 24 per cent of the total workers in the organized segment. The disaggregated analyses of data at the two digit industry level could throw further light on the incidence of these categories of workers (see the table below).

Table 2.5
Percentage distribution of workers by status and by industries
in organized and unorganized manufacturing sector, 2004–05

Industry code nos. (2 digit)	Self-employed	Regular	Casual	Total	Self-employed	Regular	Casual	Total
15	4.28	59.37	36.35	100	67.8	17.1	15.1	100
16	15.31	61.84	22.85	100	90.1	3.9	6.00	100
17	5.14	73.76	21.10	100	70.28	12.77	16.94	100
18	5.65	84.12	10.24	100	78.4	13.75	7.85	100
19	9.76	78.69	11.54	100	55.41	28.35	16.24	100
20	17.8	51.12	31.08	100	83.08	4.89	12.03	100
21	0.82	85.32	13.86	100	67.26	23.95	8.79	100
22	11.47	85.38	3.15	100	41.65	51.95	6.40	100
23	0.62	92.17	7.22	100	48.37	0.86	50.77	100
24	4.07	79.12	16.81	100	47.59	30.43	21.98	100
25	11.45	79.79	8.76	100	23.72	62.99	13.29	100
26	3.52	31.19	65.29	100	47.62	5.92	46.46	100
27	1.51	83.81	14.68	100	44.15	34.16	21.70	100
28	4.06	73.44	22.51	100	48.26	36.58	15.16	100
29	5.19	90.71	4.10	100	46.94	38.17	14.89	100
30	0.52	99.48	0.00	100	48.32	47.96	3.72	100
31	10.52	82.96	6.52	100	52.06	41.28	6.66	100
32	3.08	88.69	8.23	100	9.02	83.96	7.02	100
33	2.73	94.44	2.83	100	16.34	69.92	13.74	100
34	0.05	89.43	10.51	100	35.59	49.29	15.11	100
35	0.79	94.4	4.81	100	23.98	67.03	8.99	100
36	5.48	54.1	40.42	100	65.54	19.86	14.6	100
37	0.00	0.00	100.00	100	76.91	3.16	19.94	100
Total	5.89	70.76	23.64	100	67.64	16.23	16.13	100

Note: Industrial code numbers are according to National Industrial Classification (NIC) 2004 and the details of these are given in Table A.2 in the Appendix.

Source: as in Table 2.4.

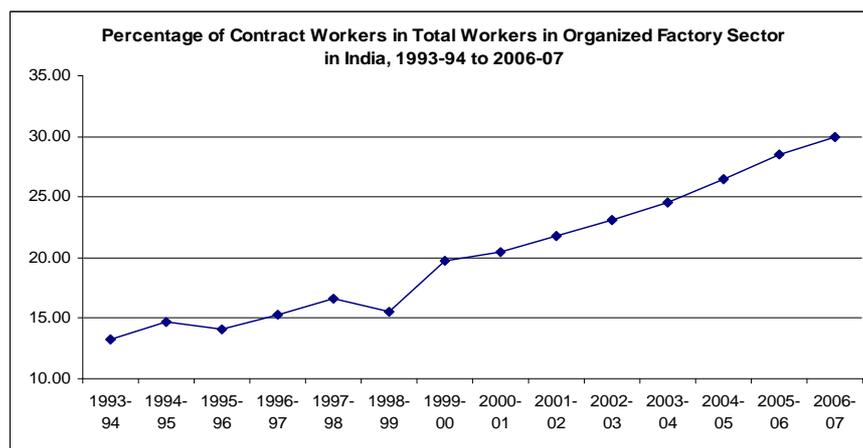
It appears from the data in the table above that casual workers accounted for at least one fifth of the total workers in the organized segment of the manufacturing sector only in eight out of the 23 industry groups considered here. The share is quite high in two industries, namely manufacturing of other non-metallic mineral products (26) and recycling (37); in the latter case all workers were employed as casual workers. The regular workers accounted for at least two thirds of total employment in 17 industry groups. In the case of the unorganized segment, self-employed predictably dominate in several industry groups, regular workers' shares outnumber those of casual workers. Two statistical doubts arise here, viz. (a) all regular wage workers enumerated by the NSSO are not "permanent"

workers in the sense noted in Chapter 1, it merely means that workers are continuously employed and not on a casual basis; (b) all casual workers do not constitute “contract workers”. It is possible that contract workers employed for longer periods (as noted later) might report themselves as “regularly employed” and not as “casual workers”. But, there are data on contract workers, given by the ASI, and this is looked at below.

2.2.2 Trends in contract labour in the organized factory sector in India

The data provided under the Contract Labour Act by the labour departments grossly underestimate the contract workers as there are many unregistered contract agencies. Contract labour employment and the number of contractors *declined* during 1998–2002 in Karnataka whereas field studies showed the opposite (Rajeev, 2006; see also Shyam Sundar 2009, a, for an analysis of this kind of data for Maharashtra). The ASI defines contract workers “as all persons who were not employed directly by an employer but through the contractor, with or *without* the knowledge of the principal employer.” (emphasis added) (GoI 2009, a). Here, the report analyses the data on contract workers collected under the ASI for the period 1992–93 to 2006–07 (the recent terminal year for which data is available).

Fig. 2.3

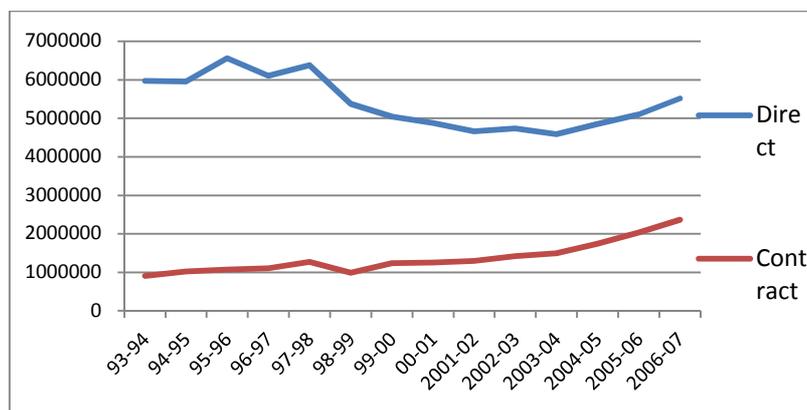


It can be seen that the share of contract workers in total workers in the organized factory sector showed a steep rising trend save for a brief dip in 1998–99. Their share increased from 13.24 per cent in 1993–94 to 30 per cent in 2006–07 (see also Maiti, 2009, Bhandari and Heshmati, 2006, for similar conclusions).

The rise in the share of contract workers in the total of production workers is called by trade unions the “contractisation or contractorisation process”. The relative shares reflect changes in both numerator and denominator and thus it could be that the extent of decrease in the numerator is less than that for the denominator in which case the shares will also show an increase. This is particularly relevant because the contract labour share could increase if the fall in contract labour is less proportionate than that in total employment. This consideration gains relevance when Nagaraj (2004) pointed out that the organized manufacturing sector shed 1.3 million jobs during 1997–98 to 2003–04. Now the question is what kind of jobs have been shed? The ASI classifies workers into two categories, viz. workers directly employed (further classified into men, women and children) and those employed through contractors. The directly classified workers could include permanent, temporary, casual or apprentices and the principal employer is directly responsible for them. The composition of the directly employed workers in terms of permanent and non-

permanent categories is unavailable. From the figure below it can be seen that the absolute number of directly employed workers declined considerably during 1997–98 to 2003–04 while, at the same time, the absolute number of contract workers rose, save for a minor initial dip. This clearly shows that employers have been replacing the directly employed workers with those employed through contractors.

Fig. 2.4
Trends in numbers of workers directly employed and through contractors



Source: ASI, Central Statistical Organisation (CSO), various issues.

The estimates given by trade union leaders, both at the organizational and enterprise level, and survey estimates by researchers reveal that the official figures on contract labour employment are an “underestimate”. Deshpande, Standing and Deshpande (1998, pp.99–100) had doubts regarding the credibility of data on contract labour and also observed that flexible workers’ strength is likely to be “under-reported”. Trade unions consistently maintain that the contract labour system is widely prevalent and these workers constitute a significant share of total employment in the manufacturing and service sectors – in many establishments they outnumber the permanent workers (see Table A.3 in the Appendix). The data in A.3, given by the trade unions, may not be a scientific exercise, but they undoubtedly raise serious questions about the “validity” of employment data provided by the employers. Maiti’s (2009) primary data collected in 2008 from 100 establishments in three common industries (cement, iron and steel and cotton textiles) and a state-specific industry in Gujarat and West Bengal (jute in West Bengal and man-made fibre in Gujarat) showed that contract labour accounted for 70–75 per cent of the total workers employed in the units surveyed. He also noted that this is in stark contrast to the ASI figure which ranges from 15 to 26 per cent in the organized manufacturing sector across the states in India. But, he defined contract labour as including migrant workers, who are directly employed on a fixed term, plus those who are supplied by contractors. His field study data – as per the conventional definition (which would cover the latter section of workers in Maiti’s survey), show the share of contract labour, according to his survey, was 53.6 per cent in Gujarat and 15.1 per cent in West Bengal (see Table 7 in Maiti, 2008).

It is common knowledge, and asserted by both employers and union representatives interviewed, that the contract and casual labour employment is higher in the government sector than in the private sector (see Table A.4 for some data on the use of contract labour in public and private sectors recently collected by V.V. Giri National Labour Institute). The share of employment of flexi-categories of employees in the government sector rose in the post-liberalization period (see P&GWFI, 2007 for reasons and for anecdotal evidence from the trade unions). The decline in the permanent workers’ strength (due to the natural process of resignations, deaths and retirements and non-fulfilment of these posts and the deliberate process of separations through voluntary retirement schemes) and the

competitive logic of labour cost reduction pursued by government are the two immediate economic reasons for the rise in the number and the share of employment of flexi-category employees in this sector.

From the following table it can be seen that contract labour employment has increased in all the states considered during 1993–94 to 2006–07, though the extent of increase varied between states.

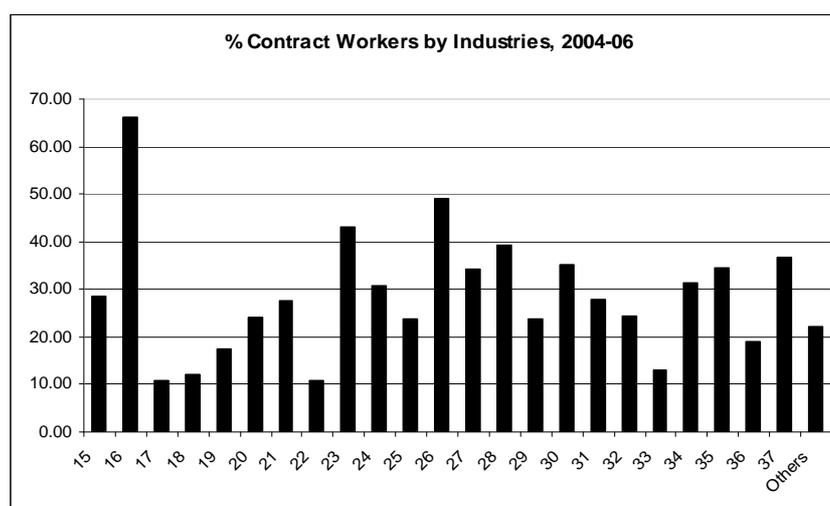
Table 2.6
Proportion of contract workers in total reported number of workers
for the factory sector in selected states in India,
1993–94 to 1994–95 and 2004–05 to 2006–07 (in percentages)

States	1993-94 to 1994-95	2004-05 to 2006-07	States	1993-94 to 1994-95	2004-05 to 2006-07
Andhra Pradesh	36.21	52.35	Madhya Pradesh	15.38	26.81
Gujarat	21.87	34.28	Maharashtra	10.31	31.27
Haryana	21.00	44.12	Punjab	11.10	28.93
Himachal Pradesh	6.55	21.15	Rajasthan	10.98	33.51
Karnataka	7.89	14.28	Tamil Nadu	6.27	14.07
Kerala	1.79	10.52	Uttar Pradesh	11.95	31.48
			West Bengal	7.35	18.75

Source: Annual Survey of Industries, CSO (various years).

It is interesting to note that contract labour accounts for a significant proportion of the total workers in States like Andhra Pradesh (52.35 per cent), Haryana (44.12 per cent), Gujarat (34.28 per cent), and Rajasthan (33.51 per cent). In States like Kerala, Tamil Nadu, West Bengal, the incidence of contract labour appears to be on the lower side, though rising.

Fig. 2.5



Note: The National Industrial Classification used during this period is NIC 2004 (see Table A.2 in the Appendix I for industry particulars).

Contract labour employment is highest in tobacco (66.19 per cent), followed by non-metallic mineral (48.99 per cent), petroleum (43.16 per cent), fabricated metal (39.28), and recycling (36.80), and basic metals (34.31) industries. In ten out of 24 two-digit industry groups considered here the contract labour share was higher than 30 per cent. In six of them the share was lower than 20 per cent. It was lowest in textiles and printing. The industrial distribution is almost the same for the earlier period (up to 2002–03) noted by Bhandari and Heshmati (2006, Table 1).

2.3 Impact of economic slowdown on employment

The economic slowdown following the global financial crisis, notwithstanding the “decoupling or insulation” hypotheses, started impacting the manufacturing sector (and other sectors, e.g. construction) from the third quarter of 2008 (though there was a marginal decline in the second quarter). This was reflected in sectoral quarterly growth rates (see Shyam Sundar, 2010, b). As the ILO (2009) observed, unemployment is not the only issue arising out of the global economic crisis; problems include partial employment, shorter working hours, partial compensation and the ever-lurking threat of unemployment at any time and the risk of exclusion from the labour market. While many union leaders interviewed opined that the impact of economic slowdown was limited in most of the industries they operate, it did have an impact to the extent the industries or sectors are exposed to global trade mechanisms that transmitted risks, for example in automobile and garment (see the ILO studies initiated by the Subregional Office, New Delhi). But, the general feeling among the union leaders was that the economic slowdown was used by employers as an excuse to downsize employment.

The Labour Bureau conducted a series of sample surveys covering selected sectors in selected areas during the period of economic slowdown and recovery. When an economic crisis takes place or worsens, and when firms respond to it with layoffs, non-regular workers are the first to be dispensed with; interviews and case studies endorse this supposition. Conversely, when economic recovery takes place, non-regular workers should get back into the labour market as quickly as they were eased out. The Labour Bureau’s surveys offer some support for this hypothesis (see also Kannan, 2009). The Labour Bureau classified workers into two categories: those directly employed, including directly employed by the firm, such as permanent, temporary and casual workers; and contract labourers. Thus, the direct jobs category comprises both regular and non-regular workers (see Labour Bureau, 2009, c). The April–June 2009 survey showed that direct jobs were lost in large numbers, while contract worker jobs gained – 171, 000 direct jobs were lost, while 41,000 contract worker jobs were gained. In the subsequent quarters, i.e. the third and fourth quarter, when the employment situation improved, employment in both categories increased. However, in the first quarter of 2010, the employment of directly employed workers declined, while that of the contract workers rose (see the table above). Thus, the results are mixed. The impact of the economic slowdown on the economy, and on employment and industrial relations aspects, were discussed in the tripartite meetings of the International Labour Conference and, as a result of the pressures exerted therein, and in other ways by the social actors, the government issued relief packages (see Kannan, 2009 for details).

Table 2.7
Snapshot of major findings of the Labour Bureau's surveys,
October 2008 to March 2010

Survey period	Sample features (sectors/regions/firms)	Extent of estimated overall employment (increase/decrease)	Direct jobs	Contract workers
October-December 2008	2581 units from 7 industries	Decrease of 0.5 million jobs (-1.01%)	-0.63%	-3.88%
January 2009	A quick thin sample of 682 units 7 industries	Loss of 98,156 jobs	N.A.	N.A.
January-March 2009	3192 units in 8 industries	Increase of 0.477 million jobs	+0.68%	0.00% ^(a)
April-June 2009	20 centres covering 11 states/union territories: 3003 units	Loss of 130,000 jobs	- 171, 000 lost	+ 41,000
July-September 2009	20 centres covering 11 states/union territories: 2873 units	Increase of 497,000 jobs	+ 392, 000	+ 105, 000
October-December 2009	2593 units in eight industries	Increase of 638,000 jobs	+ 579, 000	+ 59,000
January-March 2010	2815 units in eight industries	Increase of 61,000 jobs	- 13,000	+ 74,000

Note: % figures refers to average monthly change during the period of survey.

(a) – during this survey period, the negative growth rates for five industries is neutralized by positive growth rates in the remaining three industries, hence zero growth rate (see Table 4 (Labour Bureau 2009, b).

Source: Labour Bureau (2009, a, b, c, d; 2010, a, b).

2.4 Legal rights and working conditions of non-regular workers: an illustrative discussion

Workers' terms and conditions of employment are generally determined and protected by labour laws and their related institutions (for example labour administrative bodies and judiciary) and workers' organizations and others. A macro picture of coverage by two institutions is provided, namely labour laws and trade unions and collective bargaining to give a broad idea of the extent of workers' protection irrespective of status, and occupation and gender.

The macro contextual factors, such as coverage of labour laws, effectiveness of their application, union density and collective coverage, become important when the legal rights and working conditions of non-regular workers are assessed. Concerning coverage by labour laws, the first significant feature that stands out is the "thresholds" used by them for coverage. The number filters include the number of workers, the wage/salary earned or the scheduled employments. To give an example, the Factories Act, 1948, covers factories employing 10 or more workers using power and 20 or more workers not using power. Thus, the "filters" fragment the workers and establishments artificially (see NCEUS, 2009, pp.178–180). The untiring criticism of the trade unions is that the enforcement of labour laws is inadequate and this is accepted by the government. The number of inspections, prosecutions and convictions under various labour laws has shown a decline in the post-liberalization period (see Shyam Sundar, 2008, a, 2010, a). In fact, this issue has figured in the country wide strikes (for example 7 September 2010) and in tripartite discussions (see <http://labour.nic.in/ilc/41ilc.html>, accessed 26 June 2010). The union density and collective bargaining coverage rates at the macro level are low (less than 5 per cent, see Shyam Sundar, 2010, d, and Venkata Ratnam, 2006 for data on both indicators) and arguably

cover mostly permanent workers (interviews with many union leaders mentioned in Appendix II). For example, around 40,000 contract workers are employed in North Chennai establishments and it is estimated that around 1,000 of them are unionized and the Centre of Indian Trade Unions (CITU) is perhaps the only major union doing this difficult job (interview with Rama Subramanian). This gives an idea of the low union density with respect to contract workers and is largely applicable to all categories of non-regular workers. Furthermore, apprentices and trainees do not enjoy “voice security” as they may not be covered by the definition of “workers” and due to the difficulties in organizing them (interviews with Shanmugam; Rama Subramanian, Soundara Rajan, Kumaraswami; see also the Table 2.8 below).

The fundamental issue relating to non-regular workers is employment security. The legal criteria for permanency and retrenchment considerations, discussed in Chapter I, in fact provide the basis for employment of non-regular workers. The dominant employment pattern with respect to the non-regular worker is that employers hire and fire them at frequent intervals to avoid them claiming coverage under these provisions (interviews with all the union leaders mentioned in Appendix II). The union leaders have cited numerous instances where non-regular workers, especially casual, contract and temporary, have worked for years (sometimes more than a decade), but continue to fight for permanency where union support is available (see the Chapter 3 in this report).

Table 2.8
Comparison of terms and conditions of employment
of regular and non-regular workers in India

Particulars	Regular	Contract/casual/temporary
Employer-employee relationship	Direct	Indirect
Appointment	Formal	Often informal
Work site	Same workplace till in employment	Different workplaces
Employer	Same till in employment	Different contractors in some cases
Employment tenure	Open ended	Work or time based in short spurts
Employment security	High but being threatened	Low or nil
Training (skill security)	High; human capital returns can be reaped	Low or nil unless the contractor invests and maintains the workers on roll
Wages	Collectively bargained wages	Often not even paid the minimum wages; receives wages many times lower than the regular workers
Fringe benefits	High	Low or nil (bonus payment not universal; struggle for getting uniform, boots allowances, etc.)
Terms and conditions of work	Collectively bargained or legally stipulated	Some aspects legally stipulated but poorly implemented; but largely unregulated
Social security	Covered and enjoyed	In some cases legally covered, but largely in practice not existent
Income security	High	Low or nil
Union organizational coverage	Trade unions' presence is relatively significant, but declining	Poor union coverage
Collective bargaining coverage	Low	Virtually nil
Voice security	Medium	Low or nil

Particulars	Regular	Contract/casual/temporary
Safety and health at work place	Strong law, union monitoring – Medium	Least safe
Nature of work	Regular	Often regular work but paid lower wages; meant to be engaged for periphery work

There exist significant wage differences at different levels. In 2004–05, the regular workers in urban areas (where the presence of the formal sector is likely to be more prominent than in rural areas) earned nearly three times the real wages of casual workers. However, the rate of growth of real wages of casual workers during 1993–2004 was faster than that of regular workers (see Tables 1, 2 in IHD and ISLE, 2009). Rajeev (2006) finds in her survey of contract workers in Karnataka that a majority of them earn less than 2,000 rupees (INR) and some less than INR1,000 (less than the minimum wage) while regular workers earn at least INR6,000, per month. A quantitative analysis of results of the survey of 551 workers in selected industrial areas in West Bengal, Uttar Pradesh, Haryana and Delhi in 2004–05 showed a “substantial wage gap” between permanent and contract workers – contract workers were found to earn 45.5 per cent less than permanent workers (Bhandari and Heshmati, 2006). While some sections of permanent workers and those on the payroll of the principal employer are paid the cost of living allowance (called dearness allowance in India) to compensate for price rises, there are limited instances where non-regular workers are paid the dearness allowance. A Government of India survey of contract workers in air transport undertakings found that only 15 per cent of the contractors were paying the dearness allowance as a separate component to their workers (see GoI, 2002, 2006). The data given in Table A.5 in Appendix I show the wage differentials between the contract and regular workers doing the same or similar kind of work. The union leaders lament that the contract and casual workers are not being paid the minimum wages. There are varied accounts of exploitation of contract and casual workers, including making their payments less than officially shown figures, recovery (forceful) of wages after official payments, non-payment of the Employees’ Provident Fund (EPF), the Employees’ State Insurance (ESI) dues, no overtime pay, higher workload and denial of leave (see GoI, 2002; see also Rajeev, 2006; SNCL, 2002).

2.5 Recent developments in labour regulation in India

The demand for labour reforms by employers acquired intensity in the post-liberalization period, but the trade unions resisted them. As seen earlier, the reforms relating to amendments of Chapter V-B of the ID Act and the Contract Labour Act are two major issues. Considerable debate and heat have been generated on these issues (see Ahsan and Pages, 2008; Shyam Sundar, 2009 c, 2010, a, for an account of these debates). The Government was caught in a dilemma. At the same time, labour reforms belong in the realm of “mass politics” unlike, for example reform of capital markets, the “elite politics” (see Varshney, 1999). The former unlike the latter is visible and looms large in society and, hence, could have social and political implications. The political calculus often is that the social and political costs could outweigh the meagre economic benefits arising out of labour reforms. These two issues are called “critical or hard” labour reform issues (see Shyam Sundar and Venkata Ratnam, 2007 for a discussion on “hard” and “soft” reform distinctions). They are “hard” in the sense that employers and trade unions stick to their positions rigidly and the government is hesitant to introduce these reforms owing to the political (loss of popularity and risk of losing elections) and social costs (unemployment and unrest). The defeat of the National Democratic Alliance (NDA) government was attributed to its aggressive pursuit of labour reforms, such as strategic privatization of central public enterprises and its intention to introduce flexibility in contract labour employment among others. The Congress-led United Progressive Alliance (in its first and second terms) has not sought to introduce these critical labour reforms.

At the national level, the central government adopted two strategies: (a) use social dialogue mechanisms to build consensus among the social partners to effect some critical labour reforms (see Chapter 3 for more details); and (b) build public support by instituting enquiry and tripartite bodies to look into the issues relating to critical labour reform and to keep them in the public policy domain.

The National Democratic Alliance (NDA) government appointed a number of bodies to suggest reforms and publicized these reports (see Shyam Sundar, 2009d, 2010, a, b, for details of these bodies and their recommendations). For example, in March 2000, a Group of Ministers (GoM) was constituted by the NDA government and recommended that certain activities, such as sweeping, cleaning, dusting and gardening, collection and disposal of garbage and waste, security, watch and ward, which form the “support services” of an establishment can be excluded from being considered for prohibition under the Contract Labour Act (under Section 10). However, this recommendation could not be implemented due to a change in the government and, subsequently, the absence of a consensus (Planning Commission, 2006). The SNCL (2002) in its report, distinguished between “core” and “non-core” activities and recommended free employment of contract labour in the latter, and where it is absolutely essential and subject to certain labour protective conditions, also in the former.

The trade unions have conducted several mass agitations against the reform initiatives and policies in the form of all-India strikes, *morchas* (i.e. processions) and *dharnas* (fasts), to protest against the reform proposals. More than a dozen all-India strikes have taken place so far, mostly on the economic and labour policies of the government (see Shyam Sundar, 2010, b, c, and the references therein for these struggles). The trade unions have built alliances with new forms of workers’ organizations, non-governmental organizations (NGOs) and other social organizations to build mass movements. They have enlarged their protest agenda to cover not only issues relating to organized sector workers, but also those concerning the unorganized workers (like social security, right to employment) and livelihood issues (right to trade for street vendors) (see Shyam Sundar, 2010b, c, for these strategies and struggles). The social dialogue process in the form of tripartite consultations and discussions has not been productive owing to the “rigid” positions taken by the social actors and the government. The social dialogue process with respect to reform of the Contract Labour Act is a case in point (see Chapter 3 for further discussion on this).

In order to get out of this deadlock, the central government has *shifted* the reform process to the state governments. The constitutional arrangement of legislative powers in a federal set-up, such as that in India, enables the state governments to not only enact their own labour laws or amend the central labour laws, but to introduce their own legislations on the subjects in the state and the concurrent lists under the constitution. The state governments in competition for capital have introduced some bold labour reform measures. These include, among others, relaxation in the labour inspection system (e.g. self-certification, joint inspections), a host of reform measures like relaxation from selected laws and self-certification to the establishments in information technology (IT) and IT related establishments, and units in the special economic zones (SEZs), freeze on employment and resort to contract and casual labour systems in the state government sector (see Shyam Sundar, 2009a, c, 2010a, b).

The reforms with regard to the contract labour system, as an example of non-regular workers, shall be noted here. The government of Andhra Pradesh amended the Contract Labour Act in 2003 to “reduce the scope and extent of coverage provided to various categories of unprotected workers” (Reddy, 2008, p.42). The amendment allows the employment of contract labour not only in the “non-core” activities, but also in the “core” activities under certain circumstances. It has expanded the list of “non-core” activities by reducing the “core activities” and allowed employment of contract labour in them. The need then for the constitution of a Contract Labour Advisory Board becomes superfluous and thus it is abolished (ibid.). The employers in other states have been demanding the

“Andhra Pradesh (A.P.) pattern” amendment of the Contract Act in their states also. Several state governments have tried to imitate the so-called “A.P. pattern” (see Shyam Sundar, 2009, a, for an account of the proposals and policies in this regard by the government of Maharashtra), but the political economic considerations in them did not aid such a move. Instead, many state governments chose the “soft” route of introducing reforms relating to contract labour in the SEZs or the Export Oriented Units (EOUs) (see the box below).

Box 2.1

Labour rights and contract workers in special economic zones (SEZs)

Several state governments have liberalized the regulations and changed the labour administrative framework with respect to establishments in the SEZs. The SEZs thus became “test cases”. The self-certification system has been introduced in many SEZs in India. The units in the SEZs are declared under the ID Act as “public utility services” which render strikes difficult if not impossible. There have been amendments to other aspects of labour laws like minimum wages, safety and health, hire and fire rights and so on (see Shyam Sundar 2009, a, 2010, a; Iyer 2008 for details of these). All taken together affect the labour market governance of units and labour rights of workers in the SEZs (see Citizen’s Research Collective 2009; Shyam Sundar, 2009, a, 2010, a, for a full discussion of all these issues). In Gujarat, the government excluded the units in the SEZs from the coverage of the Contract Labour Act (*vide* Section 18, Schedule II and item 4, Gujarat Special Economic Zone Act, 2004) and the units in the zones are allowed to submit consolidated annual reports to the Development Commissioner under eight labour laws which include the Contract Labour Act (section 19). The Maharashtra government amended the Contract Labour Act (sections 1 and 10) in 2005 to deem certain activities - like canteen, gardening, cleaning, security, courier service, transport of raw material and finished products, or loading and unloading of goods – performed within the premises of a factory of the establishment in SEZs and the work in the factories and establishments which are declared 100 per cent export units by the government as “temporary and intermittent work”. This amendment thus takes these activities out of the purview of the Contract Act (Bill No. XLI of 2005 printed in *Labour Digest*, June 2005, pp.248-9). In Tamil Nadu, the government has allowed the firms in the Nokia SEZ to self-certify that they are implementing the provisions of the Contract Labour Act.

The state governments have also adopted an ingenious strategy to ensure that firms, in reality, do enjoy labour flexibility by allowing them to devise managerial strategies to restructure their organizations, reorganize their work operations and manage the quantity and composition of their workforce. This route to reform has been characterized as “reforms by stealth” (see Bardhan, 2002). This method involves keeping the formal institutional framework intact and allows employers to employ policies and measures that in effect achieve labour flexibility. The firms have adopted managerial practices like: reducing the bargaining category of workers (by promotion from workers to supervisory or managerial categories while continuing to perform their tasks as a worker); forced idleness pay; voluntary retirement scheme (VRS); parallel production; closing down firms in a highly unionized region and shifting them to non-unionized regions; employment of contract labour system; and prolonged lockouts, to “by pass” the restrictive laws and troublesome unions (see Shroufi and Nandkumar, 1995. If a firm/industry successfully implements its labour flexibility strategy then the other firms follow these strategies (“demonstration effect”) (interviews with the employers’ representatives in Chennai, and with Shanmugam, Soundara Rajan).

3. Strategies and approaches of social partners with respect to organizing and collective bargaining relating to non-regular workers

3.1 Social dialogue (tripartite talks) on contract labour

During the British rule, some important consultative forums were established and have been continued since then. The non-statutory consultative bodies at the national level

include the Indian Labour Conference (ILC) and its adjunct body, the Standing Labour Committee (SLC) and a number of industry and sectoral bodies. The efficacy of social dialogue will be briefly noted by considering the tripartite talks with reference to contract labour as an example.

Two main issues, employment security for and parity in wages and service conditions between regular and the contract workers, have been prominent in tripartite discussions. Trade unions demand that the Contract Labour Act should be amended to provide for employment security to contract workers in the form of their absorption by the principal employer upon the abolition of the contract labour system. The principle of “equal pay for equal work” (payment of same wages and other benefits for same and similar nature of work) already exists in the Rules (Central) framed under the Act and the trade unions demand that the same provision be incorporated into its (see Shyam Sundar, 2010, d, for a full discussion of all issues relating to contract labour). Employers have stridently opposed these two demands and pushed forward their reform agenda noted earlier. The issues on contract labour have been significantly discussed since the 41st ILC in 2007. It discussed the issues surrounding the reform of the Contract Labour Act (see the agenda of and the discussion in the ILC, MoL&E, 2007, a, b). Its main conclusions were that the regulatory mechanism should be strengthened and the Act implemented in letter and in spirit (see MoL&E, 2007, b).

As a result of divergence of views on the aforementioned two main issues, and in pursuance of the recommendations of the social actors in the ILC in 2009, the Government of India constituted a tripartite group on 30 June 2009 to “examine the provisions in the contract Labour (Regulation & Abolition) Act, 1970 and suggest amendments” to the said Act in terms of the views of workers’ and employers’ groups (MoL&E 2009, a, b). The group held six meetings, but could not reach consensus on the amendments to be made to the Act. As a result it submitted its report without firm policy guidelines and merely reiterated the well-known views of the social actors (interviews/discussions with Ramanand, Choubey, Dias, Khan). Consequently, the contract labour issues were further discussed in the 43rd ILC held in November 2011 (MoL&E, 2010). The Conference Committee on contract labour agreed unanimously on the following:

- (a) the rules made under, and the provisions of the Contract Labour Act, should be effectively implemented;
- (b) the labour enforcement machinery should be strengthened with the requisite manpower and logistical facilities;
- (c) state governments should constitute the tripartite state advisory boards as provided under the Act; and
- (d) payments should be made to contract workers through banks.

Thus, there is “consensus” on labour administrative issues relating to contract labour law, such as effective implementation and wage payments through banks, but no “consensus” on wage parity, universal application of the Contract Labour Act, or the employment security of contract workers. The stalemate continues even after several rounds of tripartite deliberations.

The ILC has been hailed as a “Labour Parliament” by the political leaders in their speeches to it (see references to these descriptions in MoL&E, 2009, b; Labour File 2002). The long history of the ILC (and SLC) provides a strong institutional base for social dialogue. However, social dialogue through these tripartite forums has not been productive. This forum has been used by the tripartite actors to push through their own view, rather than seeking policy compromises and solutions. The government has been taking a pro-globalization and pro-labour reform view and using this forum to convey and test their views and create a consensus on them (see for e.g. Pandhe, 2001; Labour File, 2002). Indeed, these have had the unexpected effect of unifying the Central Trade Union Organizations (CTUOs) and those cutting across party affiliations have often put up a stiff

and united opposition to these reform initiatives. The left-wing trade unions have dubbed the talks in the ILC as “talking shop exercises” (Varada Rajan, 1999). The views of the social partners and the state governments have been recycled in these tripartite forums with little or no consensus on the main policy reform issues. On the contract labour issue, as in the case of others like disinvestment, exit policy etc., the stalemate continues despite the appointment of a tripartite group. The tripartite group became another forum for the social actors to reiterate their views and stick to their guns.

3.2 The litigation route: a note on trends in judgments from the judiciary with respect to non-regular workers

There exists a consensus among researchers in jurisprudence that, until the mid-1990s, the judiciary in general took a pro-active stance and handed down judgments that sought to establish and protect the rights of workers, including the right to strike and employment security (see e.g. Dhavan, 2003; Singh, 2008, for the recitation and analyses of judgments on these issues). The trade unions made frequent use of the litigation route as they saw in the judiciary a friendly ally in the cause of establishing and furthering workers’ rights. However, the judiciary seems to be taking a stance in the post-globalization period which has taken away the long fought for labour rights in the areas of the right to strike, workers’ compensation, employment security of casual, temporary and contract labourers, and established a new perspective that aids the process of globalization (see Cox, 2008; Singh, 2008).

In the case of casual and temporary workers, in 2006 the Supreme Court (*Secretary, State of Karnataka & Ors vs. Uma Devi & Ors*) overruled the earlier pro-labour judgments and held that, *despite* long and continuous years of service (sometimes more than a decade) casual and temporary workers employed without due selection process had not the right to be regularized as they had made backdoor entries into jobs thus depriving other potential aspirants seeking jobs of employment (see Singh, 2008 for a critical analysis of this judgment). Obviously, this judgment has been cited *ad nauseam* by employers in subsequent legal battles concerning permanency of these non-regular workers, and has served as a legal precedent (interviews with Cox, Nair, Samant, Singhvi, et al.).

The Supreme Court in *Air India Statutory Corporation vs United Labour Union* in 1997 (the Air India case) took a pro-active stance and ruled that, in the event of abolition of contract labour, the triangular relationship becomes bipartite (as the contractor disappears) and the principal employer should absorb the contract workers and regularize their service (called the “automatic absorption” argument). This provided a tremendous boost to contract workers and litigation and struggles to reap the benefits of this judgment followed. The Supreme Court in another case in 2001 (*Steel Authority of India Ltd. vs National Union Waterfront Workers*, the SAIL case) reversed the Air India judgment by arguing that the Contract Labour Act does not provide for automatic absorption of contract workers upon abolition (see Cox, 2008 and Singh, 2008 for a technical discussion of the two judgments). This led to a considerable drop in the litigation for permanency of contract workers (Singh, 2008).

The present legal principles are as follows. If the contract is genuine, the appropriate government and not an industrial tribunal can order, after due consultations with the board, abolition of contract labour (see Varghese, 2004). The regular workers, and not the contract workers, can raise industrial a dispute in this case for abolition of contract labour as there exists no employer-employee relationship between contract labourers and the principal employer (Varghese, 2004). If the contract is not genuine (sham contracts) then the contract workers can themselves raise an industrial dispute demanding regularization of their services and claiming benefits available to regular workers. The Industrial Tribunal will adjudicate on the issue of genuineness of the contract (see also Cox, 2002; 2008). The onus of proving the contract labour system is a sham lies on the workers and unions. The

criteria usually used are questions like “who appoints?”, “who supervises?” and “who takes disciplinary actions?”. The courts are reported to have made the criteria, “more and more difficult and changing the interpretation earlier given to certain criteria” (Cox, 2008:p.71). Thus, it has been a difficult time for non-regular workers in the court rooms.

3.3 Non-regular workers and trade unions in India

Historically, the unions concentrated on the dominant section of the workforce i.e. on male, full time, *regular*, native, blue-collar workers employed in large scale factories. They paid little or no attention to women, contingent (temporary, casual, contract), young, immigrant workers, and workers in small establishments and the informal sector (see Shyam Sundar, 2009, b). The antipathy in a sense was (is) mutual: the vulnerable segments, such as contract or casual workers enjoyed little or no employment security and had no stable place of work and hence investment in union activity made little economic sense. Trade unions avoided them as unionization is not easy and the conventional organizational strategies did not suit them. There was clearly a divide between the regular workers and the non-regular workers, a kind of segmentation or rather a hierarchization within the workforce. As a well-known trade union researcher and activist notes “... permanent workers have been indifferent towards the contract workers in the same workplace. This has been noticed at many places, particularly in public sector units”. (P&GWFI, 2007)

Three factors aided organization of the non-regular workers in recent years. Firstly, trade unions have realized their shrinking base, i.e. the formal employment sector (especially in the government sector as noted in Chapter 2) and the need to expand their organizational activities to become a socially inclusive organization (the objective of “encompassingness”). Secondly, the numbers of non-regular workers have risen and thus, especially in the large firms and public sector establishments, there exists conducive conditions for their organization, for example economies of scale. Both the permanent and non-regular workers have realized that the globalization process poses threats to both segments (see P&GWFI, 2007). Thirdly, the workers and the unions, until the beginning of the 2000s, concentrated on the legal route, i.e. to resort to litigation and get legal relief from the courts. However, some adverse judgments (like SAIL and Umadevi judgments as noted above) have, in a sense, redirected their organizational strategies towards organization and collective bargaining for these workers. It is difficult to organize the non-regular workers (see below), but there are several success stories in the country and a few instances are highlighted here. Apart from the two examples discussed below, there are organizations like the Trade Union Centre of India (TUCI, Mumbai), Trade Union Co-ordination Centre (TUCC) (Bengaluru), the All India Central Council of Trade Unions (AICCTU), and the Self-Employed Women’s Association (SEWA) that organize contract and other forms of non-regular workers which, for reasons of space, have not been included here (see Shyam Sundar, 2009, c, 2010, b, d, for details on these).

3.3.1 Organization of non-regular workers: two examples

Contract workers in Reliance Energy Ltd., Mumbai: Formation of Mumbai Electric Employees Union (MEEU)

The Reliance Energy Ltd. (REL), an Anil Ambhani controlled company in Mumbai employs around 3,000 regular employees and around 4,500 contract employees. They perform regular work, but are reported to be paid only 40 per cent of the wages of the regular employees. The recognized union excluded them from both its union organization and the collective agreement and usually signed settlements only for regular employees. The contract workers wanted to enrol as members of the recognized union, but were not admitted to it. The adverse factors at work, the hostility of the recognized union and the

following incident prompted the contract workers to form *their* own union. The contract workers went on strike for 15 days when the management refused to pay compensation to the widow of a young contract worker, who died of burn injuries at the site. The strike and the intervention of the Trade Union Solidarity Committee (TUSC) and the Labour Minister resulted in the payment of compensation to the widow. The success of the strike led to the formation of the MEEU in July 2005 (the story is based on a note on the struggle by Vasudevan (2007) and interviews with him).

Sharmik Ekta Maha Sangh, Pune

In Pune, the union pattern is enterprise-based unions, not affiliated to any state level or national level union organizations, political or otherwise. Nevertheless, more than 60 such enterprise-based unions in the industrial belt came together and formed a local networking organization called Sharmik Ekta Maha Sangh (Maha Sangh). One of the biggest problems faced by unions in this area is the contract labour system, which is preferred by employers, for reasons mentioned earlier. The main activities of the Maha Sangh are to: (a) build networks among the enterprise based unions; (b) conduct solidarity actions supporting struggles by its member unions (conduct of *morchas*, *dharnas*, solidarity token strikes, contribution of funds, etc.); (c) organize the unorganized workers in the factories; and (d) employ rational and innovative methods to strengthen struggles, such as seeking information under the Right to Information Act (RTI) and putting pressure on the management and the government to sort out the issues and problems (see the box below for more information on this method).

Box 3.1
Use of innovative methods in building organization and struggles
with respect to non-regular workers

The constituent unions of the Maha Sangh obtain information concerning the contract workers from the agencies coming under the Labour Department of the Government of Maharashtra using the procedures laid down under the Right to Information Act, 2005. This has been used in cases relating to Bosch, Jaundier, and Sandvik companies in this area. For example, the union seeks information under the RTI Act on the following aspects: (a) which categories of work or workers can be given to contractors under the Contract Labour Act; (b) the proceedings relating to abolition of contract labour in individual cases – for example, it asks for the minutes of the Contract Labour Advisory Board on the issue of abolition of contract labour and sees whether the union concerned was involved in the proceedings and verifies the statements made therein; (c) the details of inspection under the relevant labour laws; (d) the details of issue of licence to the contractors and the registration certificate to the principal employer – such as the number of contract workers sought to be employed, occupations/jobs/services for which the contract labour system was intended to be employed and sanction details and so on; (e) the details of commercial contract between the principal employer and the contractors etc. The unions then compare this information with the ground realities and if the two differ, it then takes relevant action like raising a dispute, negotiation or discussion with the relevant parties, raising of disputes or complaints, and redressal of anomalies and so on. The union leaders, however, stressed the difficulties involved in the process of extracting the information from the government agencies concerned notwithstanding the law and, more so, in the remedial processes (interview with Shrouti, Dhokale, M.M. Jagdale, Cherian). This is happening in other centres also (for example by CITU in Chennai and some unions in Bengaluru (interviews with Soundara Rajan and Shiv Shankar).

It relies less on the judicial route and more on direct struggles. Though the contract workers are generally not members of the unions in this area, the union intervenes in various matters relating to them (interviews with Dholakia, Jagdale, Shrouti).

3.3.2 Main features of organization of non-regular workers

The union organizational aspect of the contract/casual workers has shown three characteristics. First, the established and the affiliated trade unions, CTUOs, or the regional trade union organizations have begun to: (a) include the contract and casual workers as members of the union of the regular workers; or (b) float a separate organization for the contract and casual workers under their banner. The CTUOs, other

than those mentioned above, like the All India Trade Union Congress (AITUC), CITU and the Indian National Trade Union Congress (INTUC), organize contract workers and establish separate federations of them or include them in the regular workers' organizations. Second, either spurned or neglected by regular workers and their unions, the contract workers form their own union organizations, which are still in the nascent stage. The case of contract workers' organization in the Reliance Energy Ltd. in Mumbai is a case in point. Third, the trade unions and other organizations in a local place come together to form a "local-level organization" which forms the focal point of struggles and organization of both regular and non-regular workers – Shramik Ekta Centre in Pune is a case in point. The AICCTU in Chennai is planning to mobilize all kinds of workers' organizations in Chennai and its environs like Sriperumpudur (where contract, casual and trainee workers abound) and form a common struggle centre (interview with Kumaraswami).

3.4 Struggles of and for non-regular workers

The discontent of non-regular workers has surely aided their organization. They, especially the contract and casual workers, on several occasions, have gone on strike either spontaneously, or under the banner of a union, and in solidarity with regular workers. Though the regular workers enjoy the advantage of the power of the established unions, and can conduct strikes with professional skills, they are often at a disadvantage as employers in the supply chain network can outsource production or use contract labourers. Though the contract labourers do not have the institutional power, they are large in number and sometimes in a strategically strong position (especially in the oil, petroleum and refining sectors) and thus are better able to strike. The trade unions of contract workers strike on several issues. The two principal issues relate to charter of demands, which largely revolves around wages of and facilities for contract workers, and employment security of non-regular workers. These struggle details will be mentioned when the bargaining strategies and processes, with respect to these workers, are discussed.

There are three types of struggles by non-regular workers:

Type 1: Tensions and conflicts between regular and non-regular workers: There are tensions and divisions between the two classes of workers, regular and non-regular. When the permanent workers strike, contract, casual, temporary and migrant workers are "supplied" by the strike-breaking contractors and agencies to the firm to continue production during the strike and to break the strike. The employers cleverly pit the contract/casual workers against the regular workers as happened with Pricol Ltd. in Coimbatore, Tamil Nadu. The union at Pricol Ltd. is fighting hard to close the divide created by the employer and the contractors and to communicate to the contract/casual workers that, in fact, it is not capitalizing on their plight, but fighting for, and on behalf of, them (interview with Kumaraswami; see also Shyam Sundar, 2010, b, for an account of the strike and for further references on it). When regular workers strike, the firms use it as an opportunity to replace them with contract workers. Finally, the issues of the non-regular workers are not taken up by the regular workers and there exists a divide between them. There is no support from regular workers for the struggles of non-regular workers. The Reliance Industries case study presented above is an example of this divide.

Type 2: Solidarity between the regular and non-regular workers: The commentators have been advocating for cooperation between the two categories of workers to be able to achieve better results for *both* (P&GWFI, 2007). In the Type 2, both the non-regular and the regular workers come together and strike and the regular workers take up the issues relevant to the non-regular workers (e.g. interviews with Shrouti, Mahadevan). Both regular and contract workers in Bosch and Brembo automobile factories in Pune went on strike on 18 July 2009 for equal pay for equal work for contract workers ("Bosch and Brembo employees call off strike", <http://ntui.org.in/bulletin/october-2009/> accessed 25 February 2010). In the public sector wage negotiations, it is the first time in

the seventh round of wage negotiations held since mid-2000s, that the CTUOs have included the demands concerning contract workers that: “Wages rise for the contract workers in PSUs ensuring at least the minimum wage and benefits available to the permanent workers in all respective PSUs” (see Shyam Sundar, 2010 b, for more details on the organizational solidarities arising in the public sector).

Type 3: Spontaneous actions by non-regular workers: The non-regular workers conduct industrial actions, such as occupation of factory premises, wild-cat strikes, holding up materials or output and striking. They range from spontaneous actions, owing to lack of organization, to organized strikes – for example the contract workers affiliated to CITU went on strike in Steel Authority of India’s (SAIL) plant in Durgapur in West Bengal in February 2010 over wage revision and recruitment. The striking contract workers blocked both incoming and outgoing trucks carrying different materials and this forced the management to constitute a committee to discuss the wage issues (“Strike affecting SAIL’s operations in Durgapur”, http://www.thaindian.com/newsportal/business/strike-affecting-sails-operations-in-durgapur_100321188.html, accessed 26 February 2010; see also Chapter IX in Shyam Sundar, 2010, b).

3.5 Collective bargaining with respect to non-regular workers: strategies and approaches used by social partners

The salient features of negotiations, and the contents of forms of agreement between the representatives of contract and casual workers and the employer representatives concerned during the last five to six years, are noted here. Where necessary, special instances and features will be noted. The following is based on the “contents analyses” of collective agreements and forms of collective understandings (see Table A.6. in Appendix I) and other documents and interactions with representatives of workers (representatives of both regular and non-regular categories of workers). There are two types of collective agreements reached: in the first type, the regular workers’ union negotiates on the limits of the contract labour system; and in the second type the regular workers’ union or the contract labourers’ union negotiates issues concerning the contract workers (the employment security, wage issues and other terms and conditions of employment including social security and welfare and safety issues). The discussion of the collective agreements and other documents is organized in three parts, viz.:

- i. protection of regular workers’ interests;
- ii. employment security in the form of (a) regularization of employment (b) continuity of employment; and
- iii. regular wage negotiation exercises that cover wages, social security, welfare and other terms and conditions of employment.

3.5.1. Agreements regarding the contract labour system: protection of regular workers’ strength, unions and affording flexibility to employers

The unions of the regular workers enter into informal or formal understandings with the principal employer to: (a) get an assurance that the regular workers will be engaged in the “core” activities directly related to production; and (b) allow the [principal] employer to engage the contractors or define and delimit the jobs to be given to the contractors. Four benefits flow from these arrangements. First, the union leaders of the regular workers secure impressive wage rises in exchange for this arrangement. Second, the regular workers are certain that *their* jobs will not be outsourced or contracted out and hence are assured of employment security. Third, the delimitation gives freedom and certainty to the principal employer on the issue of engagement of contract labour and prevents industrial

conflict on this issue. Fourth, the company can plan its labour cost management and be certain about it (interview with an employer's representative in Chennai). For example, the trade union of regular workers in a well-known company in Mumbai has agreed to the management's proposal to have the low-value adding activities (i.e. switchboard loading and unloading, opening of wooden boxes) of the firm to be carried out by service providers (i.e. contractors). It is an understanding between the two parties that this agreement will not be formalized as a part of the long-term settlement that they reached recently. The principles of the understanding were incorporated in an "exchange letter" (correspondence with an employer representative in Mumbai). The management of Hindustan Unilever Ltd. in Silvassa (in Dadra & Nagar Haveli) reached an agreement with the union that it shall engage the workers covered by the agreement only in the "core activities directly related to production" and reserved the right to engage the contract labour system in "all ancillary activities such as canteen, housekeeping, gardening, loading, unloading and jobs of such nature". In the Thermax Company in Pune, the regular workers' union and the company agreed, in January 2007, to freeze the number of permanent workers at 598 and that the company could continue to employ the contract labour system as per the existing practices (interview with Gholve).

3.5.2 Regularization of employment of contract/casual workers

The trade unions seek to realize the objective of employment security of the contract and casual workers by two methods, viz.: legal action and collective bargaining and agitations. The legal route was discussed earlier and here the collective bargaining route will be dealt with. The trade unions mainly seek regularization of services of contract/casual workers; when regularization is not possible, the unions have been pragmatic enough to modify their position and demand "continuity of employment" of the contract workers even when the contractors change. Three case studies will be discussed to show the intricacies and dynamics involved in negotiating and realizing this demand.

Neyveli Lignite Corporation, Tamil Nadu (public sector) -- contract workers

Neyveli Lignite Corporation (the Corporation) is a central public sector organization engaged in open coal mining and employs 18,792 regular workers and 13,800 contract workers, of which 13,000 are employed by private contractors and the rest by the NLC Industrial Cooperative Service Society (the Cooperative Society). The contract workers are organized by several unions. These unions went on strike demanding regularization of the contract workers and bonuses from 2 June to 16 August 2008. A Memorandum of Understanding (MoU) valid for five years from 16 June 2008 provided for regularization, in a phased manner, of the contract workers. The implementation of the agreement was delayed owing to the intransigency of the management and to union rivalries and litigation by a section of contract workers. Another agreement, signed on 27 October 2010, which will be valid for five years with effect from 30 October 2010, provided for expediting the regularization process subject to the legal outcome in the cases pending before the judiciary.

Century Rayon (Private Sector) – casual workers

The Tyre Cord Plant of the firm Century Rayons in Mumbai was affected by economic slowdown and production was stopped at the plant from February 2009. However, the management, on an optimistic and expectant note, started production from 20 June 2009 and introduced product innovations coupled with rising investments. Owing to a low pick-up in demand and a rise in prices of tyre yarn the plant was running at a loss. As a result, 233 regular workers employed in the plant were made idle. At the same time, the Rayon plant in the company was also not doing well, owing to a rise in pulp prices and other market conditions. Therefore, it was not possible to absorb these surplus workers into the Rayon plant. Hence, the management told them to take a long leave and also special leave,

at 50 per cent of their wages, initially for 3 months and until the production of the Tyre Cord plant revives. In this context, the management had to ask all the casual and temporary workers in the Tyre Cord plant to take a break from 16 May 2010 and that they may be called back after a review of the situation. It is probable, in exchange for agreeing to these conditions, the union “in the interest of industrial relations and to maintain a congenial atmosphere” in those departments where no permanencies were made due to non-availability of vacancies, asked to create “additional permanencies” in other departments. The management agreed to create 25 permanencies as against the vacancies that would be created in future in the respective departments with effect from 1 May 2010. As a result, 25 casual workers, working as helpers, operators and truckman, in departments such as Rayon Viscose, Packing, Textile, Chemical, were made permanent.

GlaxoSmithKline (GSK) Horlicks Factory, Nabha, Punjab (private sector, MNC) – casual workers

Alongside 1,150 regular workers, around 450 casual workers and over 300 contract workers work in GlaxoSmithKline (GSK) Horlicks factory in Nabha in Punjab. The casual/temporary workers have been working for more than a decade. The Milk Food Factory Workers’ Union (of all the workers) at the factory submitted a charter containing two important demands, viz., wage revision and permanency of 290 casual workers working there for 10–15 years (in September 2009). The management refused to consider this demand and did not bargain in good faith. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) intervened in the dispute and assisted the struggles of the unions and these workers. As a result, a collective bargaining agreement was signed between the trade union and the management of GSK on 28 May 2010 by which all 443 temporary casual workers would be made permanent in a phased manner as noted below:

- (a) 1 June 2010 – 120 workers
- (b) 1 January 2011 – 153 workers
- (c) 1 June 2011 – 170 workers (*vide* clause 11 of the collective agreement signed on 28 May 2010)

Furthermore, the management increased the daily rate of wages for casual/*badli*/temporary workers to INR300 with effect from 1 May 2010. It is significant to note that the permanent workers and their union played an important role in winning permanency for such a large number of temporary workers (interview with Nair, Amre; see also “GSK Horlicks India Union Wins Permanent Employment for 450 Casual Workers”, <http://cms.iuf.org/?q=print/395>, accessed 28 June 2010).

3.5.3 Continuity of employment of contract workers

The unions have been pragmatic in their approach with respect to employment security of contract workers. Post-SAIL judgment, their strategy has been to attempt to get regularization of contract workers’ services on several grounds, noted below, failing which they demand continuity of their employment, even when the contractors change. The employers have agreed to this demand subject to some conditions, though they oppose it as a matter of principle. The contract workers do not go through the rigorous recruitment procedure adopted by the principal employers and, hence, do not face competition for jobs as do the direct employees, especially the regular workers. Also, they also do not possess qualifications. The workers driven by poverty seek out any kind of employment and perform mostly unskilled jobs. Over the years, these workers have demanded regularization of their services. Therefore, regularization of contract workers amounts to “back door entry” to permanent jobs for them. In addition, the principal employers do not wish to “impose” the workers of the “old” contractors on the “new” contractors as this presents problems to human resource management [interviews with Choubey, Khan; a

communication by SCOPE to the Director General, Ministry of Labour & Employment, undated (possibly after July 2009)]. Three case studies follow.

Contract workers in Rashtriya Chemical Factories (public sector)

The Mumbai Shramik Sangh (MSS) affiliated to the CITU has organized around 350 contract workers in the Rashtriya Chemicals Factory (RCF) in Mumbai. The contract workers went on an indefinite relay hunger strike demanding continuity of their services with existing benefits and wages, and periodical revision of service conditions. On 4 December 2006, the principal employer (the RCF management) agreed to provide grass-cutting work to the contract workers throughout the year. It also agreed to “continue the services of the contract workers with the successive contractors”, subject to availability of work and satisfactory performance. Furthermore, the management accepted the demands of the union to maintain “the same service conditions and the wage protection with the successive contractor”. The union agreed to withdraw all court cases if a long-term settlement is arrived at and the management has agreed to continue the dialogue on this matter (interview with Monterio).

Sandvik Company, Pune (private sector)

The contractors in Sandvik Company management employed the contract workers for six months, terminated them and engaged new contract labour. The regular workers’ union protested against this. The company committed, by a Memorandum of Understanding, signed on 15 September 2008, that henceforth the contractors will “discontinue” this employment system. The contract workers will remain the regular employees of the contractor and the latter will take care of personnel and administrative issues with regard to them. According to the agreement, the contract workers can be disengaged in the event of inadequate workload or non-renewal of the contract with the contractors, but the same workers should be re-engaged on a preferential basis under the same or new contractor. In exchange the principal employer gets the right to decide on the issues relating to the appointment and continuation of the contractors and the areas (existing or new) for deployment of the contract labour system (vide MoU and a copy of the letter from the company to a contractor). According to the union, the contract workers enjoy *continuity of employment* notwithstanding the legal clauses and the changes in the contractors (interview with union leaders).

Nokia India Private Ltd., Chennai (private sector, MNC)

The Nokia India Private Ltd., a MNC in Chennai engaged CEVA Freight (India) Ltd., which, in turn, sub-contracted the work to M/s Adeeco Flexicone Workforce Solutions. The contract workers working under the latter resorted to a stay-in-strike in October 2009 and the state intervened and asked the striking workers to resume work and hold negotiations with the management. Seizing the opportunity, the LPF organized these workers and submitted a charter of demands in November 2009. Since the sub-contractor is on a short tenure, the agreement between the LPF and the two contractors was for a year only. But, the main contractor, CEVA Freight (India) Ltd., agreed that, in the event of non-renewal of contract to M/s Adeeco Flexicone Workforce Solutions, it “will persuade the new contractor to suitably accommodate those workmen on the payrolls of M/s Adeeco Flexicone Workforce Solutions Limited” (also interview with Shanumugam). In fact, the LPF broke the MNC non-union barrier by unionizing the Nokia group workers (ibid.).

3.5.4 Wage negotiations

On the wage and allowances front, five issues have caught the attention of the unions: the minimum wage; the implementation of equal pay for equal work; a system of dearness allowances; at least minimum bonus payment; and, other allowances. They also demand canteen facilities, safety equipment, social security benefits and coverage. In many industries, the unions complain that the non-regular workers do not even get the minimum

wage (interviews with most union leaders mentioned in the Appendix II; see also Krishna Murthy, 2010). Rule 25 (2) (iv) framed under the Contract Labour Act stipulates that “the rates of wages payable to the workmen by the contractor shall not be less than the rates prescribed under the Minimum Wages Act, 1948 for such employment where applicable, and where the rates have been fixed by agreement, settlement or award, not less than the rates so fixed.” There are two issues here, firstly, the fixation of minimum wages at the firm level and secondly, implementation of it in all the units of the firm.

The second important wage demand of the unions has been “equal pay for equal work” (P&GWFI, 2007). The information collected by V.V. Giri National Institute provides a useful base to study the extent of the nature of this problem – in many firms (public or private) on average, the proportion of contract workers performing same or similar work constituted 31 per cent, which is not a small figure. Surprisingly, in the public sector the wage differentials appear to be larger than that in the private sector (see Tables A.4 and A.5 in Appendix I). This principle is built into the Rules framed under the Contract Labour Act: Rule 25 (2) (v) which stipulates that “in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same ...”. But, the employers are contesting the equal wage for equal work principle. They argue that labour’s compensation is determined by economic criteria such as market forces (demand and supply, skills and experience) and not by the legal provision mentioned above. The issue of similar wages for similar work has generated litigation which retards industrial growth. Furthermore, this provision can impose a financial burden on the firms and, in the case of public enterprises, on the government’s financial position (interviews with Choubey and Dias; see also submission of Dias). If the Rules are as equally powerful as the text of the law, it becomes difficult to understand the opposition to the demand of the unions that it is made legal and implemented.

Some union leaders feel that payment of wages to contract workers on a par with permanent workers will be a solution to the contract labour debate. In fact, the government seems to be thinking along these lines: “If contract workers are provided similar wages and other facilities that are available to regular employees much of their problems can be tackled...” (views of Mallikarjun Kharge, Union Minister of Labour and Employment quoted in MoL&E, 2010, a; also interview with Shanmugam). These issues have informed the collective contracts in recent years, though these principles have not been specifically mentioned as clauses in the agreements. Finally, the unions demand and get at least a minimum statutory bonus of 8.33 per cent and more where they are powerful. Regarding the non-wage issues, the unions have stressed occupational safety and health equipment, apparatuses and apparel (OSH), a basket of allowances and social security contributions. It may be noted here that, where contract workers are organized, the wage negotiations in their case follow the pattern usually observed in the case of regular workers. Discussed below are the four agreements as case studies and then the salient features of various collective agreements, with respect to issues other than employment security, are summarized. The case studies demonstrate in several ways the uniqueness of the agreement, the challenges faced and the nature of the demand.

3.5.5 Main features of wage agreements

The main and interesting features of the agreements/settlements (see Table A.6 in the Appendix I) that relate to flexi-category workers, such as contract workers, FTE workers, and casual workers are noted. The employers (the term employer here includes principal employers or the contractors as the case may be), especially those in the private sector (Larsen & Toubro (Bengaluru), Concrete India Ready Mix, Sandvik, Mahindra & Mahindra, etc.) usually rely on the minimum wage rate notified under the Minimum Wages Act, 1948, for the region/industry to determine the wage rate (which is usually for a

day). In the public sector, the unions try to achieve wages higher than the notified minimum wage (e.g. see the box below).

Box 3.2
Minimum wage negotiation in Bharat Heavy Electricals Ltd., (public sector)

The Seventh round of wage negotiations has been taking place for the past five years in the central public sector enterprises (CPSE). The “core negotiation committee” of workers in Bharat Heavy Electricals Limited (BHEL) has demanded that the contract workers in all the BHEL units in the country should be paid the same BHEL wage which is to be negotiated. The argument of the unions is that when the same service conditions are observed with respect to the permanent workers in all the public sector units, the same principle should be observed with respect to the contract workers as well (P&GWF1, 2007). It is common knowledge that the minimum wages in an industry in a country varies by regions as the state governments notify different wage rates. The BHEL unit in various regions pays the “local” minimum wage which is far less than the industry-level wage. The management offered to pay wages a little higher than the regional minimum wages which the unions refused. They demanded “standardized” wages and benefits for all the contract workers in all the units of BHEL. They demanded INR12,600 in place of the current pay of around INR5,000 (interview with Mahadevan; Dogra, 2010).

In a few cases, companies pay a lump sum, but mostly there is a wage structure, i.e. basic wage, cost of living and other allowances. Wage rates are determined in several companies according to a hierarchy on the basis of skill, experience, status (supervisors/workers), or technical categories (e.g. Mico Bosch units in Bengaluru, Karthik Transport, Larsen & Toubro in Bengaluru, Mahindra & Mahindra). In cases where the minimum wage is implemented, companies pay “special allowances” (which are similar to cost of living allowances and are revised by the regional/central governments from time to time).

The contract workers’ unions have been successful in making the principal employer commit to payslips and payment of wages through a bank account, as irregularities are committed by contractors; though the Contract Labour Act decrees that wages should be paid by the contractor, under the supervision of a representative of the principal employer. The bonus agreements are few and in many cases the understandings are informal and verbal (Samant, Rama Subramanian, Mahadevan). Where unions are established and are vocal, agreements for bonus payments are made. In most cases, the employers paid the statutory minimum bonus of 8.33 per cent (under the Payment of Bonus Act, 1965) to the workers (Concrete India, Sandvik, M/s. N.Y. Jadhav) while in some cases they paid a higher rate (e.g. Larsen & Toubro (Bengaluru), Vizag Port Trust, Mahaveer Carrier, BPCL) and in one or two cases a lump sum amount (e.g. Nava Sheva, Narasimmaraja enterprises).

The contract and casual workers’ unions have been successful in negotiating a leave and holiday package, which did not exist or was less generous, before the advent of unions. Companies, as a result of this, provide for national and festival holidays (up to 12 in a year), earned leave as per the provisions of the Factories Act (i.e. one day for every 20 days worked), casual leave (up to 6 days in a year), sick leave and higher pay (double the wages) for work on national and festival holidays (e.g. public sector units, and contractors in them, like BRPL, Value Ventures, Hindustan Aeronautics; Larsen & Toubro (Bengaluru), Radhakrishna Foodlands, Bharat Earth Movers, Larsen & Toubro (Mumbai), Sandvik, Damodar Valley Corporation, M/s. N.Y. Jadhav etc.). The unions have been concerned with safety at work and the agreements provide for safety gear including shoes (Reliance, Larsen & Toubro, Bengaluru, Mumbai), public sector units (contractors in them like BRPL, Geogy George, Hindustan Aeronautics). The companies provide uniforms, shoes, monsoon wear, socks and washing allowances. Some companies cover their workers under private medical claim policies (e.g. Radhakrishna Foodlands, Nava Sheva, Concrete Ready Mix, Karthik Transport). They provide a host of allowances, including house rent allowance (one or two companies even provide accommodation, e.g. Sanoj

Enterprises, Mahaveer Bulk Carriers in Bengaluru, public sector units, and contractors in them, like Oil India, BRPL, Geogy George), shift, lunch, attendance, travel and educational allowances. Some companies in Bengaluru provide a death relief fund (workers contribute one day's wages and the employer equals or doubles it) to be paid to the deceased worker's family. This is peculiar to one union, the Karnataka Readymix Concrete Workers' Union, which follows a pattern in the companies it negotiates with, e.g. Karthik Transport, Mahaveer Bulk Careers, Larsen & Toubro Ready Mix in Bengaluru. In some companies, the retirement age is also determined, usually 58, 60 in Nava Sheva. In Nava Sheva, the company agreed to give: "immediate employment to the dependent's family member or near relative of such workmen in case of death, disability of workmen or retirement". Although the flexi-category workers are covered under social security laws, like the Payment of Gratuity Act, 1965 and the EPF Act, some agreements make specific commitments to pay them (e.g. Mico Bosch units, Karthik Transport, Larsen & Toubro, Bengaluru, Nava Sheva, Hindustan Aeronautics, Sandvik, Bharat Petroleum Corporation Limited).

In some companies, the union demands regularization of contract/casual workers and, in the negotiations that ensue, the principal employer/contractor agrees to negotiate wage revision in exchange for not pressing the demand for regularization, which the union, pragmatically, agrees to (see the agreement in Hindustan Aeronautics Limited, Bangalore, dated 29 June 2009). The demand for permanency can always be taken up. In such cases, the demand for regularization is tantamount to a threat to bring the employers to the negotiating table and thereby extract concessions. Similarly, as is noted below, the union and the government uses "abolition" as a threat, and as a platform for improving the terms and conditions of work. Some commentators observe that the "abolition" threat could be misused, "... in Maharashtra and other states, the labour minister or the labour department routinely calls up the employers asking them why the contract labour employed in the company should not be abolished. If the employer understands and squares up, he does not come under the scanner of the labour department for violations and prosecutions" (Krishna Murthy, 2010: p.3).

3.6 Patterns of negotiations and cooperation

From the case studies, several patterns of representation and negotiations, with respect to or by the contract workers, can be identified:

- (a) The contract workers strike *spontaneously* and represent themselves directly with the employer concerned (principal employer or the contractor) on a temporary basis. In the process, they may even ignore the instructions and counsel given by the union of the permanent workers. In this case, both organization of workers and the negotiations are not institutionalized.
- (b) The contract workers are not organized by any union, but the union of the regular workers represents their issues in the collective bargaining (Thermax, Sandvik in Pune).
- (c) The contract workers are organized either on their own (Reliance Energy Ltd.) owing to the neglect by the union of the regular workers, or by a union federation that concentrates on organizing the unorganized workers (TUCI, TUCC) or by the state or central trade union organizations, including ATIUC, BMS, CITU, LPF and Shiv Sena Union.

In the historical context of "divide" between regular and non-regular workers, in cases where there is coordination and cooperation between permanent and contract workers, the bargaining outcomes have invariably been favourable and positive for both sections of workers (P&GWFI, 2007). However, the union leaders who concentrate on organizing the

flexi-category workers complain of the existence of the “divide” between the two sections of workers (interviews with Singhvi, Shiv Shankar, Ramasubramnian).

The agreement or settlement could be either bipartite (representatives of workers and the principal employer or the contractors) or tripartite (representatives of workers, the principal employer and the contractors or the representatives of workers, the principal employer/the contractors and the labour department of the government). The negotiations could be with: (a) only with contractors or with principal employer; (b) both the principal employer and the contractor(s). The union negotiates with the principal employer and the understanding is legalized into an agreement by the contract workers’ representatives and the contractors (e.g. Glaxo in Nabha, Thermax in Pune). The union negotiates directly with the contractors and reaches agreement with the contractors/sub-contractors/contractors’ association (TNPL in Tamil Nadu). In some companies (e.g. Nokia India private Ltd., Tamil Nadu), the contractor employed by the principal employer sub-contracts the work to different sub-contractors and the union enters into an agreement with both the contractor and the sub-contractors – the sub-contractors’ contract is short and, hence, the agreement is sometimes only for a year. In some public sector enterprises or departmental undertakings, the contract workers form a cooperative service society and supply contract labourers to the principal employer and this becomes a channel through which regularization of services of contract workers takes place. In a few companies in North Chennai in Tamil Nadu, a unique pattern prevails. The potential contractor holds talks with the union in the company and invariably the contract is given by the principal employer to *that* contractor (interview with Rama Subramanian).

The terms and conditions of employment are expressed in several forms (see Table A.3 in Appendix I for details). In many firms in this sample, the parties reach an 18(1) agreement or a 12(3) settlement that contains the legal clauses and a well-defined tenure. In cases where the principal employers are parties, especially in the public sector, the terms and conditions are often contained in a memorandum of agreement/settlement or a gist of understanding between the parties that may be translated into a formal agreement or a letter of intimation spelling out the terms and conditions to the branch/project heads. In a few cases involving small operators, the terms and conditions are written on a sheet of paper with the parties’ signatures. In many cases, especially relating to the bonus issue, mostly oral understandings are reached. Thus, both formal and informal mechanisms exist with regard to non-regular workers.

The struggles and the negotiations for employment security of contract/casual workers reveal several patterns as noted here. Firstly, the demand for regularization and continuity of employment is justified on four grounds:

- the contract workers are doing the work of regular workers and, hence, the core activity of the enterprise concerned;
- the contract workers are working under the supervision and direct control of the principal employer and doing work of a permanent nature;
- the contract labour system is a sham and, in fact, the contract workers are employees of the principal employers; and
- the contract/casual workers have been working for a long time in the same enterprise.

The importance of the role of “legitimacy” of demands can be seen in the cases where some form of employment security is afforded to non-regular workers. The fact that the principal employer is, in several cases, the main player, emphasizes the “moral legitimacy” underpinnings of labour market management. Secondly, large-scale regularizations have taken place in the government sector for three reasons. Owing to the historicity of the practice of employing workers on a non-regular basis, the pool of non-regular workers has grown to such an extent, the demands for employment security were louder and wider in this sector; the government is always held as a “model employer” and it needed to demonstrate this by providing some form of employment security; the labour

wings of the political parties, especially the left and regional parties, dominate the government sector and this makes it easier for the unions to use the “political route” to get their demands sanctioned. Electoral considerations, i.e. the image of the government as being pro-worker and pro-poor, count a lot in the working class constituencies. Political factors play an important role in the working-class movement and strikes (see Shyam Sundar 2009, a, b, c). Thirdly, both the parties have shown “pragmatism” by toning down their demands for employment security where necessary. They have agreed to regularization in phases and subject to some conditions, like existence of vacancies, skill endowments and training and disciplinary aspects, or by accepting continuity of employment in lieu of regularization. Furthermore, the bargaining over employment security often revealed the “real bargaining” in the sense that there has been “give and take” attitudes on the part of the parties, as is evident in the case of Century Rayon. But, all is not well on this front. For example, there could be conflicts on the “criteria” used for regularization (unions prefer seniority while employers desire human capital endowments). Fourthly, employment security demand is sometimes used by trade unions to secure wage and other gains as is seen in the HAL case (recounted to the author in interviews with various leaders).

In the area of non-employment matters, it is significant to note that the unions have been able to gradually standardize the terms and conditions of employment in a manner similar to that pertaining to the regular workers. The agreements contain clauses on wage structure, bonus, allowances, leave and holidays, training and skills upgrading, social security issues and other unique allowances. Some agreements also talk about productivity and efficiency matters and the need for flexibility in a competitive market. The regular wage negotiations on expiry of past settlements indicate the extent of institutionalization of the employment relations with respect to the flexi-category workers. But, all is not well. The formalization and standardization relate to workers who are already unionized. The union density of the flexi-category workers is small and a large number of them work on terms dictated by the contractors and are, therefore, subject to exploitation. While union coverage is gradually increasing, there are many challenges and obstacles to the institutionalization process. These are discussed next.

3.7 Constraints on organization of non-regular workers and collective bargaining with respect to non-regular workers

There are several structural obstacles and institutional challenges to organization of and collective bargaining for non-regular workers, though their numbers are high and rising. According to union leaders, the most prominent strategy of the employers is to dismiss or suspend the workers and the union leaders when they attempt to form trade unions and strike for better service conditions (interviews with all trade union leaders mentioned in the Appendix II). Several trade union representatives claimed that, in fact, firms employ non-regular workers to avoid unionism. The practice consists of terminating the services of these workers before they complete 240 days of continuous service in a year, but continue them for years. In a few cases, they fight for permanency on the grounds of long years of service. Employment insecurity is the *biggest* obstacle to institutionalize employment relations in the case of non-regular workers. As seen earlier, the judiciary has not been of much help in recent times; in fact, several adverse judgments have dented the long-won employment rights (see Singh, 2008).

In a basic sense, the union leaders argue that there is no statute in India to bring the employers to the bargaining table. The non-ratification of the ILO Conventions relating to the freedom of association and collective bargaining (see A.1 in the Appendix I) does not help matters either (interviews with union leaders). These have hurt the efforts of the unions even in the central public enterprises like the oil sector, where the union of oil

sector workers has failed to make much headway with respect to collective bargaining (interview with Dev Roye).

In the case of the contract workers, there are several problems. The employers tell the union leaders to “mind their own business”, i.e. to negotiate for the permanent workers and not the contract workers who, the principal employers tirelessly maintain, are not “their workers”. The unions wilt under pressure and seek to gain benefits for the “insiders”, i.e. the permanent workers. They are primarily loyal to their permanent constituency. The leaders, who specialize in organizing the contract and casual workers, often lamented and even talked in anger and frustration about the attitude of regular workers and the absence of social vision on the part of union leadership. The divide between regular and the non-regular workers is still wide and deep despite a show of solidarity in a growing number of cases. A cultural transformation and union education are very essential to bridge this divide. Even the unions are reluctant to have an encompassing union covering both categories of workers. It was found that, in most cases, even where settlements for contract or casual workers had been signed, the contract workers are **not** enlisted as members of the regular workers’ union. Research shows that principal employers often use several small contractors to avoid coming under the purview of the labour laws (see Rajeev, 2006). The scattered and small-sized contract employment does not aid unionization and collective bargaining efforts (interviews with Rama Subramanian, Dev Roye). The social and political power and patronage enjoyed by the contractors in some cases poses problems for the organization of the contract and casual workers (interviews with Dhokale, Monterio, Rama Subramanian). Furthermore, the contractors, in several instances, are often changed (even annually). Though work is continuous and ongoing, contractors are not. The issue of the existence of employer-employee relations between the principal employer and the contract workers has been one of the issues of legal battles in the Indian labour movement and this weakens the legal basis for claims for negotiations. Also, it is known that the contract workers are not covered under the ID Act. In fact, one of the demands of the trade unions is to include contract workers under the purview of the ID Act. Coverage under this Act brings with it a host of labour rights, such as the right to raise a dispute, the right to strike and so on, which are not enjoyed by non-regular workers. The apprentices and trainees are, in many cases, not even recognized as “workers”. The temporary and casual workers, by the nature of their jobs, do not stay with an employer permanently; they are not tied down and, even if they do stay with an employer, they would rather avoid unionization for fear of losing the job on hand.

Union leaders also point out that the pro-management or pro-capital (especially pro-foreign capital) attitude of the government does not help; the government “dodges” the complaints and submissions made by the unions, especially relating to non-regular workers. The state labour departments do not intervene the way they should because the state governments take the view that a more pro-active intervention in favour of workers and trade unions would drive away capital from one state to another. Inward investment creates jobs which is more important than protection of labour rights. As one leader put it, “if it is between the capital (foreign) and labour rights, the government will prefer the former to the latter” (interviews with Soundara Rajan, Shiv Shankar). The sheer absence of employment security, the adverse structural and institutional factors, the limited (though growing) extent of union organization of these workers and their poor capabilities to strike are four fundamental constraints on the evolution and growth of collective bargaining for them.

Conclusions

The current phase of globalization, aided by tremendous advances in technology and transportation, has led to demands for reordering and restructuring of employment and workplace practices. In the intensified competition, in both product and factor markets owing to their liberalization, employers need to maintain and enhance competitiveness of

their firms, and workers need to enhance their employability and, therefore, should be backed by social protection institutions. Employers and mainstream economists worldwide, and especially in India, have complained of an overdose of regulation in the labour market and the IRS arguing that these introduce “rigidities” in the system and impede economic efficiency. They demand liberalization of the labour market and the IRS. In India, the liberalization of the product market has been taking place since the mid-1980s and on a more significant scale since 1991. The labour market and the IRS are complements to the product market and employers argue that the former two also need to be liberalized in order to reap the full benefits of the liberalization of the product market. Their reform agenda covers various aspects. The two principal demands concern labour flexibility, viz. the right to fire employees and close down establishments without prior permission from the government, and freedom to hire contract labour in activities that are not “core” activities of the firm/industry. They have also been demanding the insertion of fixed-term employment as an item in the schedule to the Industrial Employment (Standing Orders) Act, 1946, which will enable them to hire workers on a tenure base. These are long-pending demands of the employers. The trade unions’ principal argument against these demands is that they will not only deprive workers of their employment security, but also weaken their bargaining power and that of the trade unions. Furthermore, they will constitute a loss of economic and social welfare as there is no social protection system similar to the unemployment allowance system, in India. At present, the Law imposes the full burden of separation costs on employers and separation benefits are lower in India than in comparable countries (see Shyam Sundar, 2005 for more details on a comparative analysis of employment protection laws in selected countries).

The central government has not been able to introduce these “hard” reform measures owing to stiff and vocal resistance from trade unions and opposition political parties, both at the central and state levels. However, employers have resorted to labour flexibility strategies at the micro level; the government, according to some academics, did not take action on the employers and looked the “other way”. The competition for capital by state governments has reinforced the flexibility practices as an incentive for attracting and retaining capital in their regions. It is in this context that non-regular workers proliferated and new non-regular work arrangements evolved. Researchers have shown evidence that employment, in the post-liberalization period, increased primarily due to the growth in the employment of non-regular workers. The welfare implications of these work arrangements are a source of social concern. This study initiated by the ILO thus assumes importance.

The number of non-regular workers, especially contract workers, increased substantially in the post-liberalization period, and especially in the 2000s, at the same time as total employment in the organized sector of the economy declined. At a disaggregate level, by regions, the share of contract labour employment in total workers in the organized factory sector ranged from 10 per cent to more than 50 per cent. Field studies show use of different forms of non-regular workers. They do not enjoy the securities of regular/permanent workers; even the best employed flexi-category workers will still be far off the benchmark set for regular employees. The labour laws, though inadequate in their coverage, provide some social protection to, and regulate to some extent, the working conditions of non-regular workers. There is a strong consensus that even these minimalist laws are not effectively applied for various reasons. Jurisprudence on conflicts relating to employment security especially that of non-regular workers has undergone a change that is not exactly conducive to the interests of these workers. The declining and low levels of union density, collective bargaining coverage and contextual and legal restraints (such as adverse judicial verdicts in the case of the right to strike by government employees) do not help their cause either. The recent strikes at Hyundai Motors in Tamil Nadu and Maruti Suzuki Ltd. with respect to the right to form regular workers’ trade unions, illustrates the challenges faced by the non-regular workers.

Notwithstanding these odds, the non-regular workers’ organizations (both conventional trade unions and new forms of organizations like Shramik Ekta Maha Sangh in Pune) have adopted several strategies to improve the terms and conditions of

employment of non-regular workers. Their stories are unsung in the academic world. The studies on labour flexibility are mostly macro level econometric exercises using secondary official data and they invariably arrive at conclusions which call for deregulation of labour institutions, and labour flexibility, as solutions to unemployment and poverty. There are a few micro-level studies that collect primary information from the establishments and analyse the labour market policies of firms which have noted the adverse changes in the composition of employment in the post-reform period. These studies challenge the macro econometric exercises that place the blame squarely on the “regulatory institutions”. However, these studies primarily look at the labour market; there are hardly any that seek to study the organizational and collective bargaining issues concerning non-regular workers. The paucity of “qualitative” studies on the industrial relational aspects, including the organizational challenges, strategies adopted, dynamics involved, intra-class complexities, bargaining strategies and outcomes concerning non-regular workers, is striking. This study seeks to make some contributions to these aspects by collecting primary information from the social partners and the government and making analyses of collective agreements and some official data. Attention is limited to the major non-regular categories of workers, such as casual, temporary, trainee and contract workers in the organized sector. The vacuum is surprising given that the number of non-regular workers is rising. What is striking is that the official statistical system, especially concerning the government sector, has little to offer on the flexible categories of employment pertaining to their numbers, skills, wages, etc. The NSSO data captures these on a five-yearly basis and adopts employment classifications that are too broad and do not conform to empirical practices. For example, the “casual” category need not fully capture the non-regular work categories, such as contract workers. The ASI collects data on contract workers from the industrial establishments and it is known that this data understates the magnitude of contract workers. This raises an interesting methodological question regarding the contact point of data collection: should it be collected only from the employers, be it data on work stoppages or employment (see Shyam Sundar, 1994 for raising such queries with respect to strike statistics)? There must be some source to collect information, at least from the manufacturing sector, on employment by categories of employment. For example, it could be collected from the annual returns submitted by employers under the industrial and labour laws, such as the Factories Act. The Labour Bureau, the chief official agency for labour statistics, also conducts Occupational Wage Surveys periodically and these could be the source for collecting information on employment, skill and wages pertaining to non-regular workers. The industrial relations statistics, less rigorous than the NSSO and ASI data offer little help in the case of non-regular workers. The need for restructuring official data is no less urgent than the restructuring of the institutional framework of IRS and the labour market.

The case studies, and an analysis of organizations and the collective agreements, reveal three important and indicative tendencies that offer tremendous promise for improvement of conditions of work and the promotion of decent work for non-regular workers.

- i. The gradual integration of non-regular workers, especially contract workers into the mainstream trade union movement. The trade unions have, though compelled by labour market realities (depletion in their following, spontaneous outbursts and self-organizing by non-regular workers) sought to include non-regular workers and become “encompassing”. However, there is still a long way to go, as noted below.
- ii. Strong organization and readiness to strike (though aided by bargaining power in some cases) and political power (especially in public sector organizations) have brought employers and contractors to the negotiating table and collective bargaining has significantly contributed to the betterment of working conditions.

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- iii. Both the social partners have shown a remarkable sense of pragmatism and a sense of accommodation, especially with regard to negotiation of employment security issues.

These stories indicate increasing cooperation and dialogue between trade unions and employers.

The conventional trade unions have historically neglected the interests of and issues concerning non-regular workers; in fact, commentators have noted the existence of a “divide” between regular and non-regular workers. The huge growth in the number of non-regular workers, especially contract workers, and the decline in regular employment, prompted a rethink on both the organizational strategy of conventional trade unions and the attitudes of regular workers. The rise in the number of non-regular workers proved to be a game changer to the union movement. The conventional and politically affiliated trade unions have begun to: (a) include contract and casual workers as members of the union of regular workers; or (b) float a separate organization for the contract and casual workers under their own banner. It may be noted that the conventional trade unions and the regular workers have not fully accommodated the interests of the non-regular workers or created an institutional interface between the two segments of workers in a universal sense. Indeed, in some cases, like Reliance Energy Limited, the contract workers themselves floated their own trade union when they were ignored by the conventional trade union. It was noted that organizations of non-regular workers are stronger in medium- and large-scale organizations and in the public sector, perhaps owing to economies of scale in organizing the workers. The flexi-category workers in small- and some medium-sized establishments, which dominate the industrial landscape, are yet to be covered and this is another major challenge for the trade unions and others. Trade unions and alternative forms of organizations like Shramik Ekta Maha Sangh are using networks to address the issues concerning non-regular workers. The organization of these workers is still in the nascent stage and, in several instances, organizational divisions between regular and non-regular, especially contract workers, were noted. An “encompassing” trade union movement is still a major challenge.

The coexistence of regular and non-regular workers in a plant, or the availability of a large pool of unemployed workers, who are willing to take up non-regular work, has proved to be useful to employers in weakening if not breaking the trade union power to strike. In some instances, employers succeeded, thanks to the intra-class distinctions, if not rivalries. Nonetheless, little by little, the regular and non-regular workers are learning the lessons of solidarity as much as the employers and contractors. As Swadesh Dev Roye, the CITU activist and theorist, advocates, it is in the larger interests of the working class that both segments should come together to put up a joint fight against the employers as well as the government. The divisions in organizational frontiers reflect in the struggles as well. The building up of intra-class solidarities is another challenge faced by the trade unions and involves a cultural and attitudinal transformation, not only at the leadership level, but also among the rank and file. It is interesting to note that, with the rise in their numbers, and the increasing importance of their work, contract workers have been, at some places and in some instances, able to flex their muscles to their advantage.

The trade unions have long resorted to litigation owing to organizational weaknesses and the favourable disposition of the judiciary. The post-reform period posed challenges for both in the sense that, as judicial verdicts actually reversed long-standing legal wisdom and struck at the roots of workers’ rights, and the number of non-regular workers began to increase, trade unions were pushed to concentrate on organizing these workers and looking at the possibility of collective bargaining. The trade unions have concentrated on four primary issues with regard to non-regular workers: employment security, wage issues, bonus, and social security issues.

The trade unions have adopted different strategies depending on the sector (public or private) and the nature of issues (employment security or regular wage negotiations). In general, and in principle, they do **not** endorse the contract labour system and seek its

abolition and the regularization of contract workers on whose behalf they try to hold talks with only the principal employers; should this fail, they negotiate with the contractors. By definition, the principal employers are involved in securing regularization of contract or casual workers and also for continuation of employment of contract workers irrespective of a change in contractor. The latter solution is a sign of pragmatism from both players. The trade unions have shown a remarkable sense of pragmatism where necessary in securing these demands and the principal employers have displayed sufficient flexibility and maturity to respond to moral pressures to regularize long-serving workers. At the same time, they have also sought to regularize the casual workers. This study has documented several success stories of organization of non-regular workers and collective negotiations concerning them. Where necessary, the social partners have accepted the assistance of the state conciliation machinery. The parties are keen to convert their directly negotiated agreements into conciliated settlements as the latter enjoy wider applicability. In some cases, like the food industries, the international trade union organizations' intervention helped. This is an important angle that has remained little explored in the struggles of workers in general, and non-regular workers in particular. The pro-active role played by IUF in several conflicts is a demonstration of the power of networks. The global framework agreements could be another institutional cover that should be explored by trade unions.

The challenges and difficulties the trade unions and other organizations face in organizing and negotiating for non-regular workers have been seen. The experiences, and the stories in general, send out a powerful message that, where non-regular workers are organized and they resort to negotiations and are willing to exert pressure on the employers/contractors through strikes, political action and litigation, the probabilities of securing impressive employment and service conditions are higher. Notwithstanding the historical context of "divide" between regular and the non-regular workers, in cases where there is coordination and cooperation between permanent and contract/casual workers, the bargaining outcomes have invariably been favourable and positive for both. This is due to several factors, including: the pragmatic outlook of the social actors; legitimacy of the issues (such as long years of service, equality); the fair mindedness of the employers (norms and values); the strategic and numerical strength of the non-regular workers; and, the pressure of direct and legal action and government intervention. But, it is the powerful role of class solidarity and networking (with international unions like IUF) that is the most significant factor in explaining the success stories. The regular workers, in several cases, have played a positive role in the organizational and collective bargaining activities concerning the non-regular workers. Some conditions seem to be important for collective bargaining to take place in the case of these workers. There must be a strong organization of these workers by trade unions. There must be solidarity between the regular and non-regular segments of workers. The economic and political factors, like the nature of industries, the nature of functions discharged by non-regular workers, their ability to impose costs on the employers and contractors, the political and social power of the trade unions of these workers, should be conducive to the exercise of pressure tactics like strikes and agitation. The litigation route is always open, both as a threat and real action.

It is interesting to note that, while these organizational and bargaining stories have taken place at the micro level, implying a considerable amount of understanding and accommodation and a sense of pragmatism on the part of the social partners, at the macro level, the tripartite talks on labour flexibility, and especially on the contract labour issue, have made little progress. There is a huge divergence between what is happening at the micro level from the social dialogue that takes place at the macro level. At the micro level, there is accommodation and understanding and the representatives of the social actors reach solutions which are then negated at the macro level. The give and take that prevails at the micro level is not replicated at the macro level for fear of huge repercussions. The changes resulting from understandings in such a national forum would lead to changes in law and policies that would have to be implemented by all those covered by such changes. This stark fear prevents the social actors from taking rigid positions. The government is

also comfortable with the micro-macro dynamics as long as the “changes” happening at the micro or regional level do not impose significant economic and political costs. Although, there may not be productive conclusions on the “core” issues, the tripartite talks have shown the need for two kinds of reforms, namely, the need for strengthening the regulatory system concerning non-regular workers and rectifying the institutional failures of not constituting consultative bodies (such as advisory boards) under the relevant laws, or making them more active.

The thinking of the government is that globalization and the institutions of flexibility, such as the contract labour system, are here to stay and cannot be avoided. Thus, by implication, it may not be advisable, from an economic point of view, to bring about the changes in the legal and institutional system that the trade unions are demanding (e.g. the automatic absorption of contract workers by the principal employers). However, it strongly believes that the terms and conditions of employment concerning these workers could be improved by suitable amendments. Put bluntly, the thinking of the government seems to be that labour flexibility in employment is necessary, but income and social security benefits could be improved. They have strived to push this perspective in various ways, including in the social dialogue forums. This position is, at best, a short-term solution for the trade unions that continue to militate against labour flexibility in employment, at least at the macro level.

The tales of miseries and discrimination i.e. long and continuous years of work and poor terms and conditions of employment compared to permanent workers, invariably recounted during field and other studies, clearly show that the government and the employers cannot have recourse to the economic logic of competition. The poor application of the existing laws adds to these workers’ miseries. Absence of income and social security further worsens their plight. The overdrive for flexibility, without providing for even decent working conditions (especially in small- and medium-sized establishments), and income and social security, has grave social welfare implications.

Three policy conclusions stem from this study. Firstly, the institutional conditions for exercising trade union and collective bargaining rights need to be strengthened so that the social actors are able to negotiate terms and conditions of work suiting their micro level circumstances. The ratification of ILO core Conventions, viz. the freedom of association (Convention No. 87) and the right to organize and collectively bargain (Convention No. 98) by the Government of India, is surely a step in this direction. There is also a need to insert in the central laws the conditions necessary for collective bargaining, namely, the recognition of trade unions and the obligation to bargain and bargain in good faith. The case studies presented in the text show the potential for unionizing of and negotiating for non-regular workers, despite the absence of a conducive institutional framework. The potential for social dialogue at the enterprise or industry level is huge; the enabling institutional conditions need to be established or strengthened as the case may be.

Secondly, the study recommends three policy principles that can inform the labour law changes and implementation. One, there has to be symmetry in wages and work conditions between workers performing the same or similar jobs – the moot question is who decides the sameness of jobs – this is a logistical issue. Two, long-serving workers (contract or casual or trainees) however recruited (either front or back door) need to be regularized by suitable mechanisms (the micro level cases show the possibilities) – again the definition of “long service” is a logistical question. Chinese law provides for regularization of fixed-term workers upon the expiration of two renewals. The social dialogue process can fix these norms. Three, regulation of non-employment aspects, such as social security, occupational safety and health and other facilities need to be strengthened. The scope and effectiveness of labour law implementation requires a serious consideration by the government and social partners.

These are further elaborated below. As far as the Contract Labour Act is concerned, there is a need to *formalize* the principle of “equal pay for same or similar work” that now exists in the Rules framed under the Act. The employers’ objection that the Rule is

sufficient enough, or the costs of such a legal measure would be high, matter less; if it can exist in the Rules framed under the Act, it could just as well be formalized. The government seems to be inclined to do this in exchange for the demand of employment security for contract workers.

While a blanket provision, providing for employment security is not desirable, there is surely a need to regularize the services of non-regular workers, who have worked for a long period, and the institutional conditions should facilitate this. The moot question is the definition of “long service”, but this is an issue for social dialogue. There seems to be confusion regarding the delimitation of activities where contract labour should be allowed or not. As Prof. Papola (2010) has pointed out, in export sensitive and seasonal industries (garments or soft drinks), contract labour is necessary in “core” production activities. At the same time, the so-called “non-core” activities, such as laundry and gardening, are of a perennial nature. The very fact that some employers, in this limited survey, agreed to regularize the services, or provide continuity of service to workers with long years of service, shows that social norms like legitimacy and fairness are at work. These are often more powerful than laws. However, they show the direction and indicate the limits of exploitation. But, what is not contestable are the amendments to laws to eliminate discrimination in terms of non-employment conditions such as wages, bonuses, facilities, conditions of work, social security and the need for effective implementation of labour laws. The law makers could look at the possibility of expanding coverage of the Contract Labour Act, or define the “minimum size” of contractors. This is done for commercial establishments, for example banks, so that “capacity” control is exercised. The Chinese example can be considered (see Shyam Sundar, 2010, d, for a discussion on Chinese law). Furthermore, the law should be amended to include some conditions, such as compliance with social security and other relevant laws (a check list can be made) as mandatory for renewal of licence. It should also provide for strong penal action. To some extent, these already exist in the Rules and the point is to formalize them into the text of the law.

Thirdly, and lastly, it is beyond debate that the income, social securities and minimum wage securities have to be extended to the flexi-category workers. The consistent complaint is that, in many cases, employers, including the government, have been defaulting on this. As several commissions and study groups have emphasized, there cannot be a compromise on this front. There is a need for “effective implementation of labour laws”, including strong prosecutions and convictions of defaulters. This calls for an effective labour governance system which is, sadly, lacking. It is principally for this reason, the drive for flexibility has not gained legitimacy.

Appendix 1

Table A.1
ILO core Conventions ratified by India
(as of 18 May 2010)

Serial number	Convention	Ratification date	Status
1.	C29 Forced Labour Convention, 1930	30/11/1954	Ratified
2.	C100 Equal Remuneration Convention, 1951	25/9/1958	Ratified
3.	C105 Abolition of Forced Labour Convention, 1957	18/5/2000	Ratified
4.	C111 Discrimination (Employment and Occupation) Convention, 1958	3/6/1960	Ratified

Source: <http://www.ilo.org/ilolex/english/newcountryframeE.htm>, accessed 18 May 2010.

Table A.2
Particulars of industries according to National Industrial Classification (NIC),
2004 for manufacturing sector

NIC code numbers (at two digit level)	Industry particulars	NIC code numbers (at two-digit level)	Industry particulars
15	Food products and beverages	27	Basic metals
16	Tobacco products	28	Fabricated metal products
17	Textiles	29	Machinery and equipment
18	Weaving apparel, dressing and dyeing f fur	30	Office, accounting and computing machinery
19	Tanning and dressing of leather, etc.	31	Electrical machinery and apparatus
20	Wood and wood products	32	Radio, television and communication equipment and apparatus
21	Paper and paper products	33	Medical, precision and optical instruments, etc.
22	Publishing, printing, etc.	34	Motor vehicles, trailers and semi-trailers
23	Coke, petroleum and nuclear fuel	35	Other transport equipment
24	Chemicals and chemical products	36	Furniture, etc.
25	Rubber and plastic products	37	Recycling
26	Other non-metallic mineral products		

A.3
Details of employment of permanent and non-regular workers
in selected companies in India

Company's particulars	Number of permanent/regular workers	Number of contract workers	Number of other category of workers	Information collected from
Maruti Ltd.	2000	1800-1900		Sachdev
NLC	8000	12000		Mahadevan
Cummins Ltd.	26	100	100 trainees	Sanjay Singhvi
Ashok Leyland	4000	2000		Rama Subramanian
Chennai Petro Chemicals	1500	6000		-do-
Balwmer and Lawrie	130	120		-do-
MRF	900	1000		-DO-
Hyundai	1650	3000		A.Soundara Rajan
Toyotao Kirloskar Motors Ltd. (Head Factory)	4600	> the permanent workers		Shiv Shankar
Stagen Toyotutsu India private ltd	210	250		-do-
Toyoto auto parts	750	200		-do-
Mico Bosch (in two plants in Bengaluru and outside)	3500	900		-do-
GERB VIBRATION CONTROLS SYSTEMS PRIVATE LTD	30-35	65		-do-
Trident Powercraft Pvt. Ltd	175	110		-do-
Thermax Ltd.	598	500	300 temporary workers	Keshav Gholve
Sandvik	900 (unionized and managerial and supervisory)	350	25 trainees	Jagadale
Bukhardt Compressors Limited (near Pune)	45	150+		Dhokale
Mercedes-Benz	121	100	100 temporary and 100 trainees	Dalvi
Bharat Gears	600		500 casual	Samant
Hawkins Pressure Cookers	78		200 EPP workers	
Harkishandas Hospitals	500	1000+		-do-
Coca Cola Orissa plant (in peak season, first half of the year)	106	800 (during peak season) and 60 % of them during slack		Amre
Nestle (Moga, Punjab)	680	450		-do-

Company's particulars	Number of permanent/regular workers	Number of contract workers	Number of other category of workers	Information collected from
Nestle (Pant Nagar Plant, Uttarakhand)	550	650	100 trainees; probationers 150	-do-
Glaxo-SmithKline Horlicks	1150		450 (casual/temporary)	-do-
Mahindra & Mahindra (Tractor Division)	1733	117 (permanent contract workers) and 400 (others)	1600 (temporary and EPP)	Bhosale
Alok Industries	200	200		Vadhavkar
Radhakrishna Food Industries	150	Zero (now)		-do-
Kores Industries (Rajgad District)	150	50		-do-
Indalco (Kalyan)	270	150		-do-
Nokia main unit, Chennai	3000		3000 (trainees)	Shanmugam
Foxconn, Chennai	850	1000	2000	-do-
Neyveli Lignite Corporation	18792	13800		Shanmugam, Mahadevan and the collective agreement copy
Mahindra & Mahindra, Mumbai	1733	517 (117 permanent contract workers, others)	1600 (temporary), 275 apprentices	Bhosale
Bharat Heavy Electrical Limited, Hyderabad	6700	Around 2000	-	Sastry
Hindustan Aeronautics Limited, Hyderabad	1800	250	45 (casual workers)	Sastry

Note: The employment figures provided by the union leaders/workers though approximate should not be far off the mark.

EPP – Employment policy promotion workers. These are workers who are employed through Employment Exchange Office under the Employment Promotion Policy of the government of Maharashtra. The objective of the policy is to give on-the-job-training for a maximum period of six months in companies in the state and they are paid a stipend ranging from INR33 to INR1,000 a month by the government. But, in some companies this has become an instrument of flexibility as the companies go on changing the batches of workers and simultaneously and not coincidentally the number of regular workers has declined in some cases (Samant, 2010; also interview with Samant).

Table A.4
Proportion of contract labour performing same or similar kind of work
in selected establishments in India

Name of the establishment	%	Name of the establishment	%
National Thermal Power Corporation, Delhi	20	Tata Motors (Jharkhand)	35
Naval Dockyard (Vishakapatnam)	30	Metal Forging (Delhi)	30
National Aluminum Company (NALCO), Chhattisgarh)	20	Paragaon Packaging (Noida)	30
Hindustan Machine Tools (Bengaluru)	20	Leather Goods Industries (Tamil Nadu)	25
Hindustan Aeronautics Limited (Bengaluru)	20	Rice Mills (Tripura)	25
Gas Authority of India Limited (Delhi)	25	Automobile Work Shop (Tripura)	30
Nuclear Fuel Complex (Hyderabad)	20	Electronic Industries (Mumbai)	30
Mahanagar Telecom Nigam Limited (Delhi)	40	Cottage Emporium (Ghwahati)	30
All India Medical Sciences (Delhi)	50	Electrical Goods Industries, Pune	30
Central Pollution Board (Delhi)	50	Kalinga Industries (Bhubaneswar)	50
Mother Dairy (Delhi)	40	Delhi Development Authority (Delhi)	40
Bhushan Steel Ltd. (Uttar Pradesh)	20	Yamaha (Uttar Pradesh)	35
		Average	31

Source: Original information collected by V.V.Giri National Labour Institute and published in **Trade Union Record**, 06-20, July 2011, p.17.)

Table A.5
Wage rates of regular workers and contract labour
performing same or similar kind of work (in rupees)

Name of establishment	Wage rate of regular workers (per day)	Wage rate of regular workers (per day)	Name of establishment	Wage rate of regular workers (per day)	Wage rate of regular workers (per day)
Government sector			Private sector		
Brihan Mumbai Corporation (Mumbai)	225	200	Bhushan Steel Limited (Uttar Pradesh)	400	145
DNGC (Uttarakhand)	750	200	Yamaha Pvt. Ltd. (Uttar Pradesh)	400	145
National Thermal Power Corporation ((Delhi)	600	205	Hero Honda (Haryana)	425	190
National Fertilizers Ltd. (Hyderabad)	450	175	J.K. Cements (Madhya Pradesh)	400	180
Naval Dock Yard (Vishakapatnam)	450	180	Tata Iron and Steel Company, (Jamshedpur)	475	180
NHPC (Faridabad)	450	200	Tata Motor (Jamshedpur)	475	180
Hindustan Machine Tools (Bengaluru)	450	185	Kailash Hospital (Noida)	200	150
Hindustan Aeronautics Limited (Bengaluru)	425	185	MFCL (Ghaziabad)	160	145
Gas Authority of India Limited (Delhi)	500	205	Ambuja Works (Himachal Pradesh)	140	120
Bharat Heavy Electricals Limited (Haridwar)	450	150	Punjab Ago Corporation (Punjab)	200	160
Power Grid (Himachal Pradesh)	450	160	Hoisery Industry (Punjab)	200	170
Indian Oil Corporation (Mumbai)	500	200	Steel Fabrication (Punjab)	180	170
Nuclear Fuel Complex (Hyderabad)	450	175	Galaxy Printer (Faridabad)	200	180
Mahanagar Telecom Nigam Limited (Delhi)	405	205	Fire Works (Shivakashi)	100	90
Bharat Sanchar Nigam Limited (Uttar Pradesh)	425	145	Cosmetics Industries (Electronic Industries (Mumbai)	110	95

Name of establishment	Wage rate of regular workers (per day)	Wage rate of regular workers (per day)	Name of establishment	Wage rate of regular workers (per day)	Wage rate of regular workers (per day)
Mother Dairy (Delhi)	500	200	Cottage Emporium (Guwahati)	100	85
Ordinance Factory (Uttar Pradesh)	425	180	Mechanical Workshop, (Ekta Nagar)	90	80
Scooters India Ltd. (Uttar Pradesh)	200	150			
Average	450.28	183.33	Average	250.294	145

Source: Original information collected by V.V.Giri National Labour Institute and published in *Trade Union Record*, 06-20, July 2011, pp.18-19.

Table A.6
Details of collective agreements and settlements, minutes of meetings, memorandum of settlement in various parts of India consulted

Serial no.	Agreement details	Sector	Tenure (with effect from = w.e.f.)	Remarks (nature of the document)
1.	M/s Radhakrishna Foodlands & M/s Guardian Facilities & M/s. Unisol Infraservices Pvt. Ltd. and General Mazdoor Sabha, Mumbai	Private	3 (w.e.f. 1/1/2007)	
2.	Mgt. of BHEL (P.E.), Hyderabad, BHEL Labour Co-operative Society and BHEL unions (4)	Public	3 (w.e.f. 26/10/2007)	
3.	M/s. Alok Industries Ltd., & Textile Kamgar Sabha, Mumbai	Private	3, (w.e.f. 21/5/2003)	
4.	Damodar Valley Corporation, Bokaro, Chandrapura & the unions	Public	May 2006/2007	Letters to Project Heads giving the contents of the settlement for implementation
5.	M/s. N.Y. Jadhav and workers (in Thermax Ltd., Pune)	Private	3 ½ (w.e.f. 27/3/2008)	
6.	Jawaharlal Nehru Port Trust (JNPT) and the union	Public	December 2005	
7.	Bharat Petroleum Corporation Ltd. and the Unions (in Kerala)	Public	2 (w.e.f. 14/8/2009)	
8.	Management of Cargo Handling & the Vishakapatnam (Vizag) Harbour & Port Workers' Union	Public	w.e.f. 27/3/2007	12(3)
9.	Cummins India Limited (Power Generation Business Unit), ABS Enterprise, and the UNion	Private	w.e.f. 2 November 2007	Minutes of the conciliation meeting
10.	Bombay Pesticides Corporation (in Mahindra & Mahindra Ltd.) and Bhartiya Kamgar Sena	Private	3 w.e.f. 21/7/2005	18(1) agreement
11.	Tamil Nadu paper Limited (TNPL) Contractors' Association and the TNPL Contract Thozhilalar Munnetra Sangam)	Public sector	5 (w.e.f. 1/9/2005)	18(1)

Serial no.	Agreement details	Sector	Tenure (with effect from = w.e.f.)	Remarks (nature of the document)
12.	Hindustan Aeronautics Limited, Bengaluru	Public sector	29/6/2009	12(3) Memorandum of settlement issued in the form of a circular
13.	Hindustan Aeronautics Limited, Bengaluru and Contract and Casual workers' Association	Public sector	22/11/2008	Bi-partite
14.	Contractors in Bosch (Mico) and Mico Contract Employees' Association	Private (MNC)	4 years (w.e.f. 12/2/2009)	Bi-partite (but conciliation role)
15.	Karthik Transport, M/s. Rushit Enterprises, M/s. Southern Engineering Services and Bangalore East Industrial Worker's Union Tamil Nadu	Private	2 years and 5 months (w.e.f. 1/1/2006)	12 (3)
16.	Larsen & Toubro Limited – Ready Mix Plant at several plants in Karnataka, Total Solution Support Services (P) Limited, Karnataka Readymix Concrete Workers' Union	Private	3 (1/11/2007)	18(1)
17.	CI Concrete India (P) Ltd., (Ready Mix Plants in Karnataka), Sanoj Enterprises and Karnataka Readymix Concrete Workers' Union	Private	3 (w.e.f. 1/4/2009)	18(1)
18.	M/s. Mahaveer Bulk Carriers, M/s. Kings Security and Allied Services and Karnataka Readymix Concrete Workers' Union	Private	3 (w.e.f. 1/12/2005)	18(1)
19.	Several contractors in Mico (Bosch) (Nagaratnapura) and MICO Contract Workers' Union	Private (MNC)	4 (w.e.f. 1/6/2008)	12(3)
20.	GlaxoSmithKline Consumer Healthcare Ltd. (Nabha, Punjab) and Milkfood Factory Workers' Union and Motor Transport Workers' Union	Private (MNC)	(w.e.f. 28/5/2010)	12(3)
21.	Hindustan Unilever Limited, Pune and Sarva Shramik Sanghata, Pune	Private (MNC)	2 (w.e.f. 1/11/2008)	18(1)
22.	M/s. S.S. Enterprises (Larsen & Toubro in Mumbai) and Bharatiya Kamgar Sena	Private (MNC)	4 (w.e.f. 4/10/2005)	18(1)
23.	Sandvik Ltd. Pune and Sandvik Asia Employees' Union	Private (MNC)	(w.e.f. 15/11/2008)	Memorandum of Understanding reached in conciliation
24.	Thermax Limited and Thermax Kamgar Sanghatana (Pune)	Private	(w.e.f. 1/1/2006)	Pertains to permanent workers but relevant for non-regular workers; 18(1)
25.	M/s. Adecco Flexione Workforce Solutions Limited and M/s. CEVA Freight India Private Limited (for Nokia Private Ltd.) and Nokia India (P>) Ltd., Contract workers Progressive Union (LPF)	Private (MNC)	One (w.e.f. 30/12/2007)	18(1)
26.	M/s. S.T. Shanmugam Snuff co., and representatives of workers (in Chennai)	Private	3 (w.e.f. 1/16/2009)	18(1)

Serial no.	Agreement details	Sector	Tenure (with effect from = w.e.f.)	Remarks (nature of the document)
27.	WinTransport Ltd. and Workers' representatives (Chennai)	Private	N.A.	Private agreement on a piece of paper
28.	Narasimmaraja Enterprises and Tiruvottriyur and Ennur and Manali General Workers' Union, Chennai	Private	N.A.	18(1)
29.	Workers' Employers' Representatives in Ion Exchange Services Limited, Chennai	Private	N.A.	Minutes of meeting between the parties
30.	Hindustan Aeronautics Limited, Bengaluru, Everest Enterprises, ELSOFT Tech., Pvt. Ltd., Sri Enterprises and Workers' Union	Public	N.A.	Minutes of conciliation meeting
31.	Bhart Earth Movers Limited, Bangalore, NCS Enterprises, M/s. Essential Services and Workers' Union	Public	N.A. sometime in 2002	12(3)
32.	Mico (Bosch) Adugodi Plant and the MICO Contract Workers' Union, Karnataka	Private (MNC)	4 ((w.e.f. 1/06/2004)	Gist of understanding between the parties
33.	Oil India Pipeline Ltd. and the Union	Public	(w.e.f. 12/06/2006)	Bilateral
34.	BRP Limited and Dhaligaon Contractors' Association and BRP Casual Workers' Union, Dhaligaon	Public	5 (w.e.f. 30/11/2006)	12(3)
35.	M/s. Geogy George, Haulege & Housekeeping Contractor of the Indane Bottling Plant, Cochin and Kerala Petroleum and Gas Workers' Union, IOC LPG Bottling Plant Cylinder and General Workers' Union and IBP General Workers' Union	Public	3(w.e.f. 1/12/2006)	12(3)
36.	M/s. Pearl Freight Services Pvt. Ltd., and Maharashtra General Kamgar Union, Mumbai	Private	6 (w.e.f. 1/7/2007)	12(3)
37.	Pioneer Freight Services and Maharashtra General Kamgar Union, Mumbai	Private	3 (1/6/2007)	18(1)
38.	Neyveli Lignite Corporation and the Contractors and NLC Workers' Progressive Union, Tamil Nadu	Public	Signed on 16/6/2008	Memorandum of Understanding
39.	Tamil Nadu Electricity Board (TNEB) and 13 Unions, Tamil Nadu	Public	Signed on 10 August 2007	Memorandum of Understanding
40.	Bharat Petroleum Corporation Ltd. and Mumbai Shramik Sangh (CITU), Mumbai	Public	-	Letter by the company to the Ministry of Petroleum and Natural Gas, Government of India, New Delhi
41.	Reliance Energy Ltd., Contractors' Association and Bombay Electricity Workers' Union, Mumbai	Private	w.e.f.8/4/2007	18(1)
42.	Century Rayon and Rayon Workers' Union, Mumbai	Private	1/4/2004	18(1)
43.	JNPT and Nhave Sheva Bunder Kamgar Sanghtana, Mumbai	Public	December 2005	Meeting Proceedings

Serial no.	Agreement details	Sector	Tenure (with effect from = w.e.f.)	Remarks (nature of the document)
44.	Hindustan Aeronautics Ltd., and AITUC	Public	4 years (w.e.f. 1 January 2003)	12 (3)
45.	Hindustan Aeronautics Ltd., and AITUC	Public	4 years (w.e.f. 1 January 2007)	
46.	Neyveli Lignite Corporation, the Contractors and 8 Trade Unions	Public	5 years (w.e.f. 30 October 2010)	12 (3)
47.	Century Rayon (A Division of Century Textiles & Ind. Ltd. and the trade union at the enterprise)	Private	With effect from 11 May 2010	18 (1)

Note: See the text for the explanation of 18(1) agreement and 12(3) settlement.

These are the documents we consulted and form the basis for analyses and discussions in Chapter IV.

Appendix 2

Details of interviews and discussions

1. Vasudevan, N., All India Blue Star Employees' Federation, Trade Union Solidarity Committee (TUSC), (also Secretary, National Trade Union Initiative, New Delhi), Mumbai, on 9 August 2010.
2. Cherian, K.C., General Secretary, Sandvik Asia Employees' Union, Pune, on 17 September 2010.
3. Gholave, Keshav, President, Thermax Kamgar Sanghatna, Pune, on 18 September 2010
4. Kshirsagar, A.G., Deputy General Manager – Operations, Thermax Limited, Pune, on 18 September 2010.
5. Dhokale, Kishore M, President, Shramik Ekta Mahasangh, Pune, Maharashtra, General Secretary, Atlas Copco Employees' Federation, Pune, on 18 September 2010
6. Jagadale, Maruti M., President, Sandvil Asia Employees' Union, Pune, on 18 September 2010
7. Dalvi, Pratap Kisan, General Secretary, Madare Rajabhan Maruti, President, Mercedes-Benz Employees' Union, Pune, on 18 September 2010.
8. Shrouti, Arvind, Director, Options Positive, Pune, on September 18, 2010 and telephonic update and conversation on September 28, 2010.
9. Ghogare, Pandavrang, General Secretary, Thermax Kamgar Sanghatna, Pune, on 18 September 2010
10. Jadhav, Sanjay G., Assistant General Manager, Powai Works Personnel, Larsen & Toubro Limited, Mumbai, on 19 August 2010.
11. Amre, Sanjay, TNC Coordinator, India, International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF), Mumbai, on 31 August 2010.
12. Roop Chand, Regional Labour Commissioner (Training), Ministry of Labour and Employment, Government of India, New Delhi, on September 15 2010.
13. Samant, P.N., President, Kamgar Ahadi/Association of Engineering Workers/Maharashtra General Kamgar Union, Mumbai, on 4 August 2010.
14. Dr. Vivek Monterio, Secretary, CITU Maharashtra State Committee/Mumbai Shramik Sangh/Engineering Workers' Union, Mumbai on 19 August 2010.
15. Two Employer Representatives, on 23 and 25 August 2010 respectively in Chennai (the persons wished to remain anonymous).
16. Patil, Sharad, Secretary General, Employers' Federation of India, Mumbai, October 2009.
17. Vadhavkar, Sanjay Suryakant, Working President, Hind Mazdoor Sabha (Maharashtra), General Secretary, Steel Metal & Engineering Workers' Federation of India, Textile Kamgar Sabha, on 10 August 2010.
18. Ramanand, G., National Secretary, All India Manufacturers' Organization, Bengaluru, on 26 August 2010.
19. Balan, S., Advocate, President, Contract and Casual Workers Union, (also associated with AITUC), Bengaluru, on 26 August 2010.

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20. Pinto, Albert, General Secretary, Bhartiya Kamgar Sena, Mumbai on 17 August 2010.
 21. Umesh, K.N. General Secretary, CITU, Bengaluru District Committee, on 27 August 2010 and telephonic talk on 4 October 2010.
 22. Shivashankar, G.R., Chairperson, Trade Union Co-ordination Centre (TUCC), on 27 August 2010.
 23. Shanmugam, General Secretary, LPF, Chennai, on 22 August 2010, Chennai.
 24. Soundararajan, A., General Secretary, CITU State Unit, Tamil Nadu, in Chennai on 22 August 2010 in Chennai.
 25. Mani, T.R.S. State Secretary, AITUC, Chennai, on 24 August 2010.
 26. Kumaraswamy, S., Secretary, AICCTU, Chennai, on 24 August 2010.
 27. Nair, Arvind, General Secretary, All India Council of Unilever Union, Project Coordinator, International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF), Mumbai, on 3 August 2010 and 21 September 2010.
 28. Patil, M.R. Deputy Director, Industrial Safety and Health, Mumbai, Inspector of Factories, 20 September 2010.
 29. Rama Subramanian, Secretary, North Madras General Workers' Union (CITU Branch), Chennai, 25 August 2010.
 30. Khan, Saeed Ahamed, Head, HR & CA, Standing Conference of Public Enterprises, New Delhi, on 14 September 2010.
 31. Dias, Michael, Employers' Representative, EFI, New Delhi, on 13 September 2010.
 32. Dev Roye, Swedesh, CITU, New Delhi, on 15 September 2010.
 33. Dabole and ten other workers from Mahindra and mahindra (Tractor Divison), Mumbai, 1 September 2010.
 34. Subarao, R.V., Vice-President, BMS, telephonic talk during in October, 2010.
 35. Sharad Patil, Secretary General, Employers' Federation of India, Mumbai, in October 2009.
 36. Dr. Krishnamurthy, Industrial Relations Institute of India, Mumbai, in October 2009.
 37. R.S. Desai, Organising Secretary, Nava Sheva Port & General Workers' Union, Mumbai, on 20 August 2010.
 38. Dabole, Prakash and 10 other workers in Mahindra and Mahindra Company, Mumbai, on September 2010.
 39. Narasimhaiah, S., Additional Commissioner of Labour (I.R.), Office of the Commissioner of Labour, Bengaluru, on 26 August 2010
 40. Narasimha Murthy, Deputy Commissioner of Labour, Office of the Commissioner of Labour, Bengaluru, on 26 August 2010.
 41. Mohan, S., General Secretary, Anglo-French Company Unit leader, TUCC on 27 August 2010 in the office of Shiv Shankar.
 42. Khan, B.A. Office of the Director-General (Labour Welfare), Ministry of Labour and Employment, Government of India on September 2010.
 43. Bhosale, Vijay, Secretary Mahindra and Mahindra Unit Union of Bharatiya Kamgar Sena, Mumbai on 19 August 2010.
 44. Hegde, Research Officer, Employers' Federation of India, Mumbai, in October 2009.

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45. Achary, K.D., Deputy Commissioner, Office of the Central Labour Commissioner, New Delhi, on 13 September 2010.
 46. Chand, S.K., Regional Labour Commissioner, New Delhi, on 13 September 2010.
 47. Dr. Choubey, Director General, Scope, New Delhi, on 14 September 2010.
 48. Cox, Jane, Advocate, Mumbai, on 31 July 2010.
 49. Singhvi, Sanjay, General Secretary, TUCI, Mumbai, on 3 August 2010.
 50. Informal Discussions with selected faculty at V.V. Giri National Labour Institute, Noida, on 6 August 2010.
 51. Discussions with and translation of selected proceedings of the Contract Labour Advisory Board, Maharashtra by Vaity, Superintendent, Ambhavani, Senior Clerk, Office of the Commissioner of Labour, Mumbai, on 4 October 2010.
 52. Sastry, S.P., Secretary, State Council, AITUC, Hyderabad, on 16 November 2010.

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