Proceedings of the National Tripartite Meeting on the Employment Relationship in India

Subregional Office for South Asia
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Preface

As a follow-up to the resolution on the employment relationship of 2006 and the adoption by the International Labour Conference of Recommendation No. 198 on the Employment Relationship, the Office carried out a series of activities and research on this topical issue in various countries of the world, including India.

The issue of who is or is not in an employment relationship and what rights and obligations flow from that status has become problematic in recent years in many countries as a result of the changes in work organization and adequacy of legal regulation in adapting to those changes. In India, the issue is not different, and for decades now, the social partners have been discussing the adequacy of the existing legal framework and its application to effectively regulate contract labour and protect contract workers. The employment relationship is under the scrutiny of not only labour lawyers, but also and mainly of workers, employers, and the judiciary. Changes in the world of work have modified the 'traditional' notions of the employment relationship. In fact, these changes in the "standard employment relationship" shape the scope of protection and application of labour law and at the same time affect the way labour law is interpreted and implemented.

The present publication compiles the papers presented at the National Workshop on the Employment Relationship, which took place in Bangalore in October 2007, organized by the International Labour Organization (ILO) in cooperation with the Council of Indian Employers. We hope that the papers published now will contribute to a better understanding of this complex issue in India and of the different views and perceptions of the social partners.

The ILO would like to thank the Council of Indian Employers for their efficient support, instrumental in making the workshop a success.

Giuseppe Casale
Chief
Social Dialogue
Labour Law and
Labour Administration Branch

Leyla Tegmo-Reddy
Director and
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Subregional Office for South
Asia,
New Delhi

Speech of the Governor of Karnataka

Bangalore, 22 October 2007

Mr K.G. Baalakrishnan, Chairman, Council of Indian Employers
Mr I.P. Anand, Member, ILO Governing Body Member
Mr N.M. Adyanthaya, Member, ILO Governing Body
Ms Leyla Tegmo-Reddy, Director, ILO Subregional Office in Delhi
Mr Giuseppe Casale, Chief, Social Dialogue, Labour Law and Labour Administration Branch in ILO Geneva
Representatives of the Government of India
Representatives of the state governments, workers and employers, ILO officials

Ladies and Gentlemen,

It is my pleasure to address this distinguished audience and welcome you to the State of Karnataka and the city of Bangalore, with ancient temples, historical monuments, and a fast growing industrial sector.

Let me thank the International Labour Organization and the Council of Indian Employers for having chosen the city of Bangalore to hold this important meeting. I would also like to congratulate all those present for engaging in such a relevant discussion, the employment relationship.

During the last 30 years, enormous political, economic, and social changes have taken place in the world, which have resulted in a more open and liberal global economy. Previously distinct national economies have become increasingly integrated into international marketplaces. Increased international competition has put pressure on the economies and on their main actors – workers and employers.

As is the case worldwide, contract labour has become a prominent feature of the labour market in India. A trend has emerged whereby traditional employment patterns based on long-term or open-ended employer–employee relationships are being replaced by non-standard arrangements. Increasingly large numbers of the workforce are now engaged in atypical work arrangements and many of these workers are contract labourers.

In India, the issue of contract labour has been subject to long debate. In our country, contract workers are millions in number and generally belong to the unorganized sector. They are engaged in agricultural operations, plantations, the construction industry, ports and docks, oil fields, the manufacturing industry, railways, airways, road transport, and in many other fields. They belong to the vulnerable sections of society and have very little bargaining capacity. They are mostly engaged in hazardous occupations and areas of operations which endanger their health and safety. The vast majority of these workers, men and women, are not covered by any social security scheme. They are often denied minimum wages by the contractors, and due to their illiteracy and low bargaining capacity, they are not even paid wages regularly. Many are exploited by the contractors due to lack of proper supervision by the principal employers.

At the national level also, there are important implications to the increased use of atypical employment situations. As more workers are forced out of formal employment and into more casual or temporary arrangements, there are more possibilities for workers and employers to avoid payment of income tax, social security and employment-related insurance contributions. Ultimately, the reduced payment of these social contributions is to the detriment of the national society as a whole.

Limited access to skills and training might imply for a nation, failure to invest in the skills of future generations of workers and have long-term effects on both the quality and sustainability of our industries. Workers who understand their work are more likely to devise and implement strategies to improve the sustainability of their industry and thus safeguard their own future income and prospects. Lack of training might also lower industry standards of skills and quality.

We must also recognize 'employment flexibility' as a genuine need of a dynamic and versatile economy. We cannot any more expect from every employer that he or she take responsibility for the lifelong employment of workers.

The abolition of the contract labour system has been under the consideration of the Government of India for a long time. In the 2nd Five-Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of the system, and improvement of the service conditions of contract labour wherever abolition was not possible. The matter has been discussed at various meetings of tripartite committees at which the state governments were also represented and the general consensus of opinion was that the system should be abolished wherever possible and practicable, and that in cases where the system cannot be abolished, the working conditions of labour should be regulated so as to ensure payment of wages and provision of essential amenities.

In the course of these two days, the participants will benefit from senior international expertise that might inspire change in our own country.

I am sure the conference will also highlight and provide for a meaningful dialogue on the approaches adopted by the State of Karnataka, with reference to the achievement, not of only economic growth, but also of concurrent employment generation, ensuring a positive industrial relations scenario and also the competitiveness of enterprises.

Ladies and gentlemen, the ILO offers the social partners the chance to discuss, understand each others' views, and build up sound social dialogue. Let us take this opportunity and engage in true and effective social dialogue for the benefit of all the workers and industries of this State and the country.

I wish you a fruitful meeting.

Welcome remarks by Leyla Tegmo-Reddy

Director, ILO SRO-New Delhi

Bangalore, 22 October 2007

Shri Oscar Fernandes, Honourable Minister for Labour and Employment
Shri K.G. Baalakrishnan, Chairman, Council of Indian Employers
Shri I.P. Anand, Member, ILO Governing Body
Shri N.M. Adyanthaya, Member, ILO Governing Body
Shri B.C. Prabhakar, President, Karnataka Employers' Association
Shri S.K. Srivastava, Joint Secretary, Ministry of Labour and Employment, Govt. of India
Representatives from the employers and workers' organizations

Ladies and Gentlemen,

Good morning.

It is a great pleasure for me to welcome you all to the National Workshop on the Employment Relationship, organized by the ILO (International Labour Organization) in cooperation with the Confederation of Indian Employers.

We are very honoured to have among us the Honourable Minister of Labour and Employment to inaugurate a meeting on such a relevant topic for the social partners and the Government of India – the employment relationship.

For those who are not familiar with the work of the ILO, let me recall that the issue of the employment relationship has, in one way or another, been under discussion at the ILO for more than a decade.

Since the 1950s, the ILO has been aware of the growing phenomenon of the lack of protection for a large number of workers, in particular employees of subcontracting enterprises. Discussions on 'contract labour' have already taken place during the International Labour Conference (ILC) in 1997 and 1998 (at its 85th and 86th sessions, respectively). At the 1997 ILC, a discussion was held on private employment agencies, touching on the situation of workers employed by such agencies. During the latter discussions, the Private Employment Agencies Convention (No. 181) and the Private Employment Agencies Recommendation (No. 188) were adopted. However, against the usual practice of the ILC, no instrument on contract labour was adopted, highlighting the extent to which the subject could be misunderstood and how controversial it was.

Other debates have since taken place at the ILO, including a meeting of experts on workers in situations needing protection in 2000 and a discussion on the employment relationship at the 2003 ILC, during which ideas were aired and allowed to take shape. On the basis of various dialogues and in-depth studies, the ILO engaged in a new discussion to adopt a recommendation at the 2006 International Labour Conference.

The many different forms of contract labour, the very divergent views of workers and employers on the issue, and variations in national employment law and practice made it very difficult to arrive at a simple, single solution to find an international standard to address the concerns of the workers and a number of governments. Eventually, the ILC adopted the ILO Recommendation on the Employment Relationship, 2006 (No. 198), under strong criticism from the employers' group.

During the discussions, the Government of India supported the proposed ILO Recommendation, claiming that it would protect the interests of workers and provide them with access to social security, while encouraging employment opportunities and increasing productivity. The Government also acknowledged that changes in the labour market and the workplace, as well as globalization, had led to flexible work arrangements and those new forms of the employment relationship were giving rise to difficulties in providing protection for all workers. As such, an employment relationship would be the legal basis for workers' and employers' rights and obligations.

The ILO, which is a tripartite organization, has always focused strongly on supporting our constituents, hoping to enable them to find solutions to their problems through social dialogue or even just to understand each others' perspectives better.

Throughout the next two days, a number of experts from different backgrounds, but all very experienced, will share the practice of the employment relationship in India and in other countries. We will understand better the contents of the ILO Recommendation, and engage in lively and constructive discussions.

I sincerely hope that the inputs provided will help to understand the issue of the employment relationship better, and that at the end of the workshop, participants will understand the various views and positions on this controversial subject. If this is achieved, we will be able to say that it was a successful meeting.

Welcome to all of you again.

Report of the Meeting on the Employment Relationship in India

Bangalore, 22-23 October 2007

1. Background and objectives

The issue of whether a worker is involved in an employment relationship – and what rights/protections flow from that status – has become problematic in recent decades as a result of major changes in work organization and the inadequacy of legal regulation in adapting to those changes. Contractual arrangements can have the effect of depriving workers of the protections they are due and affect particularly vulnerable workers. Member states of the International Labour Organization (ILO) and their social partners have emphasized that the globalized economy has increased the need of workers for protection, at least against circumvention of national laws by contractual and/or other legal arrangements.

With the adoption of the Recommendation on the Employment Relationship, 2006 (No. 198), the International Labour Conference (ILC) recognized that there is a role for international guidance to member states regarding the means of achieving protection through national law and practice, protection that should be accessible to all women and men.

Along with the adoption of the Recommendation, the ILC adopted a resolution aimed at assisting the constituents in developing national policies and setting up monitoring and implementing mechanisms as well as promoting good practices at the national and international levels, concerning the determination and use of employment relationships. The resolution also stressed the need to maintain up-to-date information and undertake comparative studies on changes in the patterns and structure of work to improve the quality of information on and understanding of the employment relationship and related issues.

In this context, the workshop, organized by the ILO in cooperation with the Council of Indian Employers (CIE), aimed at:

- sharing with constituents international experience on the practice and legal framework for the employment relationship;
- facilitating discussion among the social partners and the government on the employment relationship in India; and
- improving understanding of the provisions of the ILO Recommendation on the Employment Relationship.

Participants

The participants in the workshop were the tripartite constituents in India and national and international experts.

The ILO invited each of the parties to prepare papers reflecting the organization's view on the employment relationship. The issues addressed included views on national measures and policies, regulatory framework, the role of the labour administration, interests and views of the social partners and the government on current practices, and future developments.

2. Inaugural session

The workshop was inaugurated by Mr **Oscar Fernandes, Minister of State (Independent Charge), Labour and Employment,** Government of India. During the session, Mr Fernandes urged that the employment relationship should not be specific to the top executives or formal sector, but should also be present in the informal or unorganized sector, where most of the workers work on a contract basis. He hoped that the deliberations at the national workshop would come up with innovative solutions.

Mr Fernandes stressed the importance that the government attaches to the issue and said that the distribution of the benefits of growth among the population was one of the main challenges in India. On the subject of the meeting, he made a plea to the social partners to arrive at a consensus on issues such as compensation and contingencies.

The welcome remarks were delivered by **Mr K.G. Baalakrishnan, Chairman, Council of Indian Employers.** Mr Baalakrishnan shared his view that the ongoing globalization has seen a paradigm shift in the world of work. While a highly skilled employee is called a developed partner, an unskilled or marginal employee does not have any visible employment relationship. He suggested that social security schemes being implemented in the organized sector be extended to the unorganized sector through appropriate changes in the scheme. He also suggested that employment security be guaranteed through skill development, which should be the focus of attention.

Mrs Leyla Tegmo-Reddy, Director, ILO Subregional Office, in her welcome remarks, shared that the ILO has been aware of the growing phenomenon of lack of protection for a large number of workers, in particular employees of subcontracting enterprises. She said that the many different forms of contract labour, the very divergent views of workers and employers on the issue, and variations in the national employment law have made the process of determining an international standard for the employment relationship difficult and the ILO Recommendation has been adopted to make this process simple.

Addressing the inaugural session, Mr N.M. Adyanthaya, Member, ILO Governing Body, stated that hidden and disguised forms of employment in the post-globalization era have become a subject of serious concern. It has also raised the issue of social equilibrium. Social security is necessary for every employee and, unless some form of the employment relationship is established, it may not be possible to cover employees under the scheme. Job insecurity has also increased over the years. Recommendation No. 198 is, therefore, significant for workers.

Addressing the opening session, Mr G. Casale, Director, Dialogue, ILO Geneva, thanked the Council of Indian Employers and the ILO Subregional Office in New Delhi for starting a dialogue process on this important issue, which he said was very timely. Mr Casale stated that different countries have different situations and legal structures, but the ILO instruments function like a common thread to ensure basic standards. He said that globalization has exposed certain vulnerable sections of society to greater risks, which need to be taken care of; this is the spirit of Recommendation No.198.

Mr Gotabaya Dasanayaka, Senior Specialist, ILO, delivered the vote of thanks.

3. Technical session I

Employment relationship: Recent challenges

The first technical session, chaired by **Mr S. Srivastava, Joint Secretary, Ministry of Labour,** was devoted to **Employment relationship: Recent challenges.** In his opening remarks, Mr Srivastava stated that the employment relationship had become a critical issue in the wake of globalization and the mainstreaming of peripheral employees was necessary to protect them against socioeconomic insecurities. A legal or quasi-legal framework may be required to meet this situation. In Mr Srivastava's view, this was not part of any corporate social responsibility, but an obligation in the larger interest of society and the country. For this reason, the Government of India had supported the ILO's Resolution on the subject. All the ILO instruments protecting the employment relationship and social security would become important in the coming days, he said.

Mr Giuseppe Casale, Chief, Dialogue, ILO Geneva, provided an in-depth overview of Recommendation No.198. The recommendation was aimed at orienting countries to avoid situations in which triangular relations and various forms of disguised employment left workers unprotected.

In the first part of the presentation, Mr Casale focused on the evolution of the discussions at the ILO and the preparatory work carried out until the adoption of the Recommendation in 2006. He then explained the different elements of the Recommendation:

- the establishment of a national policy for reviewing and clarifying the scope of laws and regulations;
- guidance in determining the existence of an employment relationship, suggesting a number of indicators such as subordination or dependence; and
- the establishment of a proper mechanism for monitoring and implementation. The nature and extent of protection should be defined by national law and practice.

The Recommendation should not interfere with genuine commercial and independent contractual relationships and member countries should formulate and implement the recommendation in consultation with the most representative organizations of employers and trade unions. Mr Casale also stated that establishment of an appropriate mechanism for monitoring labour market developments in this context was an integral part of the Recommendation.

Mr B.C. Prabhakar, President, Karnataka Employers Association, the first panellist to speak at the session, focused on the recent challenges facing the employment relationship in India as a result of changes such as globalization of business, advancement of technology, privatization, and workforce diversity. Mr Prabhakar highlighted the impact of globalization on work and workforce diversity as posing a big challenge. The modern requirement was a skilled workforce to meet increasing competitiveness. The modern workforce had diverse aspirations and expectations, which the enterprises needed to meet. Movement of jobs, flexible working hours, and demands of work–life balance were other new challenges, he added.

Mr Prabhakar also talked of the diversification of the economy into small, medium, and tiny sectors and that the shopfloor relationship between a worker and his supervisor had also been impacted by the ongoing process of globalization. Lastly, he said that the foreign exchange volatility and the strengthening of the rupee against the US dollar have resulted in unemployment on a large scale in Karnataka alone. He said he felt that the employment relationship should be seen in this background.

Mr Jibon Roy, National Secretary, Centre of Indian Trade Unions, stated that through Recommendation No.198, the ILO has sought to moderate the harshness of globalization, and to this effect, it was welcomed. Around 74 per cent of the workforce in India had no legal coverage and close to 30 per cent of the labour was living on less than US$1 per day. The developing countries had become a source of cheap labour for transnational organizations.

Mr Roy said that in India, the share of manufacturing in the GDP had gone down to 16-17 per cent, implying less and less employment, thereby swelling informal sector employment, where there is no protection. The Recommendation should play a useful role here.

The presentation was followed by a discussion, in which the following issues were raised:

- The concept of the Recommendation is so broad that it may not be effective in addressing the ill effects of globalization.
- Outsourcing has increased the number of contract workers, who need to be given some protection. All statutory benefits must be ensured to them. The workshop should draw some definite conclusion in this context.
- Social justice is the cornerstone of Recommendation No. 198 and this must be highlighted.
- Since industrial relations have failed to achieve industrial peace, Recommendation No. 198 should be given a chance.
- The subject requires rethinking because India is becoming a global hub of manufacturing companies, and all eyes are focused on India.

4. Special session

Mr Rameshwar Thakur, Governor, Government of Karnataka, addressed a special session, which was chaired by Mr I.P. Anand, Member, ILO Governing **Body.**

Mr Anand recalled the debate that took place on the subject at the International Labour Conference and observed that in the era of globalization, new forms of employment will emerge and the value chain will get longer and longer. It was difficult to trace a common employer. Nevertheless, each employee should have some social security coverage. He said that though employers had voted largely against the subject, they were open to a healthy debate.

Ms Leyla Tegmo-Reddy then welcomed Mr Rameshwar Thakur, Governor, Government of Karnataka.

Mr Thakur recalled that contract workers were millions in India, generally belonged to the unorganized sector, and were not covered by any social protection schemes. They were often denied minimum wages and had low bargaining capacity. Increase in the numbers of atypical workers also had negative implications for society as a whole in terms of reduced tax payment, social security and employment related insurance contributions, reduced investment in skills and training for future generations of workers, and long-term negative effects on the sustainability and quality of Indian industries. At the same time, Mr Thakur recognized the need for ‘employment flexibility’ in a dynamic economy.

Taking another look at the issue of contract labour has been under the consideration of the Government of Karnataka for a long time. Various national bodies had recommended undertaking studies to ascertain the extent of the problem, the progressive abolition of the system, and the improvement of the service conditions of contract labourers, wherever abolition was not possible. In cases where the system cannot be abolished, the working conditions of the labour should be regulated so as to ensure payment of wages and provision of essential amenities.

Mr Thakur said he wished the participants would engage in meaningful dialogue on the approaches adopted by the State of Karnataka, with reference to the achievement not only of economic growth, but also of concurrent employment generation, ensuring a positive industrial relations scenario and competitiveness of enterprises. The ILO provided its social partners the chance to discuss, understand each other's views, hear about relevant experiences from other countries, and build up sound social dialogue. He encouraged participants to take the opportunity and engage in true and effective social dialogue for the benefit of all workers and industries of the state and the country.

Mr A. Sivananthiran, ILO, Geneva, delivered the vote of thanks.

5. Technical session II

Subregional trends and issues in the employment relationship

The second technical session, on subregional trends and issues in the employment relationship, was chaired by **Mr H. Mahadevan, Deputy General Secretary, All India Trade Union Congress (AITUC).**

In his opening remarks, Mr Mahadevan observed that there was a huge gap between adoption and ratification of the ILO instruments and their implementation, and this gap should be narrowed down. Around 390 million workers in the informal sector had no protection, hence the employment relationship was important. Gandhi's theory of trusteeship was very relevant in today's context to teach employers and employees to live and work together.

Prof. Venkata Ratnam, Director, International Management Institute, made a presentation on 'Subregional trends and issues in the employment relationship' and focused his presentation on India. According to Prof. Ratnam, problems relating to the existing laws were the numerous pieces of existing legislation and the lack of coherence between them, low coverage of labour law, and a contract labour act which dealt with regulation and abolition, but not with absorption.

Prof. Ratnam highlighted the changing times and increasing forms of the employment relationship, which have led to a staggering number of people who, while working for an organization, are not considered employees, and a growing number of businesses that had outsourced employee relations. Injustice, hardship, and privation for a large majority of workers could lead to unrest and threaten harmony and peace in the world.

Dr Ratnam explained in detail the shift in priorities of the various actors in the system. Managers were increasingly focusing on the short term as well as on share prices and the importance of keeping down the prices of stocks as compared to the industry average. The new priorities for the government were economic growth and keeping inflation low as compared to full employment in the past. Protection and subsidies had been replaced by tight money and efforts to curb union power. Prof. Ratnam compared the main features of formal and informal employment, reminding his audience that the efficiency of firms relied on the quality of an efficient, skilled, and committed workforce with career prospects.

Prof. Ratnam then compared the new forms of employment relationship in India, which were becoming standard, and compared the criteria established in the ILO Recommendation No. 198 to determine the existence of employment and the criteria contained in the Contract Labour (Regulation and Abolition) Act, 1970, of India. In his view, the Recommendation was insufficient and had created confusion in trying to give employment relationship a clear identity.

Mr Ramakant Bhardwaj, National Secretary, Laghu Udyog Bharti, an association of small-scale industries in India, observed that small-scale industries were facing tough competition in the post-globalization era and cost-cutting was the only solution. Contract labour was, therefore, necessary because it provides flexibility and reduces costs. He was of the view that the government should take care of the social security needs of the small-scale and informal sector employees as the margin of profit in these sectors was very small.

Mr K. Radhakrishnan, representing the United Trade Union Centre (UTUC), observed that following globalization, the government had been shedding all its responsibilities, leaving the working class unprotected. The government should ensure decent work to all employees by establishing sound employment relationships.

While India has enacted specific legislation for contract labour, because of the dramatic changes in the environment, some panellists, including Prof. Ratnam, pointed out that the existing provisions have not been adapted to the new forms of employment relationship in India.

The panellists agreed that the number of casual workers had increased in India. For one, the number of trainees had increased. And outsourcing had also added to the numbers. Low wages, lack of protection, and lack of training were repeatedly mentioned as problems resulting from this casualization of workers.

6. Technical session III

Sharing the experiences of India and Sri Lanka

The third technical session was chaired by **Mr Sharad Patil, Secretary General, Employers Federation of India.** In his opening observations, Mr Patil said that one-sixth of the governments did not agree with the ILO Recommendation because it was not easy to implement, particularly the presumption of employment. The criteria needed to be more broad-based.

Mr Patil said that in the era of globalization and technological upgrading, there was hardly any choice but to outsource. In a number of cases, informal operations were becoming formalized, as in companies running canteen, hospitality, and security services. It was becoming difficult to define formal and informal operations. There was a need to move from job protection to income protection.

Ms H.M.D.N.K. Wataliyadda, Director, Social Dialogue Division, Department of Labour, Government of Sri Lanka, provided an overview of the employment relationship in Sri Lanka. After providing data on population and employment, Ms Wataliyadda gave an overview of the types of contracts that existed in her country and highlighted a decrease in regular employment (from 29 per cent of total employees in the late 1980s to 20 per cent in 2004–05) and an increase in casual employees (29 per cent to 34 per cent), the self-employed (30 per cent to 32.9 per cent), and contract employees. Contract employees, in particular, she said, had emerged as a new form of employment to reach 1.8 per cent of total employees.

Ms Wataliyadda stressed the comprehensive coverage of the various employment relationships by legislation, but said that lack of enforcement had led to many disadvantages for non-regular workers. She was of the view that in Sri Lanka, workers were not well organized and that there was a need to protect the workers rather than the jobs. She favoured a new legislation for contract workers, workplace cooperation, and developing decent work environment as the necessary tools to bring this about.

Mr Sanjiv Kumar, ILO-SRO India, presented the Karnataka experience with regard to contract labour and other innovative experiences, which are considered in India to be good practices for regulating the employment relationship. Mr Kumar highlighted the recent changes in the labour market scenario: increasing contractualization, a shift from wage employment to piece-rate self-employment, and higher subcontracting. In 2003–04, the Government of Karnataka carried out a study to understand the employment practices in governmental bodies and companies and in the private sector. Among other findings, the study found that contract labourers received lower wages (from one-sixth to one-eighth that of regular employees) and faced insecurity of tenure, lack of training, and a much higher accident rate (eight-ten times higher) than regular workers. The study also indicated lack of labour law protection for contract labourers, lack of social protection, and a higher share of excluded groups, such as scheduled castes/scheduled tribes, backward groups and other minorities, among these workers.

According to the study, the reasons given for contractualization by employers in Karnataka included reduction in transaction costs, legal flexibility in employment relations, cutting costs, and increased productivity. They also believed that they were replacing expensive, undisciplined, less productive, and 'undisposable' permanent employees with cheap, disciplined, productive, and disposable manpower. The study report highlighted that not only were the employers beneficiaries of the system, but also regular employees and trade unions.

The Karnataka study highlighted the fact that the statutory contract labourer in India was different from any such labourer elsewhere because of the presence of an intermediary contractor. This was not the case in China, where contract labour was more extensive, but better protected because there were no intermediaries.

The study report emphasized the close relationship between the inflexibilities in the Industrial Disputes Act, 1947, and the progressively increasing needs of contract labour and its related practices. It suggested urgent attention and action and changes in law, policies, and practices. It concluded that contract labour and inflexible labour laws were inter-related issues and needed to be examined holistically if lasting solutions were to be reached.

Mr S.Q. Zama, Secretary, INTUC, the next speaker at the session, said that it was the ultimate responsibility of the government to implement the various laws and the ILO instrument and to be a model employer by building consensus. Globalization was not a choice and trade unions had to build consensus on some basic issues in order to face it. He added that collective bargaining could help in achieving a peaceful industrial relations climate.

Mr H.R. Shah, Ministry of Labour, Government of Gujarat, said that for employment to grow, business should also grow. At the same time, employers should be fair. Mr Shah advocated fixed term employment in the special economic zones in the country. He observed that during the last ten years, although productivity had gone up, wages had shrunk.

During the discussions that followed, concern was expressed about the weak implementation of existing legislation, and the effectiveness of the labour inspectorate was criticized. The participants highlighted the negative consequences of the use of contract labour. In the context of shortage of skilled and semi-skilled workers, there was a need for training and upgrading of skills. A non-regular workforce had less chance of being trained and retrained. This showed up as a common concern for workers and employers.

Safety and security emerged as another issue for common concern among workers and employers, although the views seemed divergent. Income protection was suggested by one employer as opposed to job protection.

On a positive note, many of those who intervened stressed the fact that workers and employers were in the same boat. The need for consensus and alliances between workers and employers on this issue was stressed repeatedly throughout the session.

7. Technical session IV

View of the social partners on the employment relationship in India

The fourth technical session, on the **views of the social partners on the employment relationship in India,** was chaired by **Professor C.S. Venkata Ratnam, Director, IMI.**

The first speaker, **Mr Babu Ramesh from the V.V. Giri National Labour Institute, Noida,** focused on the main issues and concerns of the employment relationship in India. The major issues were the lack of clarity on the obligations of the parties to the relationship, increased incidence of disguised employment relationships, and inadequacies and gaps in legislation.

Mr Ramesh indicated that the unorganized sector continued to be the major component (93 per cent) of the workforce and was characterized by the absence of an identifiable employer and by multiple employer status in many cases, such as home-based workers and domestic workers. According to him, there was an unprecedented sharp growth in self-employment, along with a substantial rise in regular wage/salary work. A large component of the self-employed was home-based workers.

The issue is relevant in India because of the following factors:

- Employment patterns: Growth of employment in the unorganized sector and self-employment creating disguised employment relationships;
- Transformation in the work organization: Penetration of global production systems in the manufacturing and service sectors; and
- New forms of production, such as off-shoring and outsourcing, have created ambiguous employment.

Mr Ramesh observed that the major issues that arose in the employment relationship were the lack of clarity on the rights and obligations of the parties concerned, increased incidence of disguised employment relationships, and inadequacies or gaps in the legal framework. In his view, the legal framework needed to be fortified so that the gaps and inadequacies in it were filled. These gaps existed because some of the current transformations in the employment relationship, such as off-shoring and outsourcing, had not been anticipated at the time of enactment of the legislation.

While there have been a few recent government initiatives – such as the preparation of a draft umbrella legislation for the unorganized sector – there were still many challenges in its implementation, such as resource constraints, the enormity of the unorganized sector, and the coordination and harnessing of efforts within the federal organizational set-up. He concluded by saying that there was a need for concerted and coordinated efforts from all social partners.

In his intervention, Prof. Ratnam clarified that while there have been various versions of the bill for unorganized workers, the version presented to Parliament was a weak version of the initial draft and had created substantive controversy.

Mr B.P. Pant, Secretary, Council of Indian Employers, presented the views of employers on the employment relationship in India and made concrete proposals on how to deal with the main challenges.

Due to globalization and paradigm shifts in the world of work, the number of people going out of the formal employee–employer framework was increasing, he said. Labour market innovation, greater diversity in employment, and working time flexibility were facilitating entry and exit. The disguised relationship brought socioeconomic insecurities to categories of vulnerable employees, such as contract employees, casual employees, migrants, home-based employees, and women employees. Whether this situation could be addressed through a national policy framework, he said, needed to be examined along with defining indicators to determine employment relationship.

Mr Pant reminded the audience that according to the Contract Labour (Regulation and Abolition) Act, 1970, the principal employer was responsible if the contractor failed to comply with his obligations, such as the provision of canteens and other facilities and wages, including balance or arrears. According to the Act contract workers were entitled to the same wages as were paid to regular employees.

Mr Pant talked of some of the advantages of contract labour, such as relieving the principal employer of the need for direct supervision and control over the employees on non-essential functions and the fact that it was comparatively cheaper. Inflexible labour policies were also a restraining factor in regular employment relationships.

Mr Pant suggested the introduction of short-term and fixed-term employment policies and better enforcement and implementation of the Contract Labour Act. He also said a framework for a tripartite agreement should be developed at the national level, in which the obligations of the principal employer and the immediate employer were well defined and fair indicators were laid down as to what constitutes the employment relationship.

Mr Arvind Shrouti, lawyer and trade union consultant, presented a paper which provided an overview of the recent changes in the employment relationship in India and delineated what he called the employment regulation and flexibility insurance network, a mechanism that would match employers' need for flexibility with employees' need for social protection.

Mr Shrouti provided an overview of the changes in the labour market before and after 1991. According to him, restructuring had been taking place in India and flexibility was already in place in the 1980s. The share of the workforce in the organized sector was shrinking and labour regulations had failed to provide protection even to regular employees. Mr Shrouti recognized the legitimate need of employers for flexibility, but at the same time, he said, social protection was a genuine need of non-permanent workers. He said that what was needed was a paradigm change from permanency to job security, and employers should get the right to flexible employment by contributing to social security.

The classical employees' union model was not suitable any more for most unprotected workmen. 'Job trusts' or 'insurance unions' were more appropriate forms of organizations for unprotected workmen, he said. 'Job insurance for non-permanent workers' could become an umbrella organization, he added.

Mr Shrouti presented the concept of the 'Flexibility Insurance Network', based on the idea that employers should buy their right to employment flexibility by paying a premium for such a scheme. While the model still needed to be substantiated with actuarial calculations, the network would be a centralized fund fed by contributions from the employers' premium and from permanent workers. The fund would not be directly disbursed to beneficiaries, but would grant allocations to various job trusts to ensure replacement of manpower to employers in cases of absence of labour, conducting re-training of temporarily jobless members and also engaging them in social services, and paying subsistence allowances and other benefits to 'employment deficit' members.

The last speaker of the session was **Ms Amarjit Kaur, National Secretary, AITUC,** who provided the gender and informal economy perspectives of the employment relationship. Ms Kaur reminded the audience that four decades ago, all workers had been part of the informal economy, so legislation had at least brought about protection for 7 per cent of the workers. She criticized the lack of enforcement of labour laws and other provisions and talked specifically of the Equal Remuneration Act, 1976, which was not getting implemented. She also sought the audience's attention to the fact that women were getting paid less than men. Ms Kaur stressed the key role of the state in protecting vulnerable people. The government should be responsible for implementing and managing any social protection scheme, she said.

Reminding the audience that employment of women was increasing in the informal economy, Ms Kaur recommended that special attention be paid to women workers. In her view, legislation was the best instrument to provide protection, and she suggested separate laws for agriculture and non-agriculture workers.

In the debate that followed, the participants focused on the role that the various parties should play in the establishment and management of a social protection fund. While the employers' representatives were not opposed to the creation of a social protection fund, there were divergent views on who should bear the cost of it, whether it should be the employers alone, or whether employees should contribute to it.

8. Technical session V

The role of the Central Advisory Contract Labour Board

The fifth technical session was chaired by **Ms Marleen Rueda, Senior Specialist on Social Dialogue and Labour Administration, SRO-ILO,** who introduced the various panellists, who came from various backgrounds, but all had practical experience on the issue of contract labour.

The first speaker was **Dr S. Balakrishnan Raju, Chairman, Central Advisory Contract Labour Board, Government of India,** who provided an overview of the Contract Labour (Regulation & Abolition) Act, 1970, and the work that the Board had been doing in recent years.

In his presentation, Dr Raju provided an in-depth overview of the contents of the Act and stressed the fact that in spite of its name, no provision existed for the regularization of workers. This had been amended in many cases by court rulings.

The Central Advisory Contract Labour Board (CACLB) he said, was a tripartite body constituted under Section 3 of the Contract Labour Act by the Government of India. Its main function was to advise the Central Government on such matters arising out of the administration of the Act as may be referred to it and to carry out other functions assigned to it under the Act. But it also received complaints on the implementation of the Act by workers and employers. In Dr Raju's view, contract labour was needed, but such employment had to be carried out in full respect of the provisions of the Act.

Dr Raju cited examples of landmark judgements by the Supreme Court on the question of status of workmen in the event of abolition of the contract labour system. For example, in the Air India statutory corporation case (1996), the Supreme Court laid down that in the event of abolition of the contract labour system by the government on the recommendations of the CACLB, the relationship between the contractor and his workmen was snapped and a direct relationship was established between the workmen and the principal employer. In other words, the contract workers automatically became the direct employees of the principal employer. This judgement had become a boon to workmen because it led to the regularization of a large number of contract workers.

In the Steel Authority of India Ltd vs National Union of Waterfront Workers (2001) case, the Supreme Court declared that in the case of genuine contracts, the consequence of abolition of the contract labour system was that the principal employer was restrained from engaging contract labour in the abolished activity, and if he intended to employ regular workmen in that activity, the workmen of the erstwhile contractor should be given preference.

The principal employer was not required to absorb the contract workmen as his direct employees, but if the contract was a camouflage in order to avoid liability under the labour laws, the Industrial Adjudicator would decide the direct absorption of the contract employees into the principal employer's establishment.

Dr Raju reminded the audience of the observations of the Supreme Court in Civil Appeal No. 5497 of 1995: "The only ostensible purpose in engaging contract labour instead of direct employees is the monetary advantage by reducing expenditure. Apart from the fact that it is an unfair labour practice, it is also an economically short sighted and unsound policy, both from the point of view of the enterprise concerned and the country as a whole. Economic growth is not to be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people."

He concluded by emphasizing that the CACLB would always try for an amicable settlement between parties, thereby ensuring continuity of employment to contract workmen.

Ms H. Mangalamba Rao, from the Bharatiya Mazdoor Sangh, shared with the participants her views on the use of the Contract Labour Act based on her experiences in courts. According to Ms Rao, the Contract Labour Act was a most anti-worker piece of labour legislation. One of the first effects it had was that of companies trying to keep their workforces below 100 to avoid its provisions.

Other shortcomings of the Act were linked to the need to request for a licence to be able to get contract labour. Companies would pay for the licence, but the work was in fact performed by permanent employees. Other breaches of compliance with the law included not displaying the contract labour work in the premises of the company and not maintaining the requested documentation properly. There was no security in such service and the payment of decent wages was left to the will of the employer.

As the other speakers had done, Ms Rao also criticised the lack of provisions for regularization. She pleaded for an amendment of the Act, including the obligation to pay through bank transfers, recognition of the rights of trade unions, and the right to collective bargaining and strike for contract labourers.

The next speaker was **Mr R.K. Chilana, Associate Vice-President, Escorts Ltd,** a company that employed some 10,000 workers. Mr Chilana said the economic reforms laid great emphasis on the flexibility of the structure and employers firmly believed that employment of contract labour had become essential in view of the rigidities of the labour laws, which provide job security to employees. The employers gained from lower costs and professionalism. Mr Chilana also pleaded for proper payment of minimum wages.

Mr Ashok Ghosh, Secretary, UTUC, made a speech in which he gave a picture of the present era in terms of the value of human work. Human resources were considered a key element in any aspect of development work, but the employers in the developing countries were hiring labour at low wages and poor service conditions, and hiring and firing at will. The mechanism adopted tried to circumvent the laws and the workers came to be at the receiving end. There was hardly any decent employment relationship in the job market in India.

In the Indian economy, the agriculture, manufacturing, and service sectors had all employed people in large numbers. But the people actually employed were only a fraction of the employable people. The situation became worse when the government went in for downsizing its own workforce, since the private sector followed suit. The employment relationship was undergoing a radical change, which was affecting the workforce adversely.

During the discussion, a participant made a plea in favour of the Act, stating that the problem was rather in its implementation.

In Mr Sanjiv Kumar's point of view, the role of the CACLB was marginal and he suggested that the work of state boards would be analysed in future work, since some innovative practices could be found. Karnataka, for instance, was a very progressive state and had proven effective in enforcing the CACLB's decisions. Most contractors had been converted to employers and a circular had been issued so that payments could be made through banks.

9. Group work

The participants were divided into working groups, each to work on a different topic aimed at providing suggestions for better implementation of Recommendation No. 198.

Group 1 was asked to identify **the key elements of a national policy to guarantee effective protection to workers in the employment relationship and whether legislation would be enough.**

The group came out with the following key recommendations:

- A national policy should include all workers, regardless of their contractual relationship.
- The policy should ensure that every worker has decent working and living conditions and that occupational health safety measures are in place. Remuneration/earning/wages, etc., would be a key component.
- The policy must encompass the right to work for all employable persons and guarantee jobs for effective production with guarantee of continuity of work.
- It must ensure social security to all workers, including health/pension/maternity benefits, etc., and various mechanisms for regular/informal workers.
- It should ensure respect of core labour standards by all.
- It should make provisions for effective implementation and an enforcement machinery.
- It should guarantee the right to associations/unions.
- It should ensure that regular dialogue between employer and employees is based on mutual trust.
- It should ensure the social accountability of all partners in the world of work.

Group 2 was requested to provide **two criteria which, in their view, would determine the existence of an employment relationship. What were the most important indicators to separate dependent employees from those who were self-employed?**

The group came out with the following criteria to determine the existence of an employment relationship:

- two parties:
  - employer; and
  - employee who personally undertakes the work or assignment;
- a contract;
- remuneration for the work performed;
- supervision; and
- employer–employee relationship.

Regarding the indicators to separate the dependent employed and self-employed, the group came up with the following suggestions:

- Dependent employees are wage earners and the self-employed are income earners.
- The employee–employer relationship exists among dependent employees, but not among the self-employed.
- The provisions of the labour laws are applicable on dependent employees, but not on the self-employed.
- Dependent employees work under supervision, but the self-employed are responsible for themselves.
- Social security benefits are available for dependent employees, but not for the self-employed.
- Income is known for dependent employees, but not for the self-employed.

Group 3 was asked **what they thought should be done on a tripartite basis at the national/state governmental level to establish or reinforce mechanisms to monitor and evaluate the national policy on employment relationship.**

The group came out with the following recommendations:

- In the absence of a national policy, the existing labour legislation is taken as the national policy.
- The International Labour Conference should be held once a year; it does not meet regularly at present. The employment relationship should be included in the agenda, and recommendations should be implemented within a timeframe.
- The Standing Labour Committee should meet twice a year and include other State Labour Advisory Committees; it should be broadened to include other

areas and not focus only on the agenda of the ILC, as it is the case nowadays.

- At the state level, the advisory board/committee should meet every quarter and monitor
  - the implementation of labour laws;
  - man days lost;
  - implementation of minimum wages;
  - social protection measures; and
  - productivity.

Tripartite consensus should be strengthened.

10. Concluding session

The closing session was chaired by **Mr I.P. Anand, Member, ILO Governing Body.**

Mr S. Krishnan, Additional Secretary, Ministry of Labour, Government of India, delivered the valedictory address.

Mr Anand recalled that the debate on this issue had been on for at least 15 years, with no concrete result so far. He believed that this could be the starting point to try to reach a common understanding between workers and employers, and encouraged the participants to engage in social dialogue on this important topic. Worker–employer cooperation was the only way to find solutions that would take into account the rights and concerns of the parties.

In his address, **Mr Krishnan** stated that although India had achieved a growth rate of 8-9 per cent, it had yet to take the driving seat so far as the global economy was concerned. Further, even in India, the trickledown effect was very slow. As a result, growth was not inclusive.

In Mr Krishnan's view, legislation had been evolving, but there was still a need for consensus and clarity on what constituted an employment relationship. Where the value added was low, there the employee–employer relationship was not well defined. Social security and social protection for the vulnerable sections of society had to go hand in hand with economic progress, failing which the benefits of growth would bypass a large section of society.

He also recalled that there was international pressure to comply with labour law provisions and independent agencies would ensure the implementation of certain labour standards. These measures, if not adopted voluntarily, would come through social audit by the consumers or buyers.

Mr Krishnan called for social dialogue on this issue at various levels.

Mr R.A. Mital, Secretary, Hind Mazdoor Sabha, congratulated the ILO for having adopted the Recommendation on the Employment Relationship. The trade unions, he said, were opposed neither to globalization nor to technology, but to its negative impact on workers, which needed to be reversed. The denial of a proper employment relationship was one big reason behind poverty, growing inequality, and insecurity.

Mr Mitla said Recommendation No. 198 was laudable, but its implementation was difficult. He suggested a number of initiatives that the Government of India could take, such as advance in rationalization of labour laws, ensuring proper employment relationships, and ensuring the implementation of core labour standards for all Indian workers.

Mr B.C. Prabhakar, President, Karnataka Employers Association, and Ms Marleen Rueda, Senior Specialist on Social Dialogue and Labour Administration, ILO, New Delhi, moved the vote of thanks in favour of all the speakers and participants.

Role and functions of the Central Advisory Contract Labour Board: Emerging forms of employment relationships in India

Dr S. Balakrishnam Raju
Chairman
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Ministry of Labour and Employment
Government of India

Introduction

It is my proud privilege to present a technical paper on 'Role and functions of the Central Advisory Contract Labour Board and its experience in relation to the new forms of employment relationship in India'. I feel it is a great opportunity for me to share my experiences and views on the various issues related to contract labour in the country. For the last two years, I have been in the position of chairman of the Central Advisory Contract Labour Board (CACLB) and I have witnessed a number of issues and heard the views of the contract labour, trade unions, employers, and the officials who are enforcing the Contract Labour (Regulation & Abolition) Act, 1970.

I am basically a human resources (HR) and industrial relations (IR) professional involved in the implementation of labour laws and I have been dealing with the HR and IR functions for more than two decades. All of a sudden, my role has been changed by my appointment as chairman of the CACLB. My area of operation is the same, but the role and responsibilities have changed. Now I have wider scope to understand the range of issues related to contract labour and greater responsibility to conclude logically and legally the issues referred to the CACLB.

Before I proceed to the main topic, I would like to give some information about contract labour, the issues which led to the enactment of the Contract Labour (R&A) Act, and its salient features to understand better the role and functions of the CACLB.

- The system of employing contract labour is prevalent in most industries in different occupations, including skilled and semiskilled jobs. It is also prevalent in agricultural and allied operations and now in the service sector as well to the maximum extent.
- Contracts can be broadly divided into two categories, job contracts and labour contracts.

Job contracts

The enterprise contracts with an established firm for the supply of goods and services, and the firm undertakes to carry out this work at its own risk and with its own financial, material, and human resources. The workers employed to provide the services remain under the control and supervision of the firm (called the contractor or subcontractor), which is also responsible for paying their wages and fulfilling the other obligations of an employer. Job contracting is a simple commercial activity governed by the general principles of commercial contract law. There are two patterns in job contracting: when the work or service is on the premises of the user enterprise, and when the work or service is not on the premises of the user enterprise.

Labour contracts

The exclusive or dominant objective of a contractual relationship is the supply of labour (rather than goods or services) by the contractor or subcontractor to the user enterprise. The user enterprise may bring the contract workers into its premises to work alongside its own employees or it may have the work performed elsewhere.

- Contract workmen are indirect employees, people who are hired, supervised, and remunerated by a contractor who, in turn, is compensated by the establishment.
- Contract labour has to be employed for work which is specific and for a definite duration.
- Inferior labour status, the casual nature of employment, lack of job security, and poor economic conditions are the major characteristics of contract labour.

- While economic factors like cost-effectiveness may justify the system of contract labour, considerations of social justice call for its abolition or regulation.

Background

In India, contract labour generally refers to workers engaged by a contractor, thereby providing the basis of a triangular relationship between the user enterprise, the contractor including the subcontractor, and the workmen. As per the annual report of the CACLB on Enforcement of the Contract Labour (R&A) Act, 1970, for 2006–07, there are around 642,203 contract labourers covered by licences. (A detailed statement showing the other details for the years 2003–04 to 2006–07 is available in Annexure A.) These contract labourers are engaged in agricultural operations, plantations, construction industry, ports and docks, oil fields, manufacturing industry, railways, airways, road transport, and many other fields. They belong to the more vulnerable sections of society and they have very little bargaining capacity. They are mostly engaged in hazardous occupations, which may endanger their health and safety. Most of these workmen are denied social security schemes. They are often denied minimum wages by the contractors and, due to their illiteracy and low bargaining capacity, they are not even paid wages regularly. They are mostly exploited by the contractors due to the lack of proper supervision by the principal employers.

The contract labour system lends itself to various abuses and exploitation due to which the abolition of the contract labour system has been under the government's consideration for a long time. In the 2nd Five-Year Plan, the Planning Commission made certain recommendations, namely, the undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of the system, and improvement of the service conditions of contract labour wherever abolition was not possible. The matter was discussed at various meetings of tripartite committees at which the state governments were also represented and the general consensus of opinion was that the system should be abolished wherever possible and practicable, and that in cases where the system could not be abolished, the working conditions of labour should be regulated so as to ensure payment of wages and provision of essential amenities.

Brief history

- The Royal Commission on Labour (1929–31) and the Bombay Textile Labour Enquiry Committee (1937–39) recommended the abolition of the contract labour system.
- The Bihar Labour Enquiry Committee (1938–40) condemned the practice of recruiting labour through contracts and the exploitative nature of such recruitment.
- The Labour Investigation Committee (1943–46) found that the system was in vogue.
- These findings led to the definition of the 'worker' in the Factories Act, the Mines Act, and the Plantation Labour Act being enlarged to include contract labour.
- In the 2nd Five-Year Plan, the Planning Commission recommended that:
  - studies be undertaken to ascertain the nature and extent of the problem; and
  - progressive elimination of the contract labour system be secured wherever possible and decent working conditions and protection be ensured for contract labour where elimination was not feasible.
- The Supreme Court, in the case of Standard Vacuum Refining and its workmen (1960), observed that contract labour should not be employed where:
  - the work is perennial and must go on from day to day;
  - the work is incidental to and necessary for the work of the factory;
  - the work is sufficient to employ a considerable number of whole-time workmen; and
  - the work is being done in most concerns through regular workmen.
- The Labour Bureau undertook studies as recommended by the Planning Commission and made its report on five industries: iron ore mines, ports, petroleum refineries and oil fields, railways, and the building and construction industry.
- The 19th session of the Indian Labour Conference (1961) considered the reports of the Labour Bureau and came up with conclusions, which form part of the existing law.

- The 20th session of the Indian Labour Conference (1962) recommended legislative action to abolish the contract labour system.
- The Contract Labour (Regulations) Bill, 1964, was drafted and considered by the 22nd and 23rd sessions of the Standing Labour Committee (1964 and 1965).
- Keeping in view the opinions expressed by the interests concerned, the bill was suitably modified and was approved by the Cabinet on 22 June 1966.
- The Bill was passed by Parliament on 19 August 1970 and received the assent of the President on 5 September 1970.

The Bill aimed at the abolition of contract labour in such categories as might be notified by the appropriate government in the light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition was not possible. The Bill provided for the setting up of an advisory board of a tripartite character, representing various interests, to advise the Central and state governments in administering the legislations and registration of establishments and contractors. Under the scheme of this Bill, the provision and maintenance of certain basic welfare amenities for contract labour, like drinking water and first-aid facilities, and in certain cases, restrooms and canteens, were made obligatory. Provisions were also made to guard against defaults in wage payment. The Parliament enacted the Contract Labour (R&A) Act in 1970.

The Central Government and the state governments are the appropriate governments within the respective spheres of jurisdiction for the administration of the Act. The appropriate government can prohibit the employment of contract labour in a job, process, or operation if the job, process, or operation attracts/satisfies the conditions laid down in Section 10 of the Act, namely, whether it is incidental and necessary for the establishment, whether it is perennial in nature, whether it is sufficient to employ a considerable number of full-time workmen, and whether it is similar to the work done in similar establishments. The Act provides for amenities to contract labour, such as canteens, restrooms, sufficient supply of wholesome drinking water, latrines and urinals, washing facilities, and first-aid facilities. The primary responsibility for payment of wages and amenities rests with the contractor. In case of failure, the principal employer is legally bound to provide both wages and amenities, and recover the costs from the contractor.

Salient features of the Contract Labour (Regulation and Abolition) Act, 1970

1. Objects and purposes

- The Act seeks to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances.

2. Application

- The Contract Labour (Regulation and Abolition) Act, 1970, and the Contract Labour (Regulation and Abolition) Central Rules, 1971, came into force on 10 February 1971.
- The constitutional validity of the Act and the Rules were challenged before the Supreme Court in Gammon India Ltd vs Union of India 1974-I-LLJ-480.
- The Supreme Court upheld the constitutional validity of the Act and Rules and held that there was no unreasonableness in the measure.
- The Act and Rules were enforced with effect from 21 March 1974.
- The Act applies to every establishment in which 20 or more workmen are employed or were employed on any day in the preceding 12 months as contract labour and to every contractor who employs or who employed 20 or more workmen on any day of the preceding 12 months.
- It does not apply to establishments where the work performed is of an intermittent or seasonal nature. An establishment where work is of an intermittent or seasonal nature will be covered by the Act if the work performed is more than 120 days and 60 days in a year, respectively.
- The Act also applies to establishments of the government and local authorities.

3. Appropriate government

- The jurisdiction of the Central and state governments has been laid down by the definition of the ‘appropriate government’ in Section 2 (1) (a) of the Act, as amended in 1986.
- The appropriate government, with respect to an establishment under the Contract Labour (R&A)

Act, 1970, is the same as that in the Industrial Disputes Act, 1947.

- In the light of the judgement of the Supreme Court in Air India Statutory Corp. Ltd and Others vs United Labour Union and Others, the Central Government has become the appropriate government with respect to all central public sector undertakings.

4. Registration of establishments and licensing of contractors

- The establishments covered under the Act are required to be registered as the principal employer.
- Every contractor to whom the Act applies is required to obtain a licence and to not undertake or execute any work through contract labour except under and in accordance with the licence issued.

5. Welfare and health of contract labour

- The Act has provided for the establishment of canteens.
- For the welfare and health of the contract labour, provision has been made for restrooms, first aid, wholesome drinking water, and latrines and urinals.
- In case of failure on the part of the contractor to provide welfare and health facilities, the principal employer is made liable to provide the amenities.

6. Payment of wages

- The contractor is required to pay wages and it is his duty to ensure disbursement of wages in the presence of the authorized representative of the principal employer.
- In case of failure on the part of the contractor to pay wages either in part or in full, the principal employer is liable to pay the wages.
- Contract labourers who perform the same or similar kind of work as regular workmen will be entitled to the same wages and service conditions as regular workmen as per the Contract Labour (R&A) Central Rules, 1971.

7. Penal provisions

- For contravention of the provisions of the Act or any rules made under it, the punishment is imprisonment for a term of up to three months and a fine of a maximum of Rs10,000.

8. Other provisions

- The Act makes provision for the appointment of inspecting staff, for maintenance of registers and records, and for making rules for carrying out the purpose of the Act.
- In the central sphere, officers of the Central Industrial Relations Machinery (CIRM) have been appointed inspectors.

Prohibition of employment of contract labour under Section 10 (1) of the Act

- Notwithstanding anything contained in this Act, the appropriate government may, after consultation with the CACLB, or, as the case may be, a state board, prohibit, by notification in the official gazette, employment of contract labour in any process, operation, or other work in any establishment.
- Before issuing any notification under subsection (1) in relation to an establishment, the appropriate government will check the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors such as:
  - whether the process, operation, or other work is incidental to or necessary for the industry, trade, business, manufacture, or occupation that is carried on in the establishment;
  - whether it is of a perennial nature, that is to say, it is of sufficient duration with regard to the nature of the industry, trade, business, manufacture, or occupation carried out in that establishment;
  - whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and
  - whether it is sufficient to employ a considerable number of whole-time workmen.

Explanation: If a question arises on whether any process, operation, or other work is of a perennial nature, the decision of the appropriate government will be final.

The Central Government, on the recommendation of the CACLB, has prohibited employment of contract labour in various operations/category of jobs in various establishments. So far, about 76 notifications have been issued since the inception of the Act.

Exemption

- The appropriate government is empowered to grant exemption to any establishment or class of establishments, or any class of contractors from prohibition of the contract labour system, subject to the fulfilling of certain conditions after consultation with the CACLB.

Enforcement

- In the Central sphere, the Central Industrial Relations Machinery (CIRM) has been entrusted with the responsibility of enforcing the provisions of the Act and the Rules made under it, through inspectors, licensing officers, registering officers, and appellate authorities appointed under the Act.
- Regular inspections are conducted by the field officers of the CIRM and prosecutions are launched against establishments, whenever violations of the Act/ Rules/Notifications prohibiting employment of contract labour are detected.
- From time to time, instructions/directions have been issued to the field officers of the CIRM and the state governments for proper implementation of the Act.
- A number of representations/petitions have been received by the Chief Labour Commissioner (Central) under Rule 25 (2) (V) (a) and (b) from the contract workers or their unions claiming that the contract workers are performing the same or similar work as performed by the workmen employed by the principal employer.
- In order to facilitate speedy disposal of cases, the Deputy Chief Labour Commissioner (Central) has been notified as the authority to deal with these cases by amending this Rule.

Central Advisory Contract Labour Board

The Central Advisory Contract Labour Board (CACLB) was constituted under Section 3 of the Contract Labour (Regulation & Abolition) Act, 1970, by the Government of India. The main function of the CACLB is to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act. The CACLB is a tripartite body representing the interests of the Government, employers, and employees.

Procedure for selection of chairman and members

- A chairman to be appointed by the Central Government;
- The Chief Labour Commissioner (Central) ex officio;
- Three persons representing the Central Government to be appointed by the Government from amongst its officials;
- Two persons representing the Railways to be appointed by the Central Government after consultation with the Railway Board;
- Five persons, one representing the employers in coal mines, two representing the employers in other mines, and two representing contractors to whom the Act applies, to be appointed by the Central Government after consultation with such organizations, if any, of the employers and the contractors as may be recognized by the Central Government;
- Seven persons, two representing the employees in the Railways, one representing the employees in coal mines, two representing the employees in other mines, and two representing the employees of contractors to whom the Act applies, to be appointed by the Central Government after consultation with such organizations, if any, of employees representing the respective interest as may be recognized by the Central Government.

Terms of office

1. The chairman of the CACLB will hold office for a period of three years from the date on which his appointment is first notified in the official gazette.
2. Each of the members of the CACLB, referred to in Clauses (c) and (d) of Rule 3, will hold office as per the pleasure of the President.
3. Each of the members referred to in Clauses (e) and (f) of Rule 3 will hold office for a period of three years commencing from the date on which his appointment is first notified in the official gazette, provided that where the successor of any such member has not been notified in the official gazette on or before the expiry of the period of three years, such member will, notwithstanding the expiry of the period of his office, continue to hold office until the appointment of his successor has been notified in the official gazette.

4. If a member is unable to attend a meeting of the CACLB, the Central Government or the body which appointed or nominated him may, by notice in writing signed on its behalf and by such member and addressed to the chairman of the CACLB, nominate a substitute in his place to attend the meeting and this substitute member will have all the rights of a member for that meeting and any decision taken at the meeting will be binding on the CACLB.

5. Resignation

- A member of the CACLB, not being an ex officio member, may resign his office by a letter in writing addressed to the Central Government.
- The office of such a member will fall vacant from the date on which his resignation is accepted by the Central Government, or on the expiry of 30 days from the date of receipt of the letter of resignation by the Government, whichever is earlier.

6. Cessation of membership

If any member of the CACLB, not being an ex officio member, fails to attend three consecutive meetings of the Board, without obtaining leave of the chairman for his absence, he will cease to be a member of the Board. However, if the Central Government is satisfied that the member was prevented by sufficient cause from attending the three consecutive meetings and directs that he not be removed from the CACLB, he will continue to be a member.

7. Disqualification for membership

- A person will be disqualified for re-appointment and for being a member of the CACLB:
  1. if he is of unsound mind and stands so declared by a competent court;
  2. if he is an undischarged insolvent; or
  3. if he has been or is convicted of an offence, which, in the opinion of the Central Government, involves moral turpitude.
- The Central Government will decide in cases where the question arises as to whether a disqualification has been incurred under Sub-rule (1).

8. Removal from membership

The Central Government may remove from office any member of the CACLB, if, in its opinion, the member has ceased to represent the interests which he purports to represent on the Board. However, no member will be removed unless a reasonable opportunity is given to him to make a representation against the proposed action.

9. Vacancy

When a vacancy occurs or is likely to occur (in the membership of the CACLB), the chairman will submit a report to the Central Government, which will take steps to fill the vacancy by making an appointment from amongst the category of persons to which the member belonged and the person who is appointed will hold office for the remainder of the term of office of the member in whose place he is appointed.

10. Staff

- 1. The Central Government may appoint one of its officials as secretary to the CACLB and appoint other staff as it thinks necessary to enable the Board to carry out its functions.

  2. The salaries and allowances paid to the staff and other conditions of their service will be decided by the Central Government.
- The secretary
  1. will assist the chairman in covering the CACLB meetings;
  2. may attend the meetings, but will not be entitled to vote at the meetings;
  3. will keep a record of the minutes of the meetings; and
  4. will take the necessary measures to carry out the decisions taken at the CACLB meetings.

11. Allowances of members

- The travelling allowance of an official member will be governed by the rules applicable to him for the journey he undertakes on official duties and will be paid by the authority paying his salary.
- The non-official members of the CACLB will be paid a travelling allowance to attend Board meetings at rates that are admissible to Grade I officers of the Central Government; a daily allowance will be calculated at the maximum rate admissible to Grade I officers of the Central Government in their respective places.

12. Disposal of business

Every question which the CACLB is required to take into consideration will be considered at a meeting or, if the chairman so directs, by sending the necessary papers to every member for an opinion, with the question being disposed of in accordance with the majority decision.

Explanation: 'Chairman' for the purposes of this Rule will include the chairman nominated under Rule 13 to preside over a meeting.

13. Meetings

- The CACLB will meet at places and times specified by the chairman.
- The chairman will preside over every meeting of the CACLB at which he is present and, in his absence, nominate a member of the Board to preside over the meeting.

14. Notice of meetings and list of business

- Ordinarily, seven days' notice will be given to the members of a proposed meeting.
- No business which is not on the list of business for a meeting will be considered at the meeting without the permission of the chairman.

15. Quorum

No business will be transacted at any meeting unless at least five members are present. If there are less than five members at a meeting, the chairman may adjourn the meeting to another date, informing members present and giving notice to the other members that he will dispose of the business at the next meeting whether there is a prescribed quorum or not, and that it will be lawful for him to dispose of the business in this manner.

16. Committees of the CACLB

- 1. The CACLB may constitute committees for whatever purpose it thinks fit.

  2. While constituting a committee, the CACLB may nominate one of its members to be the chairman of the committee.
- 1. The committee will meet at times and places decided by the chairman of the committee.

  2. The provisions of Rules 12, 13 (2), 14 and 15 will apply to the committee for the transaction of business at its meeting as they apply to the CACLB, subject to the modification that the quorum specified in Rule 15 shall be one-third of the members, instead of five members.
- The provisions of Rule 11 will apply to the members of the committee for attending meetings as they apply to the members of the CACLB.

Note: See Annexure B for the current CACLB.

Cases referred to the CACLB

The types of cases referred to the CACLB are generally:

- Complaints made by workers seeking regularization and abolition of the contract labour system;
- Violation of the Act and the Rules brought to the notice of the Government/CACLB by the enforcement authorities as a result of inspections conducted, establishing a prima facie case for the abolition of the contract labour system;
- Directions to the Government/CACLB by the high courts/Supreme Court for consideration of the question of abolition of the contract labour system;
- Policy issues relating to contract labour referred by the Government; and
- Legal issues relating to jurisdiction, applicability of the Act, its interpretation, etc.

Procedure for hearing of cases

Neither the Contract Labour (Regulation & Abolition) Act, 1970, nor the Rules framed under it provide for a set procedure to be adopted by the CACLB for the hearing of cases. Complaints are referred to the Regional Enforcement Officer for a preliminary inquiry. The CACLB considers the fact-finding report of the Regional Labour Commissioner at a meeting at which all its members are present. The parties to the case are given a full hearing at the meeting. Based on the reports and the written/oral submissions of the parties, the CACLB, by majority, recommends to the Government the course of action to be taken. If the issues involved are complex in nature, the workers involved are large in number, or the material available is inadequate, the CACLB constitutes a committee to investigate the issue and submit its observations and recommendations. The committee generally consists of three members drawn from the members of the CACLB itself, with equal representation from the employer, employees, and the Government. The committee hears the parties, makes on the spot enquiries, and studies the relevant material before making its recommendations to the CACLB. On the basis of the recommendations of the committee and the written or oral representation of the parties who are again given a hearing, the Board makes its recommendations to the Government. The CACLB follows the principle of natural justice strictly. It strives to achieve unanimity in arriving at its decision. If there is a difference of opinion among the members at the conclusion of deliberations, the CACLB follows the majority opinion of the members, with the chairman having the casting vote. The Board is also guided by the precedents established by the high courts and the Supreme Court.

The guidelines enunciated inter alia are:

- The function of the CACLB is quasi-judicial in nature.
- The parties should be given full opportunity of hearing.
- The recommendations of the committee should be respected.
- It is not permissible for the CACLB to ask for the comments of the parties on the report of the committee.
- The CACLB cannot abdicate its responsibility and leave it to the Government to take a decision on matters referred to it for a recommendation.

Changes in the employment relationship in India from the CACLB's point of view

Privatization and economic transformation took place in every field once the Indian economy began its phase of liberalization. As a result, there was a sea change in the employment relationship in the public sector, private sector, and even in the Government. In the aftermath of globalization, the entire world has become a global village and market competition has become a continuous threat to business enterprises. The market demands quality goods at competitive prices along with assurance of quality and after-sales service. In these circumstances, enterprises have begun adopting new technologies, mechanizing manual operations, and right-sizing manpower. Along with the change in technology, there is an imperative need to upgrade the skills of the manpower. This is not an easy process because the traditional workforce will resist the adoption of new technologies. It is also time consuming and involves huge costs. Therefore, outsourcing has been positioned as an integral part of business strategy to gain the advantage of better quality at lower costs in a consistent manner over a period of time and add value to products and services and support to restructuring. Ultimately, this is leading to a number of changes in the employment relationship.

Labour legislation is the means to protect workers and it serves as an instrument of social harmony and justice. In view of the intense competition and financial difficulties in an increasingly globalized world, enterprises are resorting to flexible arrangements, which leave the worker unprotected. This lack of protection assumes the form of job insecurity, changes at work, reduction in wages, and decline in the safety and health aspects of the workers. It impinges on both society and the environment. The employment relationship is an essential element in enabling protection to workers and the determination of this relationship, therefore, assumes significance.

The concept of employment involves three parties: the employer, or the one who employs or engages the services of other people; the employee, or the one who works for hire for another; and the contract of employment, or the contract of service between the employer and the employee, under which the employee agrees to serve the employer subject to his control and supervision. This is the typical and traditional form of employment, which is characterized by a direct relationship between the employer and the employee.

Contract labour, on the other hand, involves a triangular relationship between the user enterprise, the contractor, and the contract worker. Though the Contract Labour (R&A) Act affords protection to such workers, there are problems regarding the scope of people covered because of the many different kinds of arrangements entered into by the employer. There are questions regarding the applicability of the Act in the following situations:

- revenue contracts entered into by the employer, which necessitate the engagement of workers (e.g., the trolley retrieval case of the AAI);
- contracts in the form of licences (e.g., restaurants, canteens, car parks, cash collection counters, etc.);
- principal to principal arrangements (e.g., IOC outsourcing LPG bottling work to Oil India Ltd);

- award of contracts to cooperative societies formed by the workers themselves;
- designating a worker as a contractor;
- self-employed people;
- vendorization;
- cases when the contractor changes from time to time, but the workers remain the same; and
- award of contracts to labour cooperative societies formed by the workers as members.

These and similar arrangements of disguised employment relationships and ambiguous situations have led to partial or total non-application of the legislation and non-protection of the workers.

It is the collective responsibility of all concerned, including the enforcement authorities, principal employers, contractors, and the trade unions, to ensure that contract workers get their legitimate benefits – fair wages, at least minimum wages, social security, and improved working and living conditions. As long as enterprises take care of these needs, there may not be any demand for abolition of the contract labour system by employees and trade unions. In any enterprise, the contractor does change from time to time, though contract workers remain in the same enterprise for a long time. Unfortunately, when a new contractor comes in, he brings in his own people to safeguard his interests and those of his principal employer. As a result, contract workers who have been working with the enterprise for a long time get thrown out of their jobs and they find it difficult to get alternate employment immediately. This leads to unrest among them. In such a situation, they have no option except to approach the authorities and raise their grievance before courts, tribunals, and the state or Central advisory boards for relief and justice. It is a fact that the contract labour system is inevitable in any enterprise. Therefore, it is the automatic responsibility of the principal employer to ensure compliance with the statutory requirements and safeguard the interests of contract labourers. As long as the employers follow the principle of mutual benefit, the question of abolishing the contract labour system does not arise.

It is a general observation that the issues related to contract labour and, in particular, abolition of the contract labour system, raised before the CACLB are due to unfair labour practices and non-compliance with the legal provisions.

Resolution of contract labour issues by the CACLB

Though the CACLB has a standard procedure to resolve the issues referred to it, after the Supreme Court judgement in the Steel Authority India Ltd (SAIL) vs National Union of Waterfront Workers (2001) case, the current Board has adopted a realistic approach to resolving issues and providing justice to all parties. After this judgement, there is no scope for automatic absorption on the abolition of contract labour. There are only two options available to the CACLB in resolving the issue:

- If the conditions are fulfilled under the provisions of Section 10, it can recommend the abolition of the contract labour system in any organization.
- It can follow the objectives of the Act: to regulate and improve the conditions of service of the contract labour, but not merely to abolish such labour.

Under these circumstances, the current Board has taken the stand that it will play a real advisory role and started counselling and advising employers, contractors, and contract employees and their leaders on how to arrive at an amicable settlement for mutual benefit and advantage. As explained above, after the Supreme Court judgement in the SAIL case, there is no scope for automatic absorption of workers on the abolition of the contract labour system. So, the CACLB's recommendation for abolition of the contract labour system and the Government notification to that effect will cause unemployment to the contract workers. The workers will lose their means of livelihood and have little hope of finding further employment as they will be known to have fought for the abolition of contract labour. Thus, a notification for the prohibition of contract labour will have a severe effect on both the enterprise and its workers.

In most cases, both parties agree on a reasonable settlement of issues beneficial to both sides and request the CACLB to grant them time to carry out the terms of the settlement. This approach has been highly appreciated by all concerned and it is showing good results. Under this approach, the CACLB is not recommending the abolition of the contract labour system; instead, there is a mutual settlement of issues between the concerned parties.

Benefits to the employers

- The employers can continue engaging contract workers in non-core areas. They can also avoid recruiting permanent workers in the jobs done by contract workers, which saves their enterprises money.
- It gives the employers a lot of flexibility in how they utilize their workforce, especially with regard to fluctuations in production and output.
- It reduces the wage bill and long-term liability.
- It reduces administrative costs.
- It helps the employers meet the challenge of labour market flexibility.
- It enables easy access to diversity.

Benefits to the contract workers

- It ensures continuity in employment.
- It provides legal protection for the payment of minimum wages, coverage under provident fund, ESI, and other benefits.
- It makes the workers eligible for overtime.
- Most of the eligible family members can work at one place.
- It provides coverage under the Workmen's Compensation Act.
- It ensures priority in recruitment in case the contract labour system is abolished at the enterprise.

Some contract workers and their representative trade unions have been insisting on the abolition of the contract labour system with the objective of seeking relief and favourable decisions from the courts and tribunals. They are fully aware of the consequences of such a recommendation from the CACLB and the resultant notification for abolition from the Government. If such a case attracts the provisions of Section 10 of the Act, the CACLB has no option but to recommend abolition.

I do not really blame any one party for this situation, but still continue to make efforts to counsel and advise both parties to reach an amicable settlement for mutual gain and benefit.

The Contract Labour (R&A) Act has been enacted to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances. The Act recognizes the triangular relationship of employment. It defines who a principal employer, contractor, and contract labourer are. Grey areas in the applicability of the Act to contract workers have been addressed to a considerable extent. But problems do arise in the determination of the employment relationship and in protecting workers in situations as cited above.

The Act entrusts the CACLB with the responsibility of preventing the exploitation of contract labour by way of abolishing the contract labour system. Disputes on this score have been resolved by the CACLB on the basis of the material cited as evidence before it and strictly in accordance with the provisions of the Act. Checking which establishment has taken registration, which contractor has taken a licence, and which person has undertaken responsibility for wage payment have been found to be fair indicators for determining the employment relationship. The CACLB is also guided by the principles of natural justice and interpretations of the provisions of the Act by judicial pronouncements.

Neither any provisions of the Act nor the Rules framed under it provide for the regularization of contract workers consequent to the abolition of the contract labour system in an activity in an establishment. This vexed question has been a bone of contention between contract workers and employers. The question of disguised employment relationship has also come up for consideration in this context.

Important judgements of the Supreme Court

A number of landmark judgements have been delivered by the Supreme Court on the question of the status of workmen in the event of the contract labour system being abolished.

- In Dena Nath vs National Fertilisers Ltd (1992), the Supreme Court held that violation of Section 7 relating to the registration of an establishment by the principal employer or Section 12 by the contractor attracts the penal provisions of the Act, but does not have the effect of rendering the contract labourers employees of the principal employer.
- In the Gujarat State Electricity Board case (1994), the Supreme Court ruled that the powers of abolition vested with the Government after consultation with the CACLB. The Government

and the CACLB are competent to abolish the contract labour system only with respect to genuine contracts. If the contract is a sham or bogus, the Industrial Adjudicator has the powers to decide any dispute brought before him by even direct workmen on behalf of the contract workmen and to order absorption of the contract workmen as regular employees of the principal employer.

- In the Air India Statutory Corporation case (1996), the Supreme Court laid down that in the event of abolition of the contract labour system by the Government on the recommendations of the CACLB, the relationship between the contractor and his workmen would stand snapped and a direct relationship would be established between the workmen and the principal employer. In other words, the contract workers automatically become the direct employees of the principal employer.
- In Steel Authority of India Ltd (SAIL) vs National Union of Waterfront Workers (2001), the Supreme Court declared that in the case of genuine contracts, the consequence of abolition of the contract labour system is that the principal employer is restrained from engaging contract labour in the abolished activity. If he intends to employ regular workmen in that activity, the workmen of the erstwhile contractor should be given preference. The principal employer is not required to absorb the contract workmen as his direct employees. However, if the contract is a sham or a camouflage in order to avoid liability under the labour laws, the Industrial Adjudicator should order the absorption of the contract employees in the principal employer's establishment.

Whether the contract is a sham or camouflage is not a question of law which can be arrived at with regard to the provisions of the Contract Labour Act. It is for the Industrial Adjudicator to decide, keeping in view the evidence brought on record. Where a person has been engaged through an intermediary or otherwise for getting a job done, the question may arise whether the appointment of the intermediary was merely a sham. Where a definite plea is raised, the tribunal or labour court is entitled to investigate whether the appointment of a contractor is indeed a sham or whether there exists a direct relationship of employer and employee between the principal employer and the workmen (Workmen of Nilgiri Cooperative Marketing Society Ltd vs State of Tamil Nadu and Others, 2004, 3 Supreme Court cases 514).

In the above cited case, the Supreme Court also considered whether a contract is a contract of service or contract for service and determination of the employer–employee relationship. It held that the question in each case had to be answered with regard to the facts involved. The supervision and control test and the organizational test are not the only decisive factors. With a view to elicit an answer, the court is required to consider several factors which would have a bearing on the result:

- who the appointing authority is;
- who the pay master is;
- who the worker can be dismissed by;
- how long the alternative service lasts;
- the extent of the control and supervision;
- the nature of the job, e.g., whether it is professional or skilled work;
- the nature of the establishment;
- the right to reject;
- who deducts the insurance contributions;
- organization of the workplace;
- supply of tools and materials; and
- the economic realities, in particular who bears the risk of loss and has the chance of profit, and whether the employee could be said to be in business on his own account.

The CACLB reaches its conclusions based on the facts of each case and keeping in view the principles enunciated by the courts to determine the employment relationship. As the Board does not have the powers to order the regularization of the workmen even if the contract is found to be a sham, the aggrieved party is advised to approach the competent industrial tribunal or labour court.

Benefits to the workers and employers

The Supreme Court judgement in the Air India case, directing absorption of contract workers engaged in activities in an establishment which has been prohibited by the Government on the recommendations of the CACLB, has been a boon to such workers. As a result of this judgement, many contract workers in establishments such as Air India, Airports Authority of India, and SAIL, have been benefited by way of regularization of their long years of service as contract workers. Though the judgement of the Supreme Court in the SAIL case has overturned that in the Air India case, the principal employer still cannot engage contract labour in the prohibited category; if he intends to employ regular workmen in such activities, he has to give preference to the erstwhile contract workmen.

In the aftermath of the Supreme Court judgement in the SAIL case, rigid application of the provisions relating to the abolition of the contract labour system has been found to be in the interests of neither workers nor employers. The approach of the CACLB has, therefore, been to use its moral and persuasive powers to bring about an amicable settlement between the parties, thereby ensuring continuity of employment to the contract workers and protecting their interests in terms of better wages, social security, and improved working and living conditions.

The employers are benefited because the continuance of the contract labour system in peripheral activities such as sweeping, cleaning, gardening, etc., allows them to concentrate on core activities to achieve competitiveness and improved productivity, which hold the key to raising real wages and reasonable profits. The efforts of the CACLB in this direction have been received well by both the workers and the employers and a certain amount of success has been achieved. The CACLB is of the firm view that confrontation should give way to cooperation between management and labour without compromising the basic rights of the labour.

The various high courts and the Supreme Court have delivered judgements on different occasions on contract labour, but it is appropriate to mention here some observations of the Supreme Court in Civil Appeal No. 5497 of 1995: “The only ostensible purpose in engaging contract labour instead of direct employees is the monetary advantage by reducing expenditure. Apart from the fact that it is an unfair labour practice, it is also an economically short-sighted and unsound policy, both from the point of view of the enterprise concerned and the country as a whole. Economic growth is not to be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people.”

Conclusion

To conclude, let us all try for better employment relationships in our country and be a role model to the rest of the world by understanding and implementing the true sense of the above quotation and the spirit of the law.

Annexure A

Annual report of the CACLB on the enforcement of the Contract Labour (Regulation & Abolition) Act, 1970 (As on 30 September 2007)

Material sent for Annual Report 2006–07*

Serial no.	2003–04	2004–05	2005–06	2006–07
1. No. of registration certificates issued to principal employers	720	590	747	611
2. No. of licences issued to contractors	6 778	7 277	7 317	7 875
3. No. of inspections conducted	4 991	4 540	5 759	4 454
4. No. of irregularities detected	71 632	59 301	60 206	61 652
5. No. of prosecutions launched	3 896	3 356	2 991	2 189
6. No. of convictions	2 072	2 018	1 017	673
7. No. of contract labourers covered by licences	853 690	968 792	983 707	642 203
8. No. of licenses revoked/ cancelled/expired	4 014	6 601	7 632	8 072
9. No. of registration certificates revoked/cancelled	52	08	211	31

*Except RLC©, Hyderabad & Mumbai

Annexure B

The current board

Chairman

1. Dr S. Balakrishnam Raju

Members

2. The Chief Labour Commissioner (Central), ex officio
3. Additional Secretary to the Government of India, Ministry of Labour & Employment

4. Director General (Labour Welfare), Ministry of Labour & Employment
5. Mr A.K. Nigam, Advisor (Industrial Relations), Ministry of Railways, Railway Board
6. Mr T. Gupta, Executive Director, Civil Engineering (General), Ministry of Railways
7. Mr R. Mohan Das, Director (Personnel & Relations), Coal India Ltd
8. Mr V.S. Rao, Executive Managing Director, VBC Industries Ltd
9. Mr Raman Kumar, Executive Director, Steel Authority of India Ltd
10. Mr Lakshman Ravinder Singh, Bharatiya Mazdoor Sangh
11. Mr K.M. Johri, Assistant General Secretary, National Federation of Indians Railways
12. Mr G.V.R. Sarma, Employees Representative, Coal Industry (INTUC)
13. Mr U.M. Shankar Das, Secretary, Indian Nationals Mine Workers Federation
14. Dr Vivek Monteriro, Secretary, Maharashtra State Committee of Centre of Indian Trade Unions
15. Mr Rakhal Das Gupta, Assistant General Secretary, Northern Frontier Railway
16. Mr P.S. Parmar, General Secretary, All India Trade Union Congress
17. Two contractors' representatives have to be re-appointed
18. Mr A.K. Gupta, Under-Secretary to the Government of India, Ministry of Labour & Employment, is Secretary, CACLB

Annexure C

Excerpts/gist of important judgements

- Engagement of contract labour in perennial activities is not the issue, whether the appropriate government has prohibited the activity or not is what matters. (Supreme Court, 2006, in the APSRC case)
- On prohibition of contract labour, the contractor's workers do not become the workmen of the principal employer (there is no provision in the Contract Labour (R&A) Act for automatic absorption).
- Engagement of contract labour, when prohibited, is illegal. (AP High Court)
- Contract workers will be absorbed if the principal employer has engaged them to discharge statutory duties.
- If the contract is found to be mere camouflage by the Industrial Adjudicator, the contract labour will have to be treated as employees of the principal employer, who will be directed to regularize the services of the contract labour in the concerned establishment, subject to conditions.
- Only the appropriate government can abolish contract labour.
- A sham contract can lead to absorption through adjudication by the Industrial Tribunal. (SAIL, 2001)
- Even when there is no registration/licence, only penal provisions apply and there is no question of absorption. (Supreme Court in the SAIL case, 2001)
- Whether the contract labour system was genuine or mere camouflage has to be adjudicated by an industrial tribunal/court and not by a high court. (Supreme Court in the SAIL case, 2001)
- Determination of genuineness requires enquiry into the disputed questions of facts, which cannot be done conveniently by high courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases, the appropriate authority is the industrial tribunal/court, whose determination will be amenable to judicial review.
- Workmen not engaged against regular vacancies and workmen not recruited through a regular recruitment process cannot claim regularization. (Secretary, State of Karnataka, vs Umadevi of Supreme Court)

The employment relationship: Recent challenges

B.C. Prabhakar
President
Karnataka Employers' Federation

The employment relationship in India has undergone significant changes in recent times. Firms competing in the same product markets adopt very different business strategies and management practices. Much rests on how firms respond to the competitive pressures they face – on whether they adopt management practices that reduce turnover, increase trust, and facilitate information sharing, or whether they try to increase profit margins by downsizing, intensifying work, and driving down employee compensation. The initial distinction that observers made between 'high road' firms that responded to the heightened competitive pressures resulting from globalization, deregulation, and new technology by adopting participative work systems and competing on the basis of quality and product differentiation, and 'low road' firms that competed by driving down costs, has turned out to be a false dichotomy.

Competition in product markets has intensified in both tradable and non-tradable sectors of the economy. The internationalization of production processes and the ubiquitous use of information technology in the production of goods and services are important sources of competitive pressure on firms. But they are not the only sources of heightened competition among firms. The three Ds – deregulation, de-unionization, and de-industrialization – have affected industries as diverse as retail trade, financial services, health care, and communications, all of which have a strong domestic presence. The pressure for high profit margins often drives reductions in wages and benefits in domestic labour-intensive industries, such as hotels, in which much of the actual work performed by employees is little affected by technology or globalization.

Trade unions are losing their significance and individual employees are preferring individuality in their service conditions. The main threat to trade unions is often associated with the external forces of globalization. In this issue of transfer, we draw attention to the internal union challenges arising from the shift in employment towards private sector services, which, in recent decades, has contributed to the destandardization of work and erosion of union membership and power throughout the country. Technological progress, rising wealth, productivity, education and female labour market participation, ageing of the population, and changing work–family life relations propel demand for non-tangible products and social services. The shift in the structure of employment has, over the last decades, caused profound changes in human resource policies, which are the basis for union organization.

Today, the services sector accounts for more than two-thirds of employment in India and more than half of all jobs are found in private sector services, where union density is markedly lower than in manufacturing and public services. In many of the fast-growing business and information and communication technology related services, collective organization is virtually absent. For the trade unions, these developments raise several challenges, ranging from combating unemployment to adjusting union structures and strategies to meet the aspirations of a much more heterogeneous service workforce, and to gaining influence on the reshaping of employment relations in private service industries. Trade unions are therefore making considerable efforts to renew their organizational structures and policies to reverse membership decline and strengthen their presence in private sector services.

Internal labour markets and protected career ladders within companies were a central feature of the old employment system. Key characteristics of internal labour markets are (i) a long-term employment relationship; (ii) wages that are sheltered from market wage fluctuations and are instead determined by administrative rules tied to job classifications and rank; (iii) upward mobility within the firm, so that wages rise with seniority and promotions; and (iv) company sponsored health and pension benefits.

For much of the last century, the Indian economy was characterized by a distinct separation of the economic and social spheres and of their characteristic institutions – the corporate enterprise in the economic realm and the family or household in the social realm. Within these institutions, the socially sanctioned roles of men and women were well defined and were assumed to be enduring. The two realms were linked by the male breadwinner, whose income supported the family, and by an employment contract, which governed the relationship between work processes in large organizations and households' labour supply.

What we now think of as the traditional employment relationship emerged in the early 20th century as developed countries shifted from a farm and family economy to an industrial economy. The focal point of economic activity shifted to the corporation. Men worked outside the home for wages to provide for the financial security of their families. The demand for a 'family wage' was a high priority for the industrial unions that emerged to represent the male wage earners. The home became the separate sphere of women. Homemaking and motherhood were recognized as important vocations for women, who were viewed as uniquely suited to carry them out. Wives looked after the needs of their husbands, undertook the unpaid work of caring for children and the elderly, and contributed directly to the family's economic well-being by sewing, cooking, and canning foods. The norms of behaviour for men and women were characterized by this breadwinner–homemaker model of work and care.

Local men were the majority group in the labour force and most of them enjoyed an implicit contract with their employers, which guaranteed them employment security.

Blue-collar employees faced layoffs during periods of economic distress, but could be sure of being recalled when the economy improved and were secure in their jobs in good times. Internal labour markets provided employees with training and opportunities for skill development, matched workers' skills to job openings, and enabled employees' responsibilities and incomes to increase over their work lives.

Traditional corporate hierarchies and internal labour markets led to reliable career trajectories. The expectation of both employers and employees was one of mutual loyalty and commitment. One important result of such initiatives was employment stability for the middle and upper tiers of the labour market and the steady expansion of the middle class.

Women's labour force participation increased steadily over the last century as rising educational levels of women, experiences gained from wartime employment, and the expansion of jobs in social work, nursing, education, retail trade, and personal services – functions women had filled in the home – all encouraged women to move outside the domestic sphere.

By the 1970s, a variety of developments led an increasing number of women to enter paid employment as well. Falling real wages undermined the ability of men to earn enough to support a family and pushed many women into the labour market in an attempt to maintain the family's standard of living. Labour force participation rates of married women rose steadily, as did their hours of paid work. Mothers often took part-time jobs when their children were young, and the share of part-time jobs increased.

These labour force changes have eroded the boundaries separating the realms of the family and the workplace. As a result, the breadwinner–homemaker model no long governs the relationship between family and work: The rise of the dual-earning married couple and the increase in single-parent families have relegated the traditional family headed by a male breadwinner and stay-at-home wife to a distinct minority among household types. More slowly, but no less importantly, the traditional division of labour within the household has begun to give way. Women still bear the greater responsibility for the care of children and other family members, but gender norms are changing slowly.

Companies are under intense pressure from shareholders and venture capitalists to perform better quarter after quarter, and this pressure often forces cost-cutting through internal administration. As a result, many companies struggle to provide training, pay fair wages, and staff appropriately while meeting the performance targets expected by the shareholders and investors. On the demand side, competitive pressures have led some large firms to downsize regular full-time employees and to outsource cafeteria, laundry, janitorial, clerical, building maintenance, packaging, and warehousing and delivery services to subcontractors to reduce wage bills, retain employment flexibility, and lower working conditions. The result has been a decline in job quality and an increase in earnings inequality.

On the supply side, the influx of women and immigrants into the workforce has made this strategy for intensifying work and driving down compensation feasible. Vertically integrated organizations and internal labour markets are being replaced by arm's length relationships and subcontracted work designed, in the absence of strong unions, to achieve cost savings, not through greater efficiency, but through an intensification of work. The dominant actions of employers are behind the aggregate trends in wage and job structures: stagnant wages, rapid growth in contingent and subcontracted jobs, and declining upward mobility. However, the salaries and service conditions for managerial staff have improved substantially in new-generation organizations as in the software development, telecommunication, organized retailing, and business process outsourcing sectors.

Looking at the overall human resource trends at this point of time in the 21st century, the following challenges emerge in the employment relationship:

- **Labour market**
  - Controlled by skilled workers, rather than employers
  - Business organizations at the mercy of the workforce
- **Ownership patterns**
  - Reduced public sector ownership, increased private sector ownership
- **Unionization**
  - Increasing trend of non-unionized workers, decreasing importance of workmen unions
  - Managing non-unionized workers is a new challenge
  - Highly diverse workforce, unlike the earlier local, homogenised workforce
- **Mobility and multiple options**
  - Movement of jobs from Western countries to developing countries
  - Movement of workforce from developing countries to Western countries
- **Redefined time structure**
  - Shift can start at any time of the day or night
  - Work during day and rest at night not necessarily a rule
- **Fast-changing technologies**
  - Continuous demand for skill development of the workforce
  - Increased workforce in research and development
- **Organizational structure**
  - Flatter structure and empowered employees
  - Fewer hierarchical structures and dependent employees
- **Nature of jobs**
  - Regular jobs becoming contractual jobs
  - Manual jobs becoming mechanized jobs
- **Loyalty in employment**
  - Employees are loyal to profession, rather than the organization
  - Frequent job changes for better options
  - Employees may quit to start rival business enterprise
  - Employer needs employee only if the business demands
- **Skewed family relations**
  - Breadwinner-homemaker couple now dual working couple
  - Husband and wife working in different shifts
  - Migration of workers, entailing loss of support from joint family system
- **Globalization**
  - Employees of the same company governed by different service conditions in different countries
  - Employees from poor and rich countries governed by same service conditions in an organization
- **Salary and rewards**
  - Working class moving up, so many employees are millionaires
  - Instant gratification – higher take-home pay, fewer perks and benefits
- **Worker–supervisor relations**
  - Many workers know more than supervisors
  - Supervisors have to influence workers without authority
- **Redefined work structures**
  - Telecommuting, or working from home
  - Globally distributed team members, connected by telecommunication
  - Individual work is down, team work is up
  - Move from personal supervision to remote monitoring of workers

The employment relationship in the Indian context

B.P. Pant
Secretary, Council of Indian Employers

The employment relationship is a critical and relevant issue in the domain of labour policy and social development in the context of the changed global economic landscape. The number of people going out of the formal employee–employer framework due to weakening of linkages, globalization of work, integrating economies, cross-border investments, and speed of information technology and scientific advancements is ever increasing. Countries are faced with serious financial and social problems and high unemployment rates due to fierce competition, which may fuel social unrest unless countered by social protection.

The disguised and hidden relationship between the employer and the employee, which at times is under employment due to some of the circumstances mentioned above, carries with it the risk of socioeconomic insecurities. The International Labour Organization's (ILO's) Recommendation on the Employment Relationship, 2006 (No. 198), is thus most timely.

The forms and magnitude of a typical employment have been noticed mostly in the developing and underdeveloped countries, which lack a supportive socioeconomic framework, particularly with regard to certain vulnerable sections of employees, such as contract employees, casual employees, migrants, home-based employees, and women employees. They belong mostly to the unorganized or informal sector, where neither the ILO standards nor the national laws of rights and protection are available, and there is no collective bargaining process in motion.

Whether addressing the issue through a national policy framework would be feasible in a diverse socioeconomic situation is yet another issue that needs equal consideration.

The Indian perspective

The composition of the Indian informal sector workforce, where the employment relationship may be in a disguised form, is epitomized succinctly in the following quote:

"Indian society is like a mountain. With the very rich at the top. Lush Alpine pastures where skilled workers in the biggest modern industries graze, a gradual slope down through smaller firms where pay and conditions are worse and the legal security of the employment means less, a steep slope around the area where the Factories Act ceases to apply, a plateau where customs and the market give poorly paid organized workers some minimum security, then a long steep slope down through casual migrant labour and petty services to destitution. There are well-defined paths up and down those slopes, which are the easiest for some kinds of people."

—Helmstrom, 1984

According to the 61st round of the National Sample Survey Organization (NSSO), India has a labour force of 469 million, of which 458 million are employed. The vulnerable categories of employment are:

Unorganized sector, total	395 million
Agricultural workers	253 million
Non-agricultural workers	142 million
Self-employed	89.46 million
Casual workers	28.40 million
Regular workers	24.14 million

Source: Work and promotion of livelihood in the unorganized sector, NCEUS

Migrants, women, and home-based workers are also vulnerable to exploitation and at socioeconomic risk. That is why these groups receive focused attention in Recommendation No. 198.

Women workers

Women comprise an important segment of the workers in India. According to the information provided by the Registrar General of India, the work participation rate for women was 25.68 per cent in 2001. This is an improvement from 22.73 per cent in 1991 and 19.67 per cent in 1981. In 2001, the work participation rate for women in rural areas was 30.98 per cent as compared to 11.55 per cent in the urban areas. In rural areas, women work mainly as cultivators and agricultural labourers. In urban areas, almost 80 per cent of the women workers are in unorganized sectors such as household industries, petty trades and services, building, and construction. Plantations and factories are other important employers of women. Women workers constitute only 5 per cent of the workforce in the mines sector. These are the sectors that require strong monitoring by the government for possible exploitation of workers.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, was enacted to protect the rights and safeguard the interests of migrant workers. The Act is intended to regulate the employment of interstate migrant workers and to provide for their conditions of service. It has been implemented by both the Central and state governments in their respective jurisdictions. It applies to every establishment in which five or more interstate migrant workmen are employed or were employed on any day of the preceding 12 months, and to every contractor who employs or employed five or more interstate migrant workers (whether or not in addition to other workers) on any day of the preceding 12 months. The Act provides for the issue of a passbook to every interstate migrant worker with full details, payment of displacement allowance equivalent to 50 per cent of monthly wages, payment of journey allowance, including payment of wages during the period of journey, suitable residential accommodation, medical facilities and protective clothing, payment of wages, equal pay for equal work irrespective of sex, etc.

The legislation thus takes care of migrant workers through a broad range of legislative measures, which are available through the employment relationship.

However, contract employment is a major source of employment for the above categories of the workforce. It is also the most common form of employment worldwide in the post-globalization era. It was therefore the focus of global attention while adopting Recommendation No. 198 in 2006. Some of the advantages of contract labour are:

- It relieves the principal employer of the need for direct supervision of and control over employees.
- It provides a relatively flexible form of employment for certain seasonal and export-oriented industries.
- It relieves the principal employer from the burden of looking after non-essential things and allows him to concentrate on his main activity of manufacturing goods and/or rendering material service.
- It is comparatively cheaper with less liability for supervision and control.
- The employment of contract labour is common for the following jobs:
    - Construction, addition, or modification of the structure of a factory or establishment;
    - Breakdown of machinery;
    - Loading-unloading, sweeping, cleaning, and security;
    - Work requiring periodical maintenance of machinery and equipment, like the service contracts for the maintenance of air-conditioners, electrical gadgets, and computers;
    - Work that needs to be done at regular intervals, like pesticide contracts, and jobs that can be done on weekly holidays/other holidays of the factory; and
    - Project work such as construction, erection, etc.
- It fixes greater accountability.

Keeping in view the utility and essential nature of contract labour, the 5th Pay Commission, headed by Justice Pandian, had suggested that employees for certain jobs in the Government of India should also be engaged through the contract system because this would lessen the government's burden to a great extent. The concepts of 'turnkey' and 'franchise' are also extensions of the contract labour system.

The Contract Labour (Regulation and Abolition) Act, 1970, was enacted to protect and safeguard the interests of contract workers. It aims to ensure regular payment of wages and other facilities to contract workers. The Act applies to every establishment and contractor that employs 20 or more workers. It also applies to government and local authority establishments.

Every establishment and contractor, to whom the Act applies, has to register and obtain a licence for the execution of the contract. The interests of the contract workers are protected in terms of wages, hours of work, welfare, health, and social security. The amenities to be provided to the contract workers include canteen, restrooms, first-aid facilities, and other basic necessities, like clean drinking water, at the workplace. The responsibility of ensuring payment of wages and other benefits is primarily that of the contractor, and only in case of default, that of the principal employer.

Sections 16-18 of the Contract Labour Act, which deal with welfare and health, authorize the appropriate government to make rules for the establishment of a canteen, and for the provisions to be made for restrooms, first aid, and wholesome drinking water. If the contractor fails to provide these facilities, the principal employer has to provide them. The contract workers have to be provided all the stipulated facilities as per the rules made by the appropriate government. The principal employer has been empowered to recover from the contractor the expenses incurred by him for providing welfare amenities as prescribed in the Rules under the Act. The Supreme Court[1] has held that the various measures, which are provided for in the Contract Labour Act, are not violative of Article 14 of the Constitution of India.

A contractor is required to pay the contract workers their wages and a duty is cast on him to ensure the disbursement of the wages in the presence of the authorized representative of the principal employer. If the contractor fails to pay the wages, either in part or in full, the principal employer is liable to pay the workers. The principal employer is authorized to recover the amount either by deduction from the amount due to the contractor or as a debt payable by the contractor, who has to pay the money back.

In another case[2], the Supreme Court has held that the principal employer is liable to pay the wages if the contractor defaults, and the term, 'wages', includes balance or arrears thereof. When contract workers are doing the same work as was being performed by regular workers working in the same establishment, the contract workers are entitled to the same wages as were being paid to the regular employees.

[1] AIR, 1974, SC 960

[2] 2004, Report of the Study Group on Contract Labour System in Karnataka by the National Law School of India University (NLSIU), Bangalore, for the Government of Karnataka.

The policy perspective

A number of other measures have been taken to safeguard the interests of the contract labour, under different statutes. These are:

- The definition of 'worker' in the Factories Act, 1948, also includes the contract worker as: "'Worker' means a person (employed, directly, or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not) in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process (but does not include any member of fee amend forces of the Union)."
- Health and social insurance benefits under the Employees State Insurance Act, 1948, by including the workers employed by the immediate employer – contractor – in the definition of employee in Section 2 (9) as: "'Employee' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and:

  i. who is directly employed by the principal employer on any work, or incidental or preliminary to or connected with the work of the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere;

  ii. who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

  iii. whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service."
- Coverage of contract workers in the definition of 'worker' in Section 2 (k) of the Plantation Labour Act, 1951.

- Coverage of contract workers under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, in the definition of 'employee' in Section 2 (e) of the Act as: "'Employee' means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of (an establishment), and who gets his wages directly or indirectly from the employer, and includes any person
  i. employed by or through a contractor in or in connection with the work of the establishment; and
  ii. engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment.
- The 'employer' has been made liable for payment of compensation under the Workmen's Compensation Act, 1923, for contract workers also in Section 2 (e), which says: "'Employer' includes any body of persons, whether incorporated or not, and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship.
- Similarly, the provisions of the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, etc., also cover contract workers, where any of these laws are applicable.
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, though not exclusively designed for contract workers, also offers some indirect relief to contract workers because it provides for the payment of journey allowance, displacement allowance, housing, etc., to migrant labour who are generally employed on a contractual basis.
- The Industrial Disputes Act and Industrial Employment (Standing Orders) Act, 1946, which mainly governs the employment and service conditions of workers, is directly linked with the direct employer–employee or master–servant relationship and, therefore, under its enactment, the contractor, good or bad, is the employer and sole arbiter of the contract labour under him.

These extensive measures put contract workers practically at par with directly employed workers and to the extent the objectives of the employment relationship is fulfilled. But at times, despite these legislative initiatives, the abuse of the contract labour system – non-payment or reduced payment of dues, lack of welfare amenities, insecurity or lack of continuity of employment, deprivation of other perks and benefits such as medical, housing, travel, etc. – continues because of lack of responsiveness on behalf of the intermediary or the contractor, who needs to be monitored strictly in order to strengthen the system.

Restraining factors in the employment relationship

Although it would be desirable to have a formal relationship with all categories of employees, the following factors restrain it:

- An inflexible labour policy and the need for a disposable labour force to meet the demands of global competitiveness;
- Long value change and inadequate supervisory control due to lack of manpower;
- The difference between an employee and independent contractors should be well demarcated to professionalize services and improve quality goods and delivery schedules;
- All operations of the industry cannot be executed in the same premises and require to be outsourced to meet the requirement of leaner and meaner operations;
- To reduce harassment by the government inspectorate; and
- To achieve cost competitiveness.

What can be done?

- Introduce short-term and fixed-term employment policies;
- Better enforcement and implementation of the Contract Labour Act;
- Review the application and implementation of the existing social security schemes with a view to extending them to the informal sector;
- Develop a framework for a tripartite agreement at the national level, in which the obligation of the principal employer and the immediate employer are well defined and fair indicators are laid down as to what constitutes the employment

relationship. A dialogue in this context may be initiated at the earliest; and

- The supportive role of the government.

While labour market innovations such as greater diversity in employment and working time arrangements are facilitating labour market entry and exit, a vulnerable section of employees is being exposed to newer and greater risks. In this background, the employment relationship has to perform a balancing Act. A comprehensive concept of flexicurity, combining flexible employment, training, and social security, as prevalent in Europe, may be worth trying here in India.

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The changing scenario of the Indian labour market and employment relations

By Arvind Shrouti

Introduction

This paper attempts to examine the changes in the organized labour market and the change in the employment relationship in India before and after the economic reforms of 1991. To achieve this objective, it is important to have an overview of the Indian labour force in recent years. It is also important to see the trends and compositional changes in the organized workforce across industry groups and across the public and private sectors. One can see from the available data the significant restructuring in the factory-manufacturing sector that has been taking place since the 1980s despite legislation induced inflexibilities.

The labour force is divided into four available activity statuses: self-employed, wage and salary earning, casual, and unemployed. Of these, the self-employed are the most loosely connected to the labour market because of the possibilities of work sharing and work spreading in a self-employed enterprise as has been discussed in detail by the Dantwala Committee (1970). Non-contractual casual labourers have the closest connection to the labour market on an almost day-to-day basis. Similar is the case with those unemployed who are 'actively seeking' work. Contractual and, hence, stable hired employment (with the same employer and/or in the same job) on a 'regular' basis is covered in the description, 'wage and salary workers'.

The available data indicates that nearly 52 per cent of the Indian labour force is self-employed, a little less than one-third is casual labour, about 14 per cent is wage and salary earning, and a little more than 2 per cent is unemployed. The National Sample Survey (NSS) data further reveals:

- Self-employment and casual labour status are more prevalent among the rural labour force than the urban labour force and among female workers than male workers.
- The incidence of unemployment is higher in the urban labour force than in the rural labour force, with nearly 48 per cent of the total unemployed persons belonging to the aggregate urban labour force whose share in the total (rural plus urban) workforce is 22 per cent.
- Those reporting wage and salary earning dominate in the urban labour force, their share being around 62 per cent.

Organized workforce: Concept and approximation in data

In usual parlance, the term 'organized' is used to indicate a unionized segment of the workforce. This is not meaningful in the Indian context, where 'organized workforce' is defined to include only those workers who have regular, contractual hired employment constituting what is widely described as the labour aristocracy because of the privileged service conditions this segment enjoys, including high wages emanating from considerably high and sustained productivity per worker in the sectors/units that employ them. Needless to add, high wages also constitute in part returns to their educational and skill endowments, although the rental element cannot be ruled out due to known redundancy, more so in public than private sector organized services.

How do we approximate this segment in data? The closest and most comprehensive approximation is given by those reporting wage and salary earning activity status. The aggregate magnitude of the wage and salary earning workforce is estimated to be around 60 million, of which 32 per cent are rural males, 6 per cent rural females, 52 per cent urban males and 10 per cent urban females. The published NSS reports do not supply the breakdown of this segment by industry of attachment. While this can, in principle, be derived from the unit level records, the disaggregated estimates may have large standard errors given that this segment constitutes less than 14 per cent of the total labour force.

The available data from the Annual Survey of India and the NSS reveal the following trends:

- In relation to the total workforce, the size of the reported total organized employment is in single digits, much lower than 10 per cent.
- A striking fact emerges. Under extreme assumptions, i.e., whether we assume reported

total organized employment to be entirely non-agricultural or entirely urban or entirely urban non-agricultural, the share of the organized employment has declined significantly over time, whatever subjective but reasonable allowance one chooses to make about the underestimation. The same conclusion holds for reported total organized employment in the public sector.

- The share of reported organized manufacturing employment has declined in relation to the workforce and much more in relation to the urban manufacturing workforce.
- Public sector employment in manufacturing increased its share significantly in organized manufacturing employment between 1961 and 1993–94 before declining in 1999–2000.
- The organized–unorganized duality in the Indian labour force has increased over the last four decades.
- As we note and analyse later, for the organized factory manufacturing sector, the decade of the 1980s was one of 'jobless growth", while the 1990s were marked by 2.9 per cent growth in factory employment.

Government role in labour market and employment relations

The existing legal framework made no provision for the procedure of union recognition for collective bargaining. Consequently, the trade union movement remained weak and fragmented and healthy collective bargaining based on countervailing power never had a chance.

There are about 50 labour-related statutes by the Central Government dealing with minimum wages, accident benefits, deaths of workers, maternity, conditions of employment, dismissal, disciplinary action, industrial disputes, etc. Labour being a subject on the Concurrent List of the distribution of powers in the Indian Constitution, there are several state statutes covering different aspects or segments of labour. The labour laws are implemented both by the Centre and/or the state governments, and this has added to the dimensions of complexities with regard to labour legislations. It is observed that while dealing with common issues in different contexts of employment conditions without reference to an internally consistent framework, India's labour laws have introduced uncertainty and ambiguity about key legal concepts and definitions, thus creating scope for conflicting interpretations. The effective coverage of this extensive legislation has been confined, in most of the cases, only to large units.

Private sector employers have found ways of getting around these regulations. These ways include (i) adopting capital intensive technology to minimize employing permanent workers; (ii) outsourcing activities to unregulated unregistered units; (iii) moving units to areas with lax enforcement; (iv) passing on excess labour costs in the form of mark-up pricing to consumers, where the product market structure permits; and (v) splitting the establishment into multiple smaller units to escape coming under the purview of the legislation.

The organized labour market in India has thus been in a state of flux during the post-reform period. The formal rules of the game incorporated in the protective labour legislation continue to persist despite their inability to protect employment, while intensification of domestic and external competition is forcing the existing units to seek informal avenues of flexibility in labour allocation. While the second tendency is doubtless improving the allocation of resources of the existing units at the margin in the face of legislative inflexibility, the latter is deterring new investment, and hence, preventing generation of new productive employment opportunities. There has been a realization of this simple economic truth at the top level. Labour market reforms have been advocated in all recent official documents, including those from the Planning Commission, the Prime Minister's Economic Advisory Council and, most recently, the Report of the 2nd Indian Labour Commission.

It is clear that labour regulations have failed to protect even the existing employment in factory manufacturing because of their adverse consequences.

Conclusion

From the above discussions and facts, we reach the following conclusions:

- We must recognize the fact that the class interests of the Indian workforce are divided into two camps.

Protected workmen	Unprotected workmen
1. Employed by large- and medium-scale firms	1. Self-employed and employed by small firms
2. Directly on the rolls	2. Subcontracted/outsourced
3. Permanent	3. Temporary/casual, etc.
4. (Collectively) Bargainable	4. (Collectively) Non-bargainable
5. Large-scale firms	5. Small-scale firms
6. Monopoly firms	6. Competitive firms

- The existing labour system seems to be in favour of the so-called protected labour, while the unprotected sections are practically out of its ambit. The unprotected sections have nothing much to lose by any de-protecting sort of reforms.
- The reform proposals from the various governments are about liberalizing some of the over-protective measures of the so-called protected labour. These proposals neither contain any positive initiative for the betterment of the unprotected sections nor do the governments make it explicit that the more than 90 per cent of the working class constituency will derive any benefit from it.
- We must recognize 'employment flexibility' as a genuine need of a dynamic and versatile economy. It is really unfair to expect that every employer will take responsibility for the lifelong employment of employees. At the same time, the human cost involved in the transitional unemployment while adjusting to changing labour demands, cannot be neglected. Thus, 'social security' is an equally genuine need of non-permanent workers.
- As a result, we need a paradigm shift 'from permanency to job insurance'. Employers should get the right to flexible employment, but they must earn this right by contributing towards social security.
- Even in the existing system, employers have to bear a considerable burden in the name of so-called social security instruments such as provident fund, gratuity, ESI, retrenchment compensation, lay-off compensation, etc. There is hardly any cross-subsidization or insurance principle applied in such schemes. These burdens, as well as bonuses, have become nothing but deferred wages. In the case of large-scale firms, which also happen to be high-wage firms, high-rated voluntary retirement schemes (VRS) are needed to take care of employment flexibility. In the reforms proposal, the rate of retrenchment compensation is proposed to be three times the existing rate. The contractor's profit margin, the cost of instigating strikes and lock-outs as a way of getting rid of manpower, and the delays in government procedures contributing to long periods of maintaining surplus manpower on the roll, are other factors that make employment flexibility a costlier affair in the existing system.
- The slogan of organizing the unorganized has remained lip service for many decades. The classical employees' union model is simply not suitable to most of the unprotected workmen because their employer is unstable. 'Job trusts', or 'insurance unions', are more proper forms of organizations for unprotected workers. Moreover, the singular and sharp demand for 'job insurance for the non-permanent' can become the rallying point for these sections and even create an umbrella organization. This would embody a class identity to the unprotected sections.
- The labour reforms must be a proactive, pro-labour and economically rational programme.
- Other issues, like the role of the government, union democracy, rational wage policy, participation by way of gain-sharing schemes, fair contracts, progressively affordable labour standards, etc., should be discussed in this session in addition to the main theme stated above.
- Employment generation is basically a function of economic growth. Dispersal of employment opportunities, however, can be addressed by labour reforms in the areas of reduction in age of retirement, single overtime and compensatory offs, job sharing by way of reduced working hours or days, part-time employment, etc.

Recommendations

Considering the above analysis and conclusions, I hereby propose the following concepts to deal with the issue:

- Concept A: Employment regulation and flexibility insurance network;

- Concept B: Reorientation and retraining as a solution to the problems of retrenchment and early separation; and
- Concept C: Concept of fair contracts

Concept A: Employment regulation and flexibility insurance network

We recognize that employment flexibility is a genuine need of a dynamic economy. This is especially so in the context of the structural changes taking place in industrial work organizations. Large work organizations are decentralizing themselves by ways of internal customers/ cost centres, downsizing, outsourcing, delayering, etc., in order to reduce the dis-economies of scales. Changing product profiles, diversification, and changing technologies are demanding a more volatile spectrum of job opportunities. The typical 'appointment' type of employment is transforming into the 'assignment' type of employment as a result of which the employer–employee relationship is gradually getting replaced by the customer–supplier relationship.

However, from the employees' point of view, job security is an equally genuine need. In the new structural context, it has become necessary to divorce the two components of job security, subsistence security and work opportunity. Thus, the working class will have to forego 'permanency', but only on the condition of having an employment insurance scheme. Employers must earn their right to employment flexibility by paying the premium for such a scheme.

The scheme must be affordable, manageable, self-regulating, transparent, and not dependent on the government, except for the provision of a proper institutional framework and judicial intervention.

We present here the conceptual model of such a scheme. This model, however, needs to be substantiated with operational details and feasibility calculations at the macro and micro levels.

The research project aims at substantiating this model in terms of actuarial calculations, operational details, and obtaining feedback on the political response it may receive from various interested parties and collecting suggestions regarding specific issues that may arise in the various industries, sectors, type of occupations, etc.

A. Contributions/ premia

1. Reference wage rate: A daily wage that a worker will have to earn if he is to maintain a standard of living for himself and two dependents at the average national income level when he gets 300 days of employment in a year. Thus:

$$W\text{ ref} = \frac{\text{Annual GDP per capita x 3}}{300}$$

$$= 1\% \text{ of annual GDP per capita}$$

Say Rs 100 @ 1995–96 prices

2. Progressive affordability index

$$= \frac{\text{Employers' share in value added/equivalent mandays}}{\text{Reference wage}}$$

$$\text{For example, PAI} = \frac{600}{100}$$

$$= 6$$

3. Equivalent man-days: Actual man-days offered by an employer are weighted in terms of

a. Stability/instability he offers or imposes on the employment situation; and
b. Dispersal/concentration of employment he offers to the employment situation.

Weightage multipliers for 'a'

- Permanent employee (lifelong guarantee) = 2
- Term employee (as per years of term) = 1 to 2
- Direct temporary (Less than one year term) = 1
- Responsible subcontract = 0.5 to 1 (As per the degree of shouldering the responsibility by the principle employer that labour standards are followed by the contractor's firm)
- Casual (employed for a very short period) = 0.5
- Not responsible for subcontract = 0

Weightage multipliers for 'b'

In order to encourage wider dispersal of employment opportunity:

- If the working day is reduced to six hours or four hours by reducing wages proportionately, it will still be deemed to be 'one' man-day.
- If a worker works overtime, say, for half a day, but gets a compensatory off (and hence opportunity for another worker), the extra time will be taken as half a man-day.

- If overtime work is paid at double the rate of remuneration, the extra time will not be counted in cases of non-availability of skills.
- If a job sharing scheme is in terms of fewer week days, instead of reduced working hours.

Stability multipliers and dispersal multipliers tend to increase the number of equivalent man-days. As equivalent man-days are in the denominator of PAI, there will be a saving in the premium. Thus, employers will be encouraged to provide more stable and more dispersed employment opportunities. However, there will be no rigid compulsions for permanency or part-time work.

4. Rate of premium = Basic premium rate x PAI

For example, if an employer earns Rs 6 crore of share in value added (return to capital) in a year and at the same time provides 25,000 man-days to permanent workers, a responsible subcontract of 50,000 man-days, and if the basic premium rate is fixed at 2 per cent, then,

$$\text{Rate of premium} = \frac{2 \text{ x } 6 \text{ crore}}{25{,}000 \text{ x } 2 + 50{,}000 \text{ x } 1} \div 100$$
$$= 2 \text{ x } 600 \div 100$$
$$= 12\%$$

Therefore, premium = 6 crore x 12%
= 72,00,000

i.e., Rs 72 per man-day.

5. Employees' contribution

Similarly, a permanent employee who is getting Rs 200 per day will pay his contribution at the following rate:

$$= \frac{2 \text{ x } 200 \text{ x } 2}{100}$$

= Rs 8 per day.

This contribution will be Rs 4 per day in the case of temporary workers and nil in the case of floating employees.

If an employee is getting Rs 400 per day, then his contribution will be :

$$= \frac{2 \text{ x } 400 \text{ x } 2}{100}$$

= Rs 16 per day.

B. Mechanism

1. ERAFIN Fund: The Employment Regulation And Flexibility Insurance Network Fund will be a centralized fund formed with the employers' premium alone (employees' contributions will go to their 'job trusts'). The ERAFIN fund will not be directly disbursed to beneficiaries, it will grant allocations to various job trusts.

2. Job trust: This can be a cooperative, professional, or voluntary organization which

- Functions as a local employment exchange ensuring replacement manpower to employers in cases of absence or labour turnover;
- Conducts re-training of temporarily jobless members and engages them in social services;
- Pays subsistence allowances and other benefits to ' employment deficit' members; and
- Gives a 'scheme bonus' to all contributing members in proportion to their contribution.

3. Degree of internal cross-subsidization (DICS) of a job trust

If a job trust has all its members permanent and highly paid, it will have zero DICS value because everybody's contribution will individually take care of his entitlement and there will be no need for internal cross-subsidization. On the other hand, if all of a job trust's members are low paid and totally 'floating' also, it will have zero DICS value. In the latter case, it is unable to cross-subsidize internally. If a job trust manages to have a composite member profile like some permanent employees who are well-paid, some term employees who are medium paid, some contract employees, and some floating employees who get varying days of employment, then it will have good DICS value, because the surplus can be transferred internally to the deficit employees. The exact method of calculating the DICS values will be a task of this research project.

4. Degree of overall deficit/surplus (DODS) of a job trust

If a job trust has a member profile such that its overall contribution is more than its entitlement, it will be a surplus job trust and hence need no aid from the ERAFIN Fund, but it will still get some scheme bonus because it has successfully developed a cooperative culture. On the other hand, if a job trust is an overall deficit job trust, it certainly needs aid from the ERAFIN Fund to fulfil its entitlement. Thus, the DODS index will be useful in determining the flows of network level cross-subsidies. The employers' premium will not necessarily go to their employees, but to needy employees anywhere. (Please note that the existing so-called social security in India is nothing but a deferred wage necessarily going to the employees' individual accounts.)

The allocations from the ERAFIN Fund will simultaneously depend on both DICS and DODS. For example, if a job trust comprises all totally jobless people, it will have a high level of DODS, but zero DICS value and so will not get any aid. Thus, the job trust will tend to balance its member profile so that 'those who help each other will be helped'.

C. Monitoring instruments

1. Employment passbook: Every employable person will have a unique identity number and will be allotted an employment passbook. Any incidence of employment will be entered in this passbook with mutually signed entries about appointment, terms, terminations, retrenchments, lay-offs, job changes, assignments, present days, leave, etc. Thus, the passbook will have a picture of the employee's employment situation for that year.

Contributions to be paid to job trusts will be based strictly on actual employment opportunities received by a member. A member cannot contribute from the income of other sources, like relatives or friends, in order to record a higher contribution and, hence, more entitlement.

The fully employed will have no subsistence allowance entitlement, only bonus entitlement. The fully employed will not have any entitlement also because this scheme is typically designed for partial and transitional unemployment.

The job trust should check whether the underemployment is genuine, i.e., a day when a job is offered, but not taken by the member merely due to his attitude, will not be counted as a deficit day in his passbook.

In case of joblessness due to punitive dismissals, the entitlement will be much less as compared to retrenchment.

2. Employment returns to be filed by employers

When employers deposit their premium with the ERAFIN Fund, they will submit detailed employment returns. The return must mention the passbook numbers of all their employees for cross-checking purposes. Employers will be interested in recording every employment they have created because by creating more employment, they will save on their premium amount.

3. Claim statements by the job trust

Each job trust will submit a statement of claims for aid coming from the ERAFIN Fund. This claim will be based on the DICS and DODS indices. In order to verify the values of DICS and DODS, each job trust will furnish all the relevant information and data regarding contributions and entitlements of their members. In addition to this, the job trust will also furnish data regarding various other activities, such as training and retraining, coordinating the replacement of manpower, and engaging jobless workers in the social service.

The ERAFIN authorities will create an integrated database of i) passbooks; ii) returns; and iii) claims. Regular updating of this information will be one of the major functions of the ERAFIN authorities.

D. Internal self-regulative process

Basically, three types of vested interests are playing this 'game':

1. Employers;
2. Surplus contributive employees; and
3. Deficit claiming employees.

Employers will be interested in over-recording the employment opportunities provided by them in order to save their premium. To achieve this, they may use 'deficit employees' and create a false record of employment on their passbooks. Such false entries will reduce the DICS and the contributing employees, who stand to lose because their scheme bonus depends on DICS, will oppose such practices.

The contributing employees can conspire to record more internal cross-subsidy by under-recording the actual employment opportunities got by the deficient employees, i.e., overplaying the value of DICS. Since such under-recording will result in higher premium, the employers will be vigilant against it.

The third and most important factor is that the deficient employees who were hitherto unorganized will now be organized under the ERAFIN umbrella. They will be vigilant and pressurize the ERAFIN authorities to ensure that the employers do not collude with well-to-do employees.

As DICS encourages a composite member profile, the job trust will become a working class brotherhood, cutting across the stratifications within the working class. The functioning of ERAFIN will be made transparent to trade unions, voluntary organizations, political activists, and the public at large.

The three factors, counter-balancing interests, integrated database, and public accountability, will ensure that ERAFIN is not misused or sabotaged.

Lastly, as ERAFIN will form a new mechanism for capital formation, it will improve the investment situation. ERAFIN will ease the pressure on government funds for enduring the human cost of economic restructuring. We hope that the politicians will appreciate the scheme as it is a way out of the deadlock of economic, rational, and social justice.

Concept B: Reorientation and retraining as a solution to retrenchment and early separation

Involuntary loss of work opportunity results in excessive psychological and financial stress to the individuals forced into such situations. Changing demographics, lifestyles, and value systems lead to changing demands for goods and services. Globalization, liberalization, and structural changes in national economies also result in making certain industry sectors redundant or non-competitive. This consequently leads to loss of jobs for no apparent fault of the retrenched employees. Economists refer to structural unemployment as a mismatch between supply of and demand for labour. Mismatches can occur because demand for one kind of labour is rising, while that for another is falling, and the supplies do not adjust quickly enough. Thus, we often see imbalances across occupations or regions as certain sectors grow, while others decline. Unlike the product and capital markets, the price of labour (the wage) is sticky and so, the labour market takes years to adjust to shortages and surpluses. Additionally, there is an information deficit – the unemployed don't have adequate information about the demands for types of opportunities. The countries of North America and Western Europe are culturally homogenous with one language and predominantly one religion. This results in high labour mobility and thus facilitates the clearing of the labour markets. India has many languages, castes, and regional subcultures, leading to reluctance on the part of workers to migrate and settle in other regions. The costs of relocation, problems of school admissions, and difficulties in getting rental housing accentuate the problem. It is observed that the unemployed in India tend to stick to their city/ town and use informal support networks of family and relatives to survive and subsist. While such individuals coast along, it is a great waste of their productive potential and a loss to the national output.

As the Indian economy integrates with the world economy and as tariffs and barriers are further reduced, it is likely that the manufacturing sector will have a shakeout leading to further shutdowns and downsizing. Neighbouring countries, such as China, have a clear comparative advantage over India in terms of lower manufacturing costs and more streamlined operations. The scenario looks scary and it is imperative that steps be taken to handle the potential problems of involuntary unemployment, disguised unemployment, and underemployment.

India's polity is primarily appeasement driven. If the unemployed class does not assert itself as a 'political entity' (a euphemism for 'vote bank'), it is unlikely that any government at the Central or state level will address this issue and allocate resources to its alleviation. It is unlikely that the unemployed, who are geographically dispersed and unaware of their political clout, will organize themselves and demand the establishment of a social safety network. Advanced capitalist countries have always had flexible labour policies. Firms in these countries can hire and fire at will. To reduce the pains of separation, these countries/societies have established a well-managed social safety network, which provides unemployment allowance, subsidized retraining, and assistance for subsequent job hunts. No such institutional structure exists in India. So, while we would like to get all the benefits of globalization, we are not willing to pay the dues for its attendant problems.

Objectives

The broad purpose of any healthy society should be to provide social and economic welfare to individuals and households that are volunteering to make contributions. Normally, no self-respecting individual would like to avail of a free lunch year after year. To achieve that objective, there must be social institutions that can find a match between individual capabilities and work opportunities. Employment not only provides income security, it also defines a person, gives him an identity, makes his existence meaningful, and creates a valued place for him. A person holds a valued place if his colleagues and associates will miss him if he were gone. To have many different people who will miss you in many different parts of your life and at many levels of intensity, is a hallmark of a person whose place is well and thoroughly valued. Involuntary unemployment strikes a major blow to this concept of being valued. When a person is fired, not only does he individually suffer, his family suffers as well and the whole social fabric around him gets disturbed. Unfortunately, this serious psychological and financial problem seems to be overlooked in the Indian institutional landscape. We have not developed the necessary 'social capital' in this dimension.

Development economists have identified lack of social capital as the main reason for the lack of growth and progress in the underdeveloped countries. Social capital is basically 'soft infrastructure', the institutions that enforce property rights, provide safety, enforce contracts, and facilitate collective action.

Capital, which is a stock of deferred consumption, can be divided into three categories: physical capital, human capital, and social capital. With the globalization of the capital markets, physical capital is not a constraint any more. For viable business propositions, physical capital can be raised in months, if not weeks (foreign direct investment and venture finance). India has allocated significant resources in the last 50 years for developing human capital. World-class tertiary educational institutions (the Indian Institutes of Technology, Indian Institutes of Management, Regional Engineering Colleges) have produced a large mass of scientific and technical manpower in the country.

It is social capital in which India faces a major deficit. Property rights are guaranteed in principle, but one has to incur huge transaction costs to exercise those rights. Contract enforcement is possible on paper, but a tardy judiciary makes enforcement virtually impossible. Social institutions cannot be copied and imported. They have a unique flavour, which depends on the milieu, and so have to be home grown. It also takes years, possibly generations, to establish such structures. Needless to say, there is an urgent need to start establishing such institutions.

Institutional infrastructure

It appears that the Indian economy is making a shift from manufacturing to services. The history of economic development in various countries shows a clear shift from agricultural to manufacturing to services. Since services are non-tradable and non-storable (they have to be created and consumed at the same point in space and time), they have to be labour intensive. Services are also influenced by cultural preferences and so are sensitive to demographic transitions, fashions, fads, and trends. Considering this, reorientation and retraining of the unemployed must be such that the newly acquired skills are relevant to the service sector opportunities.

A possible list of opportunities is given below:

- Services for senior citizens who are living alone because their children are settled far away;
- Plumbing, carpentry, electrical wiring, masonry, and allied services for small projects;
- Small-time trading of readymade garments, apparel, and fashion goods;
- Assistance to double-income households (where both husband and wife work) for routine chores such as paying electricity and telephone bills, and corporation tax;
- Private tuitions for school children;
- Operating bank accounts – cheque deposits and petty cash withdrawals;
- Courier services;
- Tuitions in hobbies such as music and painting;
- Home delivery of groceries and pre-cleaned vegetables;
- Assistance in investment – counselling and filling out forms;
- Pet care;
- Nursing and disability assistance for the aged and the handicapped;
- Gardening;
- Tourism, picnics, and transportation provisioning; and
- Catering for small functions and parties.

The idea is to identify the skills required to undertake such activities and see if such skills can be taught. Besides the skills, it is necessary to create an understanding of accounting, cash flows, and general administration.

Peer support networks

Non-profit, voluntary organizations

The organization should provide the following support services to the needy unemployed:

- Micro credit;
- Health insurance;
- Legal assistance for redressal and other needs;
- Capacity building and soft skills – spoken English is a good example;
- Communication aids – how to present yourself; and
- Interviewing skills and biodata drafting.

Plan of action

- Appeal to like-minded people about the timeliness of the retrenchment and early separation problem and the need to find a stable, long-term solution.
- Form a core group of 10-12 individuals.
- Decide what form the organization will take – whether to model it as a charitable institution, a registered society, or a loosely coupled social movement.
- Chalk out the activities to be pursued and the milestones to be achieved in the next one year.
- Explore possible sources of funds and availability of infrastructural facilities.
- Brainstorm on the mechanisms of assistance, facilitation, and support.
- Explore if any other NGOs are working in this area and if synergistic relations can be established with them.
- Explore through early experiments/pilots what are the real needs and expectations of the retrenched workers.
- Set the right expectations for the beneficiaries and the volunteers.

Concept C: The concept of fair contract

We have seen that the Contract Labour (Regulation and Abolition) Act, 1970, is a great failure. Considering the fact that in some cases, the employer–employee relationship is getting converted into a customer–supply relationship, I hereby recommend that the concept of fair contract be introduced instead of abolition of the contract system. I am working on the concept and will have it ready in due course of time.

Liberalization, globalization, and changing employment relationship trends in India: A brief critique of the contract labour system in Karnataka

Sanjiv Kumar

Background

The last two decades of the 20th century saw watershed changes in the economy of the world, including that of India. Liberalization and globalization have drastically reduced the autonomy of the nation states and loosened the hold of governments on industry and commerce. Growing interdependence, better communication and transportation, and freer mobility of capital and technology than labour have made considerations of product market conditions dominate business decisions as opposed to labour market conditions. Reduced entry barriers at both national and international levels have accelerated competition and also the need for innovation on all fronts, whether legislative, judicial, administrative, financial, or technological, including business processes and labour relations.

The changes in economic and industrial policies in the wake of liberalization and globalization were not accompanied by suitable labour market reforms in India. The Government of India made some efforts to push labour reforms by appointing the 2nd National Commission of Labour in 1999, but could not make any headway because of the apprehended political costs. On the other hand, driven by the economic necessities of the product market, new ground was achieved in labour relations through entirely new practices supported by the new judicial and administrative trends.

There are limited empirical data and research publications on the subject due to hostility from industrial establishments and their refusal to part with relevant information from their archives and their workers. This is amply illustrated by the experience of the National Law School of India University (NLSIU) team in a detailed study on the subject done authoritatively for the Government of Karnataka. The management of L&T Komatsu refused permission to the study team to meet the workers. Karnataka Soaps & Detergents Ltd issued a show-cause notice to a regular worker for making arrangements for the team to meet the contract workers at the company. At GE Thermometrics, while the investigators were allowed to meet contract workers from the housekeeping, security, and packing sections, the manager for human resource development refused to allow them to meet contract workers on the shop floor. At the ACC Cement Factory in Wadi, the investigators were refused permission to enter the new plant.

The practice of employing contract labour is prevalent in varying degrees in almost all the industries and services in India. The Central and state governments are probably the largest employers of contract labour. Contract labour can be distinguished from direct labour in terms of their employment relationship with the principal establishment and the method of wage payment. Unlike direct labour, which is borne on the pay or muster roll of the establishment and is entitled to be paid wages directly, contract labour, by and large, is neither borne on the pay roll, nor paid directly. The establishment which farms out work to a contractor does owe legal responsibility, but no clear accountability vis-à-vis its contract labour.

Recent trends in the employment relationship in India

- Move from full-time employment to part-time employment;
- Increasing contractualization of the workforce;
- Move from wage employment to piece-rate self-employment;
- Subcontracting and outsourcing leading to brand holders without any manufacturing units. Brand holder procures from others and focuses on marketing and sales;
- Increasing proportion of apprentices, supervisors, and 'non-workmen' category employees to deal with industrial unrest; and
- Workplace shifts from establishment to homes, as in the case of bidi and agarbatti manufacturing units.

This paper will examine the contract labour system in India with case studies and study report[1] findings from Karnataka. In the liberalized and globalized product

[1] 2004, Report of the Study Group on Contract Labour System in Karnataka by the National Law School of India University (NLSIU), Bangalore, for the Government of Karnataka.

market, intense competition required the restructuring of the labour force, their skill upgrade, and productivity improvements. Inflexible exit options under the industrial dispute laws and non-emergence of an amicable compromise between the employers and the trade unions paved the way to an alternative ‘safety valve’ in the form of progressively larger contractualization and subcontracting. Some of these trends are captured in Table 1. The table shows contract labour use in the Karnataka Electricity Board between 1997 and 2001. There was a small increase of 8.3 per cent in the number of regular employees, but the number of contract workers increased by 273 per cent in the same period. As a percentage of total employees, the number of contract workers went up from 8.2 per cent in 1997–98 to 23.65 per cent in 2000–01. This is not just a trend in a public sector company; similar statistics can be found in a wide cross-section of industries. A survey across Karnataka by the NLSIU, Bangalore, found that over the years, 68 per cent of the large and medium industries in the state had substantially increased the number of contract workers they used.

Employers’ interest in the system

The NLSIU study explored the reasons for employing contract labour. Around 46 per cent of the responding employers cited flexibility and fewer disputes as the most important reason for employing contract labour. Around 22 per cent employers acknowledged greater productivity, 14 per cent said they got workers who could work for longer hours, and 8 per cent said that because contract labour was cheap, their costs came down considerably. Some employers said contract labour could be more easily deployed in hazardous work situations and the cost to the company and liability in case of accidents was lower if a contract worker was involved.

The employers contended that the contract labour system promoted labour market flexibility and increased their enterprises’ competitiveness. The mere possibility of a contracting arrangement leading to exploitation of the contract workers was no reason to abolish the contract labour system or even to regulate the system so stringently that the establishment lost the very flexibility for which it resorted to contract labour. Employers are able to cut down on their labour costs because, for obvious reasons, the wages paid to contract workers are substantially lower than those paid to the regular employees of the principal employer. The contract labour system provides flexibility in the working of an establishment because terminating a contract with a contractor is much simpler than retrenching direct workers, who could take recourse to the Industrial Disputes Act.

Today, organizations farm out the production of several items to subcontracting firms. Many product lines have been closed and the workers redeployed. In the initial stages, the permanent force was scaled down by taking advantage of natural attrition, and not many were made redundant. A substantial quantity of a company’s products is coming through small-scale manufacturers. Subcontracting operations are yielding good dividends and contributing handsomely to the turnover and profitability of the corporation. Clearly, the advantages to the employer in employing contract labour are:

- Production at lower cost;
- Engaging labour without having to extend fringe benefits such as leave wages, insurance, provident fund contributions, and bonus;
- General reduction of the overhead costs and the administrative burden of maintaining an establishment;
- Transactional costs such as the cost and time incurred in collective bargaining and for resolution of industrial conflicts, etc.; and
- The sheer economics of farming out contracts for the manufacture of certain components, rather than investing capital and installing plants for their manufacture.

In most cases, more than one such benefit is the actual reason behind employing contract labour.

Attitudes of regular employees to the work culture: The employers’ experience

The organized trade union movement in India, with the power of its bargaining strength attained over the years, has made good inroads into and claimed a share in the profits derived from an enterprise. Unfortunately, at the same time, the central trade unions have failed to inculcate an efficient work culture and discipline in the hearts of the workers, which has resulted in stagnation of productivity and production. Excessive job security has been hampering the performance of regular employees.

There is a growing tendency for the wage question to be linked with workloads and productivity. Employers are beginning to argue that wage gains to labour would have to accrue from higher workloads and increased productivity, especially because workers are already being compensated for the rising cost of living by the leapfrogging dearness allowance. Trade unions, on their part, have tried to get away from linking wages with workloads because they fear that wages could freeze at the point where workers were unable to take on any more work, especially if the employer did not modernize the plant.

The second area of conflict is industrial discipline, which the management feels is exclusively its prerogative. It feels that it should be able to dismiss even a regular worker for wilful misconduct. But the worker could be reinstated through the intervention of an adjudicatory mechanism if the management had not conducted the enquiry in accordance with the principles of natural justice.

The third area of concern for an employer is absenteeism. Usually, the agreement with the union stipulates that any vacancy must be filled by a worker from the next lower grade, and that he should be paid a third of his wages as an officiating allowance. But there is nothing in the contract to actually get the worker to officiate. If the worker refuses, the management is in trouble. If the management goes down the ladder operating this system, the position gets offered finally to a gate *badli*. Filling the position with a *badli* has its own problems. A *badli* might have to be confirmed if he is employed continuously for 240 days – this means adding to the permanent rolls.

A more difficult problem is posed by medical leave because a doctor's certificate, as required under the Employees State Insurance Act, 1948, can be managed for a couple of rupees.

Another point of conflict is the belief of the trade unions that welfare labour legislations provide only the floor level or minimum. Trade unions in the organized sector, with their bargaining power, have achieved more.

The above factors contributed to the strategies that are now being adopted to divert work from permanent labour.

The concerns of the trade unions

These are the major concerns of the trade unions:

- Job insecurity is the most serious concern.
- Though the work is perennial in nature, the contract labour system is sustained only with a view to deny contract labour their legitimate statutory rights.
- Contract workers receive lesser wages than regular employees for the same or similar work.
- Deprivation of fringe benefits such as pension, gratuity, provident fund, sickness benefits, and other benefits such as leave with wages, maternity leave, etc. Added to all these disadvantages, the increasing reliance on contract labour threatens the bargaining strength of the permanent force.

In theory, the trade unions believe strongly that unless contract labourers are organized and kept in their fold, regular employees will face hardships. But the reality is different. In practice, the unions offer little sympathy to the interests of the contract labourers. In the majority of the cases, contract labour is exploited by both management and regular unions/workers. Everyone knows that subcontracting operations reduce the hard work of the permanent employees and contribute to higher profits and enable the unions to walk away with handsome bonuses. Trade unions, however, continue to object to subcontracting on the grounds that it hampers the creation of job opportunities in the corporation.

Kinds of labour contracts

Contract labour can be divided broadly into two categories:

- Those employed on job contracts; and
- Those employed on labour contracts.

Job contracts

In ordinary language, the term, 'job contract', is strictly confined to a particular assignment within a stipulated time-frame as compared to a continuous or perennial job. In job contracting, the principal establishment enters into a contract with a contractor (firm) for the supply of goods or services. The contractor discharges his obligations under the contract through his own employees. The contractor's employees work under his supervision and control. The contract envisages payment to the contractor on the basis of output and not the number of persons employed by him to carry out the work of the establishment. Thus, the contract in such a case is akin to one between the two principals.

These are some characteristics of job contracts:

- Services not directly rendered to the principal employer;
- Not integral to the main business or operation of the establishment;
- Specialized work in certain industries 'involving the use of some particular, unusual, and peculiar skill and expertise; and
- Services needed temporarily for specific tasks.

Labour contracts

In this type of contract, the employer bargains with the contractor for supply of labour (workers) in contrast to the supply of goods or services by the contractor to the principal employer. The principal employer makes payments to the contractor on the basis of the number of workers supplied by the contractor to the principal employer. Since the job of the contractor is only to supply the labour and not to render any specialized service that involves a particular skill, special knowledge, or technology, the entire supervision of the work is done by the principal employer. Even assuming that the nature of the job for which the labour is supplied by the contractor is to render a specialized service, a particular skill, or special knowledge or technology, such jobs may not be perennial or necessary for the main purpose of the establishment and may not be required for sufficient duration with regard to the nature of the industry, trade, business, manufacture, or occupation carried on in that establishment.

Unfortunately, the Contract Labour (Regulation and Abolition) Act, 1970, includes both types of contracts, i.e., job contracts and labour contracts in the definition of 'contractor' under Section 2 (1) (c). This negates the very purpose of the preamble of the legislation as well as the provisions of Section 10 of the Act. Perhaps, India is a global exception in providing such a system through a legislative mechanism. According to the prevailing norms of labour jurisprudence, only job contracts are permissible in an establishment or industry and this includes other labour contracts which do not satisfy the criteria laid down in Section10 of the Contract Labour Act. This legislation in fact negates the prevailing labour jurisprudence relating to the curtailment of managerial freedom within the employment contract, which emerged during the early post-Constitutional period, prior to the commencement of the Contract Labour Act.

Contract workers: Some dimensions

Generally, contract workmen are employees who are hired, supervised, and remunerated by a contractor who, in turn, is compensated by the principal establishment.

The *Encyclopaedia Britannica* defines contract labour as 'the labour of workers whose freedom is restricted by the terms of a contractual relation and by laws that make such arrangements permissible and enforceable'. The essence of the contract worker's obligation is his surrender, for a specified period, of the freedom to quit his work and his employer. Other stipulations cover such matters as repayment of the costs of transportation, housing, and other expenses. Today, however, a contract worker is one who is deemed to have surrendered his right to claim continued employment beyond what the terms of his contract offer.

Concept of employment

The concept of employment involves three aspects:

- Employer;
- Employee; and
- The employment contract.

The employer is the one who employs, i.e., the one who engages the services of other people. The employee is the one who works for another for hire or reward. The employment contract is the contract of service between the employer and the employee under which the employee agrees to serve the employer for a legitimate consideration, subject to the employer's control and supervision.

The Indian contract worker is essentially an employee of the principal employer, doing work for him, but who, legally, has an employment contract with neither the principal employer nor the contractor. He is pawned as a commodity by the contractor in the premises of the principal employer and exploited on all fronts by both the principal employer and the contractor.

The predicament of the contract worker

Whatever be the real causes of the employment of increasing numbers of contract workers, the contract labour system shows certain clear trends and characteristics across a wide range of industries. Contract workers get one-third to one-tenth the wages of regular employees. The frequency of accidents and the seriousness (sometimes even fatal nature) of the accidents are five to 10 times higher in the case of contract workers. The higher fatalities may be partly due to the lack of skills, training opportunities, and provisioning for protective accoutrements for contract workers. According to an International Labour Organization (ILO) publication, in many cases of contract labour, 'high work pressure, unclear responsibilities with regard to observance of conditions of work, including safety and health regulations… and a general lack of training exposes the contract workers to higher risks of occupational accidents and diseases'.[2] Probably, all hazardous jobs that regular employees refuse to do are assigned at a much lesser cost to contract workers. This trend is borne out by data from the Karnataka Power Transmission Corp. Ltd and supported by the fatality statistics of the Directorate of Factories and Boilers, Government of Karnataka, and the data collected by the NLSIU in its study report quoted above.

There is hardly any protection of the tenure of contract workers. Lack of protection of tenure makes them vulnerable to exploitation by the principal employer and the contractor. The NLSIU survey showed that even in the large-scale organized industries, only 39 per cent of the contract workers got provident fund, 28 per cent ESI/medical benefits, 9 per cent gratuity, 19 per cent canteen facilities, 45 per cent weekly offs, and 30 per cent overtime payment benefits. The service conditions of the contract workers were so precarious that if they came forward to offer any evidence against their employers or asked for any amelioration of their working conditions or wages, they were immediately removed from service. The Contract Labour Act was absolutely ineffectual in protecting these rights of the contract workers. The survey further found that large numbers of contract workers did not receive even minimum wages and 46 per cent of the men workers and 53 per cent of the women workers had to pay the contractor to get work. This being the case in the bigger industries, one can imagine the plight of the contract workers in the smaller and dispersed units or those units where there are less than 20 workers and where the Contract Labour Act is not applicable. It is also noteworthy that the number of persons from the scheduled castes, scheduled tribes, backward communities, and minority communities was disproportionately high among the contract workers.

From the above discussions, a general understanding emerges that employers are using the contract labour system to substitute expensive, indisciplined, less productive and less easily disposable permanent workers with cheap, disciplined, productive, and easily disposable manpower (in the form of the contract workers). The system gives them legal flexibility in the employment relationship and reduces their transaction costs. The regular employees and their trade unions also benefit from the contract labour system because they can pass on the hazardous work to the contract workers and the system improves average productivity. It is interesting to note here that the inflexible exit laws and fear of permanent employment is recognized by many as important roadblocks to creating more decent employment in India. McKinsey & Co. (Sep. 2001), in one of its studies, indicated that allowing large-scale contract labour for all activities will boost employment in India by some 75 million additional jobs. The Ahluwalia Committee (July 2001) and the SP Gupta Committee (May 2002), both constituted by the Planning Commission of India, estimated and suggested that simplifying labour laws (including contract labour laws) as per the economic realities of the day would generate 100 million decent jobs in India.

Contract labour system: A historical perspective

The contract labour system is not a new phenomenon in India. However, during the last three decades, there is an increasing trend among employers to initiate this type of employment relationship. This recourse to the contract labour system is not confined to understandably temporary and seasonal work like construction, exploration, plantation, and agriculture, but also extends to other sectors such as maintenance, loading-unloading, cleaning-sweeping, housekeeping, security services, catering, gardening, driving, and even shop floor manufacturing in almost all industries.

As far back as 1931, the Royal Commission on Labour commented on the hardships of contract and casual

[2] Preface to the Report on the Asia-Pacific Regional Seminar for Trade Union Organizations on Contract Labour, held by the Bureau of worker's Activities, ILO, at New Delhi in April 1997.

workers in the docks in Indian ports and observed that they should be protected against the caprices of the intermediaries. The Bihar Labour Enquiry Committee (1940) condemned the practice of recruiting through contractors because they ordinarily lacked the sense of moral obligation towards the labour that an employer is expected to have. The Rege Committee (1946) observed the contract labour system rampant in mines, plantations, and factories and tried to enlarge the meaning of 'worker' under the various relevant labour laws to include contract labour. The Bombay Textile Labour Enquiry Committee (1957) observed the rampant exploitation of contract workers by contractors in the textile industry and recommended the abolition of such labour. The 1st National Commission on Labour (1969), inter alia other recommendations, advised the government to adopt a general direction of policy to abolish such practices in due course, and where it was extremely unavoidable to have stricter regulations, to ensure to contract workers the facilities that other regular workers enjoyed.

These historical developments led to the enactment of the Contract Labour Act in 1970, which laid down a procedure for the abolition of the contract labour system and the regulation of this employment relationship. This Act gave legal recognition to the practice of employing contract labour by Indian employers.

The 2nd National Commission on Labour (2002) was constituted with the mandate to look comprehensively at the plethora of labour legislations and to suggest a simplified law aligned to the needs of the liberalized and globalized world. In the area of contract labour, the Commission drew a distinction between core and non-core activities and recommended that contract labour be engaged only for non-core activities. However, in cases of seasonal demand, the employer was to be allowed to engage temporary labour for core activities as well. But no Central legislation could be enacted based on these recommendations because of political reasons.

Nevertheless, Andhra Pradesh became the first state to amend its contract labour laws to recognize the distinction between 'core' and 'non-core' activities and to generally prohibit contract labour in core activities. Although this legislation was a step forward in minimizing the use of contract labour, it was termed an anti-labour legislation by many. One needs to study the impact of this legislation on the contract labour system in Andhra Pradesh to understand its efficacy. The Gujarat Government passed amendments that took away the powers of the appropriate government to prohibit contract labour in certain non-core activities, special economic zones, etc. But it also recognized the employment relationship between the contract worker and the contractor and introduced the concept of retrenchment compensation.

The contract labour system is widely practised all over the world and the protection afforded to contract workers varies widely from country to country. China has gone the whole hog by adopting a labour contract system. However, the Chinese contract system is a fixed term appointment and not contract employment through intermediary contractors, so it is possible that the moral and legal responsibilities of the employers vis-à-vis their contract employees is enforced more satisfactorily.

The Contract Labour (Regulation & Abolition) Act, 1970

This Contract Labour Act does not by itself abolish any contract labour, but it provides for an institutional mechanism to abolish contract labour in certain cases. It provides for the compulsory registration of both the principal employer and the contractor. The appropriate government under Section 10 of the Act is authorized, after consultation with the appropriate advisory board, to prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operations, or other work. The Act provides for certain minimum facilities to be provided to contract workers.

Prior to this legislation, a general tripartite understanding was in favour of the progressive abolition of contract labour wherever possible and its regulation in other cases. But the contents of this Act and its operation in the last four decades make it amply clear that its primary object is regulating the system, rather than abolishing it wherever possible. Karnataka, which is a progressive state, had only seven abolition notifications, of which two were later rescinded and the rest hotly contested in court. Countrywide, between 1975 and 2002, there were just 36 prohibition notifications under Section 10.

Enforcement of the provisions of the Act remained more or less statistical because most of the prosecutions initiated by the authorities pertained to violations that were technical in nature. Anyone who has had occasion to talk to contract workers will confirm that insecurity of tenure makes their predicament so precarious that whenever they raise their voice against any ill-treatment, whether in wage claims or other benefits, the threat of termination becomes imminent. If they reveal any information pertaining to their substantive rights, they are compelled to refute it at the stage of the court enquiry, for fear of losing their jobs. It is evident from the operation of the contract labour law in the last 40 years that it does not afford regulatory protection to contract workers in any such eventuality. The NLSIU study came up with the clear finding that the law does not provide any safeguard whatsoever to contract workers in the event of the denial of their substantive rights and against any unfair labour practices on the part of the employer and the contractor. The team further noted the following instances of violations of the substantive rights of contract workers:

- Denial of minimum wages;
- Illegal deductions/delay in payment of wages;
- Denial of proper conditions at work such as leave and regular hours of work;
- Denial of amenities when contract workers discharged work similar to that of regular employees;
- Denial of fringe benefits;
- Uncertain terms of employment, such as abrupt termination or removal;
- Hostile attitude towards forming a union; and
- Total ignorance of workers' rights and privileges amongst the contract workers.

The contract workers are mostly illiterate. They live at a basic survival level and have neither the resources to organize themselves nor the leisure to reflect upon the injustices meted out to them. They are thus unable to get their rights – whether from the employers, trade unions, judicial courts, or labour administration.

Abolition of contract labour and judicial reflections

Prior to the enactment of the Contract Labour Act, the courts[3] had laid down a test for deciding whether contract labour should be continued on a regular basis in an establishment. It spelt out the circumstances when the workmen of an establishment could espouse the cause of contract labour who were not the direct employees of the establishment and raise an industrial dispute, and when the industrial adjudicator would have the jurisdiction to investigate whether the contract was genuine or not, and offer a suitable remedy if he concluded that it was not. The Supreme Court had held that even if the contract was genuine, the industrial adjudicator would have the jurisdiction to abolish the contract labour system in an establishment and offer appropriate relief to the workers.

But once the Contract Labour Act came into being, the prerogative of the court to decide on the abolition of contract labour was assigned to the appropriate government under Section 10 of the Act. So the courts[4] started referring such cases for consideration to the government. It is worth noting that Section 10 of the Act was framed based on the guidelines laid down by the Supreme Court in earlier cases. But there were certain glaring omissions in the Act. It was not clear how the appropriate government comes to factual knowledge of the existence of the contract labour system which can be done away with under Section 10, and what would be the fate of the contract workmen after the contract labour system was abolished. These lacunae led to conflicts between the management and the labour. A three-judge bench in the Air India Statutory Corp. vs United Labour Union case (1997) ruled that on the abolition of the system of contract labour, the workmen were entitled to be absorbed in the establishment where they were working, and the court had the power under Article 226 to direct the employers to absorb such workers.

But this judgement was reversed in the Steel Authority of India Ltd (SAIL) vs National Union Waterfront Workers and Others (2001) case by a five-judge bench. The court ruled that even in cases of abolition of the contract labour system, the erstwhile contract workers who might have put in years of service under contract to the same principal employer could not be regularized as a matter of right, as there was no such provision in the Act. However, if the contract was a sham, the contract workers deserved absorption and they could raise an industrial dispute. Thus, prospectively, it became fruitless for the contract workers to approach either a court or the appropriate government to abolish the system under Section 10 of the Act. In view of these

[3] Supreme Court of India, three-judge bench, 1960, Standard Vacuum Refining Co. vs its workmen.

[4] Supreme Court of India, two-judge bench, 1985, BHEL Workers Association Haridwar vs Union of India.

incongruities in the legislation, the judiciary played a major role in interpreting the provisions of the Act to meet the challenges which resulted in tumultuous verdicts that ultimately destroyed the chances of the contract workers to seek appropriate remedy for the regularization of their services under the principal employer.

The SAIL judgement reflected the sentiments of the new political economy prevailing at that time and coincided with a further dose of liberalization and globalization. A major resulting trend was that progressively, more and more employers sought registration to employ contract labour in core activities on the shop floor. Prior to this judgement, a general understanding or notion existed that such labour should not be employed in core activities, which are mostly perennial in nature and on the shop floor. There was always the threat that a court would rule such a contract as sham or illegitimate and direct its abolition, thus paving the way for the absorption of the contract workers.

But this judgement removed all hopes of regularization of the contract workers after abolition of the contract labour system. So, it became futile for the workers to seek abolition. In effect, this judgement nullified the whole purpose of the Act. There has been no case of abolition of the contract labour system since then in Karnataka. Today, it is understood that if the principal employer is registered and the contractors have the requisite licence, contract workers can be employed in any and every activity of the enterprise without any fear. Such permissions are being granted regularly by the authorities. Thus, the Contract Labour Act, in effect, protects the employers, and not the employees, in terms of avoiding any long-term employment relationship and the consequent liabilities, including the benefits of decent working conditions, collective bargaining, and a rightful compensation package.

The case study (2004) of Mangalore Chemicals and Fertilizers Ltd (MCF) proves the point succinctly. MCF, a fertilizer manufacturing company, was an undertaking of the Government of Karnataka before it was privatized. In a fertilizer factory like MCF, loading-unloading is a very important activity. It had been done for several decades by contract workers, who had their own distinct union and affiliation. The wages of these contract workers were very high when compared to the regular shop floor workers at MCF. For decades, the trade union had bargained collectively for good wages (Rs 15,000 per month), working conditions (limited number of sacks to be loaded), and other fringe benefits. The workers could also extort premium *(mamool)* from the truck owners and buyers because they could delay loading and unloading. They had opportunities for seeking abolition of the contract labour system and consequent absorption, but they avoided this because they had better service conditions and wages than the regular workers. In 2004, due to a wage revision dispute, the contract labour trade union went on strike. The management found another contractor and contract workers. Industrial disputes were raised and conciliated at various levels. It was evident to all that the case of the earlier workers was extremely weak as they were valid contract workers under the Act and they could not now seek abolition of the contract labour system because after the 2001 SAIL judgement, there was no automatic regularization of the workers as a matter of right. Finally, the MCF management hired new contract workers at much lower wages.

Conclusions

From the above discussion, it is evident that contract workers are an exploited lot in India with low wages, insecurity of tenure, lack of skills, higher rates of accidents and fatalities, and limited legal protection. It is also clear that inflexible labour laws and limited exit options force employers towards increasing their employment of contract labour. In effect, the existence of the contract workers and their plight is intimately connected with the overprotected working lives of regular employees with high wages, limited productivity, and obvious reluctance to adapt to the challenges of globalization. Labour laws at present protect only 6 per cent of the workers in the organized sector in India. Contract labour, although technically in the organized sector, is unable to reap the benefits of the law because of their unenviable legal status.

There is a very close relationship between the inflexibilities in the Industrial Disputes Act and the progressive increase of the use of contract labour and related practices. There is an emergent need for change in the law, policies, and practices to address these grievances. As contract labour and inflexible labour laws are organically interconnected issues, there is a need to take them up together to find a holistic and lasting solution. Contract workers should not suffer on both counts – insecurity of tenure and lower wages and lack of other benefits. Their insecure tenure should be compensated by higher wages (say, one and a half times what similarly placed regular employees get) and benefits packages. Continuance of an intermediary contractor will always obfuscate both legal and moral accountability, and the buck will pass to and fro between the principal employer and the contractor. A direct term contract system will ensure fuller employers' responsibility and better accrual of more benefits to contract workers.

One of the greatest achievements of civilization in the 20th century is the accomplishment of human rights as an integral part of the governance of a state. Inter alia other rights, the right to freedom of association, including the right to form and join trade unions for the protection of interests, collective bargaining, equality at work, protection against forced labour, etc., all remain unattainable to contract workers.

Constitutional mandates in the Directive Principles of State Policy enunciate the 'right to secure just and humane conditions of work (Article 42); right to just and favourable remuneration, conditions of work, ensuring a decent standard of life and full enjoyment of leisure (Article 43); and right to a standard of living adequate for him and his family (Articles 39 (a) and 47)'. But it is quite evident that for the Indian contract workers, these ideals are mere platitudes.

Today, the attitude of the state, employer, trade union, and the judiciary needs to be sympathetic to contract workers in order to enable them the enjoyment of their human and constitutional rights. An emergent, early affirmative action in this direction is imperative.

Table 1

The Contract Labour (R&A) Act, 1970

Trends in contract appointments in Karnataka

S. no.	Particulars		1997–98	1998–99	1999–2000	2000–01
1.	No. of regular employees		35 170	36 015	36 926	38 106
2.	No. of contract employees		3 159	4 534	8 616	11 808
3.	Average annual compensation of regular employees		150 429	195 113	220 700	181 429
4.	Average annual compensation of contract workers		11 736	18 548	17 885	20 071
5.	Fatal accidents					
	Permanent employees	(Per 10,000 employees)		7.4	6.9	6.6
	Contract employees			57.77	30.23	25.42
6.	Total no. of fatal accidents in factories and boilers			2000	2001	2002
	Regular employees		-	24	13	20
	Contract employees		-	32	25	32

Source: Archives of the Karnataka Electricity Board (1 to 5)
Archives of the Directorate of Factories & Boilers (6)

Table 2

Welfare benefits to contract workers

S.no.	Welfare benefits	Percentage of workers availed (%)
1.	Provident fund	39
2.	ESI/ medical	28
3.	Gratuity	9
4.	Canteen	19
5.	Weekly off	45
6.	Overtime Payment	30

Source : Study Report of the NLSIU, 2004

Table 3

Incidence of payments by contract workers to contractor to get work

Gender	Percentage of workers
Men	46
Women	53

Source: NLSIU study report, 2004

Table 4

Reasons for contract employment (as given by employers)

Reason for contract work	Percentage
Greater productivity	22
Longer hours	14
Fewer disputes	46
Cheaper	8

Source: NLSIU study report, 2004

Table 5

No. of prohibition notifications issued under Section 10 (1)

Year	Central	Karnataka
1975–80	6	0
1980–90	10	0
1990–2000	5	5
2001–2002	15	2
Total	36	7

Source: NLSIU study report, 2004

Table 6

Some important judicial landmarks

S. no.	Name of the case	Year and no. of judges	Brief facts	Questions in issue	Held	Observed	Comments
1.	Standard Vacuum Refining Co. vs Their Workmen	1960 3	Exploitation of contract labour by the contractor. Regular employees raised industrial dispute for abolition of the system and for regularization of contract labour.	• Can regular employees raise an industrial dispute for regularization of contract labour? • Can industrial tribunal direct abolition of the system?	Yes. It is an industrial dispute. Yes. If it is a genuine contract, the tribunal cannot order absorption, it can only direct the company to give preference to the contract labour.	—	This case was decided prior to the coming into operation of the Contract Labour Act. If the contract is mala fide, the tribunal can order regularization of the services of the contract labour.
2.	BHEL Workers Asson. Haridwar vs Union of India	1985 2	Petitioners under Article 32, seeking abolition of contract labour system and for direction to be treated as company's direct employees.	Can the court order abolition of the system and provide the reliefs sought under Article 32 of the Constitution?	No. But the government was directed to decide whether the system can be abolished and to examine whether the work done by the contract labour was similar to the work done by the regular employees.	—	The Supreme Court cannot embark under Article 32 on the powers of the ppropriate government under the Act.
3.	Air India Statutory Corp. vs United Labour Union	1997 3	In view of the Central Government notification dated 9 Dec. 1976, prohibiting the contract labour system in statutory undertakings. Petitioners' failure to prohibit the same.	On abolition of the system, are the contract workers entitled to absorption? Under Article 226, does the high court have the power to direct absorption once the system is abolished? Does the failure of the employer to register and the contractor to obtain a licence render to the contract labour the right to claim absorption?	Yes Yes Yes The court overruled Denanath	—	The incongruous ratio in GEB was overruled with regard to the relief sought to be provided to the contract labour once the system was abolished. Once the system is abolished, the erstwhile contractor is removed and there is a direct relationship between the erstwhile contract labour and the principal employer.
4.	Steel Authority of India Ltd vs National Union Waterfront Workers & Others	2001 5	The Central Government issued a notification on 9 Dec. 1976, prohibiting employment of contract labour for sweeping, cleaning, dusting, and washing of building in central public sector undertakings. On abolition, the automatic absorption of contract labour by the principal employer.	Whether the Notification dated 9 Dec. 1976 is valid in view of non-compliance with the provisions under Section 10 of the Act. Whether contract labour would be automatically absorbed once the notification was issued under Section 10.	Notification is bad since the appropriate government has not followed the procedure under Section 10 of the Act. No. Reversal of the ratio as laid down in Air India case and holding the ratio laid down in GEB case as valid. However, if it is a sham contract, the contract labour can raise an industrial dispute and deserve the absorption.	—	Though the ratio appears to be a setback for the workers, in reality, the court cleared the gates for their absorption in the case of a sham contract. However, it has disastrous consequences for contract workers making a plea for abolition of the system under Section 10.
5.	Bharat Heavy Electricals Ltd vs State of UP & Others	2003 2	The contract workers who were terminated subsequently raised an industrial dispute as the real employees of the employer.	Though the labour are employed on a contract basis (sham), if the supervision, control, and other powers are retained with the principal employer, in such a situation, are the said workers deemed to be employees of the principal employer?	Yes	—	If the case for absorption falls outside the ambit of the Act, based on certain tests, the workers could succeed in their claim for absorption as regular employees.

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Programme

Time	Programme	
	DAY 1, Monday, 22 October 2007	
	Registration	
08.30 – 09.00 09.00 – 10.30	**Inaugural**	**Chair:** Mr Oscar Fernandes, Minister for Labour and Employment **Welcome remarks**: Mr K.G. Baalakrishnan, Chairman Council of Indian Employers, and Ms Leyla Tegmo Reddy, Director, ILO Subregional Office and ILO Representative in India **Opening Remarks**: Mr N.M. Adyanthaya, Member, ILO Governing Body (Workers) **Introduction**: Mr Giuseppe Casale, Director, DIALOGUE, ILO Geneva **Chairperson's Address**: Mr Oscar Fernandes, Minister for Labour and Employment **Vote of thanks:** Mr Gotabaya Dasanayaka, Sr Specialist on Employers' Activities, SRO ILO, New Delhi
10.30 – 11.00	**Tea/Coffee Break**	
11.00 – 12.45	**Technical Session 1:**	**Employment Relationship Recent Challenges:** Presentation by Mr Giuseppe Casale, Director, DIALOGUE, ILO Geneva **Chair:** Mr S.K. Srivastava, Joint Secretary, Ministry of Labour and Employment, Government of India **Panellists:** Mr B.C. Prabhakar, President, Karnataka Employers Federation; Mr Jibon Roy, National Secretary, Centre of Indian Trade Unions Open Discussion
12.45 – 13.45	**Lunch**	
14.00 – 15.00	**Special Session:**	**Chair:** Mr I.P. Anand, Member, ILO Governing Body (Employers) **Welcome**: Ms Leyla Tegmo-Reddy **Introduction**: Chairperson **Special Address**: Mr Rameshwar Thakur, Governor of Karnataka **Chairperson's remarks** **Vote of thanks:** Mr A. Sivananthiran, ILO Geneva
15.00 – 16:15	**Technical Session 2:**	**Subregional Trends and Issues on Employment Relationship:** Presentation by Prof. C.S.Venkatratnam, Director, IMI, Delhi **Chair:** Mr H. Mahadevan, Deputy General Secretary, All India Trade Union Congress **Panellist:** Mr Rama Kant Bharadwaj, National Secretary, Laghu Udyog Bharati Open Discussion
16.15 – 16.45	**Tea/Coffee Break**	
16.45 – 17:45	**Technical Session 3:**	**Sharing Experiences of India and Sri Lanka:** Presentation by Ms H.M.D.N.K. Wataliyadda, Director, Social Dialogue Division, Department of Labour, Government of Sri Lanka **Chair:** Mr Sharad Patil, Secretary, Employers Federation of India **Panellists:** Mr S.Q. Zama, Secretary, INTUC; Mr Sanjiv Kumar, SRO, ILO India Open Discussion

20.00 onwards	**Dinner** hosted by Mr K.G. Baalakrishnan, Chairman, CIE	
9:00 – 11:00	**DAY 2, Tuesday, 23 October 2007**	
	Technical Session 4:	**The Views of the Social Partners on the Employment Relationship in India**: New forms of employment relationship in India; role of labour law and labour administration; role of employers and workers and Recommendation on the Employment Relationship, 2006 (No. 198); women workers and the employment relationship Presentations by: Mr Babu Ramesh, V.V. Giri National Labour Institute Mr B.P. Pant (Employers) Mr Arvind Shrouti (Workers) Ms Amarjit Kaur (Gender and Informal Economy Perspectives) **Chair:** Government representative Open Discussion
11.00 – 11:30	**Tea/ Coffee Break**	
11.30 – 13.00	**Technical Session 5:**	**Role of Central Advisory Contract Labour Board:** Presentation by Dr S. Balakrishnan Raju, Chairman, Central Advisory Contract Labour Board, GOI **Chair:** Ms Marleen Rueda, Sr Social Dialogue and Labour Administration Specialist, SRO, ILO New Delhi **Panellists**: Mr R.K. Chilana, Associate Vice-President, Council of Indian Employers; Mr Ashok Ghosh, Secretary, UTUC; Ms H. Mangalamba Rao, Bharatiya Mazdoor Sangh Open Discussion
13.00 – 14.00	**Lunch**	
14.00 – 15.30	**Technical Session 6:**	**Group Work**
		Identify common interests, common trends, and common views on the way forward for a better follow-up to Recommendation 198 Plenary and Open Discussion
15.30 – 16.00	**Tea/offee Break**	
16.00 – 16.30	**Closing:**	
		Chair: Mr I.P. Anand, Governing Body Member (Employers) **Valedictory address**: Mr S. Krishnan, Additional Secretary, Ministry of Labour and Employment **Closing remarks**: Mr R.A. Mital, Secretary, HMS **Vote of thanks:** Mr B.C. Prabhakar, President, Karnataka Employers Association; Ms Marleen Rueda, Sr Specialist on Social Dialogue and Labour Administration, SRO, ILO New Delhi