CONTRACT LABOUR LEGISLATION – PROBLEMS AND PROSPECTS

Ramesh Kumar Behera,Research Scholar,
P.G. Department of Industrial Relations and Personnel Management,
Berhampur University, Bhanja Bihar,
Berhampur – 760007 (Odisha).

Dr. Bhabani Prasad Rath,Retired Professor
P.G. Department of IR&PM,
Berhampur University, Bhanja Bihar,
Berhampur – 760007 (Odisha).

Introduction

Appointing labour on contract basis is on increasing trend in the recent years. A workman is deemed to be employed as Contract Labour when he is hired by establishment by or through a contractor for a specified work. Contract workmen are indirect employees; persons 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 definite duration. Inferior labour status, casual nature of employment, lack of job security and poor economic conditions are the major characteristics of contract labour.

It is a known fact that factories in India employ both regular and contract workers as the adjustment costs for the former would be larger than for the latter. Thus, in addition to varying work intensity firms take care of cyclical fluctuations by varying the composition of the workforce as between permanent and non-permanent employment. Since the 1980s, there has been growing informalisation of industrial labour in India. This has taken the form of a rising share of the unorganized sector employment, and informalisation with greater use of subcontracting and increasing employment of contract and temporary workers. The share of unorganized manufacturing in total manufacturing employment has increased from 80.7% in 1983, to 83.2% in 1993-94, and further to 85.0% in 2004-05. Annual Survey of Industries (ASI) data suggests that employment through contractors constitute 23.08% of total organised workforce in 2003 compared to 11.03% in 1992.[i] A recent article estimates the contract workers account for 55% of public sector jobs and 45% of the private sector jobs in the country in the year 2015.[ii]

Available data show that wages and employment benefits received by casual workers are much lower than those of regular salaried/wage workers[iii] and the incidence of poverty is much greater among contact workers than the regular salaried/wage workers (hereafter shortened as regular wage workers). Estimates made from unit-level data of National Sample Survey (NSS) 61st round employment-unemployment survey reveal that in 2004-05, the average wage earned per day by regular wage workers in organized manufacturing was about Rs 169 while that earned by casual workers was only about Rs 55.[iv] In unorganized manufacturing, the average wages earned per day by regular wage workers and casual workers, in 2004-05, were Rs 83 and 54 respectively.

Literature Review

The condition of contract labour in India was studied by various Commissions, Committees, and also Labour Bureau, Ministry of Labour, before independence and after independence. Many scholars (e.g., Dutta, 2003; Ramaswamy, 2003; Sharma, 2006; Gupta et al., 2008; Ahsan and Pages, 2008) feel that the use of contact workers provides a means of getting around the labour regulations, particularly the Industrial Disputes Act (IDA), and industrial enterprises have actually been adopting this means on a wide

scale.[v] There is, however, not much econometric evidence in support of the view that labour market rigidities are the prime cause or an important cause of increasing employment of contract and temporary workers. Maiti et al. (2009) and Sen et al. (2010) present econometric evidence that indicate that stringent labour regulations have led to greater use of contract workers. As a measure of the degree of labour market regulation, they use the index of Besley and Burgess (2004), and find that this variable has a significant positive effect on the proportion of contract workers out of total workers. The Besley-Burgess index has, however, come under severe criticism from Bhattacharjea (2006, 2009) who has elaborated it flaws, and therefore it seems, one has to be cautious in interpreting econometric evidence based on the Besley-Burgess index.[vi]

Employers in India in the 1980s that has been termed the period of jobless growth matched staffing to workload fluctuations by adjusting the timing of hours worked (work-time flexibility). The increase in time worked from 1979 to 1987 was equivalent to a shift from a 5 to a 6 day week. At the same time productivity increased due to infrastructure investment and trade liberalization increased the efficiency of labour while reducing its requirement per unit of capital. Capital accumulation, however, has been the driving force that has offset the negative effects of the growth in work intensity and productivity. Empirical work in the 1990s confirms this. Also, apart from work intensity, firms have managed to be flexible by changing the composition of contracts via changes in the share of permanent to non-permanent temporary and casual workers.

Historical Background of Labour Policy & Labour Laws in India:

India's Labour Policy is mainly based on Labour Laws. The labour laws of independent India derive their origin, inspiration and strength partly from the legacy of labour laws evolved under the British rule the views expressed by important nationalist leaders during the days of national freedom struggle, partly from the debates of the Constituent Assembly and partly from the provisions of the Constitution and the International Conventions and Recommendations. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III. (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy.

The Labour Laws were also influenced by important human rights and the conventions and standards that have emerged from the United Nations and the International Labour Organisation. These include right to work of one's choice, right against discrimination, prohibition of child labour, just and humane conditions of work, social security, protection of wages, redressal of grievances, right to organize and form trade unions, collective bargaining and participation in management. Our labour laws have also been significantly influenced by the deliberations of the various Sessions of the Indian Labour Conference.

Labour legislations have also been shaped and influenced by the recommendations of the various National Committees and Commissions such as First National Commission on Labour (1969) under the Chairmanship of Justice Gajendragadkar, National Commission on Rural Labour (1991), Second National Commission on Labour (2002) under the Chairmanship of Shri Ravindra Varma and the National Commission for Enterprises in the Unorganised Sector (NCEUS) (2009) under the Chairman of Dr. Arjun Sengupta. In addition there have been a number of judicial pronouncements on labour laws which have helped to arrive at a better interpretation of these laws and at times given a new direction to their implementation.[vii]

Constitutional Framework:

Under the Constitution of India, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations. As a result , a large number of labour laws have been enacted catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, maternity benefits, provision for payment of bonus, regulating the working conditions of workers employed in specific organisations like factories, mines plantations etc. certain specific categories of workmen such as plantation labour, beedi workers etc.

The Contract Labour (Regulation and Abolition Act, (1970) :

The concern for providing legislative protection to contract labourers, whose conditions have been found to be abysmal, resulted in the enactment of the Contract Labour (Regulation and Abolition) Act, 1970.

Objective and Purpose of the Act:

The Contract Labour (Regulation and Abolition) Act, 1970 was passed to regulate the employment of Contract Labour in certain establishments and to provide for its abolition in certain circumstances.

Application:

The Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971 came into force on 10th February 1971. The Act applies to every establishment in which 20 or more workmen are employed or were employed on any day on the preceding 12 months as contract labour and to every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen. It does not apply to establishments where the work performed is of intermittent or seasonal nature. An establishment wherein work is of intermittent and 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 as well.

Registration of Establishment:

The establishments covered under the Act are required to be registered as principal employers with the appropriate authorities. Every contractor is required to obtain a licence and not to undertake or execute any work through contract labour except under and in accordance with the licence issued in that behalf by the licensing officer. The licence granted is subject to such conditions as to hours of work, payment of wages and other essential amenities in respect of contract labour as laid down in the rules.

Payment of wages:

The contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorised representative of the Principal Employer. In case of failure on the part of the contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. The contract labour who performs same or similar kind of work as regular workmen, will be entitled to the same wages and service conditions as regular workmen as per the Contract Labour (Regulation and Abolition) Central Rules, 1971.

Prohibition:

Apart from the regulatory measures provided under the Act for the benefit of the contract labour, the 'appropriate government' under section 10(1) of the Act is authorised, after consultation with the Central Board or State Board, as the case may be, to prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operation or other work.

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

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

The Central Government on the recommendations of the Central Advisory Contract Labour Board, have prohibited employment of contract labour in various operations/ category of jobs in various establishments. So far 48 notifications have been issued since inception of the Act.

Regularisation of Contract Workers and Judicial Interpretations:

Before the enactment of this Act there was no specific legislation which dealt in detail with the problem of the contract labour. Although there were legislations like Industrial Disputes Act 3 947, Payment of Wages Act, 1936 etc. but none of them was specifically designed to regulate contract labour. This restricted the courts from forming the basic guidelines as to abolish or restrict the contract labour. Therefore they required an Act which completely dealt with the regulations of the contract labour.

After the enactment of the Act, the courts did not have to face much difficulty regarding the facilities which should be provided to this contract labour. The definition of employer, contractor and workmen were also provided by this Act which helped the court to interpret the meaning of these words. The courts also construe as to when the labourers would be considered as contract labourers or not. But the issue relating to the right of the contract workers to get absorbed by the industry after contract labour is abolished remained unanswered.

The above issue had to be dealt by the court in almost every case relating to the contract labour because in the establishments where contract labour was abolished owing to the application of the Act, these labourers wanted to get absorbed in the establishment directly. On the above issue there has been a varying opinion of the courts. The reason for a varying opinion of the courts is that the Act has no provision regarding the same as the Act does not completely abolish contract labour.

In the case of **R.K. Panda v. Steel Authority of India** where the same issue was in question the Supreme Court held that the Act regulates contract labour but has never proposed to abolish it entirely. The primary object of the Act can be taken as to save the contract labourers from exploitation. But the right to be absorbed by the employer directly is neither proposed nor mentioned in the Act. The Supreme Court also said that insertion of certain clauses in the contract with the contract labourers by the industry does not give them a right to escape from the duty of providing the contract labourers rights. The Court held that the labourers who were continuing in the employment for the last 10 years, in spite of change of contractors and have not crossed the age of superannuation and were medically fit, should be

absorbed as regular employees in the order of seniority and regular wages will be payable only for the period subsequent to absorbtion and not prior to that.

In another case **Air India Statutory Corp. v. United Labour Union** where again the same question was in issue the Supreme Court said that the Act works in direction for the betterment of these contract labourers as it talks about the utilities which should be provided by the principal employer to them like drinking water facility, urinals, storage rooms etc. therefore it could be easily inferred that the Act has no intention of making these workers jobless after the abolishment of contract labour. The Act also does not intend to deny the workmen to continue their work or to devoid them from benefits of permanent employment because earning livelihood is a fundamental right. The Court ordered to absorb these workers on a seniority basis.

Here again in this case the Court understood the conditions under which the contract labourers are made to work and used the freedom provided by the common law system. Here the judges did not give the decision just on the basis of what is written in statutes but understood the objectives of the act and tried to implement the same i.e. to provide better working conditions to these contract labourers and to protect them from exploitation. Therefore the decision given by the court is highly appreciable as it was in the direction for the betterment of these workers.

In the case of **Steel Authority of India Ltd. v. National Union Water Front Workers,** again the same issue was raised. Here the Court acted solely on the basis of what was written in the Act. The Court said that Section 10 of the Act or any other provision there does not imply for automatic absorption of contract labour. Therefore, the principal employer is not required to absorb contract labour working in the concerned establishment. Furthermore the Supreme Court also said that the Act nowhere has said that the contract labourers are or should be treated as the employees of the employer, but they are the employees of the contractor. Therefore the employer has no duty or under no obligation to absorb them.

Enforcement:

In the Central sphere, the Central Industrial Relations Machinery (CIRM) have been entrusted with the responsibility of enforcing the provisions of the Act and the rules made thereunder, through Inspectors, Licensing Officers, Registering Officers and Appellate Authorities appointed under the Act.

Regular inspections are being conducted by the Field Officers of the CIRM and prosecutions are launched against the 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 CIRM and State Government for proper implementation of the Act.

Streamlining Contract Labour Law:

In the wake of economic liberalisation as well as the judgements of the courts, proposals have been received from social partners to bring about amendments in the Contract Labour Act.

Views of Employers' Associations:

- Since 1970 when the Contract Labour (Regulation and Abolition) Act was enacted the economy has undergone a sea-change, from an era of protectionism to liberalisation, from restricted domestic competition to international competitiveness.
- The system of contract labour offers tremendous opportunities for employment and allows the employers flexibility to choose what is best for them. This helps improve productivity and service competitiveness.

- The Act should be made applicable only to the main and core activities of the establishment in so far as abolition of contract labour system are concerned.
- Supportive or allied activities of an establishment like maintenance, housekeeping should be out sourced and the Act should only provide for regulating the working conditions and wages.
- The Principal Employer should, however, have to ensure payment of wages to contract labour as laid down under the law in force as also other basic amenities and social security benefits.
- If the contract labour system, which is cost effective, is not allowed to continue, industries may go in for technological restructuring with less number of workers leading to reduction in employment.

Views of the Trade Unions

The Trade Unions are totally opposed to the idea of contracting of services and in jobs which are perennial in nature for following reasons:-

- Reduction of regular employment;
- The contract labour generally belongs to weaker sections of the society and will be deprived of the benefits that accrue to regular employees.
- Efficiency will decrease as establishment will be deprived of experienced staff.
- Coordination of activities of large number of contractors/sub-contractors will prove to be more time consuming and costly than in house activity.
- What is required is not privatisation but in house improvements and restructuring.
- Outsourcing will only lead to a type of employment founded on discrimination and exploitation of contract labour in regard to wages paid, working conditions, etc.

Recommendation of working committee for the Twelfth Five year plan:

Amendment of the Contract Labour Act, 1970

Among the recommendation submitted by the working group for the twelfth five year plant, the following recommendations have been made with regard to the Contract Labour Act, 1970.

- It is recommended to amend the Contract Labour Act so that contract workers get the same wages, facilities and benefits as regular employees.
- Even if contract workers have no security of tenure, they would get better salaries with health cover and social security benefits under the Employees' State Insurance Corporation and Employees' Provident Fund, respectively.
- Implementation of labour legislation is a state subject and states can amend central legislation. However, identifying state amendments as being pro-labour or pro-employer is a task that can result in paradoxes. Maharashtra and Gujarat in one exercise are labelled as pro-worker states when another study reports the extent of over manning in these states as being the lowest. These states are also perceived as good locations for setting up manufacturing units. Also, it is not just the legislations, but the enforcement that is crucial to the extent to which firms are deterred by labour legislation. More stringent labour legislation and/or better enforcement can both deter

employment generation. Delicensing along with capital accumulation affected employment growth more than labour legislation.

Conclusion:

Job security regulations are often seen as a source of rigidity and resulting in rents for organized labour. However, these regulations often emerged as a response to the threat of unemployment and income insecurity and are more a social insurance than rent seeking. Moreover, markets if left to themselves will not be able to device contracts that provide an efficient level of employment security. In a temporal world if workers trade off working with shirking, employers can similarly trade off honouring a contract with termination of employees. Opportunistic behaviour is often difficult to observe or to verify. In product markets opportunism can be nipped through signals such as the offer of warranties.

In labour markets both firms and workers are susceptible to opportunism and verifying breach of contract is difficult. A meaningful way to get workers to invest in a job and employers to honour contracts is to legislate employment protection. The difficult task, of course, in reality is to ensure that employment protection does not become protectionist and an enemy of economic progress.

As we all know that organizations, contractors and labour/ workers play important role because active involvement of every one can bring successes to this Act. Organizations should become aware of the duty of the contractors on the site, make sure that they will help in making the labour worker aware of their rights and they themselves play their role effectively.

For the effective implementation of Contract Labour (Regulation & Abolition) Act 1970 it is necessary to establish and maintain good relations between the Contract Labour on the one hand and the Organization on the other. Government should be more active in implementing the labour laws for the safety and welfare of the workers by making some things mandatory for them so that they can get essential requirements. Effective use of this Act would lead to presence of the labour on the site with no conflicts with contractors or employer and more productivity which would help in the all-round development of the organization. Thus Labour laws are for the benefit of the labour and their proper implementation would help the organization to carry on its work smoothly which would help the organization in larger productivity. Proper implementation of labour laws is for the good of both the employer and the employee. Contractors who are the directs employers of the Contract labour are supposed to take proper care of the contract labourers so that the whole system could run smoothly and help in the economic development of the country.

References

[i] Bhandari K.Amit, Heshmati Almas,(2006) *Wage Inequality and Job Insecurity among Permanent and Contract Workers in India: Evidence from Organized Manufacturing Industries,* IZA Discussion Paper No. 2097, Bonn Germany.

[ii] "Labour ministry examining proposal to bring wages of contract workers at par with regular workers*", Economic Times, 12 Jun 2015.*

[iii] NSSO (2006) defines casual wage labour as "A person who was casually engaged in other's farm and non-farm enterprises (both household and non household) and, in return, received wages according to the terms of the daily or periodic work contract." A regular salaried/wage worker on the other hand is defined to be one which receives salary or wages on a regular basis, either time wages or piece wages and full time or part time.

[iv] Sen and Dasgupta (2009) have undertaken a survey of industrial units in a large number of clusters in different parts of India (during 2004-05). The wages of casual workers were found to be significantly lower than that of permanent workers. In NOIDA, for instance, the permanent workers' average wage was about Rs 4760 per month while that of casual workers, Rs 2480 per month. In Kolkata, the relevant figures were Rs 4820 and Rs 1970, respectively.

[4] Sharma (2006, p. 2081) writes: "..contract labour has been one of the principal methods used by the employers to gain flexibility in the labour market. Thus, employers have been able to find ways to reduce the workforce even with the "restrictive" provisions in place." Similarly, Gupta et al. (2008, p.7) write, "... hiring contract workers can enable firms to get around many of the regulatory restrictions on adjusting employment levels, productions tasks, and others." Ahsan and Pages (2008) note that contract labour has become a common way to deal with the problems posed by the labour regulation arising from the Industrial Disputes Act. The use of contract labour is found to have a favourable effect on employment in the econometric analysis undertaken by them. However, from the results obtained, they conclude that contract labor may be more effective at ameliorating the effects of regulations on output than on employment. At the same time, Ahsan and Pages (2008) point out that while firms hire contract labor as a way to reduce wage and adjustment costs, the fact that contract workers are not covered by industrial dispute laws is probably an additional source of interest for employers. Bhattacharjea (2009) and Bhandari and Heshmati (2005, 2006) in this context.

[5] Bhattacharjea (2009) has examined the effects of tightening and loosening of employment protection legislation on the share of contract workers out of total workers employed in organized manufacturing in Indian states. He finds that in one state the share of contract workers rose substantially after a tightening event (consistent with the hypothesis that increasing use of contact workers is a result of rigid labour regulations). But, it also rose in two other states, in one case even more substantially, after a loosening event. Thus, the results are mixed and one cannot conclusively say that tightening of employment protection legislation induces greater use of contract workers.

[vii] Report of the Working Group on Labour laws & other Labour Regulations for the Twelfth Five Year Plan (2007-12), Ministry of Labour and Employment, pp. 3-5.