

The Contract Labour Act 1970 Issues & Concerns

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This paper assesses the legal framework of contract labour employment in India. It reviews role of the state in the enforcement of Contract Labour (Regulation & Abolition) Act 1970 (CLA) and relates it with the vulnerabilities contract labour suffers from. It also focuses on the changed attitude of the state agencies towards labour law enforcement. The formulations are built on secondary data and doctrinal reasoning to argue that there is a need for change in the framework of CLA so as to check rampant tendencies of the employers to indulge in contractualization. Contract labour is being employed even in core activities mainly with a view to lowering the costs through exploiting the weak bargaining power of workers. The paper cites the Andhra Pradesh amendment to the CLA to be used as a reference point for effecting changes in the framework.

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Contract Labour: Some Estimates

Contract workers constitute a large part of the total wage employment in India. It has been believed since long that most of these workers are engaged in activities necessitated by seasonal/occasional requirement of employers or in situations where there is a temporary increase of work. For example, most of the following employments are found through contract labour: loading and unloading of goods and materials; catering including canteen services; security services; civil and construction works; electrical/ air conditioning/ painting/ whitewashing; house keeping services; computer maintenance, etc. However, in view of the growing incidence of globalization a major reason for employment of contract labour is its contribution to the economic and financial feasibility of the establishment. Also, a contractor is believed to be more effective in supervising workers in certain opera-

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tions. But the system is working such that most contractors are indulging in its large scale misuse. This is explained by the present legal framework of contract labour employment and the indifference of the state and central governments and their agencies in enforcing the safeguards envisaged. With their Taylorian management style, contractors exploit their workers by creating the fear of the sack amongst them and the resultant vulnerability of being employed in the unorganized sector.

No one knows the exact number of contract workers employed in the country as no data on it has been systematically collected; but it is crudely estimated that this figure is around 30 million. Of course, all contract workers are not covered by the Contract Labour (Regulation and Abolition) Act 1970 (CLA), which is the principal central law regulating the employment of contract labour in India. A large number of these workers are working in establishments that employ contract labour below the CLA's coverage limit of 20. As per the latest available data, in respect of employments where the central government is the appropriate government under the CLA, 1.3 million contract workers have been covered by the licences issued by the central government during 2007-08 (Government of India, 2009). But there is no data available on those covered by licenses issued by the state governments, nor on those not covered by the CLA. Some studies have found that the share of contract labour in wage employment is as high as 60 to 70 per cent

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The rights conferred on contract workers by the Constitution of India and various labour laws are poorly enforced. Trade union leaders have a vested interest in espousing the cause of regular, core workers and issues of contract workers are taken up by them only half-heartedly or not at all. In small and medium enterprises, the situation is one of total anarchy so far as contract labour employment is concerned. The employment culture is now becoming one of contract culture. The incidence of sham contract² in such arrangements as devised by various decisions of the higher judiciary is high. So when one looks at the plight of this class of workers and the enforcement of labour laws meant to protect their interest, a dualism is clearly discernible. On the one hand we have employees who are able to procure substantial gains from their employers through

1. R4D-Department of International Development—Research News: “Indian industry dependent on a forgotten workforce” <http://www.research4development.info/news.asp?ArticleID=50459> accessed on 22 November, 2009.

2. See the decision of the supreme Court in the cases of Steel Authority of India Ltd. v. National Union Waterfront workers (2001) 7 SCC (L&S) 1344; and Secretary, Haryana State Electricity Board v. Suresh & others [1999 LLR 924 SC].

collective bargaining or are beneficiaries of the practice of talent management strategies of employers. This includes high wage-practices followed by some of the multinational companies and enlightened domestic companies. On the other hand, there are a large number of cases of merely symbolic or cosmetic enforcement of labour law. For, their basic spirit is substantially subverted through the shenanigans indulged in by employers through engagement of labour law consultants. This exploitation is further cemented through the nexuses between employers, labour bureaucracy and politicians, which aim at extracting undue advantage from this category of workers by denial of their labour law rights. Sometimes even the union leaders are found included in these nexuses (Saini 1995a).

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Social scientists at the global level have been warning of the forthcoming major social tensions (Towers 1997). These tensions are likely to result from the steep inequalities caused by the increasing practice of naked capitalism by most countries through practicing the globalization philosophy. Since May 2007, the Indian government has been talking of the need for inclusive

growth mainly to counteract the above threats envisaged by the social scientists. It should be kept in mind that inclusive growth can be sustainable only if it is built on the foundations of basic rights of the working people, especially the powerless. But in the era of globalization, the general tendency is noticeable on the part of the state agencies to undermine labour rights. It is being noticed that employers are devising various ways to subvert the spirit of labour laws; this is often done through strategies suggested by labour law consultants. This has been found to be the case even in a country like the USA where the Dunlop Commission on the Future of Employer-Employee relations found that 70 per cent of US employers were using labour law consultants to manage industrial relations (US Department of Labour 1994).

This paper examines the legal framework of contract labour regulation and its working in the Indian context. Based on this, it reviews the role of the state in the enforcement of this Act. It also raises pointers towards the changed attitude of the state agencies to the issues of labour law enforcement. The paper uses secondary data and doctrinal reasoning to argue that there is a need for change in the framework of the CLA so as to check the rampant tendencies of the employers to employ contract labour in even their core activities. They mainly indulge in these tendencies with a view to lowering the costs through exploitation of the weak power of workers.

Constitutional Values & Contract Labour Regulation

Being one of the founder members of the International Labour Organization (ILO), the Constituent Assembly of independent India was well aware of its duty to provide for, through provision in its Constitution, justice to all sections of the working class. This thinking was the soul of the Directive Principles of State Policy as enshrined in Chapter IV of the Constitution. This chapter gives a constitutional mandate to the Indian state and obliges it to ensure dispensation of, among others, economic, political and social justice to all sections of the society including the working masses. So as to operationalize this constitutional commitment, the National Commission on Labour (Government of India 1969) had recommended to Parliament the passing of a legislation envisaging regulation and prohibition of the employment of contract labour.

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The CLA was enacted as a central law that was made applicable to establishments operating all over the country. Both the Central and state governments were authorized to administer it in their respective jurisdictions. This legislation aimed at regulating the conditions under which the contract labour works and also provides for the abolition of the contract labour system wherever pos-

sible and practicable. The basic framework of the CLA was built on the presupposition that contract labour was not undesirable per se. It was seen as promoting organizational flexibility when it could not be afforded to appoint permanent labour in certain operations or processes for various reasons. The Act is intended to minimize the exploitation of this class of labour. The scheme of the Act envisaged some semblance of proximity between the working conditions enjoyed by labour employed directly as contract labour; it is also intended to ensure that contract workers are paid wages on time.

The CLA has been made applicable to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour. It is also applicable to all contractors who employ 20 or more contract workers in an establishment belonging to the principal employer. An establishment covered under the Act has to register itself as principal employer by making an application to the registration officer concerned appointed by the appropriate government.³ Principal employers that do not register themselves under the Act cannot employ contract labour in their establishments. All contractors who are covered under the CLA are required to obtain a licence.⁴ Every licence granted to a contractor

3. This has to be done in terms of section 7 of the CLA read with rule 17 of the Contract Labour (Regulation & Abolition) Central Rules, 1971 (CLC Rules).

4. This has to be done in terms of section 13 of the CLA read with rule 21 of the CLC Rules.

under the Act carries certain conditions subject to which the contractor can employ such workers. These conditions relate to hours of work, fixation of wages and provision of certain essential amenities as laid down in the Contract Labour (Regulation & Abolition) Central Rules, 1971 (CLC Rules). So far as the amenities to be provided by the contractor to the contract labour are concerned, they are bare minimum and certainly needed inclusion of other health and welfare provisions, especially in larger establishments.⁵ Presently, the amenities envisaged for contract labour under the CLA include: provision of canteen where 100 or more workers have been employed; rest room in case labour is expected to halt at work during night; arrangement of wholesome drinking water, latrines and urinals; washing facilities; and first-aid facilities. In case the contractor fails to provide these amenities the principal employer has been obliged to provide the same.

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5. So far as establishments covered under the Factories Act 1948 are concerned, the definition of worker under that Act has been widened through an amendment in 1976 to include all contract workers also.

presence of its (principal employer's) authorized representative. If the contractor fails to pay wages to any worker, the principal employer has been made duty bound to pay the same.

The CLA also provides that the appropriate government can prohibit the employment of contract labour in any operations, processes or other work. It lays down guidelines to be considered by the appropriate government while deciding the prohibition issue. The four guidelines in this regard as provided in section 10 of the Act include whether the work is: of perennial nature; incidental or necessary for the work of the establishment; sufficient to employ a considerable number of whole-time workmen; and finally, is being done ordinarily through regular workmen in that establishment or a similar establishment. These guidelines are the same as were envisaged by the Supreme Court in the case of *The Standard Vacuum Refining Co. of India Ltd. v. Its Workmen & Others*.⁶

Working of the CLA

The CLA gives the power to administer this Act to the appropriate governments concerned. In the Central sphere, the Central Industrial Relations Machinery (CIRM) enforces the provisions of this Act as well as the rules framed there under (i.e. CLC Rules). In the state sphere, the labour department of the state government concerned does this work. Various authorities that have been en-

6. (1960) 2 LLJ 233 SC.

trusted with different enforcement powers in this regard include: inspectors, licensing officers, registering officers and appellate authorities appointed under the Act. The central government has so far issued 76 notifications under section 10 of this Act⁷ prohibiting employment of contract labour since the enactment of the CLA (Government of India 2009).

Regular inspections are supposed to be conducted by the officers of the labour department and launch prosecutions whenever establishments are found violating the Act/Rules/ notifications including employment of contract labour in operations and processes where the government has prohibited employment of contract labour. From time to time, the central labour ministry is expected to issue instructions/directions to the field officers of CIRM and state government officers so as to ensure the proper implementation of the CLA.

The case of Steel Authority of India Ltd. (SAIL) v. National Union of Waterfront workers⁸ is an interesting judgement to note about the way the CLA has been working, and is the latest decision of the Supreme Court on the issue of the fate of the existing contract workers when the appropriate government decides to prohibit employment of contract labour in a process or an establishment. In this case the Court held that neither

Section 10 of the Act nor any other provision in the Act whether expressly or by necessary implication provides for automatic absorption of contract labour on issuing a notification by the appropriate government under Section 10 (1) of the CLA prohibiting employment of contract labour in any process or operation or any establishment. Consequently, the court reversed prospectively its own judgement earlier delivered in the case of Air India Statutory Corporation, etc. v. United Labour Union & Others.⁹

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One may agree or disagree with the position taken by the Supreme Court in the SAIL case. But there is no doubt that this judgement has resulted in substantial diminution of contract labour power in India. Also, there are several malpractices that are prevalent in the system of employment of contract labour; and somehow vested interests have allowed them to continue even as there are blatant violation of the CLA. We may note some of these practices as follows:

Firstly, in the era of globalization, the general labour law enforcement mechanism has become very weak and the situation is getting converted from

7. This section envisages powers to the appropriate government to prohibit the employment of contract labour in different operations and category of jobs in various establishments.

8. (2001) 7 SCC (L&S) 1344.

9. JT 1996 (11) SC 170.

bad to worse. Of course, even in the pre-globalization era, umpteen number of labour law violations have been reported (Advani & Saini 1995, Patel & Desai 1995). However, this tendency has got steeply intensified in the post-globalization world. The Indian state is obsessed with absolute growth, and indirectly gives impression to its agencies and functionaries that they need to look the other way when they see violation of labour laws. The number of staff in the labour departments at the state and the Central levels is not adequate enough. In some states like Rajasthan and Uttar Pradesh, the labour inspector is not allowed to inspect the violation of labour laws by the covered establishments without obtaining permission of the District Magistrate, who is always so busy with enforcing more than 100 other pieces of legislation. This results in delays and perpetual violation of labour legislation, and consequently the denial of rights of those who are the target of protection of a labour legislation.

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Secondly, a large number of establishments to which the Act is otherwise applicable are not registered under the Act; they somehow get away from it by indulging in law avoiding practices. Similarly, the contractors who are otherwise covered under the Act do not obtain the requisite licence in several cases. The labour enforcement machinery has been allowed to be further

weakened over the years. The value of globalization is being celebrated, and contract labour is seen as antithetical to free market economy. This happened in the following case involving a state public sector enterprise (PSE). In this case, Secretary, Haryana State Electricity Board v. Suresh & others,¹⁰ the appellant was a Statutory Board set up to supply electricity in the state. The Board contracted out cleaning work; the contractor employed 42 cleaning workers. For this work, he was paid Rs. 32,000 per month. After completing 240 days of service these workers claimed permanency in the service of the Board. The Supreme Court found that the contract had specified the number of workers to be engaged and the amount of money to be paid to the contractor for this work. The work was supervised by the state government officials. It was found that the overall control on these workers was of the Board. The contractor concerned was a mere name-lender; he had not even obtained a license nor did the Board register itself with the registration officer.¹¹ The situation was held by the Supreme Court to be reflecting a “sham contract.” Consequently, the workers’ plea was accepted by the Court. If this is the situation in large public sector undertakings, one can imagine how much do employers of contract labour in medium and smaller

10. 1999 LLR 924 (SC).

11. In the circumstances of this case the Supreme Court held that the contract system was a mere camouflage, a smoke-screen disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board and employees could easily be discerned.

establishments care about the legal provisions.

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Thirdly, it is not a secret that due to pressure of unions, PSEs continue to employ the same workers again and again even as the contractors change from time to time. Like in the case of Haryana Electricity Board, often the supervision is also done in many cases by the PSE management. Somehow, these practices are being overlooked. But they certainly fall in the ambit of sham contract as envisaged by the judiciary. It has been observed that even in the private sector the practice of “contractor changing but workers not changing” is often noticed. Also, most PSEs are indulging in many practices in employing contract labour that would come within the ambit of sham contract as envisaged in SAIL.¹² In this case the Supreme Court unequivocally endorsed its earlier opinion about sham contract in Gujarat State Electricity Board vs. Union of India,¹³ and in Haryana Electricity Board cases, it denounced these practices.

Fourthly, technically, most labour laws that cover the workers of the principal employer also cover the contract workers, though the benefits payable to the latter are the responsibility of mainly the contractor concerned. But the contrac-

tors almost never allow these workers to remain on their rolls. They manoeuvre the situation such that the law is kept away. Even if they allow them to continue for 240 days or more, they normally themselves disappear after two or three years. So benefits like gratuity never get accrued or paid to the workers concerned. Further, though the contract labour is covered by the Employees Provident Fund (and Miscellaneous Provisions) Act 1952 (EPF Act), one may not find even one contract worker who is getting pension under the Employee Pension Scheme 1995 (EPS).

Fifthly, if one looks into the background of the CLA, it is noticeable that the intention of the lawmakers was not to allow contract labour to be employed in permanent and core operations. Initially, there was a fear amongst the employers if they indulged in such practices as the judiciary was often changing its position on different aspects of the interpretation of the CLA. They thought of getting caught in difficult situations if they employed contract workers in core operations. But the situation seems to have fairly settled now especially after the SAIL judgement. The net result of these judgments is that contract labour can be employed in any operation unless it is specifically prohibited by the appropriate government under section 10. There are cases where the number of permanent workers is just a few hundred but that of the contract workers are several thousands. Presently, there is a tendency of the states not to further prohibit employment of contract workers in new operations and establishments.

12. (2001) 7 SCC (L&S) 1344.

13. 1995 (5) SCC 27.

Further, the issue of payment of wages to the main workers and the contract workers is a very tricky issue. It has been observed that the difference between the two sets of workers is anywhere between 2 and 6 times, even as they perform similar work. Rule 25 of the CLC Rules clearly provides that if a contract worker performs the same or similar kind of work as is being performed by regular workmen, in that case s/he will be entitled to get the same wages and other service conditions as are available to the regular workmen. But this does not happen at all in reality.

Need for Reform

It is clear that many labour laws including the CLA are covertly projected by the state as symbolic pieces of aspirational legislation to portray that India is an enlightened society and cares for its working masses. But not many know the empirical realities underlying the working of this branch of social legislation. All those who wish to ensure a system of social justice for working people would suggest that we need to look at several aspects of the non-enforcement of labour laws including the CLA.

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enjoy any countervailing power against the contractors and the principal employers. And unions of the core workers are not willing to espouse industrial disputes related to contract workers' concerned. If some try to do so, the management often asks whether the constitution of their union provides for such an espousal. They normally do not think of amending their union constitution so as to take up the contract labour's cause. That is certainly not an easy task as other union leaders do not think it to be a worthwhile proposition. For, their objective is to secure benefits and better working conditions for their own workers. They do not see this to be a good strategy; and know that surpluses of employers through employment of contract labour can be expected to be partly shared with the core workers in various forms. Consequently, in most cases the contract labour is not even able to fight for its legal rights as they are not organized nor does the legal framework quite support them; they remain in constant fear of job insecurity. This situation justifies increasing state role in ensuring a just treatment to contract labour through legislative amendment.

There are clear signs of labour relations moving from policies of adversarialism to those emphasizing coopera-

tion. Even the International Labour Organization (ILO) has now adopted “decent work” as one of its key goals. The ILO has emphasized four issues to be focused at in this regard: work content; rights at work; security of employment; and representation and dialogue. Plenty of literature is now coming on this issue including on the complexities and contradictions involved in operationalizing these projections, especially without the help of the countervailing power of unions or weak power of unions. Since most employers who pursue cost-cutting strategies are not likely to pursue “decent work” as part of their organizational goals, the state has to take requisite measures so that they become part of labour legislation. If we apply this concept to contract labour and the way it is being treated in the Indian context, there is certainly a case for making changes in the present regulatory framework.

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Contract labour does not get any gratuity under the Payment of Gratuity Act 1972 (PGA) as the principal employers frequently change contractors with the labourers remaining the same for various reasons. This is happening in a large number of PSE companies. One of the navratnas PSE companies too, the Steel Authority of India Ltd. (SAIL)¹⁴ is following a good practice that tends to benefit the contract labour. It has been putting a

14. As per the discussion with the General manager (Legal) of the SAIL.

compulsory clause in every contract it signs with a contractor that he/she will have to take a group insurance policy from the Life Insurance Corporation of India (LIC) for all the employees employed by her/him as contract labour. The contractor is not allowed to withdraw that money from the LIC in any case; the latter is authorized to retain that money. So when the worker works for the same principal employer under different contractors, the money is utilized for paying gratuity to the employee concerned. It will be a good beginning if protection of contract labour in relation to gratuity payment is made more realistic through an amendment of CLA so as to provide a special cover to contract labour as an exception.

Since most employers employ contract labour even in core operations, there is a need to block this loophole through legislative action at the Central level. The state of Andhra Pradesh has taken a commendable lead in this regard by amending the CLA, which prohibits employment of contract labour in core operations¹⁵ of the principal employer.

15. Sec.10 (1) provides that notwithstanding anything contained in this Act, employment of core activities in any establishment is prohibited; Provided that the Principal Employer may engage Contract Labour or a Contractor in any core activity, if

- (a) the normal functioning of the establishment is such that the activity is done through contractors, or
- (a) the activities are such that they do not require full time workmen for the major portion of the working hours in a day for longer periods as the case may be,
- (a) any sudden increase in volume of core activity which needs to be accomplished in a specified time.

The amendment has also abolished the system of advisory board as envisaged in the central legislation and provides for a “designated authority” to advise the government on the question whether any activity of a given establishment is a core activity or otherwise. The designated authority also decides the question whether an activity is a core or not.

Change in the law alone will be of no consequence unless the governments concerned show the will to implement the basic spirit and essence of the Act in their respective domains.

Interestingly, the state of Andhra Pradesh was aware of the need for organizational flexibility in the globalization era; so it has clearly stated that certain activities will in no case be treated as core activities. Thus, the following activities have been excluded from the import of the term “core activity” in the Andhra Pradesh amendment: sanitation works including sweeping, cleaning, dusting, waste disposal; watch and ward services including security service; canteen and catering service; loading and unloading of operations; running of hospitals, educational and training institutions, guest houses, club, etc that are in the nature of support services to the establishment; courier services as support service to the establishment; civil and construction work including maintenance; gardening and maintenance of lawns, etc.; house-keeping and laundry services as support services; transport

services including ambulance services; activity of intermittent nature even if that is core activity of the establishment; and any other activity incidental to the core activity.

The Andhra Pradesh amendment to the CLA has sent good signals from a concerned state to protect undue contractualization in the state. If the Centre follows suit, that will somewhat restore the original intention of the framers of the CLA. However, change in the law alone will be of no consequence unless the governments concerned show the will to implement the basic spirit and essence of the Act in their respective domains. The strategy to restore rights of contract labour has to be multi-pronged in order to be effective. One of the remedies that can be suggested for a more efficacious implementation is constitution of “committees” on the pattern of the Bonded Labour System (Abolition) Act which have tripartite composition and aim to work for facilitating human rights enforcement of workers who need to be freed from bondage and rehabilitated appropriately, as envisaged in that Act. Since the present labour policy of the state is resulting in too much wage disparity between the unorganized sector (including contract) and organized workers a more effective implementation of a labour law like the CLA will go a long way in operationalizing the social agenda of the state.

Conclusion

Since the adoption of the new economic policy in India, and more so after

the delivery of the well-known SAIL judgement by the Supreme Court of India, it is clearly seen that there is a tendency amongst more and more organizations to employ contract labour. The problem has assumed amazing proportions to the extent of subverting the very *raison d'être* of the CLA. The findings of a recent study suggest that some of India's key industries, such as cement, iron and steel, cotton textiles and jute, rely on contract labour for as many as four out of every five workers.¹⁶ This research also reveals that in Gujarat, none of the contract workers surveyed received Employees' State Insurance (ESI) coverage, though in West Bengal up to one in four did. The contract labour regulations have not been found effective even in West Bengal where they are largely recruited and controlled via trade unions. Public opinion seems to be legitimizing the new dispensation despite the lack of legal support for these practices.

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One needs to ask whether economic growth alone is the main goal that we cherish in our Constitution. Have we not resolved to build an enlightened society based on social, economic and political justice? A realistic implementation of

16. See endnote note 1.

this thinking in relation to contract labour is possible if a central legislation is brought prohibiting employment of contract labour in core operations on the pattern of the Andhra Pradesh model. And, the implementation of the Act is overseen with the help of the "committees" consisting of labour department officials and workers representatives, NGOs and the friends of labour.

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