

# **Re-igniting collective bargaining in the Indian public sector: The case of non-standard workers**

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## **Re-igniting collective bargaining in the indian public sector: The case of non-standard workers**

The increasing integration of national economies with global markets has intensified the competition in product, capital and labour markets, pressurising organisation to be efficient and flexible (Kalleberg and Hewison, 2013). In support of this neoliberal regime many governments have actively or passively deregulated in favour of investors and employers to enable them to be globally competitive resulting in the use of flexible production processes, employment systems associated with low-quality employment and new forms of work organization that erode standard employment relationships (Anwar and Supriyanto, 2012; Evans and Gibb, 2009; Kalleberg and Hewison, 2013). Non-standard employment relations have become attractive for employers to distance themselves from the responsibility to those workers who are in fact performing work on their behalf but also enables organizations to maintain flexibility, resize, save labour costs and eliminate the need to deal with a unionized workforce (Chen and Brudney, 2009; Gibb, 2009; Holdcroft, 2013; Kalleberg, 2003). With regard to the Indian context, it has been observed that since the implementation of neoliberal policies in 1991, the public sector has been privatised, licensing regulations for investment removed, restrictions reduced on foreign direct investment (FDI), tariffs reduced and capital markets deregulated, resulting in competitive pressures and the expansion of non-standard working arrangements (Maiti, 2013). This makes it relevant for us to examine the development and current trends in the use of non-standard working arrangements to deliver public services.

### **Non-standard work arrangements: A review of literature**

“Standard” work is often referred to as “typical” or “regular”, full-time, permanent, direct employment while “non-standard” refers “atypical”, “non-regular”, or “contingent” work done by peripheral or marginal workforce which includes part-time employment, day labour, on-call work, temporary-help agency, contract-company employment, independent contracting and other self-employment in an otherwise standard work arrangement (Chen and Brudney, 2009;; Kalleberg et al 2000; Mastracci and Thompson, 2005). In effect, non-standard arrangements typically depart from standard employment in respects of the diffused employer identity, employer control, continuity of employment, employment protections and social security and is more likely to be associated with bad job characteristics such as low

earnings, lack of health and pension benefits (Kalleberg et al 2000), lack of promotion opportunities (McGovren et al, 2004), low quality work, no access to welfare benefits, limited access to training opportunities, low or no trade union representation, low bargaining power, lack of labour market alternatives and low labour law coverage (Ebisui, 2012) typical of secondary or peripheral segments of labour markets (Saloniemi and Virtanen, 2005).

However, Kalleberg and Hewison (2013) hold that since distinctions between “standard” and “non-standard” work arrangements are often inadequate to capture the complexities of contemporary employment practices designed to cheapen labour costs, increase flexibility, reduce the permanent workforce, shift employment risks to workers and reduce labour’s capacity for organization, the notion of non-standard work was introduced. Non-standard work may be structured across every employment status category, including permanent full-time, permanent part-time, temporary part-time, temporary full-time and self-employed (Ebisui, 2012; Gibb, 2009). These arrangements are characterised by atypical employment contracts that have limited or no social benefits and statutory entitlements, high degrees of job insecurity, low job tenure, low wages, high uncertainty and instability, no regular working hours, high intensity of work, unpaid overtime, limited duration of contract, multiple or disguised employers, poor working conditions, limited access to training, limited voice, high risks of ill health and a dearth of social protections (Evans and Gibb, 2009; Gibb, 2009;; Kalleberg and Hewison, 2013; Keune, 2013; Rossman, 2013). However, the denial of the right to join a union and bargain collectively with their employer makes non-standard workers most vulnerable to exploitation. In fact, employers deliberately use non-standard employment to resist unionization and summarily dismiss workers for attempting to form or join a union in order to benefit from the increased flexibility and lower wage costs that the non-standard employment was designed to deliver. Even if non-standard workers do manage to join trade unions, they face significant problems when they attempt to exercise their rights to bargain collectively (Holdcroft, 2013). Thus, by putting the benefits of collective bargaining beyond the reach of contract workers, contract employment is more likely than standard work arrangements to be associated with bad job characteristics (Kalleberg et al 2000).

Moreover, many precarious workers find themselves in triangular employment relationships in which the de jure and de facto employers differ. Bargaining collectively with the de facto employer is not possible since the company is technically not their employer

(Holdcroft, 2013; Kalleberg et al 2000), neither does it make any sense for them to bargain with their de jure employer as this company has no actual control over their work (Holdcroft, 2013). This then limits their ability to reduce the power imbalance with either employer through collective bargaining. This imbalance is not corrected by joining the de facto employees union since this gives the de jure employees no right to be covered by the same collective agreement. Thus, they are subject to the demands of their de facto employers without any hope of security and advancement. Further, given their transient status, precarious work employees do not have the sustained contact with their de facto co-workers a necessary requirement to organize collectively. In fact, that their de facto co-workers do not share their marginal status prevents joint collective action (Holdcroft, 2013; Kalleberg et al, 2000).

Rolling back precarious work is therefore a union priority (Rossman, 2013). It is only with the combined strength of all workers that it will be possible to reverse the tide (Holdcroft, 2013). To enable this unity, unions are being forced to look at their own structures and working methods to remove barriers inhibiting precarious workers from joining them (Holdcroft, 2013). Unions realise that precarious work can be confronted and successfully rolled back by the traditional tool of collective bargaining. Collective bargaining also helps to both determine the circumstances under which non-permanent or outsourced employment is justified and also ensure that wages and conditions of precarious workers are equal to those of regular workers. Thus, it not only protects precarious workers but also ensures that precarious work cannot be used to undercut established conditions regular jobs (Anwar and Supriyanto, 2012; Holdcroft, 2013). Besides collective bargaining, organizing precarious workers, influencing national policies and legislation through social dialogue, litigating in court, undertaking capacity-building on precarious work issues and campaigning for legal and regulatory reform are some of the other strategies and instruments used to address problems of precarious work (Evans and Gibb, 2009; Holdcroft, 2013; Keune, 2013). Moreover, at international level unions are building cross-border networks, using International Framework Agreements (IFAs) and raising cases under the OECD guidelines for Multinational Enterprises (Evans and Gibb, 2009).

Nonetheless, trade unions recognize that theirs and other private initiatives will not be enough – there is a need for strong government action. Evans and Gibb, (2009) argue that “[r]egulation is indispensable, together with supportive labour market policies. ILO

Conventions Nos 87 and 98, which establish workers' rights to come together in unions (freedom of association) for the purposes of negotiating the terms and conditions of their employment (collective bargaining) are wide-ranging, powerful instruments whose implications and applications as tools for challenging precarious work have begun to be applied. The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) recognizes the right of temporary/agency workers to be represented by a union of permanent workers for collective bargaining purposes. Many unions do, in fact, negotiate the terms and conditions of those on temporary and/or agency contracts employed in their workplaces (Rossman, 2013).

### The Indian Public Sector Undertakings

Since political independence in 1947, India followed a development policy based largely upon import substituting industrialization (ISI) with the aim of creating a socialistic society (Arun and Nixon, 2000). The public sector was not merely an engine of growth but also an instrument of social change (Dutt, 1987). While the public sector was required to command the entire Indian economy especially in case of irrigation, power, railways, ports, communications, coal, banks and heavy industries (Arun and Nixon, 2000; Bagchi, 1982; Eapen, 1980); it was also expected to promote balanced and diversified economic growth, self-reliance in strategic areas, reduce regional imbalances, help economically weaker sections of the society, prevent concentration of economic power in the hands of a few individuals, increase employment opportunities, generate surpluses for reinvestment and enforce social control on trade and industry for equitable distribution of goods and services. In case of conflict, the social objectives were to take precedence over the commercial objectives (Tulpule, 1976). Additionally, the public enterprises were conferred the role of being model employers. They were expected to adhere to labour laws, have cordial labour-management relations and evolve exemplary personnel policies, practices and procedures that the private sector would deem worthy of adopting (Rao and Rao, 1987).

To this end, Tulpule (1976) notes that an employee in a public sector enterprise compares favourably with the private industry with respect to housing, medical aid and education of children. Further, anti-union animosity visible amongst private sector management was absent among public sector managements since the government usually favoured a policy of trade union recognition and collective bargaining (Tulpule, 1976). As a

result, both trade unions and employers in the public sector set up coordination committees to deal with industry-level collective bargaining (Venkata Ratnam, 1996). Besides this, (Public Service Undertakings (PSUs) paid higher than the minimum notified wages for similar jobs. In fact, the rate of growth of emoluments of public sector employees since the 1970s has been higher than the rate of growth of inflation, GDP and per capita income (Venkata Ratnam, 2003). However, the wage level of public sector employees was not tied to labour productivity or the industry's capacity to pay of the industry until 1991 (Venkata Ratnam and Naidu, 1999). The emphasis was on parity in basic wage rates/scales of pay, dearness allowance (a cost of living adjustment allowance paid to Government employees and pensioners in India) and other major allowances for employees across the Government and public sector. Unions invoked Article 12 of the Constitution of India to equate the public sector as whole to mean the State and the State could not discriminate among its employees. It was for the same reason that the civil servants pay decided by the Pay Commission provided the base/bench mark for the public sector unions to bargain. As a result, wage differentials within an enterprise and across enterprises were significantly compressed over the years with the principle of 'equal pay for equal work' being rigorously applied (Venkata Ratnam, 2003). Only the Industry level bargaining was to a large extent practiced in the public sector industries (Pratap, 2011).

### **Liberalisation and standard employment in the Public sector**

The year 1991 is frequently identified as a turning point in terms of Indian central government policy and neo-liberalism. At that time, India faced a fundamental fiscal crisis, brought about by economic, political, domestic and international factors (Candland 2007: 99–100). As a result, the government secured assistance from the IMF, linked to a structural adjustment package. In addition to two immediate currency devaluations, the package included policy initiatives with the ultimate objective of privatisation, the removal of licensing regulations for private investment, reduced restrictions on foreign direct investment (FDI), tariff reductions and deregulation of capital markets (Balasubramanyam and Mahambare 2001; Hensman 2010: 112–13; Candland 2007: 100; Uba 2008: 863). Also, with India as a founding member in 1995 further weakened trade restrictions, liberalised FDI and reduced restraints on public sector activities (Hensman 2010: 113). At the same time, private sector competition was introduced in areas hitherto reserved for the public sector with the Government simultaneously declaring that it had no plans for further nationalisation

(Venkatratnam, 1996). The overall efficiency of the public sector was now judged by the returns on the capital invested, which were compared unfavourably with the returns earned by a group of private sector concerns (Dutt, 1987). The public sector enterprises were now expected to be not only model employers but also model performers (Venkat Ratnam, 2002).

The balance between being a model employer and simultaneously being a model performer often tilted in favour of the latter. When most of the wage agreements in the central public sector expired on 31 December 1991, the government wanted to delay its decision on the wage question due to the on-going structural adjustments in the economy and the resultant liberalization and deregulation. It therefore, banned further wage negotiations for the whole of 1992 and the first quarter of 1993. Not surprisingly, in 1994 the Department of Public Enterprises that controls the central public sector undertakings (CPSUs) issued guidelines providing for decentralised bargaining and moving away from parity principle that dominated the CPSUs until then. This move also recognized that PSUs operate under different market conditions: some were capital intensive while others labour intensive, some profitable while others were sick and unviable, some operating under competitive market conditions requiring rare skills while others were developmental corporations with social responsibilities (Venkata Ratnam, 2003).

The government allowed public enterprises to sign fresh wage agreements only if they could meet the extra financial commitment arising out of wage revisions from their own resources and if the unit labour costs and sale prices did not rise as a result of wage revision (Venkata Ratnam and Naidu, 1999). As a result, sick public enterprises since then have not revised wages and workers in these enterprises were paid variable dearness allowance as per previous agreements (Roye, 2007). Further, the duration of the collective agreements have constantly increased from two to three years in the 1970s to three to four years in 1980s to five years in the 1990s (Venkata Ratnam and Naidu, 1999) and to ten years in some cases today (GOI, 2006b). In recent years, the domain of collective bargaining has gone beyond wages and working conditions to include anything and everything like staffing, work norms, incentive and overtime payments, job and income security, technology and other changes, transfers and promotions, rewards and punishment, individual grievances, discipline matters, wage and employment cuts, wage freeze, moratorium on strikes and other trade union actions, changes in work practices, flexible deployment of work force etc. in exchange for regularisation non-standard workers (Venkata Ratnam, 1996). In fact the use of the strike by workers to enforce their demands has been made impotent by the Essential Services Maintenance Act (ESMA). This Act bans strikes in listed essential Public Utility Services

make the legal and justified strike next to impossible. ESMA has been used particularly against public sector employees such as UP Electricity Board Workers' strike in January 2000, general strike of government and public sector employees of Tamilnadu in 2003, against striking airport employees protesting the privatization of Delhi and Mumbai airports in 2006 (Pratap, 2011).

However, the neo-liberal reforms on a nation-wide basis have been relatively gradual and within limits, especially regarding privatisation (Ahluwalia 2002; Candland 2007: 91; Sinha 2005: 18–20; Uba 2008: 863). While central government has restructured some public sector organisations as state-owned enterprises on a commercial basis with partial equity sales, this process – at least as initiated by central government – has often stopped short of full-scale privatisation. Between 1990 and 2003, government privatisation revenues came mainly from minority share sales in banking, oil and gas, plus full privatisation of a few manufacturing enterprises and the restructuring of the telecommunications organisation as a PSU (Kikeri and Kolo 2005). According to Uba (2008:863–4), by 2004 central government had fully privatised ten and partially privatised 47 out of 244 public sector enterprises, while Candland (2007: 100) suggests a slightly more conservative picture. Central government caution – a feature of both Congress and BJP-led administrations – has seemingly focused on fear of public unpopularity, union opposition and electoral defeat. Many of the state governments within India have, however, been less cautious in implementing privatisation (Sinha 2005: 19; Uba 2008: 865–6). In spite of this the extent of state control in product markets is still relatively high in India (OECD, 2007).

### **Non-standard employment and flexibility**

Nonetheless, a fundamental employer and government policy objective in India has been to deregulate the formal sector of the economy. Formal sector workers have the best legal protection, are largely public sector and are most likely to be union members. India is generally recognised as having some of the strongest legal protection for formal sector workers anywhere in the world (Teitelbaum 2006) and, alongside Indian employers and government, the World Bank has demanded extensive labour law reform (Jenkins, 2004). Thus, the formal sector's legal framework is constantly under employer and government criticism, which is seen as an unfinished part of the 1990s economic reform programme. The employers have also campaigned vigorously for an unrestricted right to hire and fire workers, known as the 'exit policy' (Hensman 2001). Planned labour law reform sought to eliminate

prior government permission to close down workplaces and retrench labour where more than 100 workmen were employed – an important feature of India’s labour law framework (Singh 1995). Employers argued that labour flexibility and market restructuring would ultimately expand employment opportunities. A systematic campaign was carried out by employers’ associations to revise (a) the Contract Labour Act, especially Section 10, with the aim of removing all restrictions on contract labour usage, and (b) the Industrial Disputes Act, 1947. Provision V B of the latter, require all business units employing 100 or more workers to obtain government permission before implementing dismissals or closures or retrenchments (Hensman 2001). Arguably, central to this has been a conscious policy of employers and successive governments to shift labour from the formal to informal sectors –with the latter defined in terms of small unregistered workplaces, casual and sub-contracted labour, and any other workers who are excluded from employment protection legislation and union rights (Hensman 2010).

With Indian labour law reform politically risky, the government chose a ‘federalist’ strategy of encouraging the non-enforcement of labour protection by state governments, linked to inter-state competition to attract investment. As a result, confrontation with unions is more likely to be isolated within states and sequential, rather than united and simultaneous on an all-India basis; and employers and governments can also develop their tactics in each state (Jenkins 2004; see also Bhattacharjee 1999). The Andhra Pradesh state government was the first to overhaul its contract labour regulations fundamentally, resulting in other states’ employers’ associations demanding similar legal amendments (Jenkins 2004). Thus, central government worked covertly to undermine the legal framework (Datt 2008), increasingly enabling employers to bypass the law (Hensman 2001) and weakening the formal sector by allowing employers to decentralise production and sub-contract various operations to smaller businesses. Legal violations regarding workplace closures were often ignored; and employers imposed more flexibility over wage payments, provident funds, leave encashment and gratuity (Noronha and Sharma 1999). Dismissals and closures continued unabated throughout the 1990s. This was achieved mostly by Voluntary Retirement Schemes, which in practice often intimidated, coerced and misinformed workers, creating ‘a fear psychosis’.

This led to a reduction in the formal *nature* of jobs and a simultaneous increase in their informal *nature*. According to the Economic Survey (2009–10), the employment growth in the formal (organised) sector grew at 1.20 per cent per annum during 1983–1994 but decelerated to –0.03 per cent pa between 1994 and 2007 (Government of India, 2010c). This

decline was mainly due to a decrease in employment in public-sector establishments from 1.53 per cent growth 1983–94 to –0.57 per cent decline in 1994–2007. With regard to the informal sector, the National Commission for Enterprises in the Unorganised Sector (NCEUS) estimated that the total employment in the country during 1999–2000 was 396.9m with 361.8m being of an informal nature, while in 2004–2005 the total estimated employment was 457.4m with 422.6m being informal in nature. In fact, the employment of a large number of informal workers is now the norm, which enables companies to combine a strict dual labour market with flexibility-linked wages to minimise costs (Suresh 2010). Thus, the bulk of the production of goods and services take place in the informal sector where conditions for workers are precarious, poor, and unstable (Maiti, 2013).

### **Non-standard job quality and security**

In India, non-standard employment in the public sector mainly occurs through "job contracting" where the enterprise enters into contract agreement with an established firm for the supply of goods and services. The contractors' performs the assigned task at their own risk and use their own finances, materials and labour to complete the contract. They also control and supervise the workers and are responsible for paying the workers' wages in order to fulfil their obligations as an employer. The user firm in line with the contract agreement, makes payment to the contractor on the basis of the work performed and services provided and confines its interest with the final product or service and does not concern itself with the number of contract workers engaged by the contractor for the job or how the job was done and by whom (Das and Pandey, 2004). Thus, it generally refers to workers engaged through an intermediary by employers in both the public and private sector resulting in a triangular relationship between user enterprises, contractors and workers (GOI, 2007, Vasanthi, 2006-07).

The ban imposed by the Ministry of Finance on the creation of new posts in all Ministries/Departments/ autonomous Institutions encouraged the outsourcing of routine services such as cleaning, maintenance, moving papers, etc. and hiring of contract labour through various private agencies. However, the engagement of contract labour has now expanded to include jobs of data entry operators, drivers, etc. (GOI, 2012; GOI, 2010a). Thus the system of contract labour is now being promoted actively as the simple solution to all labour 'problems' mainly unionization and is becoming all pervasive as contract workers replace the regular workforce seen in government departments, universities even where the work is perennial and continuous in nature (Vasanthi, 2006-07). In 2013, the licensed

contract workers in the PSU's in the Central Sphere were approximately 1.8 Million ; this excludes contractors who employ less than 20 workers (GOI, 2013a). According to the VV Giri National Labour Institute, the number of contract labourers engaged by licensed contractors was 1.4 Million in central departments and PSUs and 4.6 Million at the state level in March 2009. The number of contract labourers not covered under the Contract Labour Act is estimated to be over five times the number covered (GOI, 2012b). This increasing engagement of contract workers in strategically important perennial operations has resulted in a drastic change in employee profiles in CPSUs (Roye, 2013). Besides, the increase in contract workers there has also been an increase in 'Executive' category employees in the CPSUs who take on the jobs of regular skilled workers in order to ensure a trade-union free workplace (Roye, 2013). Thus the number of permanent regular workers is declining when compared to the combined strength of executives and contractor workers in most CPSUs in the country (Roye, 2006).

These contract workers have very little bargaining power, have little or no social security and employment security and are often engaged in hazardous occupations endangering their health and safety, denied minimum wages, have little or no security of employment (GOI, 2007) worked unlimited hours and had poor service conditions (AIBEA, 2013). According to the Labour Herald (2013) on an average the cost to the company (CTC) for a regular worker at the lowest grade of pay scale would range from Rs.25,000/- to Rs.40,000/- while the contract workers are paid around Rs 3000/- to Rs 6000/- on the average (Labour Herald, 2013). In several cases of contract labour, work for as long as twenty years in the same establishment without entitlements or even a minimum wage (Vasanthi, 2006-07). For instance BSNL refused to employ about 4000 employees who were working for the last 15 to 20 years and began dismissing workers when a government order compelled it to implement minimum wages (BSNLEU, 2012). It is also important to note that in several industries including public sector companies, the contractors usurp part of the workers' wages as fees for providing them with jobs and continuity in assignment (Das and Pandey, 2004). The system of contract labour denies workers their status of workmen and the liability and responsibility of the employer. It results in uneven benefits at work between those in regular employment and contract workers (Vasanthi, 2006-07). Contract labourers are paid less as compared to regular workers of a principal employer performing similar kinds of work (GOI, 2012b) and are routinely made to work for 12 hours instead of the normal shift of eight hours without any overtime payment (Cox, 2008). In fact the public sector, which has the obligation

to provide employment on fair and decent terms to all sections of society, is the largest user of contract labour who are often exploited and employed to reduce permanent positions (GOI, 2011; Vasanthi, 2006-07). The contract labour system highlights the “invisibilisation” of workers by transferring responsibility of contract labour to middle men and not the employer. The work done by contract labour is dismissed as peripheral, not integral or germane to the work of the establishment introducing an artificial hierarchy amongst workers (Vasanthi, 2006-07).

### **Legal controversy regarding regularisation of non-standard work**

In the early years, prior to the Contract Labour (Regulation and Abolition) Act, 1970, the situation was somewhat remedied by a series of Supreme Court judgements that held that for a the master-servant relationship to exist in areas where workmen would otherwise be considered to be contract workers the control test should be applied. Application of the test meant the right of the master to control not only the work done but also the manner in which it was done. The court also emphasised that in modern industry, control could not be the only test, other factors were relevant including whether the person is part and parcel of the organisation – the integrational test. Later a stricter line was taken in the case of *Hussainbhai Vs Alath Factory Ehezilali Union (1978 (4) SCC 257)* where the economic "choking off test" was applied to hold that the workmen, though supposedly employed through contractors, were the employees of the employer. The employer has economic control over the workers' subsistence, skill and continued employment. If the employer for any reason chokes off, the worker is virtually laid off. In this case, the "integrality test" was taken to mean that the work done by the workmen was an integral part of the industry concerned (Cox, 2008). It was in the case of *Standard Vacuum Refining Co. of India v its workmen and Ors* where the Court held that where there are discriminatory working conditions, the judiciary was required to intervene without the need to refer to the constitutional or fundamental rights. This judgement influenced the enactment of the Contract Labour (Regulation and Abolition) Act, 1970 (Vasnathi, 2006-07).

The Contract Labour (Regulation and Abolition) Act 1970 was enacted with the aim to regulate the employment of contract labour and to provide for its abolition in certain circumstances (GOI 2012). The appropriate government under Section 10(1) of the Act is authorized after consultation with the Central Board or, as the case may be, a State Board, to prohibit by notification in the official Gazette employment of contract labour in any process,

operations or other work in any establishment keeping in view the condition of work and benefits provided for the contract labour in that establishment. Where it was not possible to abolish contract labour an attempt would be made to regulate the service conditions (GOI, 2013a; GOI 2012; GOI, 2010a; GOI, 2007). The appropriate government can prohibit deployment of contract labour provided the job contracted out is necessary for the business/occupation carried on in the establishment or Principal Employer, perennial in nature, carried out ordinarily through regular workmen in that establishment or similar establishment and the quantum of job is sufficient to employ a substantial number of whole time workmen (GOI, 2007; Rastogi, 2004). So far the Government has issued 84 notifications from time to time to prohibit employment of contract labour in various establishments in the Central sphere under section 10 of the Contract Labour (Regulation & Abolition) Act, 1970. (GOI, 2013). Under the Act, any contractor employing 20 or more workers is required to obtain a labour license to engage any person to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work as per the requirements in connection with the work of an establishment, unless the employment of contract labourers is prohibited on any job, work or process in any establishment under Section 10(1) of the CL(R&A) Act, 1970. (GOI, 2013a; GOI, 2012). The Contractor is required to disburse wages in the presence of the authorized representative of the Principal Employer (GOI, 2012). The liability to ensure payment of wages and other benefits is primarily that of the contractor and, in case of default, that of the principal employer. The Act provided for basic welfare amenities like drinking water, first-aid facilities, rest-room and canteens for contract labour (GOI, 2010a). Contract workers are also covered by the Employees Provident Fund and Miscellaneous Provision Act, 1952, Payment of Gratuity Act, 1972, Minimum Wages Act, 1948, Payment of Bonus Act, 1965, Interstate Migrant Workmen (RE&CS) Act, 1979, Employees State Insurance Act, 1948, Employees Provident Fund and Miscellaneous Provisions Act, 1952 and Employees State Insurance Act 1948 (GOI, 2013b).

From time to time, workers and their representatives have advocated for extending prohibition to other categories in other establishments. The workers have continued to demand for abolition of contract labour in the hope that they may force the employer to absorb them on a regular basis as they are entitled to get preference if the employer intends to do so (GOI, 2006a). The issue was discussed in the case of Air India Statutory Corporation vs. United Labour Union and others (AIR 1997 Supreme Court 645), where the Supreme Court ruled that contract labour would automatically become the employees of the principal

employers when a particular job is prohibited from being contracted out (GOI, 2010a). In the Air India case, “the Supreme Court held that the CLRA must be read in the light of Fundamental Rights, Directive Principles of State Policy and particularly the Right to Equality.” (Vasanthi, 2006-07) Once a prohibition notification was issued barring the employment of contract labour workers, these were entitled to be absorbed in the establishment. In response to the judgement, the Standing Committee of Public Sector Enterprises (SCOPE) requested the Supreme Court to review the decision, arguing that as employers need the flexibility to streamline their operations and produce goods and services efficiently and at the least cost. The workers' need for security and social protection can be met only when the industry and trade have a competitive edge in the international market. Moreover, PSUs argued that the Supreme court judgment would put them at a disadvantage while competing with private players (Gupta, 1998). SCOPE also called upon the government to withdraw all notifications abolishing contract labour systems in public sector undertakings. (Cox, 2008). Another argument used in the Steel Authority of India v. National Union Water Front Workers, LLJ 2001 SC 2394 AIR 2006, SC 1806 (SAIL) case and expounded in the case of State of Karnataka v. Umadevi, (2006) 4 SCC 1, was that “automatic absorption of contract workers would violate statutory service rules and drive others of equal opportunities” (Vasanthi, 2006-07).

In SAIL, proceeding almost entirely on the text of the statute, the Court held that CLRA only provided for prohibition of contract labour and not for its absorption in the establishment. The Court felt that when the legislature is totally silent on the consequences of prohibition of contract labour, solutions must not be provided for by judiciary (Vasanthi, 2006-07). This means that there is no right to absorption that after a notification under section 10 is issued abolishing a contract labour system. The workers would have to raise a separate demand under the Industrial Disputes Act, 1947, for permanent employment and pursue the matter before an industrial tribunal (Cox, 2008).

In the meanwhile, in March 2000 a Group of Ministers (GOM) was constituted to examine the proposal of the Ministry to suitably amend the provisions of the Act with a view to facilitating outsourcing of activities to specialized firms having professional experience and expertise in the relevant area and at the same time to provide for a safety net to contract labour in such outsourced activities. Such a measure, it was felt, would generate employment growth. The GOM agreed that certain activities which form support services of an establishment be excluded from the application of Section 10 of the existing Act, which

provides for prohibition of employment of contract labour in certain circumstances (GOI, 2007; GOI 2006a). The GOM, identified in 2002 ten such activities that, though perennial in nature, were ancillary, supportive/peripheral to be kept outside the purview of prohibition of employment contract labour under Section 10 of the Act (GOI, 2010).

To push the issue further, the then Finance Minister in the Budget Speech, 2001, announced amendments to the Contract Labour (Regulation and Abolition) Act, 1970. “Section 10 of the Contract Labour Act to be amended to facilitate outsourcing of activities without any differentiation between core and non-core activities (GOI, 2006a). Though this did not fructify, some of the State governments took similar actions. For example, the State Government of Andhra Pradesh has not only exempted Special Economic Zones and Export Oriented Units from the provisions of the act but amended the Contract Labour Act to prohibit employment of contract labour in the core activities of an establishment but allow engagement of contract labour in none-core activities of an establishment such as watch and ward, sanitation, cleaning works, etc. even if perennial in nature (GOI, 2007; GOI, 2006a).

### **Non-standard labour and collective bargaining**

So far according to Ahn (2010) the Committee of Public Sector Trade Unions (CPSTU), comprising the AITUC, the CITU, and HMS, Joint Action Front have done little to successfully pressure the Government to stop recruitment of contract labour, reducing new recruitments in the banking sector and disinvestment in public enterprise (Ahn, 2010). The fact remains that majority of the contract workers are yet to be organised under trade unions and wherever organised, there is little effective cooperation with the unions of the regular workers. . The regular workers' unions in public sector fail to realize that the rapid decline in the number of regular workers in all the PSUs and increase in the number of contract workers, will make them irrelevant if the contract workers movement are not integrated with the regular workers' movement (Pragoti, 2008). These informal workers are hardly unionized, and excluded from collective bargaining processes and benefits. (Ahn, 2010). Collective bargaining is rare and even where there have been instances of signing bipartite collective agreements the wages are lower than the applicable minimum (Venkata Ratnam and Naidu, 1999). In fact, the privatization of public sector, and recruitment of non-standard workforce almost wiped out industrial bargaining (Pratap, 2011).

Consequently, the permanent workers are fast losing trade union strength and with it the right to strike and the right to collective bargain (Roye, 2006). Trade unions need to devise strategies to transform the workplace and stand up against restrictions to trade union rights, especially the application of freedom of association and collective bargaining (Ahn , 2010). As a result, permanent workers unions seek to address the issues of contract labour in the CPSUs and closely coordinate and cooperate with the contract workers unions (Roye, 2006). More recently unions are realising that “the divide between the contract and regular workers must be bridged to be effective” (Labour Herald, 2013). They also realise that working class power lies with contract workers. Contract workers have become indispensable to the supply chain; any stoppage of work by contract workers can bring the operations to a standstill (Roye, 2013). Unions are agitating against outsourcing of regular and perennial jobs by holding rallies, campaigns, processions, dharnas, meetings and submitting memorandums to concerned authorities (AIBEA, 2013).

The CPSTU adopted a resolution demanding simultaneous wage revision for contract workers along with the regular workers and ensuring payment of industry level minimum wages to the contract workers instead of a decentralised minimum wages as per the respective states. In the industries where contract workers are organized in trade unions and the regular workers' union and contract workers' union closely cooperate with each other, the overall trade union movement becomes stronger and contract workers also could substantially improve their conditions. The regular workers' movement in public sector has to take initiative to organize and integrate the contract workers in PSU trade union movement (Pragoti, 2008).

INMF, an affiliate of IndustriALL Global Union in India, has prioritized organizing contract workers by having contract workers be part of the existing unions instead of creating separate structures. Only when delays occurred in amending union statutes of existing unions separate unions for contract workers were created. This strategy promotes non-competition and consequently to unifies the workers instead of dividing them (Industriall, 2013a). At national level, their increased strength has helped Indian unions to successfully secure an agreement in 2012, which grants a substantial increase in wages and other allowances for non-standard workers in the public sector coal industry (Industriall, 2013b). The wage of contract workers now also includes social security, allowances and other statutory benefits. Through collective bargaining, the union has secured regular payment of wages through the bank, deduction of provident fund contributions, access to medical facilities in the company hospitals and annual bonuses.

The INMF affiliated unions are now strongly campaigning and negotiating the implementation of this agreement directly with CIL and avoid negotiating with contract agencies for the implementation of the agreement. (Industriall, 2013a). Besides this, INMF organized a series of awareness workshops, a systematic mapping of the workplaces, collecting information on non-standard workers and identifying potential organizers among contract workers. A training program was developed to train permanent and contract worker organizers, while education workshops for non-standard workers encouraged them to struggle for equal or at least better treatment. Building stronger unions has enabled non-standard workers to achieve improvements to their working conditions.

The INMF has shown that organizing non-standard workers is not only possible, but that it increases the power of all workers to negotiate better pay and working conditions (Industriall, 2013b). other multi-employer bargaining models in the public sector like an ad-hoc representative body of contract workers arising out of a spontaneous action negotiating either with the principal employer or the contractors, a contract workers' or regular workers' union negotiating with the principal employer such as NLC Madras Atomic Power Station in Kalpakkam in Tamil Nadu, contract workers' union or the regular workers' union negotiating directly with the contractors and reaching an agreement with the contractors' association (TNPL in Tamil Nadu) and finally the contract workers themselves sometimes form a co-operative service society, which supplies contract labourers to the principal employer and negotiates or plays an important role in determining their service conditions (e.g. NLC, Kalpakkam Atomic Energy and others, especially in Tamil Nadu).

### **Role of tripartite social dialogue**

India has a system of a tripartism which was built with considerable effort of the Central Government to initiate a social dialogue between workers' and employers' representatives. One of the main agencies in India to promote social dialogue is the Indian Labour Conference (ILC) which was first established in 1940 (Nordic Consulting Group, 2011). This is a tripartite organisation operating at national level consisting of government (the Ministry of Labour and Employment), trade unions and employers' organisations, including PSUs. There are seven Industrial Tripartite Committees (ITCs) to discuss the labour related issues concerning the particular industry of which two -- the ITCs for electricity generation and distribution and for road transport -- include public sector employers.

At the various tripartite meetings the principal interest of trade unions has been to regularise the services of contract workers especially when contract workers perform similar task to those done by regular workers, contract workers are controlled by the principal employer, the contract labour system is a sham and the contract employee has worked for several years with the same employer. Trade unions have held that contract labour is exploited (GOI, 2010a) and therefore the Contract Labour Act should be amended to provide for automatic absorption of contract labour when a prohibition notification is issued by the government (GOI, 2007). According to them the public sector should act as a model employer and refrain from engaging contract workers in jobs that are perennial in nature. In fact the Licensing Officer/Registering Officer under Contract Labour Act should be vested with statutory powers to on the spot verify whether the nature of job done by the contract workers is perennial or similar to the job performed by the regular worker in the Industry/Establishment or elsewhere. Further, since the principal employer is always in a better position to deal with the defaulting contractors than contract workers, they should take responsibility for enforcing compliance of the provisions of the Act with contractors. In any case, the labour inspectorate should be strengthened (GOI, 2010a). Trade Unions should also be empowered to file complaints in the Court of Law if the provisions of the Act (GOI, 2010b). The wages should be directly deposited into their accounts of contract workers and should be revised to take into account experience and skill acquired (GOI, 2010b). Moreover, contract workers should not be terminated without any justifiable reason (GOI, 2010a), rather when there is a change in contractors, the same contract workers should be engaged by the incoming contractor (GOI, 2010b).

On the other hand, employers justify the system of contract labour for reasons such as the sporadic nature of the work, difficulty in ensuring close supervision, flexibility in manpower deployment, ability to concentrate on core competencies etc. (GOI, 2007). In fact employers argue that instead of prohibiting the employment of contract labour, contract labour should be provided with all statutory facilities and benefits available and applicable to regular employees (GOI, 2010a). Abolishing contract labour especially in non-core activities would lead to capital-intensive mechanization further reducing employment opportunities. Their view is that the employers should be given flexibility to determine the composition of the workforce for the industry to survive in the competitive environment (GOI, 2007). The licensing officer should not be vested with statutory powers to decide whether a particular job

entrusted to contract worker is similar to a job done by the regular worker and the principal employer should be absolved of the responsibility for all statutory compliances as the employer of the contract labour (GOI, 2010a). Further, employers observe that it may not be desirable to equate the wages of a contract worker with wages of a regular worker for similar work done. Equating the wages of contract labour with that of regular worker will only negate the experience and the quality and skill of regular workers (GOI, 2011).

Given the above the Tripartite Group constituted during the 42<sup>nd</sup> Indian Labour Conference with a view to facilitating greater social protection to the contract workers submitted its Report on 31-12-2009 with the proposal to amend the act where the contract labour performs the same or similar kind of work as the workmen directly appointed by the Principal Employer, the wage rates, holidays, hours of work social security and other conditions of service of contract labour shall be the same as is available to the workmen on the rolls of Principal Employer. Further, the contract agreement between the Principal Employer and the Contractor should clearly indicate the wages contribution towards social security schemes and other benefits that are to be paid by the contractor to workers (GOI, 2012; GOI, 2010a).

## **Conclusion**

The public sector in India was supposed to play an important role in the economic development of the country and was entrusted with the task of building strategic industries such as irrigation, power, railways, ports, communications and heavy industries. It was also supposed to play the role of the model employer with exemplary personnel policies, practices and procedures. Accordingly, the government also favoured a policy of trade union recognition and collective bargaining that would lead to cordial industrial relations resulting in benefits in terms of wages and fringe benefits such as housing, medical aid and education of children of employees. However, with neoliberalism becoming widespread the public sector has been put under tremendous pressure to perform and compete. The principle of parity that was a feature of collective bargaining across the public sector has now been replaced by disparity which takes into accounts the market conditions and capacity to pay of each unit. As a result, employees working in financially weak public sector units have not received wage increases since 1994. Further, the ban on recruitment and the pressure to keep costs in check have encouraged non-standard work relationships that violate labour regulation and basic workplace rights. Though union response to this phenomenon is lacklustre, some

public sector unions have welcomed contract labour as members into their unions while others have formed co-operative service societies, which negotiates or plays an important role in determining their service conditions (e.g. NLC, Kalpakkam Atomic Energy and others). Nonetheless, through collective bargaining, unions have secured regular payment of wages through bank transactions, deduction of provident fund contributions, access to medical facilities in company hospitals and annual bonuses. At national level, their increased strength has helped Indian unions to successfully secure an agreement in 2012, which grants a substantial increase in wages and other allowances for non-standard workers in the public sector coal industry (Industriall, 2013). Thus, organizing non-standard workers is not only possible, but it also increases the power of all workers to negotiate better pay and working conditions.

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