

**Organizing the Unorganized: The Dynamics of Organizing of and Negotiating for
Contract Workers in India**

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Introduction

The current phase of globalization has been primarily driven by tremendous changes in the field of technology and transportation. These changes have impacted the product market in two ways. The technological developments have aided the arrangement or division of production across regions and thereby creating a new “geography of production”. This also means distribution of tasks from the time of raw material extraction to designing and final transportation of the finished product to far flung regions. In its trail, these also create networks of production and accommodate deep and wide production supply chains which mean diverse forms of workplaces and workers. These affect labour market and hence its governance in significant ways. Secondly, globalization has led to intensification of competition apart from the widening of the market potential. Along with these, the product market has been subject to tremendous fluctuations both on the supply side owing to constant innovations in technology on the one hand and the demand side due to the changes in the tastes and preferences of the consumers.

The main imports from these changes are that the labour market governance and the institutional framework of the industrial relations system require restructuring in a manner that is conducive to a dynamic product market operating in the globalized economic context. The employers argue that these product market changes necessitate a flexible labour market and a departure from the conventional industrial relations practices reminiscent of the Fordist production system. Labour flexibility can be understood as the ease with which employers are able to respond to developments in the product market and changing macro-economic conditions. The main component of the flexibility strategy is the numerical flexibility which means detachment from the classic life-time based employment in a same firm. The “standard or regular employment” is taken to cover full time, open ended contract with social security benefits (see ICEM 2008) and the employments not conforming to these are referred to “non-standard” or “non-regular” employments – I will use the term “non-regular employment” in the paper as is the practice in India. The most marked trend in the labour flexibility strategy is that employers have shifted from directly employing temporary workers to employing workers through intermediaries (ICEM 2008), which is popularly known as “contract labour” in India.

The trade unions oppose the labour flexibility argument and the strategy of the employers on several grounds. The globalization drive in fact necessitates more regulation by the government

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as the employment and income policies have created insecurities in several spheres, viz. employment, income, skill, voice and so on which have socio-political implications. These flexibility strategies affect the “quality of employment” and also the “decent work” agenda (see Shyam Sundar 2008, b, for a discussion of decent work concept). They have adverse implications for a fair globalization.

Nine categories of employment usually obtain in most industrial establishments in India, viz. (i) permanent, (ii) trainees (non-statutory) , (iii) probationers (subject to confirmation), (iv) *badlis* (substitute workers for absenting permanent workers), (v) temporary, (vi) fixed term employment (FTE) employees, (vii) casual, (viii) apprentices (under the Apprentices Act, 1961) and (ix) contract workers. The categories (i) to (viii) are directly employed and categories (ii) to (ix) can constitute the non-regular or flexi-category workers. Flexi-category types can also prevail among white collar employees. Female workers/employees may in some industries and in some contexts constitute non-regular or flexi-category workers/employees (Deshpande, Standing and Deshpande 1998).

In most cases, the “non-regular employments” will be characterized by a combination of all or several of the following features: low or no employment security, less pay or allowances, no annual increments, uncertain and often working hours, differential treatment as compared with regular workers, little or no training, less or no social security benefits, poor occupational health security, less or no paid leave and holidays, denial of or less scope for union and collective bargaining rights and so on (see Table A.1 for a comparison of conditions of employment and work between regular and non-regular workers). The decent work agenda requires that while productive work and employment is available in a macro economic sense, they are characterized by securities and rights (including representation and voice). The differential incidence of securities amongst the workers creates inequities in the labour market and these could have socio-political implications. Then it becomes necessary to enquire into the developments with regard to the improvement in the work conditions of non-regular workers and the institutional practices underlying them. At the same time, the trade unions that are mandated to improve their conditions of work are under trouble thanks to the globalization drive. The employers and the critics of labour regulation are pushing for labour flexibility policies. Trade unions are resisting them. These impart dynamics to the issues surrounding particularly the non-regular workers.

Here I concentrate on one category of non-regular workers, namely contract workers for several reasons. The contract workers constitute an important aspect of numerical labour flexibility strategy of the employers (the principal employers or the user enterprise) as these indirectly employed workers are preferred by them to the directly employed flexible categories of workers like casual or temporary workers because of “legal distancing” in the use of contract labour, i.e. the statutory liabilities are on the contractors and not on the principal employer. The contract labourers could be dispensed with at ease as and when the product market conditions demand. Further, the principal employers would not run the risk of regularizing the contract workers on the ground that these workers were not on their pay rolls. Since the contract workers are not directly employed by the principal employers these workers cannot raise an industrial dispute involving the principal employers and to challenge the contract labour system. Indeed, till recently, the contract workers were not covered by the Industrial Disputes Act, 1947 which law enables the workers covered by it to raise an industrial dispute. There could be tensions between the directly employed workers, say, the regular workers and the contract workers. They may be

exploited by the employers or the contractors to weaken the organizational rights of either. The trade unions argue not unrealistically that the contract labour system could be exploitative owing to these factors. Finally, as we note later the incidence of the contract labour has been rising tremendously in the post-reform period. Thus, the contract labour system is characterized by interesting dynamics and it will be instructive to note the debate on and the developments with regard to it in the post-reform period.

This study is based on 30 collective agreements concerning contract workers, government documents, among others and on extensive interviews with the representatives of trade unions and of employers' organizations, with management officials and with government representatives (the details of these are given in Shyam Sundar 2011, b).

This paper is organized as follows. I briefly explain the contract labour concept in Section I. As contract labour employment is an important aspect of numerical labour flexibility the employers in India have been demanding liberalization of the Contract Labour Act. I review the debate on the labour flexibility in general and the contract labour flexibility in particular in Section II. I discuss the strategies that trade unions have resorted to improve the conditions of contract labourers in Section III. The trade unions have for various reasons begun to intensify their organizational efforts to organize the contract workers and conduct struggles for the improvement of conditions of these workers. I discuss them in Section IV. The trade unions negotiate collective agreements to formalize matters relating to employment and non-employment issues. I discuss in detail the issues featuring in the negotiations and the patterns of negotiations in Section V. Finally I make concluding observations.

I

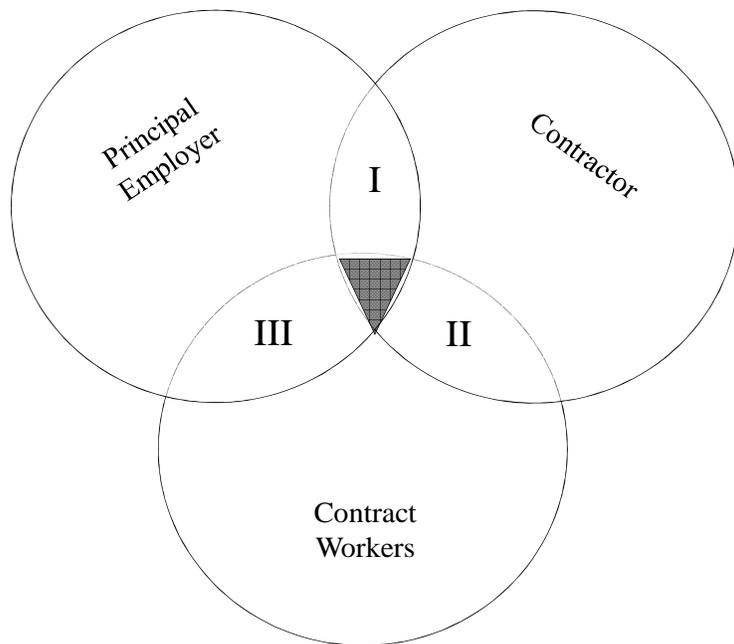
Contract Labour: An Introduction

The 'contract labour' is applied to labour which is employed to perform some work through an intermediary (a contractor) and hence no direct employment relationship exists between the principal employer (I use this term which is in vogue in India) for whom she does work and herself. There could be a single contractor or chain of contractors. The relationship between the principal employer and a contractor is a commercial contract and can assume two forms. There are two kinds of contracts, job contracts and labour contracts. In the case of job contracting, a contractor undertakes to get a job done or a product produced with the aid of her workers according to the requirements of the principal employer. But the raw materials, drawings, tools, space and machines etc. are provided by the principal employer. The contractor is paid the transaction or conversion costs (i.e. the cost of conversion of raw materials into a finished product) (see Gupte 2004:p.204; Ramanujam 2004). In the case of labour contracting, the contractor merely supplies her workers to the principal employer according to the requirements of the latter. The principal employer pays the contractor a lump sum according to the contract out of which the contractor pays wages and the statutory social security benefits like the provident fund and medical insurance contributions and the residue is her profits or net revenue. The principal employer allocates work to and monitors the performance of the contract workers (see Gupte 2004:pp.203-4). In this paper, I am not concerned with outsourcing or the commercial contracts but with labour contracting. In this case of the former, the service provider firm or the outsourced unit will come under the relevant labour laws as a separate industrial establishment. I am concerned here with the triangular relationship as shown in the figure below.

The contract workers are those who work for a contractor or a sub-contractor and is covered by the Contract Labour (Regulation and Abolition) Act, 1970. According to the Contract Labour Act, “a workman shall be deemed to be employed as “contract labour” in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer (section 2 (b) of the Act).

Figure - 1

Tripartite Nature of Contract Labour Market



I, II, III – Overlaps

Shaded Area – Tripartite Zone

II

The Contract Labour Flexibility Debate in India

The institutional framework of the industrial relations system (IRS) and the labour market is structured on the state interventionist model wherein the state agencies such the executive, judiciary, labour administrative agencies will determine the “rules” governing them as opposed to the “voluntarist model” wherein the state intervention is limited to the extent of providing no more than a facilitating legal framework. This was a part of the state interventionist strategy to promote industrial development through licensing (infamously called as the “license raj” model) and control of the private sector on the one hand and dominant role for the public sector, on the other hand. The Industrial Disputes Act, 1947 (the ID Act), the Trade Unions Act, 1926, the Contract Labour (Regulation and Abolition) Act, 1970 (the Contract Labour Act) are the three major labour laws that govern the IRS and the labour market. The ID Act provides for machineries for resolution of industrial disputes, defines the rules for the conduct of strikes and lockouts and related issues and regulates employers’ actions like lay off and retrenchment of workers and closure of firms among others. Chapter V-B of the ID Act requires the industrial establishments employing more than 99 workers to comply with a host of procedures especially to take *prior permission* from the government to effect lay off and retrenchment of workers and to close down industrial establishments. The Trade Unions Act extends a set of rights to and imposes obligations on the [voluntarily] registered trade unions.

As the preamble of the Contract Labour Act states it is an Act to “regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith”. It applies to establishments employing 20 or more contract workers and to contractors employing 20 or more workers. The principal employers should register their establishments with the government and the contractors should obtain license from the government to be eligible to execute work through contract labour. The central or the state government may constitute an Advisory Board (Board) to advise it on matters relating to administration of the Act.

The most controversial clause of the Act is Section 10 (1) which empowers the central or the state government to *prohibit* (after consultation with the Board) the employment of contract labour in any process, operation or other work in any establishment. The appropriate government before issuing the prohibitory orders should consider (1) the conditions of work and benefits provided for the contract workers in the establishment concerned and (2) other relevant factors such as whether (a) the process or work is *incidental* or *necessary* for the industry, (b) it is of *perennial* nature, (c) if it is done ordinarily by *regular* workers, and (d) it is sufficient to employ *considerable* number of full-time workers.

The Act also seeks to promote the health and welfare of contract labour (sections 16 to 19 in Chapter V). The contractor should pay wages to her workers in time and in the presence of the representative of the principal employer. The liability in the matters concerning the wages and the welfare facilities ultimately falls on the principal employer. The Rule 25 (v) (a) of the Contract Labour (Regulation & Abolition) Central Rules, 1971 stipulates that “in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen directly employed by the principal

employer of the establishment on the same or similar kind of work:...” The Contract workers are also covered under other laws providing for social security like provident fund, medical insurance and so on.

The Labour Reform Debate

The New Economic Policy 1991 marked a decisive shift in economic policy, in response to the criticisms of the regulatory system concerning the product market, from regulation, public sector domination and import controls and substitution to liberalisation, privatization and globalisation. The shift from state regulation to market economy comprised freedom from regulations and control and a larger role for private enterprise, reduction in the space for public sector, and opening up of the economy. Arguing that there is interface between the product market and the labour market, the employers and the academics critical of the regulatory system have demanded liberalization of the IRS and the labour market in India (see Shyam Sundar 2011, a, for a discussion on labour reforms and for references on this issue).

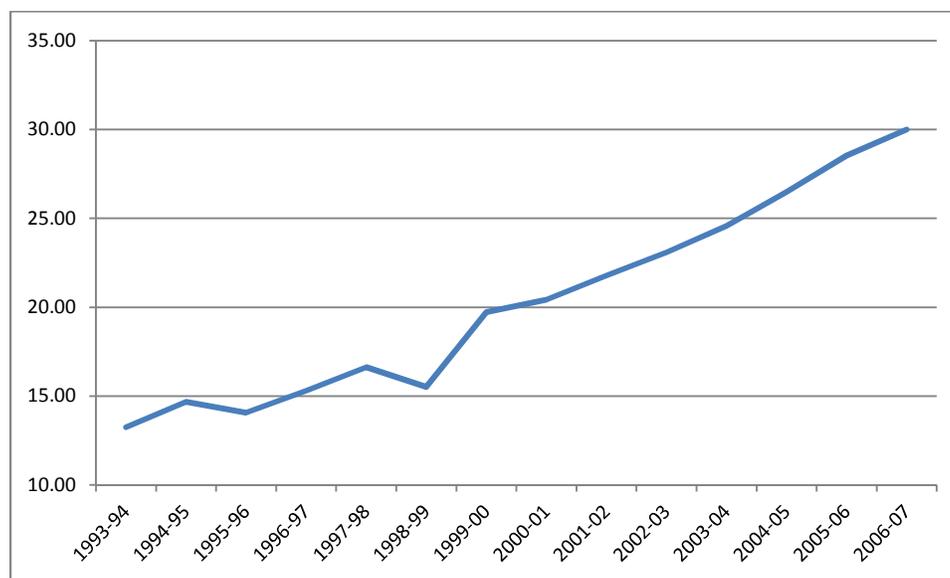
The labour reforms demands include freedom to the employers to retrench or lay off workers and to close down establishments without prior permission from the government, free employ of contract labour, liberalize “inspector-raj” model of labour regulation, reduce paper work for firms in terms of returns, musters, records, etc. to be maintained (what I call it as “labour bureaucracy”), rationalize and modernize labour laws to iron out inconsistencies and remove antiquated labour law provisions, and so on (see Shyam Sundar 2009, a, b; 2010, a, for a full discussion of labour law reform debate in India). Thus, the main emphasis of the employers in the post-reform period has been to create a new or undo the old unsuitable institutional framework in the IRS and the labour market to enable them to promote and sustain competitiveness of firms so necessary in a globalizing economic system. Of these, two issues have dominated the debate on labour reforms in India in the post-reform period. The employers demand deletion of Chapter V-B of the ID Act. They further demand liberalization of the restrictive provisions relating to the employment of contract labour under the Contract Labour Act. The market logic demands labour flexibility and competitiveness (*via* low cost) which the contract labour system provides; it also enjoys social legitimacy as it leads to employment generation and hence has implications for macro-economic policies concerning unemployment and poverty. The employers give a twist to the labour reform argument by observing that a tiny proportion of workers employed in the formal sector (about 7 percent) protected by labour laws, trade unions, collective bargaining, government intervention enjoy a premium often at the cost of the huge number of workers employed in the unorganized sector (93 percent) and it is time the government turned its attention to the latter.

The trade unions turn the employers’ argument on its head by observing that informalization is rising as a result of the globalization drive. Research has shown that the employers in the formal sector notwithstanding the restrictive labour regime have increased employment by raising the numbers of flexi-category workers and that increase in employment in the last decade was primarily due to rise in informal employment (see Deshpande, Sharma, Karan and Sarkar 2004; Bhalla 2007). They demand universal coverage of labour laws to cover the unorganized workers and social security legislation for these workers. With regard to contract labour, they argue that the best way to solve unemployment is to increase productive investment and not to resort to labour contract system as the employers argue. The flexibility strategy in general and the contract labour system in particular would only generate “low quality jobs”. The contract labour

system has created “inequalities” in the labour market and intensified insecurity, led to exploitative labour market practices and weakened the bargaining power of trade unions. They refer with concern to the increasing incidence of contract labour in India. The trade unions have been demanding changes in the Contract Labour Act to improve the employment conditions concerning the contract workers. Their main demand is that the contract workers should be extended employment security and the Contract Labour Act should be amended accordingly. Their other demands are as follows. (a) The 20 workers cut off for the applicability should be removed and the Act should apply to all units (there are some unions that demand the applicability of the Act to establishments employing more than 9 workers). (b) Wages to contract workers should be paid through the banks. (c) Contract workers should also get wage increments on the basis of their experience and skill. (d) A separate inspectorate with adequate personnel for inspection of matters relating to the Contract Labour Act in each state and effective implementation of the labour laws in general and the Contract Labour Act in particular. (e) Payment of minimum wages prevalent in the company/firm/industry/region to the contract workers in the company (see Shyam Sundar 2012, a, for a discussion on the reform debate on contract labour in India).

We see from the figure below that the share of contract workers in total workers in the organized factory sector shows a steep rising trend save for a brief dip in 1998-99. The share of contract workers in the organized manufacturing sector has increased from 13.24 percent in 1993-94 to 30 percent in 2006-07 (see also Maiti 2009, Bhandari and Heshmati 2006 for similar trends).

Fig. 1 Proportion of Contract Workers in Total Workers in Organized Factory Sector in India, 1993-94 to 2006-07



Source: Annual Survey of Industries (ASI), Central Statistical Organization (CSO) (various issues)

The rise in the share of the contract workers in the total production workers is called by trade unions as “contractisation or contractorisation process”. The estimates given by trade union

leaders both at the organizational and enterprise level and survey estimates by researchers reveal that the official figures on contract labour employment are an “underestimate”.

III

Strategies of the Trade Unions

What are the options left for the trade unions and the workers’ organizations to represent and improve the interests of the contract labourers? The fundamental issue is the organization of the contract workers. The trade unions in India (like elsewhere) historically concentrated on the typical worker, viz. male, regular, blue collar worker working in the large sized manufacturing industries and ignored others. As a result, women, casual, contract workers and those employed in non-typical service industries and so on were little represented in or covered by trade unions and collective bargaining (organizational strategy). The trade unions and the workers’ organizations *then* can resort to one or a combination of the following strategies for the improvement of conditions of work for contract workers.

- *legal action*
- *political action (seeking favourable amendments in laws)*
- *state intervention via abolition orders*
- *tripartite discussions (national/state)*
- *collective bargaining & direct action*

Legal Action

There exists consensus among researchers in jurisprudence that the judiciary in general delivered judgments until the early-1990s or so that sought to establish and protect the rights of workers like the right to strike, employment security and so on (see Dhawan 2003; Pavani 1985; Singh 2008, for the recitation and analyses of judgments on these issues). But the judiciary seems to be taking stances in the post-globalization period which have taken away the long fought labour rights in the areas of right to strike, workmen’s compensation, employment security of casual and contract labourers, and has developed a new perspective which aids the process of globalization. In the U.P. State Brassware Corporation Ltd. Vs. Udai Narain Pandey case in 2005, the Supreme Court observed that “The changes brought about by the [subsequent] decisions of this Court probably having regard to the changes in the policy decisions of the government in the wake of prevailing market economy, globalization, privatization and outsourcing is evident” (<http://www.lawyersclubindia.com/sc/U-P-State-Brassware-Corpn-Ltd-Anr-Vs-Udai-Narain-Pandey-1628.asp>, re-accessed 15 May 2011).

The Supreme Court in Air India Statutory Corporation Vs. United Labour Union in 1997 (shortly the Air India case) took a pro-active stance and ruled that in the event of abolition of contract labour the tripartite relationship becomes bi-partite (as the contractor disappears) and the principal employer should absorb the contract workers and regularize their services (called the “automatic absorption” argument). This provided tremendous boost to the contract workers and litigation and struggles to reap benefits of this judgment followed. But this legal relief was brief.

The Air India judgment was referred to a Constitutional Bench of the Supreme Court and the case also included contract labour in other public sector units like Steel Authority of India

Limited. In 2001 the Supreme Court (Steel Authority of India Ltd. Vs. National Union Waterfront Workers, shortly the SAIL judgment) reversed the Air India judgment by arguing that the Contract Labour Act does not provide for automatic absorption of contract workers upon abolition (see Cox 2002, 2008; Singh 2008 for a technical discussion of the two judgments) unless the contract labour system is proved to be a sham arrangement. Significantly, it argued that abolition of contract labour does not render the contract workers unemployed as they could be employed by the contractors elsewhere. This judgment has led to a considerable drop in the litigation for permanency of contract workers.

In a recent judgment, the Supreme Court observed that, “in order to avoid their [employers’] liability under various labour statutes, employers are very often resorting to subterfuge by trying to show that their employees are, in fact, the employees of a contractor. It is high time that this subterfuge comes to an end” (The Hindu 2011). Notwithstanding this “late awakening” by the judiciary, the legal route in terms of approaching the judiciary for relief for the trade unions does not seem to be encouraging.

State Intervention via Abolition Orders

The trade unions are also in a fix owing to the SAIL judgment. Earlier, the trade unions filed cases under Section 10 (1) of the Contract Labour Act to the Labour Department for orders for abolition of contract labour in a process in a firm. The government in line with their political correctness stand was more inclined to pass the prohibitory orders though often legally contested by the employers. Post-SAIL judgment, the trade unions do not press the government to pass orders for prohibition of contract labour as this judgment has ruled out regularization of the services of the contract workers upon abolition.

Social Dialogue and Political Action

The institutional base for social dialogue in the form of existence of the tripartite forums has been laid during the Second World War period in the colonial period. The federal tripartite forums formed during that period such as the Indian Labour Conference (ILC) and the Standing Labour Committee (SLC) have made significant contributions to the law and rule making process (see NLC 1969). They however did not function since the early-1970s and have been revived in the early 1990s during the post-reform period (see Mathur 1993).

Based on the suggestions of the trade unions and the discussions in the 42nd SLC (held in December 2007, see GoI 2007, a, b; see also 2007, c), the item, “all issues connected with contractualisation of labour” was discussed in the 42nd ILC in February 2009 (see GoI 2009, a, b). The views and suggestions on the main policy issues diverged radically. Hence the Conference Committee on this issue recommended the constitution of a task force comprising experts and representatives of workers and employers organizations (GoI 2009, b). Pursuant to these recommendations, a tripartite group was constituted by the government in June 2009 to “examine the provisions in the Contract Labour (Regulation & Abolition) Act, 1970 and suggest amendments to the Act” keeping in mind the views of the workers’ and employers’ groups expressed in the 42nd ILC. The tripartite group met six times and submitted its report at the end of 2009. The Group made a few recommendations concerning the peripheral issues but could not reach “consensus” on the main issues like employment security. The issue “problems of contract labour” (social security, wages, etc. and amendments in the contract labour legislation to

provide for employment security) was also a part of the three key themes discussed in the 43rd ILC during 23-24 November 2011 (GoI 2010, b). But nothing substantial emerged out of these deliberations.

The social dialogue has failed on account of the persistence of rigid positions held by the social actors and the ambivalence of the government. The Workers' Group demanded amendment of Act to provide for the automatic absorption of workers upon abolition among others. The employers did not accept this at all. They persisted with their fundamental argument on the inevitability of contract labour flexibility in the era of globalization and insisted on removal of abolition clause in the Act. They suggested that the regulation clauses concerning the workers could be strengthened (see GoI 2010, a, for more details on the deliberations in the meetings). The government did not mind the impasse in its so-called search for consensus. The ILC has been hailed as "Labour Parliament" by the political leaders in their speeches to the ILC (see references to these descriptions in GoI 2009, b; Labour File 2002). The social dialogue through these tri-partite forums has not been productive as this forum has been used by the tripartite actors to push through and reiterate their views and perspectives rather than going beyond this for some policy compromises and solutions. I will note shortly instances to show that the social actors in contrast to their rigid positions have pursued accommodationist policies on contract labour, though resulting from negotiations and agitations (see Venkata Ratnam 2003, Shyam Sundar 2012, b, for flexible positions taken by social actors in other aspects of employment relations like productivity).

Organization and Negotiation Strategy

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

Four factors aided organization of the non-regular (contract) workers in recent years. One, trade unions realizing their shrinking base (as the formal sector employment declined steeply, see Shyam Sundar 2012, a, for data and references on them) needed to organize the hitherto unorganized to sustain and or expand their organizational coverage. Further, there has been a moral need to become socially inclusive organizations which would mean organizing the vulnerable sections of the workers. Two, the numbers of non-regular workers have risen owing to the aggressive labour flexibility strategies followed by the employers in both the private and the public sectors. These workers could not be ignored. Further, given their expansion in the large sized establishments especially in the government sector, there exist conducive conditions for organizing these workers like economies of scale and so on. Three, both the permanent and

the non-regular workers have realized that the globalization process poses threats to *both* of them as the employers seek to substitute non-regular for the regular workers; further the non-regular could suffer from poor wages and work conditions or could undercut the regular with these (despite the social norms). Then, it pays for the both to forge solidarity to confront the divide and rule strategies of the employers (see P&GWFI 2007). Four, till the beginning of the 2000s or so the workers and the unions have concentrated on the legal and administrative routes, i.e. to resort to litigation and get legal relief from the courts and approaching the government for abolition of the contract labour system under the Contract Labour Act; but some adverse judgments (like SAIL and Umadevi judgments, see Shyam Sundar 2011, b, for more details) have blocked the legal route and required the consideration of alternative strategies like organization of contract workers and negotiating for them.

There are several institutional challenges to organization of and collective bargaining for contract workers. In some cases, owing to the triangular relationship characteristic of the contract labour system and the depth of the sub-contracting system that develops, the location of the employment relationships for these workers may not be clear. These raise questions and concerns for collective negotiational points. The most prominent strategy of the principal employers is to threaten to or actually terminate the contractors when the contract workers attempt to form a trade union. Either prompted by the this threat or *suo motto* the contractors suspend or dismiss the union leaders and the worker-members when they attempt to form trade unions and strike work for better service conditions. Employment insecurity is the *biggest* obstacle to institutionalize employment relations in the case of the non-regular workers. As we saw earlier, the judiciary has not been of much help in recent times; in fact, several adverse judgments have dented the long-won employment rights (see Singh 2008).

The employers tell the union leaders of regular workers to “mind their own business”, i.e. to negotiate for their constituency of permanent workers and not for the contract workers who the principal employers tirelessly maintain that these are not “their” workers”. The unions sometimes wilt under pressure and seek to gain benefits for the “insiders”, i.e. the permanent workers in exchange for giving up organizational and negotiational efforts concerning contract workers. They are firstly loyal to their main constituency namely the permanent workers. The leaders who specialize in organizing the contract and casual workers have often lamented about the indifferent and even hostile attitude of regular workers and the absence of ‘social vision’ on the part of union leadership. The divide between regular and non-regular workers is still wide and deep despite growing displays of solidarity in a number of cases.

There is evidence (both anecdotal and research) to show that the principal employers often use several small sized contractors to avoid coming under the purview of the Contract Labour Act and other related labour laws (see Rajeev 2005). The scattered and the small sized contract employment do not aid unionization and collective bargaining efforts. The political power and patronage enjoyed by the contractors in some cases poses problems for organization of the contract and casual workers.

The issue of the existence of employer-employee relations between the principal employer and the contract workers has been one of the issues of the legal battles in Indian labour movement and this weakens the legal basis for claims for negotiations. Also, it is known that the contract workers are not covered under the ID Act. In fact, one of the demands of the trade unions is the demand to include the contract workers under the purview of the ID Act. The coverage under

this Act brings with it a host of labour rights, such as the right to raise a dispute, the right to strike and so on, which are not enjoyed by the non-regular workers.

In a basic sense, the union leaders argue that there is no statute at the central level in India to bring the employers to the bargaining table. The non-ratification of the ILO Conventions relating to the freedom of association and collective bargaining (see <http://www.ilo.org/ilolex/english/docs/declworld.htm>, accessed 15 January 2012) does not help matters either.

IV

Organization and Struggles of Contract Workers

There are several success stories of organizing the contract workers in the country and we highlight here a few instances (see Shyam Sundar 2011, b, for a thorough discussion on this and the next section). The union organizational aspect of the contract workers has shown three characteristics. One, the established and the affiliated trade unions [central trade union organizations (CTUOs) or the regional trade union organizations] have begun to (a) include the contract and casual workers as members of the union of the regular workers or (b) float a separate organization for them under their banner. The CTUOs other than those mentioned above like All India Trade Union Congress (AITUC), Centre for Indian Trade Unions (CITU), Indian National Trade Union Congress (INTUC), Trade Union Co-Ordination Centre (TUCC), Self Employed Women's Association, All India Central Council of Trade Unions organize contract workers and establish separate federations of them or include them amongst the regular workers' organizations (see Shyam Sundar 2011, a, b, and 2012, b, for details and references on them).

Two, either spurned or neglected by regular workers and their unions, the contract workers form their own union organizations, which is still in the nascent stage. The case of contract workers' organization in the Reliance Energy Ltd. in Mumbai is a case in point. It employs around 3000 regular employees and around 4500 contract employees; the latter are said to be in service for periods ranging from 5 to 15 years (the story is based on the note on the struggle by Vasudevan (2007) and interviews with him). They perform regular work and are reported to be paid 40 percent of the wages of the regular employees. The company is covered under the Bombay Industrial Relations Act (BIR Act), 1946. Under the BIR Act, the Bombay Electric Workers' Union (BEWU) has been the "recognized union" (see Shyam Sundar 2008 for the provisions relating to the trade union recognition under the BIR Act). The recognized union enjoys monopoly power to sign collective agreements among other advantages. It was learnt that the BEWU excluded the contract labourers from both its union organization and the collective agreement and usually signed settlements only for its constituency, i.e. the regular employees. The contract workers wanted to enroll as members of the BEWU, but were not admitted by the latter. Thus ignored, the contract workers worked under comparatively poor and unsafe working conditions, did not enjoy employment security and were deprived of other benefits that are extended to the permanent workers. These adverse factors, the hostility of the recognized union and the following incidence prompted the contract workers to form *their* own union. The contract workers struck work for 15 days when the management refused to pay death compensation to the widow of a young contract worker, who died of burn injuries at the site. The strike by the contract workers and the intervention by the government and of Trade Union

Solidarity Committee (TUSC) resulted in payment of compensation to the widow. The success of the strike led to the formation of Mumbai Electric Employees Union (MEEU) in July 2005. This story underlines the tensions inherent in the interface between non-regular (especially contract workers as they are indirectly employed) and the regular workers (see later on this).

Three, the trade unions and other organizations in a local place come together to form a “local level organization” which forms the focal centre of struggles and organization of both regular and non-regular workers. The Shramik Ekta Centre in Pune is a case in point. In Pune the union pattern is enterprise-based unions which is not affiliated to any state level or national level union organizations, political or otherwise. But more than 60 such enterprise-based unions in the industrial belt came together and formed a local networking organization called Shramik Ekta Maha Sangh (shortly the Maha Sangh). One of the biggest problems faced by unions in this area is the contract labour system which is preferred by employers for reasons mentioned earlier. The Maha Sangh relies less on the judicial route and more on direct struggles. The main activities of the Maha Sangh are to (a) build networks among the enterprise based unions, (b) conduct solidarity actions supporting struggles by its member unions (conduct of *morchas*, *dharnas*, solidarity token strike, contribution of funds, etc.), (c) organize the unorganized workers in the factories, and (d) employ rational and innovative methods to strengthen struggles such as seeking information under the Right to Information Act, 2005 and putting pressure on the management and the government to sort out the issues and problems.

Struggles of and for Contract (Non-regular) Workers

The existence of discontent among the contract workers has surely aided the organization of these workers. The non-regular workers especially the contract and casual workers on several occasions have struck work either spontaneously or under the banner of a union and in solidarity with the regular workers. Though the regular workers enjoy the advantage of the power of the established unions and can conduct strikes with professional skills, they are often at a disadvantage as employers (in the supply chain network) can outsource production or use contract labourers. Though the contract labourers do not have the institutional power, they are large in number and sometimes are in a strategically strong position (especially in oil, petroleum and refining sectors) and thus are better able to strike work. The trade unions of contract workers strike work on several issues. But the two principal issues relate to charter of demands which largely revolves around wages of and facilities for contract workers and employment security of non-regular workers (see Shyam Sundar 2010, b; 2011, b, for details and discussion of strikes by contract and casual workers).

There are three characteristics of the struggles by non-regular (contract) workers that are worth mentioning here.

- **Type 1: Tensions and Conflicts between Regular and Contract Workers:** When the permanent workers strike work, the contractors supply contract and migrant workers to the firm to continue production during the strike and to break the strike. Secondly, the employers cleverly pit the contract/casual workers against the regular workers. Thirdly, the firms use the strike by regular workers as an opportunity to dispense with them and replace them with the contract workers (Gurgaon Workers News 2010). Fourthly, the issues of the contract workers are not taken up by the regular workers and there exists a divide between the regular and the non-regular workers.

- **Type 2: Solidarity between the regular and non-regular workers:** Both the contract workers and the regular workers come together and strike work and wherein the regular workers take up the issues relevant to the contract workers. Both regular and contract workers in Bosch and Brembo automobile factories in Pune went on a strike on July 18 2009 demanding (a) implementation of pay rise stipulated in the 2007 collective agreement and (b) equal pay for equal work for contract workers and protesting against the huge disparity in wages of regular and contract workers, among others (“Bosch and Brembo employees call off strike”, <http://ntui.org.in/bulletin/october-2009/> accessed 25 February 2010). The management tried several strategies to break the strike and the solidarity between two categories of workers. In the course of the strike, the management made an offer to the regular workers that the conflict could be settled amicably if they agreed to the condition that contract workers and the trainees would not be taken back for work. It threatened to close down its operations if this offer was not accepted by the union. The union refused the offer and insisted on their recall with increased wages and benefits (“Bosch and Brembo workers remain united”, <http://www.imfmetal.org/index.cfm?c=20709>, accessed 25 February 2010). Eventually the regular workers had to surrender and the contract workers lost their jobs. But the solidarity between the two classes of workers sent strong messages about the direction of the working class movement. In the public sector wage negotiations, it is for the first time in the seventh round of wage negotiations held since mid-2000s, the CTUOs have included the demands concerning the contract workers that “Wage rise for the contract workers in PSUs ensuring at least the minimum wage and benefits available to the permanent workers in all respective PSUs” (see Shyam Sundar, 2010, b, for more details on the organizational solidarities arising in the public sector). The CTUOs propose to conduct an all-India strike on February 28, 2012 and two of five issues of the strike concern vulnerable workers: one, “No contractorisation of work of permanent/perennial nature and payment of wages and benefits to contract workers at the same rate as available to the regular workers of the industry/establishment”; two, “Amendment of Minimum Wages Act to ensure universal coverage irrespective of the schedules and fixation of statutory minimum wages at not less than Rs. 10,000 per month” (*Trade Union Record*, 06-20 January 2012, p.1).
- **Type 3: Spontaneous and Independent Actions by Contract Workers:** The non-regular workers conduct industrial actions on their own such as occupation of a factory premise, wild cat strikes, holding up materials or output, striking work and so on; they range from spontaneous actions owing to lack of organization to organized strikes. For example, Hero Honda’s plant in Gurgaon employed 1,200 permanent workers and 4,000 contract workers under three contractors. The contract workers claimed that they had been doing the work of regular workers for seven years and their services were not regularized. The contract workers were not organized by any union. But they decided to go on a flash strike from April 10, 2006 demanding regularization of their services, higher pay, compensatory off, medical facilities and salary accounts in banks. The contract workers were confident that the company could not run without their services. As calculated by the contract workers the company declared holidays during the strike for the permanent workers. The management defended it by saying that it had advised the permanent workers to stay away from the strike. The strike ended on the fifth day following an understanding reached between the workers and the management. The brief

press statements issued indicates that the contractors had assured the striking contract workers that their genuine grievances would be addressed (see “Hero Honda Casual workers on Strike”, <http://labourfile.org/PrintNewsDcoment.aspx?ID=92>; “Hero Honda Impasse ends”, <http://www.tribuneindia.com/2006/20060416/biz.htm>; “Strike at Gurgaon Hero Honda Plant ends”, <http://www.expressindia.com/news/print.php?newsid=66147>; “Contract workers on strike at Hero Honda”, <http://www.thehindubusinessline.com/2006/04/12/stories/2006041203780100.htm>, accessed 13 October 2009).

V

Collective Bargaining with respect to Contract Workers

We shall note here the salient features of negotiations and the contents of collective agreements between the representatives of contract workers and the representatives of the employer/contractors concerned during the last five to six years. The following discussion is based on the “contents analyses” of collective agreements and forms of collective understandings and other documents and interactions with representatives of workers (representatives of both regular and non-regular categories of workers). There are two types of collective agreements reached - in the first type, the regular workers’ union negotiates on the limits of contract labour system and in the second type the regular workers’ union or the contract labourers’ union negotiates issues concerning the contract workers (the employment security, wage issues, safety, social security and welfare issues). I organize the discussion of collective bargaining into three parts, viz. (a) protection of regular workers’ interests, (b) employment security in the form of regularization of employment and continuity of employment, and (c) regular wage negotiation exercises which cover wages, social security, welfare and other terms and conditions of employment. The bargaining process is a typical one wherein the parties conduct negotiations, use pressure tactics like agitations and where the trade unions succeed a collective agreement is reached. Here we discuss a few important instances.

I. Agreements Regarding the Contract Labour System: Protection of Regular Workers’ Strength and Affording Flexibility to Employers

The unions of the regular workers enter into informal or formal understandings with the principal employer to (a) get an assurance that the regular workers will be engaged in the “core activities” directly related to production, and (b) allow the [principal] employer to use the contract labour system or define and delimit the jobs to be given to the contractors. Four benefits flow from these arrangements. One, the union leaders of the regular workers secure impressive wage rises in exchange of this arrangement. Two, the regular workers are certain that *their* jobs will not be outsourced or contracted and hence are assured of employment security. Three, the delimitation gives freedom and certainty to the principal employer on the issue of engagement of contract labour and prevents industrial conflict on this issue. Four, the company could plan its labour cost management and be certain about it.

It is significant to note that a trade union of regular workers in a well-known company in Mumbai has agreed to the management’s proposal to have the low value adding activities (i.e. switchboard loading and unloading, opening of wooden boxes) of the firm to be carried out by

service providers (i.e. contractors). It is an informal understanding between the company and the regular workers' union. The principles of the understanding were incorporated in an "exchange letter". The management of Hindustan Unilever Ltd. in Silvassa (in Dadra & Nagar Haveli) reached an agreement with the union that it shall engage the workers covered by the agreement only in the "core activities directly related to production" and reserved the right to engage the contract labour system in "all ancillary activities such as canteen, housekeeping, gardening, loading, unloading and jobs of such nature". In Thermax Company in Pune, the regular workers' union and the company agreed in January 2007 to freeze the size of the permanent workers at 598 (which means no retrenchment of these workers and maintenance of the strength in the event of natural separations) and in exchange the union accepted that the company could continue to employ contract labour system as per the existing practices. The company agreed to consider employment of eligible daughters and sons of the permanent workers (subject to qualifications and other factors) and the selected workers will be absorbed after training in the company for one year. Thirdly, the regular workers' union considered this as a good compromise and a win-win deal. The company got the freedom to have labour flexibility and the union could feel safe about its membership size and control over employment matters.

II. Employment Security of Contract Workers

The trade unions seek to realize the objective of employment security of the contract workers through the collective bargaining route. The principal interest of the workers' organizations is to provide employment security to the contract workers *via* "regularization" or "continuity" of the services of the contract workers. As seen earlier, in the case of contract workers the judicial position is that the Contract Labour Act does not provide for automatic absorption of contract workers upon abolition of the contract labour system. The demand for regularization and continuity of employment is justified on four grounds, viz.

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

Trade unions negotiate with principal employers to absorb the contract workers on their rolls or to ensure continuity of employment to the contract workers. In the case of the latter issue, the understanding or an agreement reached between the principal employer and the trade unions is communicated by the principal employer to the contractors for implementation or is incorporated in the commercial contract between the principal employer and the contractors (P&GWFI 2007). In some cases, the contractors are also involved in the bargaining process. To be sure, the contractors resist this dictum and hence also the principal employers (see Shyam Sundar 2011, b, for the arguments advanced against this employment arrangement). We will review here a few successful instances.

(a) Regularization of Employment

Tamil Nadu Electricity Board, Tamil Nadu

The Tamil Nadu Electricity Board (shortly, the Board) is a public utility service arm of the Government of Tamil Nadu. As many public sector units it employs a large number of contract workers. It employs around 21,600 contract workers in the circles (branches) other than thermal, hydro and gas turbine projects. The contract workers engaged in distribution and other circles filed for absorption under Section 3 of the Industrial Establishment (Permanent Status to Workmen) Act, 1981 and the labour inspectors invariably granted absorption. The Board held negotiations with the unions representing contract workers since May 2005. The Board eventually agreed to consider the absorption demand of the contract workers in a phased manner. The rule by Dravida Munnetra Kazhagam (DMK) in the state helped in no small measure to the agitations led by its labour wing, the Labour Progressive Front (LPF). The settlement in 2006 covers 21,600 contract workers. The Minister for Electricity announced on the floor of the Legislative Assembly that in the initial exercise 6,000 contract workers will be absorbed suitably (according to their qualifications and technical training) with effect from 15 September 2007. A Committee will look into the cases of the remaining workers. Based on its report, the remaining workers will be absorbed in a step wise process in three batches, 6000 (I batch), 6,000 (II batch) and the remaining 3,600 during 2007-09.

Neyveli Lignite Corporation, Tamil Nadu

The Neyveli Lignite Corporation (NLC) is a central public sector organization engaged in open coal mining and employs 18,792 regular workers and 13,800 contract workers, of which 13000 are employed by private contractors and the rest by the NLC Industrial Cooperative Service Society (shortly, the Cooperative Society). The contract workers are organized by several unions. On 16 August 2008, these unions struck work demanding regularization of the contract workers, bonus among others. The Memorandum of Understanding (MoU) valid for five years from 16 June 2008 provided for regularization in a phased manner of the contract workers. The implementation of the agreement was delayed owing to the intransigency of the management and to union rivalries and litigation by a section of contract workers. Another agreement signed on 27 October 2010 which will be valid for five years with effect from 30 October 2010 provided for expediting the regularization process subject to the legal outcome in the cases pending before the judiciary.

The Thermal Power Station, Jharkhand

The management of Thermal Power Station in Jharkhand signed a tripartite agreement on 13 January 2009 to regularize contract workers, which it did not implement. It engages 1,000 permanent workers and 2200 contract workers. On 4 June 2011, the contract workers with the support of the trade union of the permanent workers went on a strike demanding implementation of the 2009 agreement. As a result of the numerical strength of contract workers and with the cooperation of the permanent workers, the plant was fully shut down. The management at late night on the same day agreed to implement the 2009 tripartite agreement (*Trade Union Record*, 06-20 July 2011, p.5).

M/s. Alok Pvt. Industries Ltd, Mumbai

The company in response to the persistent demand of the union agreed in 2003 to absorb 55 workers as per seniority criteria. First, the workers would be taken in as temporary hands and after successful completion of the temporary work tenure, they would be taken on probation basis for a period of three months and be made permanent on satisfactory services. The company gave a temporal plan of phased absorption – 20 workers in 2003, another 20 in 2004 and 15 in 2005.

Radhakrishna Foodlands Pvt. Ltd., Mumbai (Private Sector)

The contract workers in Thane district in Mumbai are organized by the engineering wing of the CTUO, Hind Mazdoor Sabha (HMS) called the General Mazdoor Sabha. The union has been negotiating agreements with the principal employer on wages and other working conditions concerning the contract workers. In 2007 agreement, the management agreed to make 65 percent of the contract employees employed by the contractor, viz. the Current Guarding Facility Management Pvt. Ltd., permanent by December 2009 in three different batches starting from December 2007. However, the management would consider several variables like discipline, seniority, attitude, productivity and attendance of such employees for regularizing the services of the contract workers.

(b) Continuity of Employment of Contract Workers

The unions have been pragmatic in their approach with respect to employment security of the contract workers. The trade unions initially seek to secure regularization of the services of the contract workers. If this strategy does not work, they rework their strategy to demand “continuity of employment” of the contract workers. It means that even when the contractors change, as they do on several occasions, the contract workers would be continued to work for the contractors recruited by the principal employers. In other words, the new contractors are bound to employ the workers of the old contractors in the firm. Put simply, the contract workers enjoy *quasi-regular* services.

Rashtriya Chemical Factories, Maharashtra

The Mumbai Shramik Sangh (MSS) affiliated to the Center for Indian Trade Unions (CITU) has organized around 350 contract workers in the Rashtriya Chemicals Factory (RCF) in Mumbai. The contract workers went on an indefinite relay hunger strike demanding provision of regular work to grass cutting contract workers, continuity of services of contract workers and with existing benefits and wages, and periodical revision of service conditions. The major demands were continuity of employment (with existing wages and benefits) and periodic revision in service conditions. A MoU was reached between the MSS and the management on 4 December 2006. The principal employer (the RCF management) agreed to provide grass cutting work to the contract workers through-out the year. It also agreed to “continue the services of the contract workers with the successive contractors”, subject to availability of work and satisfactory performance of the workers. Further, the management accepted the demand of the union to maintain “the same service conditions and the wage protection with the successive contractor”. The union agreed to withdraw all court cases if a long-term settlement is arrived at and the management has agreed to continue the dialogue on this matter.

Sandvik Company, Maharashtra

The Sandvik Company management signed a MoU with the union of the regular employees, i.e. Sandvik Asia Employees' Union (SAEU) on 15 September 2008. It is a wage agreement reached with the union of the regular workers and it contained some special clauses relating to the contract labour system, which we will discuss here. The then practice was that the contractors employed the contract workers for six months, terminated them and engaged new contract labourers. The union protested against this. The company committed that henceforth, the contractors will "discontinue" this employment system. The contract workers will remain the regular employees of the contractors and the latter will take care of personnel and administrative issues with regard to them. According to the agreement, the contract workers can be disengaged in the event of inadequate workload or non-renewal of the contract with the contractors but the same workers should be re-engaged on a preferential basis under the same or new contractor. In exchange the principal employer gets the right to decide on the issues relating to the appointment and continuation of the contractors and the areas (existing or new) for deployment of contract labour system. The company accordingly wrote to the contractors a letter containing the aforementioned provisions of understanding and instructed them to observe the same. This is indeed a significant achievement where the understanding between the principal employer and the regular workers' union has been inserted as "clauses of the commercial contract" between the principal employer and the contractors.

Nokia India Private Ltd., Tamil Nadu

The Nokia India Private Ltd., in Chennai engaged CEVA Freight (India) Ltd. which in turn sub-contracted the work to M/s Adeco Flexicone Workforce Solutions. The contract workers working under the latter resorted to a stay-in-strike in October 2009. The state labour department asked the striking workers to resume normalcy and hold negotiations with the management. Capitalizing on the rule by DMK party in the state, its labour wing, the LPF organized these workers and submitted a charter of demands to Nokia Company in November 2009. Since the sub-contractor was on a short tenure, the agreement between the LPF and the two contractors was for a year only. But the main contractor, CEVA Freight (India) Ltd. agreed that, in the event of non-renewal of contract to M/s Adeco Flexicone Workforce Solutions, it will persuade the new contractor to suitably accommodate the workers on the rolls of M/s Adeco Flexicone Workforce Solutions Limited.

Main Features of Negotiations relating to Employment Security

The regularization and continuity of employment negotiations reveal at once a strong sense of pragmatism on the part of the management and the unions and conflicts. The management first resists and eventually bites the bullet and agrees to regularize the flexi-category workers on *its* terms and conditions. There are two aspects of the regularization programme, viz. it will be in a phased manner as all of them cannot be regularized in one stroke; the workers satisfying the criteria laid down by the management such as skills, discipline record, etc. will only be considered. The principal employer lays down a programme for regularizing the workers. The programme often involves a step wise progression: from indirect employment (contract employment) to directly employed status, a temporary or casual, followed by training and probation and then permanency. The principal employers concede to this demand because the contract workers possess some special skills and experience (owing to long years of service) and

these are valuable to the employers. But there can be conflicts in deciding the criteria for selection of workers to be regularized. While the management wishes to use the criterion of qualification and skills, the unions demand the criterion of “seniority” to be adopted. In fact, in Neyveli Lignite Corporation and Madras Atomic Power Station in Kalpakkam, conflicts surfaced on this issue. In Madras Power Atomic Power Station 150 contract workers were working through a co-operative services Society for around 20 years. 33 workers out of them were regularized in October 2008 on the basis of qualification and age limit but not on seniority basis. The remaining 80 workers (some others have died due to occupational health hazards) demand that should also be made permanent (vide letter to the Collector, Kancheepuram District, Tamil Nadu and agitational pamphlets of the workers). In some cases, the union accepts the criteria imposed by the management for regularization of flexi-category workers (e.g. Radhakrishna Foodlands, M/s. Alok Industries).

III. Wages and Allowances and Other Issues

It may be noted here that where contract workers are organized, the wage negotiations in their case follow the pattern usually observed in the case of regular workers. The trade unions present a charter of demands to the principal employer or the contractors or their association if any. Negotiations take place between the parties concerned. In some cases, the contract workers strike work in support of their demands. In few cases, intervention by the government conciliation machinery takes place. The conditions of work are often contained in formal agreements and in some cases in informal documents like non-stamp paper documents (minutes, jottings, memorandum of understanding, etc.). The trade unions always make it as their strategic negotiational point to always bargain with the principal employers as they do not endorse in principle the contract labour system. At the same time, the principal employers do not wish to engage in negotiations with regard to contract workers lest this would amount to admission of the existence of direct employment relationship between them and the contract workers.

However, the trade unions have succeeded in several cases to force the principal employers to come to the negotiating table. In some cases, a tripartite agreement is reached between the principal employer, the contractor(s) and trade unions. There are instances where the trade unions strike agreements with the principal employers and the same is implemented by the contractors – in a few cases the principal employers incorporate them in the commercial contract with the contractor. The involvement of the principal employer in the wage negotiations reflects the bargaining power of the contract workers and the strategic importance of the contract workers. Why else the principal employers who as a matter of principle seek to disown the contract workers would be a party either directly or indirectly? These are instances of multi-employer bargaining that arise owing to the peculiarity inherent in the triangular employment systems like the contract labour system. In some companies, the union demands regularization of the contract workers and in the negotiations that ensue the principal employer/contractors agree to negotiate wage revision in exchange for not pressing the demand for regularization, which the union in a pragmatic sense agrees to. In such cases, the regularization demand acts as a *threat* to bring the employers to the negotiation table and extract concessions.

In many cases, the union negotiates directly with the contractors and reaches agreement with the contractors/sub-contractors/contractors’ association. In some companies the contractor employed by the principal employer sub-contracts the work to different sub-contractors and the

union enters into an agreement with both the contractor and the sub-contractors – the sub-contractors' contract is short and hence the agreement sometimes is for a year. In some public sector enterprises or departmental undertakings, the contract workers form a co-operative service society and the society controls the supply contract labourers to the principal employer; this becomes a channel through which regularization of services of contract workers takes place. In a few companies in North Chennai in Tamil Nadu, an unique pattern obtains. The *potential* contractor holds talks with the union in the company and invariably the contract is given by the principal employer to *that* contractor. Thus, both formal and informal mechanisms exist with regard to the non-regular workers.

On the wage and allowances front, five issues have engaged the attention of the trade unions, viz. the minimum wages, the implementation of equal pay for equal work principle, a system of dearness allowance, minimum bonus payment (as per the provisions of the Payment of Bonus Act, 1965) and other allowances. They also demand canteen facilities, safety equipment, social security benefits and so on. The parity in pay and other conditions reflects the monetization of trade unions' concern for employment security. But this principle has been contested by the employers. They argue that labour's compensation should be determined by economic criteria such as market forces (demand and supply), skills and experience and not by the legal provision mentioned above. Further, this provision can impose undue financial burden on the firms and in the case of the public enterprises on the government's financial position. Some union leaders feel that parity between the two classes of workers will be a solution to the contract labour debate; in fact, the government seems to be thinking along these lines – “If contract workers are provided similar wages and other facilities that are available to regular employees much of their problems can be tackled...” (Views of Mallikarjun Kharge, Union Minister of Labour and Employment quoted in MoL&E 2010).

Main Aspects of Wage Negotiations

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

The contract workers' unions have been successful in making the principal employer to commit to the issue of wage slips and payment of wages through a bank account to the contract workers to prevent the irregularities committed by the contractors - though the Contract Labour Act decrees that wages should be paid by the contractor under the supervision of the representative of the principal employer. The bonus agreements are few and in many cases the understandings are informal and verbal. Where unions are established and are vocal, agreements for bonus payments are made. In most cases, the employers pay the statutory minimum bonus of 8.33 percent (under the Payment of Bonus Act, 1965) to the workers or a lump sum amount.

In some cases the contract workers get impressive wage rise and even dearness allowance benefits. Recently, the contract workers in Cochin Shipyard Limited secured a 30 percent wage rise and their annual increments will be linked to seniority (<http://www.ntui.org>, accessed 18 September 2011). In Jharkhand, the contract workers in Heavy Engineering Corporation Ltd. in

Ranchi led by CITU reached an agreement which not only secured wages and other benefits but also reduced the tenure of the earlier agreement reached by other unions from ten to five and a half years. The rise in wages was in the range of INR 140-150 for differently skilled workers. Further, it assured wages of higher skilled workers to lower skilled workers if they crossed a given level of service – for example, an unskilled worker with 7 years of service will get wages of a semi-skilled worker and so on (see CITU 2011). In Sandvik Company in Pune, the contract workers will be paid minimum wages and allowances as per the Minimum Wages Act (applicable in Maharashtra), house rent allowance @ 5 percent of the basic wages plus allowance as per relevant law in Maharashtra, INR 20 per actually worked day as canteen allowance, provident fund @ 12 percent of basic wage and special allowances, 8.33 percent bonus, gratuity for those with qualifying service, earned leave as per the provisions of Factories Act, uniform and shoes, etc. Further, the contract workers subject to satisfactory performance will be deemed as permanent workers of the contractors. These are impressive benefits.

The agreements provide for national and festival holidays (up to 12 in a year), earned leave as per the provisions of the Factories Act (i.e. one day for every 20 days worked), casual leave (up to 6 days in a year), sick leave and higher pay (double the wages) for work on national and festival holidays and so on. The agreements cover work safety issues (safety gear including shoes), work apparel issues (like uniforms, shoes, monsoon wear, pair of socks, washing allowances etc.), a host of allowances like house rent, shift, lunch, attendance, travel, educational allowances. Some agreements provide private medical cover in the absence of legal medical coverage. In some cases, the agreements provide for death relief fund (the workers' contribute one day's wages and the employer equal or double of it) to be paid to the deceased worker's families. In some companies, the retirement age is also determined (mostly 58 and 60 in a few cases) - in Nava Sheva port in Mumbai, a company agreed to give "immediate employment to the dependent family member or near relative of such workmen in case of death, disability of workmen or retirement". Though the flexi-category workers are covered under the social security laws like the Payment of Gratuity Act, 1965, the Employees' Provident Fund Act, 1971 and so on some agreements make specific commitments to pay them.

Conclusions

Employers in India have complained of over-dose of regulation in the labour market and the IRS arguing that these introduce "rigidities" in the system and impede economic efficiency. The rigidities cause inefficiencies and hurt the competitiveness of firms operating in India and deter foreign investment and these have implications for employment generation and eventually for poverty alleviation. In India, the liberalization of the product market has been taking place on a more significant scale since 1991. The employers demand liberalization of the labour market and the IRS as a complement to the product market reforms. Their labour reform agenda covers several aspects. But the two principal demands concern labour flexibility, viz. the right to fire employees without prior permission from the government and the freedom to hire contract labour in activities at least in "non-core" activities of the firm/industry and in special circumstances subject to market pressures in core activities also. The trade unions have contested these reform demands and conducted wide ranging protest activities. They have demanded in general wider coverage of labour laws (to include hitherto uncovered workers in the so-called formal sector and news laws for the unorganized sector workers) and effective implementation of them. In relation

to contract workers, they have demanded employment and other forms of securities (income, voice and social securities) and better conditions of work.

The dominant share of the informal sector in the total employment and increasing informalization in the formal sector often attributed to globalization on the one hand and the protests of and the pressure exerted by the trade unions and informal economy workers' organizations on the other hand led to the enactment of social security and right to employment laws by the government (see Shyam Sundar 2011, a, for further information on these). But the important component of informalization of employment in the economy in the post-reform period is the rise in the share of non-regular workers in the so-called formal sector in the economy (see Deshpande, Sharma, Karan and Sarkar 2004). In particular the share of contract workers in the total workers in the organized manufacturing sector has increased from 13.24 percent in 1993-94 to 30 percent in 2006-07 in the post-reform period in the country.

The trade unions have resorted to several strategies to improve the conditions of work of the contract workers. They have concentrated on four primary issues with regard to the contract workers, viz. employment security, wage issues, bonus, and social security issues. The results of the legal route are mixed though the trade unions are not willing to give up hopes on this front. Especially the SAIL judgment (denying automatic absorption of the contract workers in the event of abolition of the contract labour system unless it is a sham arrangement) has to some extent blocked the legal route to the trade unions. This judgment has also rendered their demand for abolition of contract labour system (under the Contract Labour Act) useless, as abolition will probably result in their unemployment.

The trade unions use the space available in the social dialogue institution of tripartite deliberations and lobbying and protest strategy to pressure the government to carry out amendments in the laws and policies of the government to secure employment security and increased income (higher minimum wages) and social security. But these processes have not yielded much positive results. While trade unions seek to effect through these macro level strategies to introduce changes at the systemic level, they have also *pragmatically* begun to use the collective bargaining route.

The tremendous rise in labour flexibility has posed problems for the trade unions. On the one hand, their "organizational space" has shrunk and on the other hand they are charged with social and organizational duties to organize the non-regular workers and negotiate for improvement of their work conditions. The huge growth in the numbers of the non-regular workers especially the contract workers and the decline in regular employment prompted a rethink on both the organizational strategy of the conventional trade unions and the attitudes of the regular workers. As a result, the conventional trade unions (and the organizations concerned with the unorganized workers) have sought to intensify the organizing of the non-regular workers despite the adverse labour market and institutional conditions. The paper has cited some successful instances of organization of contract workers mostly by trade unions of regular workers which form the institutional base for improvement of conditions of work for them. The inclusion of wage issues in the bargaining agenda for the sixth round of wage negotiations in the public sector and inclusion of contract labour employment system in the macro struggle agenda of trade unions in the recent years indicate the solidaristic policies of trade unions. While these instances show encouraging trends wherein the conventional trade unions and regular workers are adopting organizationally and socially inclusive practices of organizing non-regular workers under their

fold and in fact indicate the “market” for labour organization in India, it has not been smooth process; there are niggles. There is still void in the institutional interface between the two segments of workers in an universal sense. Indeed, in some cases like the Reliance Energy Limited case, the contract workers themselves floated their own trade union when they were ignored by the conventional trade union. The “insider-outsider” dichotomy applies with some amount of force in this case. The collective agreements by which the regular workers seek to protect their jobs and grant in exchange freedom to the [principal] employers to use contract labour system or outsource the prescribed activities lends credence to this theory and strengthens the apprehensions of non-regular workers (see Balan 2010 and Shyam Sundar 2011, b, for a discussion on this issue). I have noted elsewhere in detail instances where the contract and casual workers have had to strike work often spontaneously and on their own to resolve their grievances (see Shyam Sundar 2010, b, for a detailed discussion of strikes by non-regular workers in recent period). Hence, there are both healthy instances of solidarity and tensions between regular and non-regular workers.

The trade unions have exerted pressure on the principal employers or the contractors to come to the negotiating table to conduct negotiations with them. The significant feature of governance of employment relations concerning contract workers is the employ of negotiational processes like bargaining, industrial action, state intervention and so on to determine pay and other conditions similar to regular workers and employment security of contract workers. The role of government is significant in this regard. They have been able to make significant improvements in the employment security and service conditions of the contract workers through their organizing and collective bargaining drives and agitations. The trade unions basically fight for employment security of contract workers. This demand is justified by long years of service by contract workers, performance by contract workers of work usually done by regular workers, sham-ness of contract labour system (though the legal route assures regularization in this case, it can be tortuously long), and so on. They demand regularization of services of contract workers by the principal employers. This demand can also be a bargaining ploy to secure impressive wage gains. If this demand is not feasible, the unions negotiate on pragmatic grounds continuity of employment of contract workers even when the contractors change. Though both the demands are resisted by employers, both the public and the private sector employers, trade unions have been able to achieve some gains on this front. Negotiations on employment security issues owing to the nature of employment are invariably held with principal employers and in some cases concerning continuity of employment, the contractors also figure in.

Collective agreements similar to those concerning regular workers have been reached in the case of contract workers. The typical agreement contains provisions relating a wage structure, a host of allowances, leave and hours of work, firm level social security provisions apart from those legally eligible, occupational health and safety matters and so on. On the wage front, the issues concerning procedural matters like payment of wages through a banking process (say by check or through an account) and substantive aspects like a higher minimum wage, equal wage for equal work, dearness allowance and bonus and other allowances have been negotiated. Some impressive gains have been made in these regards. The conventional wage negotiations usually involve the contractor(s) and in some cases the principal employers also. The involvement of principal employers indicates the power centre in the employment relationships concerning the contract workers. These are instances of multi-employer bargaining that arise owing to the peculiarity inherent in the triangular employment systems like contract labour system.

This paper has shown that the employment and service conditions of the contract workers improve significantly if four institutional conditions are met with: one, existence of enabling conditions for organizing the contract workers; two, solidarity between regular and contract workers; three, readiness of workers (both regular and contract workers) to strike work if necessary to bring the principal employers and/or the contractors to the negotiating table; and four, the existence of resources (legal knowledge, finance, alternative employment, etc.) to litigate to prove sham contracts to demand regularization (Shyam Sundar 2010, b; 2011, b).

The organization and negotiation routes succeeded in several cases because of some reasons, viz. the economic logic (human capital embodied in contract workers proxied by long years of service), the pragmatic outlook of the social actors, the rising solidarity between regular and non-regular workers, the legitimacy of the issues (such as long years of service, equality), the play of norms and values, the increasing bargaining power of contract workers owing to strategic location of them in the work structure and their numerical strength (their number equals or exceeds the regular workers), the pressure of direct action (like strikes) and legal action (litigation, threat of seeking orders for abolition of contract labour system) and government intervention.

While the case studies presented here are impressive, the going in the post-reform period has not been easy for trade unions and probably will not be. But they indicate the potential role of organization and negotiation route. If these are supported by legal reforms and positive social dialogue action at the macro level, the labour market outcomes and the economic developmental gains will be formidable.

The rights framework is an enabling condition for the institutionalization of collective bargaining and thereby ensuring decent work. The institutional conditions for exercising trade union and collective bargaining rights need to be strengthened which will provide the framework for efficient conduct of collective bargaining. As a first step, the government needs to ratify ILO Core Conventions, viz. the freedom of association (Convention No. 87) and the right to organize and collectively bargain (Convention No, 98). There is also a need to insert in the central labour laws the conditions necessary for collective bargaining namely, the recognition of trade unions and the obligation to bargain and bargaining in good faith.

There is a need for a fair and an equitable wage compensation for the contract workers. There should not be debate on the principle of equal pay for equal work as this is a non-contestable equity argument; only the logistical issues of laying down the criteria and the regulatory process needs to be determined. In fact, this may lead to a better distribution of value added in the firm and secure a cordial labour-employer relationship. There is some promise on this issue as the government seems to be in favour of this. While a blanket provision providing for employment security is not desirable, there is surely a need to regularize the services of non-regular workers who have worked for long and the institutional conditions should facilitate this; the moot question is the definition of “long service”. The social dialogue process can fix these norms. Finally, regulation of non-employment aspects such as social security, occupational safety and health and other facilities needs to be strengthened which calls for ensuring effective implementation of existing labour laws which by itself would result in enhancement of labour welfare.

Appendix

Table A.1 Comparison of Terms and Conditions of Employment of Regular and Non-regular Workers in India

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

coverage	declining	
Collective bargaining coverage	Low	Virtually nil
Voice security	Medium	Low or nil
Safety and health at work place	Strong law, union monitoring – Medium	Least safe
Nature of work	Regular	Often regular work but paid lower wages; meant to be engaged for periphery work

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