Whither Contract Labour Abolition?

The Contract Labour (Regulation and Abolition Act), 1970: From Rise to Repeal

INTRODUCTION

The Contract Labour (Regulation & Abolition) Act, 1970 (CLRA Act) is a unique piece of Indian labour legislation, possibly unparalleled in the world.

As labour laws have been passed, improving the conditions of labour in the organised sector in the decades following independence; industrial establishments have been increasingly resorting to the device of contractualisation - that is of subcontracting out the work of their establishment to contractors - in order to obfuscate the "employer-employee" relationship and to avoid their liability/ responsibility as employers.

Such precarity of labour brings in its wake – (i) almost insurmountable obstacles to unionization and "recognised" collective bargaining; (ii) a glass ceiling separating two sections of working class – the permanent workers and the contractual workers - which become, as Jonathan Parry and Ajay TG so graphically describe in their book "Classes of Labour"[1] on labour in the Bhilai Steel Plant, almost two different classes, with all the consequent political implications; and (iii) an extremely poor standard of living of a majority of the working class even in the organised sector, devoid of benefits of most labour legislation.[2]

The declared objective of the CLRA Act was to abolish contract labour wherever possible, and to otherwise regulate it. It restricted the conditions under which contractualisation could be resorted to, facilitating the prohibition of contractualisation where work was perennial, necessary to the enterprise, and regular in nature. It defined a "Principal Employer" in the context of a "Contractor" and laid down certain responsibilities upon this Principal Employer - in particular ensuring the timely and full payment of wages - but also of keeping the Labour Department apprised of the particulars of contractors it had engaged, the numbers of workers under such contractors, and the details of the nature of work entrusted to them. It laid down certain conditions to be fulfilled by the Contractors, and certain amenities that such Contractors were bound to provide to workers. It empowered governments (both Central and State) to abolish contract labour in specified processes in specific industries under their administrative control, in consultation

[1] "*Classes of Labour: Work and Life in a Central Indian Steel Town*", Jonathan Parry (in collaboration with Ajay T.G.), Social Science Press, 2019.

[2] Ravi Shrivastava & Balakrushna Padhi, "Collapse in Wage/Salary Income Growth in India, 2011-12 to 2017-18", Centre for Employment Studies Working Paper Series, Institute for Human Development.

with tripartite boards having representation from labour, management and the government. It laid down a process whereby an enquiry could be conducted by a tripartite committee whether contract labour should be abolished in a particular process in a particular industry or not. (The criteria were to include whether such work was necessary and incidental to the work of the establishment, whether it was perennial in nature, whether it was ordinarily performed by regular workmen and whether it was sufficient to employ full time workmen.) Such legislation is absent even in the most advanced capitalist economies.

However, it is equally evident from the ever-increasing levels of contractualization in the organised sector in India today, and the poor wages and miserable conditions of work this has spawned, that the CLRA Act has not succeeded in achieving its declared objective. Why was this so? Were there weaknesses and loopholes in the manner it was drafted? Did the fault lie in implementation? Or were the judicial interpretations of its provisions to blame? Perhaps a combination of all three. If anything, all these needed to be rectified, and the implementation of the Act needed to be strengthened in order to assure a basic minimum standard of wages and working conditions in the industrial sector.

However, quite to the contrary, 52 years after the passing of the Act, it is on the verge of being repealed by the "Occupational Safety and Health Code, 2020"[3] (henceforth OSH Code) - a piece of legislation which has nothing in its statement of purpose to do with the aims and objectives of the CLRA Act. Nor are any other commensurate provisions being provided in the new Labour Codes. Literally the baby has been thrown out with the bath water.

As a trade union worker since 1984, I have been continuously working with contract workers, both in the public and private sectors. During this period, I have observed or participated in, three major struggles of non-regular workers:

(i) The struggle for the departmentalization of contractual iron ore miners in the captive iron mines of the public sector Bhilai Steel Plant, at Dalli Rajhara, district Durg, Chattisgarh (1977-1993);
(ii) The struggle of contractual workers in the private auxiliaries and ancillaries of the Bhilai Steel Plant for unionization, recognition as direct employees, and the implementation of labour laws (1990-2016);
(iii) The struggle of the contract workers in the Jamul Cement Works of the private sector cement plant ACC Limited (now Holcim/ Adani) for regularisation (1990–2016).

[3] "The Occupational Safety, Health and Working Conditions Code, 2020" which received the assent of the President on 28th September, 2020 and was notified in the Gazette of India on 29th September 2020.

In all three cases, despite the fact that contractual workers carried out permanent, perennial work in core production for even decades together, the Contract Labour (Regulation and Abolition) Act, 1970 (henceforth CLRA Act) could not come to their rescue.

This experience prodded me to try to understand how, despite the legislative intent and potential; the framing, execution and legal interpretations of the CLRA Act have not only failed to abolish contract labour, but have actually legitimised its existence to the extent that today a new legal framework is coming into existence, where contract labour is no longer recognized as an evil and in fact it is the regular, permanent workman that has been abolished. The study of this Act is divided, therefore, into five parts:

A: The bulk of this paper is the history of the passage of the CLRA Act, pre-legislation procedures, situation on the ground at the time, and the political context of passage of the Act. It is a chronicle of a death foretold – the CLRA Act began with basic weaknesses which the trade unions vociferously pointed out, and which were to lead to its progressive weakening.

B: The working of the Act, particularly with reference to the abolition of contract labour by the routes of (i) notification, (ii) through the recommendation of the contract labour advisory boards. How successful or otherwise were these two routes? What was the effect of the 2001 *SAIL* judgment[4] on the functioning of the contract labour advisory boards?

C: Lifting of the corporate veil, "sham and bogus" contract labour[5], and the role of the Industrial Courts in regularising contract workers.

D: Situation of contract labour over time – Increasing Contractualisation and Increasing gap between the wages and amenities of Permanent and Contractual Workers – findings of an Unpublished Survey in the Cement Sector.

E: Case study of the struggle of the contract workers of ACC Jamul for regularisation.

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[4] "*Steel Authority of India Ltd Ltd. & Ors. Vs National Union Water Front Workers & Ors*" judgment passed by a 5 judge Bench of the Hon'ble Supreme Court on 30.08001 whereby the Court declined to absorb contractual workers who had been working for long years performing jobs where contract work had been abolished.

[5] By a "sham and bogus" contract, we mean, a paper arrangement, by means of which a Principal Employer tries to show that workmen are employees of an intermediary only to avoid his liabilities, while retaining actual control and supervision over the worker.

Methodology:

This paper is based on the following sources:

(a) Documents relating to Parliamentary Debates, and Proceedings and Report of the Joint Parliamentary Committee formed prior to the passage of the CLRA Act.
(b) Case laws of the Supreme Court and High Courts relating to the abolition of contract labour and the functioning of the CLRA Act.
(c) Discussions with a few trade union leaders and labour experts. Particularly for the discussion regarding the functioning of the Central Advisory Board, I am indebted to Shri Vivek Monterio of the Central Trade Union CITU who shared with me his experience as a member of the Central Contract Labour Advisory Board from 2001 to 2018, and also many relevant documents placed before the Board.
(d) Personal experiences of the struggles for the regularisation of contract labour particularly of contractual workers of the Jamul Cement Works of the ACC Cement Company, organised by the Pragatisheel Cement Shramik Sangh.

PART A: The history of the CLRA Act.

I studied pre-legislation processes in some detail, particularly the evidence adduced before the Joint Parliamentary Committee set up to review the CLRA Bill (henceforth JPC); the Report of the JPC and the Minutes of the Dissenters; and the Rajya Sabha Debate prior to the formation of the JPC. I discovered, what were for me, many somewhat counterintuitive facts about the situation of labour in 1968-69:

1. In many government or public sector run establishments – railways, ports and docks, mines, and public sector steel plants – by that time, already a large proportion of the workforce were contract workers. The same was true of new under-construction development projects.

2. However, labour unions still had considerable political clout at that time. They were well represented in the Parliamentary debate, cutting across regions and political parties; as well as before the JPC, which on their invitation actually visited various sites all over the country where there were large numbers of contract workers. These unions, though usually of permanent workmen, were certainly invested in the abolition of contract labour. All of them demanded that the CLRA Act should be an Act for Abolition alone, and claimed that in its present form emphasising regulation, the Act would only legitimize the existence of contract labour. All of them

forcefully stated that the beginning should be made with the government/ public sector establishments abolishing contract labour.

3. The process of legislation on this issue concerning the poorest of industrial/ organised sector workers, though taking three years, was far more detailed and transparent than anything we see today, with recording of evidence, field visits etc. The facts gleaned from the field visits and representations by workers during the field visits were used by the Committee members to pose hard-hitting questions to the employers. The recently passed Labour Codes, on the other hand, were pushed through Parliament during a pandemic with little debate, with no consultation with trade unions, and certainly no analysis of data or field visits.

4. In the evidence recorded before the JPC, surprisingly, the government/ public sector employers/management staunchly defended contract labour and suggested that the abolition of contract labour was impractical. Their opinion clearly held much more weight than that of the private employers who were, of course, all for contract labour.

5. It appears that it was the strong stand of the judiciary in "*The Standard Vacuum Refining Vs Its Workers & Others*"[6] in favour of contract workers that was one of the bulwarks of the argument for abolition. Interestingly the role of the judiciary after the coming into existence of the Act became increasingly ambivalent and ended in outright hostility to contract labour in 2001 with the "*Steel Authority of India & Ors Vs National Union of Waterfront Workers & Ors*"[7] matter.

Parliamentary Debate

The Contract Labour (Regulation and Abolition) Bill, 1967 was placed in the Lok Sabha on 31st July 1967. Almost 9 months later, on 7th May 1968, a Joint Committee was proposed by the then Minister for Labour and Rehabilitation - Mr Jaisukhlal Hathi – in the Lok Sabha, which motion was adopted by the House.

When the same proposal came up for endorsement in the Rajya Sabha, several members interjected forcefully. The following excerpts from the debate show, not only that, by this time industries such as plantations, mines, agro-based industries like sugar industries, and ginning mills of the textile industry were already using

[6] " *The Standard Vacuum Refining Co. of India Ltd. Vs Its Workmen & Ors*." passed by 4 judges of Hon'ble Supreme Court on 06/04/1960. Citation: 1960 AIR 948, 1960 SCR (3) 466.

[7] See 4 above.

high proportions of contract labour; but also that, on the other hand, a strong opinion in favour of its abolition existed, cutting across regions and political parties. Shri Rajnarayan[8] (Samyukta Socialist Party) also spoke in the course of the debate of how contractors were flooding the poorer districts of Mirzapur, Azamgarh, Devaria, Gorakhpur, Basti etc (of Uttar Pradesh) and herding together poor persons to work as contract labour on major development project programmes. From the speech of Shri Venkatraman[9] (Congress), it also appears that in certain areas there were strong movements for abolition of contract labour in South India which were being kept at bay by promising that a beneficial legislation was on the anvil and the government was in the process of passing it. This speaks to a different political culture, largely sympathetic to the plight of the working class, prevailing among the elected representatives at the time.

"SHRI ARJUN ARORA (Uttar Pradesh)(Congress): Madam, I support the motion, but I feel it is a highly belated measure. It should have been brought long ago. And it is also a half-hearted measure. ***Contract labour has been the curse of Indian labour, the biggest curse of Indian labour, and as early as 1931, the Royal Commission on Labour in India recommended its complete abolition. It is really ironical to find that what the Royal Commission recommended in 1931 was not done by the Royal Government till 1947 and our Government, the people's Government, has also taken 21 years to bring forward a Bill for abolition of contract labour****….*

….. If you abolish anything, you do not have to regulate it. The very fact that this Bill seeks to regulate contract labour under certain circumstances implies that it is not going to abolish it. I wish the Bill was primarily aimed at abolition of contract labour and no regulation whatsoever would then have been necessary*. What happens today is that contractors are fattening themselves at the expense of what is called contract labour. There is no security of employment for labour employed by contractors. There is no mechanism for the enforcement of labour laws on labour employed by contractors. ... There is no provision and no arrangement for giving contract labour fair wages or reasonable wages. There is not even any arrangement of regular payment of wages to contract labour. All possible ills concerning labour which were prevalent in the 19th century, before the first Factories Act came in 1881 or so, are still prevalent in the country as far as contract labour is concerned. I am sorry the Minister has not thought it proper to bring forward a Bill for complete abolition of contract labour, but has sought only to regularise their condition of work. Even as far as regulation of contract labour is concerned, the Bill does not make adequate provisions; it does not make provisions which may be in line with the Factories Act or other labour legislations in force in the country. I hope the Select Committee will take care of all these things and a better Bill, a more determined Bill, a fairer Bill will emerge out of the Select Committee."*

"SHRI BALACHANDRA MENON (Kerala), (Communist Party of India): Madam Deputy Chairman, I have only two suggestions to make. This Bill is only giving a statutory basis for contract labour. For the past few years we have seen too many employers and estate owners switching over to contract labour, even in regard to work of a permanent character. ***For example, in plantations in spite of the fact that productivity has increased and production has increased, in spite of the fact that larger areas are coming under plantation crops, the total number of workers remains the same as before. That is because most of the work is being handed over to contract labour, even work of a permanent character. ... Every time a***

[8] Shri Rajnarayan was at the time a Member of Parliament from Uttar Pradesh belonging to the Samyukta Socialist Party. He later gained fame for the case he won of election malpractice against the then Prime Minister Smt Indira Gandhi, and for defeating her at the polls in 1977.

[9] Shri S. Venkatraman was a two term Rajya Sabha Member from the Congress party.

new legislation comes, every time the worker gets a higher wage or bonus or some other benefit in the shape of gratuity, etc., the employers try to escape these things by creating labour which will always be on a contract basis. So, I would suggest that we should insist that for every work of a permanent character no employer will be allowed to hand it over to any contractor*. … We know, for instance, that* ***there are hundreds of workers employed in the bidi industry. The attempt is to subdivide the bidi factories under independent employers who are really contractors. Legally he is an independent employer because he has the licence but he gets only a commission from the main employer. In such cases we will have to see whether the product is for the main employer and, if so, such work should not be deemed to be under any contract****. I would, therefore, suggest that all these things will have to be looked into by the Joint Select Committee."*

(We see that this is still a period when bidis were still rolled in factories, today they are almost universally manufactured through a "putting out system" involving entire families, particularly women and children, at a pittance of a wage. The "Beedi and Cigar Workers Act, ……."[10] which was brought about to rectify this, which has also not been effectively implemented, is also on the verge of repeal with the coming into force of the OSH Code 2020. Again there are no provisions either in the OSH Code or in any other Labour Code commensurate with the provisions of this Act.)

"SHRI A. G. KULKARNI (Maharashtra) (Congress): Madam, I am lending my support to the Hon. Member, Shri Arjun Arora, that this Bill is a half-hearted measure in bringing about some improvement in the contract labour. Madam, you are well aware ***that in industries, particularly agro-based industries, in the working season, a majority of the sugar factories employ around 4 thousand workers. Out of that number, 3 thousand workers are contract labour mainly employed for harvesting and post-agriculture purposes. Madam, this labour is not given even the minimum wage; it is given a wage which is very substandard. So, actually the Government should have come forward with a measure for the abolition of contract labour because it does not get any justice at all, and this happens usually in the case of nearly three-fourths of the workers employed in some such industry where the employment is on a large scale. …… Madam, again this happens in the rural areas and in the villages where cotton and groundnuts are processed in the factories. The big employers in the ginning and other factories give all this work to them in order to avoid or escape the clutches of the Industrial Disputes Act or the Factories Act or some other Act. They give all this work in a piecemeal fashion to the various contractors and though the employees are old and are responsible to them, they are being fraudulently shown as employees of the subcontractor and thereby the labourers and the employees of the contractor do not get whatever rightful wages they are expected to get. In this connection I would urge upon the Select Committee that there should actually have been the abolition of contract labour and not such half-hearted measures like this for improving their emoluments."***

"SHRI M. R. VENKATA RAMAN (Madras) (Congress): Madam, I would request that this matter be dealt with extremely urgently and even set a time-limit for the report of this Committee to come before the House for discussion. ***Madam, every time this issue has come, the workers have been told that the matter is before Parliament… …. I happen to be the President of a trade union in Tamilnad where there are 10 thousand workers working in the mines[11] in Salem District. Madam, 7 thousand of them are on contract labour, although the 7 thousand and 3 thousand do identical work. By keeping them on contract or as contract labour the employer does not have the obligation of provident fund or***

[10] "The Beedi and Cigar Workers (Conditions of Employment) Act, 1966" is an Act aimed at preventing the subcontracting of the work of rolling beedis and keep it in factories rather than being distributed to workers home where family labour is extensively exploited at a pittance of a wage.

[11] Captive iron ore mines of the Salem Steel Plant of the Steel Authority of India Ltd.

insurance or bonus and all the other things which go with permanent employment. This is a very vexed question. The companies are running very profitably in that particular business of manufacture of firebricks etc. They say that the matter is pending before Parliament and Parliament is going to pass a statute on contract labour and under these circumstances how can they abolish contract labour immediately? With great difficulty the matter has been referred to a Tribunal along with other issues but I cannot wait indefinitely like this. And rightly the State Government says that mines are under the Central Government and thus they do not bother about what happens*. So, while agreeing with the sentiments expressed by Mr. Kulkarni and the points made by Mr. Arora and Mr. Balachandra Menon, I would urge upon the Minister that further delay in this matter is absolutely pointless and the Hon. Minister must give top priority to this matter."*

"SHRI JAISUKHLAL HATHI (Minister for Labour): - So far as the expeditious consideration of the Bill is concerned the motion says the Committee shall report by the first day of the next Session. So, this is the time given for the Committee for its deliberations. So far as the other point is concerned, the Bill is for progressive abolition of contract labour. It was discussed by the Tripartite body and it was found that it may not be possible to abolish all the contract labour at once. There might be some casual labour as the Member himself has said. A distinction has to be made between casual work and work of a permanent nature. In work of a permanent nature, no contract labour could be there and that should be abolished but where the work is of a casual nature, this may be allowed but there also various safeguards have been provided like giving licence, registration, and then certain conditions like the principal employer will be liable for the wages and several other conditions also have been laid down. All these matters are there but if there is any other suggestion to be made, naturally I am sure the Joint Committee will consider it."

The Joint Parliamentary Committee

The 45 member Joint Parliamentary Committee (henceforth JPC) also seems to have been very serious about its work. The Committee itself had a varied composition including both those who were pointedly in favour of labour and those who were in favour of the employers. But the overall inclination of the JPC was more sympathetic to the workmen. The itinerary of the Committee described in their own words[12] was as follows:

"5. The Committee held thirteen sittings in all.

6. The first sitting of the Committee was held on the 14th May, 1968 to draw up their programme of work. The Committee at this sitting decided to hear evidence from public bodies, trade unions, organisations, associations and individuals desirous of presenting their views before the Committee and to issue a Press Communique 'inviting memoranda for the purpose. The Committee also decided to invite the views of some All-India representative trade unions central organisations, railway trade unions federations, Railways, C.P.W.D., Ports and Docks, Coal and Steel undertakings and all the State Governments/ Union Territories on the provisions of the Bill and to inform them that they could also give oral evidence before the Committee, if they so desired.

7. 33 memoranda/ representations on the Bill were received by the Committee from different States/ Government Departments/ associations/individuals. (Appendix III).

8. At their third sitting held on the 21st June, 1968, the Committee decided to undertake on-the-spot study visits to the different regions of the country where contract labour was employed in large strength to enable them to acquire first-hand knowledge of the conditions in which the contract labour worked.

[12] Report of the Joint Committee on the Contract Labour (Regulation and Abolition) Bill, 1967.

9. At their fifth sitting held on the 27th August, 1968, the Committee decided to divide themselves into four Study Groups for the purpose of undertaking an on-the-spot study and approved the tour programmes of the Study Groups to visit the various industries, Ports, Docks, Railway Establishments etc. in the States of West Bengal and Bihar; Maharashtra and Goa; Mysore and Madras and Andhra Pradesh and Orissa during September/ October, 1968. (Appendix IV). During their visit, the members saw the working conditions of the contract labour and held discussions with the various officials and representatives of non-official organisations on the provisions of the Bill.

10. The Committee has decided that the Study Notes on the visits undertaken by their Study Groups should be laid on the Tables of both the Houses.

11. At their second, fourth and sixth to ninth sittings held on the 20th and 22nd June, 26th to 28th September and 23rd November, 1968, respectively, the Committee heard the evidence given by 12 parties. (Appendix V).

12. The Committee have decided that the evidence given before them should be printed and laid on the Tables of both the Houses.

13. The Report of the Committee was to be presented by the first day of the Fifth Session of Lok Sabha. As this could not be done, the Committee at their second sitting held on the 20th June, 1968 decided to ask for extension of time for presentation of their Report up to the first day of the second week of the Sixth Session. Necessary motion was brought before the House and adopted on the 22nd July, 1968. The Committee decided to ask for further extension of time up to the last day of the second week of the Seventh Session which was granted by the House on the 18th November, 1968.

14. The Committee considered the Bill clause-by-clause at their tenth to twelfth sittings held from the 6th to 8th January, 1969.

15. The Committee considered and adopted their Report on the 29th January, 1969."

Among the 33 Memoranda received by the Joint Parliamentary Committee, there were:

a) Memoranda of Governments – Assam, Haryana, Pondicherry, Delhi Administration, West Bengal, Government of Goa, Daman and Diu, Madhya Pradesh.
b) Memoranda of representatives of workers – Indian National Trade Union Congress, Lucknow (evidence recorded); Dakshin Railway Employees Union, Tiruchy (evidence recorded); All India Trade Union Congress, New Delhi (evidence recorded); United Trade Union Congress, Calcutta; Dakshin Railway Employees Union, Madurai; All India Railwaymen's Federation, New Delhi (evidence recorded); National Federation of Indian Railwaymen, New Delhi (evidence recorded); Hind Mazdoor Sabha, Bombay (evidence recorded); Hindustan Lever Mazdoor Sabha, Calcutta; Railway Go-downs Workers Union, Howrah; Garden Reach Workshops Mazdoor and Staff Union, Calcutta; National Union of Waterfront Workers, Calcutta.
c) Memoranda of representatives of private employers - Hindustan Lever Limited, Bombay; All India Manufacturers Organisation, Bombay (evidence recorded); Employers Federation of India, Bombay (evidence recorded); All India Organisation of Industrial Employers, New Delhi (evidence recorded); Calcutta Tea Merchants Association, Calcutta (evidence recorded); Builders Association of India, Bombay;

United Planters Association of Southern India, Coonoor; Calcutta Tea Traders Association, Calcutta.

d) Memoranda of representatives of government organisations – Bombay Port Trust, Bombay; Ministry of Railways (Railway Board) (evidence recorded); Central Public Works Department, New Delhi (evidence recorded); Hindustan Steel Limited, Ranchi; Madras Port Trust, Madras; Calcutta Electric Supply Corporation, Calcutta. (The evidence of the Minerals and Metals Trading Corporation of India was also recorded although no Memorandum was submitted by them.)

The four Study Groups formed by the JPC visited the following establishments and organisations[13]:

Study Group I (West Bengal and Bihar) –

(Private Sector): Tea Houses and Transit September Sheds, Kidderpore Dock Area, Calcutta; Hindustan Lever Ltd., Garden Reach, Calcutta; Balur Scrap Yard, Howrah; Banksmullia Colliery, Asansol;

(Public Sector): Calcutta Electric Supply Company, Southern Branch, Calcutta; Railway Loco Shed, Howrah; Goods & Parcel Sheds, Howrah; Garden Reach Jetty, Calcutta; Garden Reach Workshops, Calcutta; Port Commissioners Office, Calcutta; Durgapur Steel Plant, Durgapur; Hindustan Cables Ltd., Chittaranjan; Chittaranjan Locomotives, Chittaranjan; Bokaro Steel Plant, Bokaro; Hindustan Steel Construction Corporation, Ranchi; National Coal Development Corporation, Ranchi; Heavy Engineering Corporation, Ranchi.

Study Group II (Maharashtra and Goa) –

(Private Sector) Bidi Manufacturing Unit Factories, Camptee (Distt. Nagpur); Gumgaon Manganese Mines, Khapa; Carnac Bunder Goods Shed; Bombay; Mechanical Ore Handling Plant of M/s Chowgule and Co. (P) Ltd. Marmugao.

(Public Sector) Maharashtra Housing Board Construction Site, Bandra, Bombay; Bombay Port Trust, Bombay; Mazagaon Dock Ltd., Bombay; Bandra Loco Shed, Bombay; Iron Ore Mines, Hicholim (Goa); Marmugao Harbor, Marmugao (Goa).

Study Group III (Mysore and Madras) –

(Private Sector) Dalmia Magnesite Corporation, Salem; Beedi Factories, Mangalore; Bondel Quarry Mangalore.

(Public Sector) Hydro-Electric Project, Sharavathi; Railway Coal Handling Work at Bangalore City Railway Station; Railway Coal Handling Work Basin Bridge, Madras; Madras Port Trust, Madras; Mangalore Harbour Project; Mangalore Bunder; Construction site of new Mangalore— Hasson Railway Line.

Study Group IV (Andhra Pradesh & Odisha) –

(Private Sector) Hyderabad Allwyn Metal Works Ltd. Hyderabad; Hyderabad Asbestos Cement Ltd. Hyderabad; Associated Cement Company Ltd., Kittna Cements, Tadepalle; Andhra Cement Company, Vijayawada; Caltex Oil Refineries (India) Ltd., Vishakhapatnam; Orient Paper Mills, Brajranajgar, Orissa.

[13] See 12 above

(Public Sector) Construction site of new Administration Block of South-Central Railway, Hyderabad; Hindustan Shipyard Ltd., Vishakhapatnam; Vishakhapatnam Port; Rourkela Steel Plant, Rourkela.

I have not been able to access the Study Notes or copies of the original Memoranda, particularly of the various governments, all of which would be very useful to understand the situation of contract labour, as well as the stated stand of the governments at that time. The evidence recorded however is available[14] and a study of this shows the following:

Evidence adduced by the workers organisations:

I have quoted the evidence given by the workers organisations at length below. The reason is that the following interesting facts emerge from their evidence:

1. The Unions, across parties and industries, generally representatives of the regular workers were extremely anxious about growing numbers of contract labour, particularly in the government and developmental sector.
2. They were unanimous that **the Act should address abolition alone**, that regulation was not feasible or enforceable, and if at all it was to be effective, it **should address the primary issue of wage parity and also benefit parity with regular workers**.
3. They were also unanimous that **abolition should begin with the government, they saw the government as the largest employer and also the largest violator. Thus, for them, the government was not in the role of a neutral umpire between employers and workers**.
4. Naturally, in those circumstances, they were wary of giving Governments the power of notification or exemptions. And they also felt that between the Government and the employers, **these parties would have the majority in the Advisory Boards**. Hence the request for **giving these powers only to a judicial authority.**
5. Concern was repeatedly expressed that the **contract workers were given no direct forum for redressal of grievances, including for wages, for instance under the Payment of Wages Act**.
6. The Unions wanted **the four criteria for abolition of contract labour** stated in the *Standard Vacuum*[15] Case, namely – work of permanent and perennial nature, work necessary and incidental to the particular enterprise, work sufficient to employ regular workmen, and work which was normally done in other enterprises by regular workmen – **to be specifically included in the statute and not merely as criteria for consideration by the Advisory Boards**.

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[14] See 12 above

[15] See 6 above

(Here it is important to recall that in the *Standard Vacuum* Case, the case was filed by regular workers on behalf of contract workers, who did not even qualify as ‘workmen’ at that time, and the judgment, most remarkably, holding that the regular workers had a ‘community of interest’ with the contract workers, not only held the dispute as maintainable, but decided it in their favour. But after the CLRA Act clearly demarcated the two categories of workers, the option of regular workers representing the contract workers was also ousted.)

7. The Unions all expressed concern **at a minimum of 20 employees being made necessary for applicability**, as they all felt that it would become very easy to avoid application of the Act using sub-contracting. (The new Codes have increased this number to 50.)

The concerns of the Unions proved prophetic. The remarks in italics are mine.

Shri PK Sharma of the INTUC made several important points. The only Committee member who questioned him persistently on behalf of the employers was Shri RK Amin. Almost all other members used him as a sounding board as to which provisions of the Act would be effective, enforceable etc and encouraged him to elaborate his views. The following were his views in brief:

(a) "If the government is clear that the contract system should be done away with then **it should specify that, under no conditions will contract work be allowed in any industry so far as the principal processes of the industry are concerned**.
(b) **The contract system should be abolished altogether and then the advisory boards can advise the State Governments to exempt certain processes**.
(c) **In the State tripartite committee meetings held all over India, they had unanimously requested the Central Government to abolish the contract system.** *(Note that the Labour Minister had, on the contrary, claimed that in the Tripartite meetings it was concluded that a blanket would not be practicable.)*[16] **But when the Central Government has come forward with this Bill, we find that they only express a fond hope, and delegate the power to abolish to the State Governments** implying thereby that this is an evil which they shirk to abolish, and which they want the State Governments to abolish.
(d) This Bill emanates from the Government of India and from Parliament; **at least in the public undertakings directly under the Central Government, could not this Bill abolish outright contract labour**? If such a provision had been made in this Bill, could it not have been easily implemented, to start with? This Bill says that an attempt will be made to abolish contract labour gradually. Could not such a gradual attempt have been made right in the public undertakings?
(e) **The clause V(a) should be amended so as to cover seasonal work so that dal mills, rice mills, sugar industries and all industries of seasonal character are covered**.
(f) **Unless the contract between the principal employer and the contractor specifies that the lowest wage payable should be the same as is prevailing in the industry, it will not be able to check the low wages of contract workers**.
(g) **Loading and unloading is a continuous process and it should not be considered as an irregular or intermittent process**.
(h) Regarding penal provisions, I have already suggested that **these should be made a cognisable offence and the proceedings should be initiated on the application made by the Trade Union or the workman who has suffered**."

[16] Statement of the Labour Minister in the Rajya Sabha Debate extracted earlier.

Shri KG Shrivastava of the All India Trade Union Congress:

(a) "One of the characteristic features of the pattern of employment **in the Iron Ore Mining Industry is the employment of contract labour even for regular jobs of the various mining operations**. The Labour Investigation Committee has observed that the system has led to serious abuses of which underpayment of wages, miserable housing, sweating conditions of work, disregard of the provisions of the labour laws are the chief. The Committee opined that the legal abolition of the contract system would improve the lot of the workers. At the time of the present survey it is estimated that in the country as a whole, **nearly 56 per cent of the mines employed such workers**. (*The contractual miners in the captive iron ore mines of the Bhilai Steel Plant, a public sector steel plant among whom Shankar Guha Niyogi*[17] *worked are a case in point here.*)

(b) **Contract labour should not be engaged in the types of to work referred to in the Supreme Court judgment** (*Standard Vacuum Refining Co. of India Ltd. vs Their workmen and another*) on this subject, namely, factories where: (a) the work is perennial and must go on from day to day; (b) the work is incidental and necessary for the work of the factory; (c) the work is sufficient to employ a considerable number of whole-time workmen; and (d) the work is being done in most concerns through regular workmen.

(c) The Bill does not abolish contract labour at all. We demand that it should be abolished totally. Even the present strength of the inspectorate is such that they are not able to carry out the inspection of these labour laws. Even the Government has admitted that they are short of staff. (*Where is the much-touted Inspector Raj?*) Nothing will practically happen if this Bill is made into law.

(d) We say no licence is necessary, it should be totally abolished.

(e) The whole working-class movement is for the total abolition of this contract system. But when we discussed it in the Indian Labour Conference, **it was brought to our notice by the then Labour Minister that it will not be possible with the present Constitution of India and unless amendments are made there to abolish it totally**. (*This does not seem to be a correct interpretation.*) Therefore, a beginning has to be made …. so that it can be abolished at least in those categories in respect of which the Supreme Court has given a judgment. For the remaining part, our submission is that **the principal employer should be made responsible to give them the same wages, same welfare facilities and the same working hours so that in practice they will come to the conclusion that employment of contract labour is not useful to them**.

(f) It has been our stand that **in the railways and such other public sector undertakings work should be done departmentally and not through contractors**.

(g) Casual people are of a different nature; they are not contract labour as such. Our stand has been that casual employment should not be continued for a long time. There should be a specific period and we have achieved that, as far as Government departments are concerned. **There, those who work more than six months should be given the rights of regular temporary employees**. (*We can see how in the Umadevi*[18] *case the Supreme Court considered cases of casual labour employed for more than a decade and grudgingly allowed only a one-time regularisation for them, specifying that it would not act as a precedent to others.*)

(h) The penal provisions are never adequate in the labour laws. **In many cases employers find it better to violate the laws and pay the penalty than to observe the laws**.

(i) As far as the provisions of this Bill are concerned, it does not aim at abolition at all; it aims at giving licences to these contractors.

(j) It was felt that we would not be able to do without zamindars. We find now that we can do without zamindars. The same will apply to contract labour also.

(k) Wherever there is work, irrespective of boundaries, people go in search of work. Suppose you set up a factory in Bhilai or Rourkela, people roundabout those areas do come, irrespective of State boundaries.

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[17] Shankar Guha Niyogi (1943 – 1991) was a legendary trade union leader who organised contractual workers first in the captive iron ore mines of the Bhilai Steel Plant and later contractual workers in ancillaries and auxiliaries of the Bhilai Steel Plant. He was assassinated on 28th September 1991.

[18] "*State of Karnataka & Ors Vs Umadevi & Ors*." – Judgment passed by 5 judges of the Hon'ble Supreme Court on 10.04.2006.

It is not that they can come only through contractors. *(When asked how people could be recruited without contractors.)*

(l) The limit on the number of persons in an establishment, may, in our view, be reduced to 10 because in some of the departmental undertakings, in canteens, etc. nearly always ten persons or one or two this way or that are employed.

(m) The cost will go up as far as fringe benefits are concerned because the workers are denied these benefits. **If they are employed directly by the Government these benefits will have to be given to them. To that extent, the cost may go up. But to offset this there is another side. The contractors take up the work at 100 per cent or 200 or 300 per cent above the real estimated cost."**

There were several representatives of railway workers and it is clear that contract and casual workers were being deployed in a big way in the Railways which was one of the earliest employment generating departments.

Shri V Sundarmurthy of the **Dakshin Railway Employees Union, Golden Rock, Tiruchy** had this to say**:**

(a) "The railways are the main Government agency to enter into construction contracts throughout the railway system. The work relates to construction of bridges, new lines etc., remodelling, earthen work etc. **Materials such as rails, steel, and cement etc. are supplied by the railways and the labour alone is supplied by the contractor. The contractor gets the labour mostly from the tribal people in the villages, who are most depressed and backward, and who are also mostly Harijans. The labour is not paid any standard wages only substandard wages are paid to the labourers**. **Moreover, the contractor is exploiting the workmen. There is no labour law followed. The Workmen's Compensation Act, the Industrial Disputes Act and other labour laws do not apply to them at all. The contractor can terminate their services at his whims and fancies.**

(b) Secondly, even for works of a permanent nature, the contract labour system is followed in the railways. **For instance, in the refreshment rooms, the catering department, the PW works, repairs to buildings etc. they are employing casual labourers and paying them sub-standard rates. In the transhipment yard also, casual labourers are employed. These are works of a permanent nature. Coal transportation, fuelling of engines, repairs to buildings, roads etc. are also permanent types of work.** In order to reduce the expenditure and to implement strict economy, perhaps, they are following the system. Otherwise, there is no justification for bringing casual labour into these jobs. **The Central Pay Commission has classified the nature of the work and also prescribed a particular rate for the work. And yet to deprive the workers of these benefits, this kind of system is being followed in the railways**. Contract labour is employed in an indirect way in the loco-sheds etc.

(c) They are engaged in loading and unloading coal fuel to engines, transhipment of wagons; repairs of roads, buildings, etc. They do similar work as the Class IV employees of the Railway.

(d) **I admit that the cost of production may go up, but what about the welfare of society and the uplift of our workmen?**"

Shri JP Chaubey, Treasurer, All India Railwaymen's Federation, New Delhi:

(a) "The Railwaymen's Federation is most concerned **about the employment of 3 lakhs casual labourers in the Indian Railways. Their conditions are miserable**. There is no protection for them. **A lot of corruption is also going on in the employment of casual labour. Recently, the system of employment of casual labour is being expanded and many of the works which are of a permanent nature, in those works also, the railways are employing casual labour**. Now, Sir, in a country where we want to establish socialism, this type of exploitation of labourers should be stopped. ……

(b) This Bill which is under consideration, in fact, does not give any protection. The law should be positive and effective, **all the provisions should be such that the workmen as also the trade unions can use them for the protection of the employees**. Otherwise there is not going to be any sort of social security to these employees.

(c) All those works which are of a permanent nature should be done by the railwaymen in service. **The entire lot of casual labour should be treated as railway employees and they should be given all the securities which are guaranteed to an employee under the Constitution.**

(d) **There should be a Judicial body appointed whom they can approach**. Our experience is that if the power is delegated to the Government, the Officer who is on the job will go on doing things in his own way. He will be guided more by certain methods. So, if there is some provision for interpretation by the Government and for enforcement by them, then that would not serve the purpose. Therefore, some judicial or an Independent tribunal should be appointed for interpreting the provisions of the Bill and for ensuring the implementation of the provisions of the Bill.

(e) The idea is if the word 'casual' is not there then the benefit of this Act would not apply to the casual labourer. I have already said that those persons who are employed on commission are also doing permanent nature of work. **For the catering work one man is getting commission; the other is a casual labourer and still the third is a permanent employee. All the three work for the year**. So, the very system should be abolished and everyone should be treated as a railway employee. Our Union has not only moved in the matter but we have given a strike notice also.

(f) The entire Committee should recommend to the Government that they must introduce this Bill in Parliament **for abolishing casual and contract labour**. **We are building a society. It is obligatory on the part of the Government to ensure a minimum protection to those who are being exploited for years.** Therefore, whatever may be the expenditure and whatever may be the labour that the Government may have to undertake, such a rule or law is of a necessity. **If Government have to take over such a large employment of labour, then we should have some sort of an independent Corporation**. Mr. Sen said that there should be some sort of a big society having some treasury rules and so on. They can employ the labourers and keep on sending them wherever the works demand.

(g) I have said that protection should be given to every individual. If that is not possible, then at least the number could be reduced from 20 to 10 *(for applicability)*. **Suppose somebody says that he will run the entire administration more economically and with less expenditure *(on a contract basis)*, would you agree to it? "**

SHRI R. K. AMIN[19]: That time may also come.

Shri Keshav H. Kulkarni, Joint General Secretary, NFIR and Member, INTUC Central Executive Committee:

(a) "Railways are one major industry where a very large force of contract labour is employed— beyond 3 lakh -mainly in the occupation of handling of coal and goods and engineering works etc. … The National Federation of Indian Railwaymen, has been repeatedly demanding that the conditions of work of contract labour are really bad and this system should be abolished and from that point of view, Sir, as I have already noted in the memorandum, my organisation welcomes this Bill.

(b) With this introduction I would like to say further that a lot of discussion has been taking place in various forums on the subject since, perhaps, for the last three or four years. Now, in the context of these discussions, this Bill, so far as my organisation is concerned, is not completely satisfactory. The object, as has been stated by this Bill is to regulate or abolish the system of contract labour. I have gone through the various provisions of this Bill, and I wonder if either of these purposes, whether the regulation or the abolition, is going to be achieved this way in which the various provisions have been framed.

(c) As far as regulation is concerned, there are in Chapter IV certain provisions relating to welfare and other health amenities etc. … **The subject was under discussion subsequently in the Standing Committee of the 19th session of the Indian Labour Conference, where their recommendation was very comprehensive. And actually, this recommendation was based on the judgment of the Supreme Court *(Standard Vacuum)* and besides various things had been laid down in that resolution. Take for example, the recommendation of the 19th Session relating to certain conditions regarding fixation of wages, holidays, question of overtime, question of rest etc. These are things which are very necessary**

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[19] Professor RK Amin, Economist from Gujarat, previously associated with Swatantra Party and Bharatiya Lok Dal; Chairman Gujarat State Bhartiya Lok Dal, Vice-President of Gujarat State Janata Morcha; President, Gujarat State Economic Conference, 1974; Member Fourth Lok Sabha, 1967—70, Committee on Public Undertakings, 1969-70,

to be mentioned categorically in this Bill. Our view is that so far as the regulation aspect is concerned, whatever provisions have been made, … they are too inadequate, looking to the problem and also in the background of the recommendations of the Indian Labour Conference.

(d) **This is a matter about which sufficient consensus has developed in the country**.

These are things which are capable of very precise definition. There is no question of any confusion or equivocalness so far as the four types of works enumerated by the Supreme Court are concerned and also the 19th Labour Session came to that conclusion. It has been laid down that we can demarcate these types of work which need not be executed by contractors.

(e) In other sections there is a repeated reference about the Government taking decisions in consultation with the advisory boards. We are afraid if these things are mixed up and there is only Central Advisory Board we may not be able to do adequate justice to the particular industry and therefore, actually the point was discussed at the Standing Labour Committee and **the suggestion was made for different committees, but looking to the whole scheme of the Bill and the way these advisory boards are going to play vital part, Committees may be too inadequate and, therefore, at least so far as these major industries are concerned our view is that there should be separate advisory boards.**

(f) Now, at the end of clause 10 there is an explanation which is very important. It says

"if there should arise any question about a particular work being perennial or not then in that case the decision of the appropriate Government thereupon shall be final", Here, I would only add that as you are going to form these advisory boards for the effective administration of this Act so whatever the decisions are going to be taken **should be in consultation with the Advisory Board.**

(g) Now, **along with 'incidental to' we wish it should be 'incidental to or connected with' because there are different types of work for example, in the case of Railways loading of the coal— now coal handling may be incidental to railway work but maintenance work is not incidental but connected** and a large force is engaged in the engineering contracts. Therefore, 'incidental to and connected with' will cover a major portion.

(h) Under clause 21 there are only certain responsibilities fixed on the principal employer. No doubt, it is according to the recommendations of the Tripartite Body. As I have already remarked **this Section is not adequate to give protection to contract labour. Here, the only abuse which is checked is that of short payment and also some responsibility is thrown on the principal employer. … But the question is who is going to fix the wages. This question came up before the tripartite body and at that time it was said legislative measures for fixing standard wages should be taken. It is a very important question. This question of wages is more important than these welfare and health measures and, therefore, until and unless that provision is made this question of regulation will not be satisfactorily solved at all. Therefore, this standard wage fixation should be there**.

(i) For example, take the case of railway contracts. The contract may be on the railway basis. But the railways do not run according to the States. For example, take the Jaipur division of the Western Railway. It runs through Punjab, Haryana, UP, Rajasthan. Gujarat, Madhya Pradesh, Maharashtra etc. There are nearly seven States. The rules and orders issued in the different States may be different, and therefore it will make matters complicated. Taking into consideration all these factors we have suggested that these things should be specified in the Bill itself. Already, we have some guidelines laid down. For instance, in the Shops and Establishments Act, we have provided for the hours of work, the rest period, how the overtime payment should be regulated and so on. There is one thing, however, which I would like to mention, namely that **whatever hours of work may be there should be at least uniform. …... Under clause 12(2) it may form a part of the contract But what I would suggest is that the hours of work, the payment rates, the rate of overtime payment, the rest period, how the rest period should be controlled and so on should not be provided for separately but should form a part of this legislation itself, as has been done in the case of the Shops and Establishments Act and other such legislations.**

(j) In spite of various laws that have been there, our standing complaint is that the implementation of the various labour laws especially in the departmental undertakings of Government has been very indifferent, and very much halting too. We have repeatedly brought these things to the notice of the Administration. There is the question of these departmental undertakings exempting themselves from the various provisions of the labour legislation. Every year, the Labour Ministry publishes reports about the administration in the working of the Employment Regulations, The Workmen's Compensation Act, the Payment of Wages Act etc. in the railways. **Every year, the Labour Ministry quotes a number of**

cases where particular provisions have not been followed and have been violated; the next report only contains information to the effect that so many irregularities were found and they were brought to the notice of the Administration, so many of them had been rectified, so many were under review and so many were under processing. That is all that happens. Is this the way the Government would have dealt with an employer if he had violated a law, if he were a private employer? The whole difficulty is because the question of delicacy between sister departments comes into the picture, and whatever legal protection would be there for the workers to secure the benefits under particular laws is not there in these Government undertakings. We are afraid that if clause 20 or clause 26 is allowed to remain in its present form, the same thing may happen, so far as these industries are concerned. Moreover, when we make a definite law where we confer certain rights on the employees, we should also provide that if the employee feels that a particular benefit has not been extended to him, he should have the right to seek remedy in a court of law in respect of redressal of the grievance that he has. Therefore, this clause should be totally changed and provision should be made for the appointment of an authority as under the Payment of Wages Act."

Shri V.B. Kulkarni, Hind Mazdoor Sabha

(a) "My first point is that abolition of contract labour should be the aim of this Bill and not regulation of it. **We believe that abolition would be easier than regulation of contract labour system.** We also believe that contract labour system survives by exploitation of labour. **Cheaper labour without any security of employment, without any retirement benefits, without any regulated working hours is the main sustaining power of this system. Since it is bad for administrative convenience and economic reasons it should not be continued.**

(b) It cannot be done overnight. Therefore, if the decision is in favour of abolition of contract system **the residual remnants of this system should be placed under severe restrictions so as to make it a thoroughly unattractive proposition**.

(c) I say that abolition would be easier because **smallness of the contractors will make it almost impossible for any active functioning and to make the law operative or enforceable. We have seen that in small industries even the most common and reasonable legislation like the Shops and Establishment Act is not being implemented.**

(d) If you come to the conclusion that the contract labour system in its totality should be abolished, **then the government should first start abolishing it. They are the largest single employer and by all estimates they are having the largest force of contract labour in various departments. Since ours is a developing economy and since we spend 40 to 45 percent of our developmental expenditure on construction work and since we allow over 60 to 75 percent of our construction work to be done through contract labour, it is of the utmost importance that the government should show its sincerity and reasonableness towards labour by abolishing the contract labour system in its departments. Since development is going to be a perennial matter— there would be development even 50 or 100 years hence— there should be a regular department for construction work through which we can do away with the contract labour system in construction work. The only argument that can be levelled against my suggestion would be economic costs and administrative difficulties. But to end the exploitation which exists today which one cannot describe adequately, the economic reasons and administrative difficulties do not go well with democratic system and the goal of the welfare state.** Therefore, the government should be the first to start it. If the government starts it, then the private sector employers will have no grudge and no complaint. But if the government continues it and if the government asks the private sector to do away with it, there would be a great deal of opposition from the private sector employers.

(e) However, if the Committee comes to the conclusion that contract labour cannot be abolished in certain spheres of our economic activity, then **I would urge that this Committee should draft the Bill in such a way, by making amendments and putting severe restrictions, to make employment of contract labour thoroughly unattractive. To do so, the law must provide equality of wages and conditions of work in various categories of employment in various industries.** No doubt, wages and conditions of work will differ from place to place and there cannot be any standardisation. I am not asking for standardisation. **What I am saying is that the contract labour should get the same salaries and benefits which the regular employees are getting**. They should not get a lesser wage. **Contract labour is paid anything**

between 35 to 50 percent of what the regular employees are getting. They are not getting other benefits like holidays, retirement benefits, provident fund, gratuity and so on. If they are all provided in the Act, I am sure the contract labour system will die its own death.

(f) Everything should be provided to them. **Since the Government provides housing to their own employees and since they ask the private employers to do it, there is no reason why the contract labour should be denied these benefits**.

(g) Then I would suggest that the Bill should be enforced immediately and simultaneously at all places. No place should be left out of its scope, be it the State of Jammu and Kashmir or any other area. (*Here the right-wing anger at the exclusion of Jammu & Kashmir with little appreciation for the reason for it is visible. Actually J & K had an extremely active trade union movement and most labour laws were immediately adopted and better implemented there!)*

(h) Then, I feel the limit of 20 is on the high side. We have seen a lot of industries, which have smaller unit factories employing one person less than 20 to get rid of the clutches of the various labour welfare legislation. **So, the number should be reduced to 5, if it cannot be reduced to 1. It could be reduced to 1, provided government decide that contract labour is bad and should be abolished**.

(i) **The largest single industry in the country is the construction industry, and in that industry a large number of women are employed**. They are married and have children. They come to work with children. Many of you have seen, just as I have seen, their putting their children in baskets or tying them between the length of two trees or keeping them in the shed and going to work. This is inhuman. **If this Bill is to provide any benefit, it should ensure that women workers engaged by the contractors get the benefit of creches and maternity benefit. Whatever facilities we give to women in other industries should be provided to them here also. There is no mention of it in the Bill.** *(In practice, it was to take at least three decades after this before construction labour got any protective laws.)*

(j) Surely, I would not like women employees to be employed because they are cheaper, because they do not ask for creches and dormitories for their children, because they do not ask for special privacy by way of washing rooms and other things. I would surely like women workers to be employed more and more but I would surely not like them to be employed under sub-human conditions.

(k) Then, there are two words appearing in this Bill at two places or perhaps more. The words are "intermittent" and "casual". I feel, unless these two words are qualified properly and adequately, they are likely to be misused and will leave open a lot of litigation. **… I am told, in Railways 8 lakhs of the employees are casual and some of them retire as casuals. I also know of instances in the Bombay Naval Docks, where I know from personal knowledge, hundreds of employees retired as casuals in 1956 after years of service. What is casualness of employment? I would appeal to you, therefore, that the terms "intermittent" and "casual" should be specifically stated in the body of the Bill itself.**

(l) About the Central and State Advisory Boards, as the Bill stands at present, **I am not prepared to make any distinction between the representation given to the Government and the employers because the Government is the largest single employer and they together against me as a worker form a majority. I am not casting any aspersions on the Government representatives, but the fact remains that numerically they are stronger than me. If they are stronger, they will make a mockery of the tripartite system or the advisory board. … So I strongly feel and I demand on behalf of my organisation .. that the workers should be given equal representation, that is, equal to the total number of Government nominees and the employers' nominees, if this thing is to be permitted.**

(m) **Then, in clause 15(2) of the Bill it is stated "as early as possible". This is a beautifully vague statement. There must be some time limit. If this Bill is to go as it is, at least you will see that a time limit is specified.** Within a reasonable period, the decision must be given; otherwise this vague term "as early as possible" has got no meaning. People will have to nominate their heirs and executioners to receive the benefit.

(n) About the recovery of dues, **it should be open to the employees to recover their dues either from the contractor or from the principal employer through a court of law through the Payment of Wages Act.** Depending upon the situation they will either sue the contractor or the principal employer or both, but such a provision should be there in the Bill itself.

(o) We would not like the right of adding to the Schedule the industries to be covered by the Bill to rest with the Government; in fact, we suggest that **the Bill should stipulate that whether the industry is to be covered under the Act or not, and whether the work could be done through the contractor or not should be determined by a judicial body, be it a labour court or a tribunal. I would suggest a labour**

court because the tribunal would provide a forum for appeal, but it should not be left to the Government or the advisory Board, Central or State, to recommend which industry is to be added and which is not to be added.

(p) **Take for instance, the Minimum Wages Act. The Government has a right to add to the schedule the industries, and that right has been used by the Government in a very halting and half-hearted manner. Se it should not be left to the Government to add to the list of industries and to give exemption**. Let it be judicially decided whether the contract labour system should be continued or not in a particular industry or project.

(q) If the Committee recommends that it is not for the contract labour but feels that it *(abolition*) cannot be done overnight or in the shortest possible period, for the limited period, I will accept the four criteria. *(The four criteria mentioned in the Standard Vacuum Case).* I am not mentally prepared to accept the economic and administrative considerations as a cause for the continuation of the system.

(r) According to our estimate, the contractor is, generally, given about 10 per cent of the amount involved in the work. But he earns much beyond that. **Our estimate is that he earns between 15 to 25 per cent by giving inferior type of work about which the employer should worry.** … It is entirely true that the employer encourages the contract system because it is cheaper for the employer also. **It is hardly possible to make a distinction between an employer and a contractor whose motive is profit.**

(s) All Government Departments should abolish contract labour. I am not exempting any Departments including Defence. …. 3 months is good enough to implement it.

(t) I would repeat that the Hind Mazdoor Sabha stands for total abolition of contract labour system, but it visualises the fact that it cannot be done overnight. **During this period between abolition of contract labour system in certain employment areas and where it could be allowed for some time because it cannot be done away with, during that period the contract labour should be given equity benefit with the regular employees so that the worst features of the contract labour system could be removed**.

(u) In its present form, first of all, this Bill will not satisfy the labour. Secondly, the implementation will be halting, because the rights are reserved by the Government. On the advisory committees, the representatives of the employers as also of the Government are in majority. You will have a statute on the book which will not be implemented. Leave it to a judicial authority to determine whether contract labour system is necessary in a particular sphere of activity."

Evidence of the employers

The evidence of both employers from the public sector and the private sector was heard by the Committee. Here I have extracted the evidence rendered by the Member of the Railway Board at length to show several things:

a) Repeatedly variable workload is stated as the main reason for employing contract labour. This understanding is as if the worker is employed only if he/ she is working for every minute of the 8 hour work day. In **many kinds of permanent work, the work itself has a cyclic rhythm with varying intensity and there are natural breaks in the production process. Also, for any human being carrying out work, breaks in the work are a part of that work.** To claim that this is not "full utilisation" of a worker is to make all work completely mechanical as work on a conveyor belt. (As powerfully depicted in the film "Modern Times"[20]) This has actually been achieved in the auto industry where despite the high payment, it was the absolutely dehumanising and alienating micro management of a worker's time

[20] Film by Charles Chaplin on the dehumanising/ alienating work on the assembly line.

(exactly 7.5 minutes for a drinking water break) that led to massive revolt among the workers of Maruti Suzuki at Manesar, Gurgaon[21].

b) There is also the argument that the contractors carry out very "specialised work" using "specialised tools", in which case, the workers could be permanent workers of that particular contractor. But in reality, usually the contractor is a mere supplier of cheap labour for whom the Principal Employer need not provide benefits and whose job is too precarious for them to unionise or demand even the statutory minimum. Workers carrying out a specialised task should also be better paid as skilled labour, but contract labour is often not even paid the statutory minimum wage.

c) The understanding of what a contractor does has also subtly changed with time. **The earlier understanding was that a contractor was a person who undertook to carry out a particular job for a particular price within a particular time for a Principal Employer. He was expected to have the materials, equipment and supervisory capacity to carry out such work. In fact in a situation where the materials, equipment and supervision were of the Principal Employer, the contract was considered to be a "sham and bogus" contract, a "paper arrangement", a "smokescreen" or "camouflage"**. In such situations, in a catena of cases[22], courts held that the workers were for all practical purposes the employees of the Principal Employer and were therefore regularised. Unfortunately the 2001 SAIL judgment, by holding that a contractor could also simply "supply labour for a particular work", legitimised such sham and bogus contractors also.

d) Another aspect regarding which the public sector employers were vociferous was that the **provision imposing liability on the Principal Employer for the non-payment or short payment of wages by the Contractor should be removed as being impractical[23]**. This has proved to be one of the most effectively used provisions of

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[21] "*Japanese Management, Indian Resistance*" by Anjali Deshpande and Nandita Haksar, Speaking Tiger Books, 2023.

[22] "*Hussainbhai, Calicut Vs Alath Factory Thozhilali Union, Kozhikode & Ors*" – Judgment passed by 3 judges of the Hon'ble Supreme Court on 28.07.1978. Citation: 1978 AIR 1410, 1978 SCR (3)1073, 1978 SCC (4) 257.

[23] Section 21 of the CLRA Act reads as follows

21. Responsibility for payment of wages.-

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor any contract as a debt payable by the contractor.

the CLRA Act and has ensured some degree of accountability of public sector employers.

e) The most shocking aspect of the depositions of the public sector employers, amongst which that of the most articulate has been extracted below, show that there is no acknowledgment whatsoever of the need of their being "a model employer" (as stressed in several Supreme Court judgments); of the fact that infrastructure projects were never supposed to be "profit making" ventures; and of the fact that the much vaunted "trickle-down" of development was always understood, in the then prevailing progressive post-colonial economics, to practically occur in the form of enhanced "purchasing power" through the disbursement of better wages. On the contrary this public sector employer refers to the unlimited availability of the unemployed, and the prevailing starvation wages in the rural economy to claim that even paying the reduced wage of a contract/ casual worker is a great favour that the public sector provides to the unemployed. Clearly the levels of casualisation and contractualisation in the Railways, even by that time, with lakhs of such workers working for decades together, were already way beyond what the management representatives were willing to admit. The lame theory that some contractors even provided the workers better wages or working conditions could not be buttressed by even a single example.

f) The deposition of Shri BC Ganguli, Member Railway Board before the Joint Parliamentary Committee is being given here almost in full, because it exemplifies the neo-liberal logic that was later going to completely dominate discourse in the 1990-91 era of liberalisation, globalisation and privatisation. There is clearly no philosophy of "socialism" or "welfare state" or "trickle down of development" to be seen here in the management of public sector enterprises!!

Evidence of Shri BC Ganguli, Member Railway Board before the Joint Parliamentary Committee including the then Labour Minister.

(a) "SHRI B.C. GANGULI: In the Railways there are some incidental jobs like goods and parcel handling, handling of coal with cranes to the various loco sheds and in some cases we are still doing manual loading of the tenders of locomotives. We sometimes employ contract labour there. These are all jobs which are of **permanent nature but of variable load**. These are three types of jobs which are of a permanent nature but are done by contract labour. If the workload were, as I said, of a perennial nature without variation from day-to-day, constant load, there would be a possibility of getting these jobs done by departmental labour. But what happens is that all these jobs which we have given to contractors are of intermittent nature and load varies from day to day.

LABOUR MINISTER: It may be possible to devise a method whereby permanent nature of work with variable load can be managed in large centres by certain nucleus staff.

SHRI B. C. GANGULI: This is all right in principle. It is not good to mix up the working of a departmental job with that of the contractor's labour. Suppose you have kept 50 permanent men as nucleus and you also employ the contractor there for taking account of variable load. That man's difficulty will be that he has no permanent load. The contractor also keeps a nucleus to carry on his work. This is not a practicable or workable proposition. He will have his agents and organisation and he must find some minimum job to pay for these things."

(b)" **For building bridges etc. specialised tools and plant and specialised type of labour is needed. The contractor can afford such things. He has got a job here today and tomorrow he may have it elsewhere,** say at Haldia port for instance. He can utilise the tools and plant and specialised labour as he has various places to work. We had in the olden days thought that we could keep some specialised equipment with us like pneumatic air-locks, but we could not utilise them fully.

LABOUR MINISTER: There is National Project Construction Corporation. They can deploy their men in various types of work. Can the Railways think of some such thing?

SHRI B. C. GANGULI: We have already got this corporation which is now functioning, as contractor also in the Farrakka barrage. We have now got one such body which also finds it difficult to get full work. It won't be possible to have a multiplicity of agencies.

LABOUR MINISTER: If a contractor can afford to have men and then go on from place to place for work, why can such a corporation not do it? Perhaps the argument may be that when there is no work, the contractor can discharge those people.

SHRI B. C. GANGULI: That is the main thing. The second thing is that you will not be able to attract temporary establishments to work for the Government because we have a lot of limitations - payment of bonus and things like that, also the pay scales.

LABOUR MINISTER: They are not limitations.

SHRI B. C. GANGULI: They are big limitations.

LABOUR MINISTER: I am talking from the workers' point of view.

SHRI B. C. GANGULI: I am talking from the Government point of view. Government cannot go on adding staff like this.

MR. CHAIRMAN[24]: Recently we had gone on tour to some places where we saw work connected with the railways also. I concede there are many works, according to you, of a temporary nature, lasting four or five months where a contractor is engaged and then afterwards, they have to be employed elsewhere. **Have you got any idea of certain works which are of a permanent nature, occurring for the last many years, which you get done through contractors, where those workers are called contractor's employees, with the result that they do not get proper facilities? Are there contractors who do work only for the railways and not for other people?**

SHRI B. C. GANGULI: **There are certain contractors who work on the railways, in the PWD, in the docks, harbours etc. and there are some others who work only on Railways.** There are various types of contractors. As I have explained, there are two or three categories of work of a permanent nature but with a fluctuating workload where we have gone for the employment of contract labour. Let there be no impression going round that the railways are functioning with contractors. The railways do not. If you take our working expenses, **60 percent is accounted for by the wage bill of our men**. That is our trouble today. If we had functioned on any other methods which had been adopted by the company railways in the olden days, today we would have been in a much better position. But our trouble is that we have got a very very large number of permanent labour. **I see very little scope for railways to expand their permanent labour in their working**.

MR. CHAIRMAN: How do the conditions of workers employed under contract system compare with those of the regular workers in the railways

SHRI B. C. GANGULI: **It all varies from contractor to contractor. There are some contractors who, according to my personal opinion, do not look after labour as they should. There you can say that the condition of the labourers employed by the contractor is worse than the labourers engaged departmentally by the railways. But I have known of certain cases also where contractor labour is better off than railway labour.**

[24] Chairman of the Joint Parliamentary Committee was Shri Kashi Nath Pandey, Congress MP from the State of Uttar Pradesh

SHRI DEVEN SEN[25]: Cite an example.

SHRI B. C. GANGULI: The Hindustan Construction Co. Ltd.

SHRI DEVEN SEN: That is not connected with railways.

SHRI B. C. GANGULI: I am talking of a comparable contractor. Hindustan Construction Co. is an Indian contractor. We are trying to take an employer like the railways. That being so, you cannot take Nathu Ram or Magan Ram; that comparison will not be appropriate.

MR. CHAIRMAN: The question is how these conditions compare between the contract labour and the regular labour? I am referring to the contractor who employs labour only for the railway purposes and he is employed by the railway contractor.

SHRI B. C. GANGULI: The railway departmental labour has got a timescale 70— 85, plus dearness allowance. Some private contractor may pay less because the Minimum Wage is less than that. **When a contractor is a small man who takes a smaller contract, naturally he tries to limit his payment and the facilities to the barest minimum which is required under the law. He does not give facilities that the railways would give to permanent labour.** The permanent labour in the railways has got medical facilities and housing facilities— not to the full extent of course. They are not available to an average contract labour.

SHRI B. C. GANGULI: I shall be frank. If execution and enforcement of laws is thorough, I would have gone on making laws and filled Parliament House with law books. Unfortunately, experience is different. We have not been able to enforce a fraction of the various labour legislations that have been passed in the last twenty years because enforcement needs a certain atmosphere. Have we been able to enforce the Payment of Wages Act except in the Government sphere? Take the Minimum Wages Act. With super abundance of labour in this country, even if you pass a law that Rs. 10 will be the minimum wage, you will find that the contractor will get a man to sign for Rs. 10 and pay him only Rs. 5. My point is that conditions have got to be created before laws are enacted. Otherwise, enforcement becomes impossible. Take the Factories Act, for instance. I am a member of the National Commission on Labour. How many factory inspectors are available in a State and what is the intensity of inspections? Now, nobody says that we should not improve labour conditions; I should not be misunderstood. Without the necessary conditions, legislation becomes a formality of filling up certain forms without really benefiting the labour

MR. CHAIRMAN: Are you satisfied with the conditions of contract labour in the country? If not, what are your suggestions for improving their lot?

SHRI B. C. GANGULI: My personal view is this. Three things are important. One is higher wages. We have not revised the notified rates under the Minimum Wages Act. So, let us first of all enact the minimum wages for the labourer and see that his wages improve. Secondly, medical facilities for contract labour. Third, we should see if at a least a fraction of the labourers could be housed.

I was only pointing out to this Committee certain provisions of this Bill. You are making one provision to the effect that the principal employer will be liable for ensuring the due payment to the contractor's labour. Now, take for instance a contractor who has 200 labourers. If I have got to satisfy myself that the contractor is paying the labourers correctly all their dues, **that means I have to have a parallel organisation for taking the muster, supervising the work of these men and then on the pay-day see that all those men get their pay exactly according to their attendance. It means that you are asking for a parallel organisation by the principal employer to be kept; it will not be practicable.**

MR. CHAIRMAN: Are you sure that the contractor would be paying the proper wage

SHRI B. C GANGULI: There are some contractors who do not pay and there are some contractors who do pay. You cannot tar them with the same brush. Of course, we have had evidence in the National Commission on

[25] Deven Sen, was a Member of the Lok Sabha from the Asansol constituency of West Bengal belonging to the Samyukta Socialist Party. He was an active trade unionist, President of the Hind Mazdoor Sabha and a member of the "Wage Board for the Coal Mining Industry".

Labour that contractors have not paid these labourers. But how can you make the principal employer responsible to see that the payment has been made to the labourers according to the contract of employment? That means I have got to be associated with the employment of labour, the fixation of the rates, keep the muster and also witness the correct payment of dues. All this is duplication. Do you want me to set up such an organisation? I have no objection, but it means that wherever you are going to have these workers on contract labour, it will entail the setting up of a duplicate organisation.

MR. CHAIRMAN: The workers cannot be left to the wolves.

SHRI B. C. GANGULI: **May I submit that my personal view is that if there are wolves, you will not be able to save the workers, because with this under-employment in the country, even a schoolmaster signs for Rs. 250 and takes only Rs. 100 home.**

SHRI SHRICHAND GOYAL[26]: Let us deal with this matter from one aspect. The railway is the biggest employer of this contract labour. I am told that there are three lakhs workers who are being treated as contract labour in the railways.

SHRI B. C. GANGULI: No, Sir; not to my knowledge.

SHRI SHRICHAND GOYAL: That is the figure supplied by the Federation of Railwaymen.

SHRI B. C. GANGULI: That is not a sacrosanct figure.

SHRI DEVEN SEN: Let us know the total.

SHRI B. C. GANGULI: The total has got to be understood in the light of these facts. If you do not want to take the facts, what is the good of my talking?

SHRI SHRICHAND GOYAL: Please give us in writing.

SHRI B. C. GANGULI: Now for goods and parcels handling, we have 16,000 labourers; coal and ash handling, 20,000 labourers; engineering works including large scale construction works 25,000; engineering works of other nature. . .

MR. CHAIRMAN: Can you give us a copy?

SHRI B. C. GANGULI: I was reading out these figures to give you a background of the matter. Out of these 1,40,000 labourers who are employed on contract, through the contractors, a small, minor fraction will come under the handling category. The majority will continue to be contract labour.

SHRI SHRICHAND GOYAL: Can you tell us whether you have included in this figure of 1,40,000, those men who are working in the refreshment rooms and the railway godowns?

SHRI B. C. GANGULI: We have a number of vendors,— 5,600 and then another 1,500. We have about 7,000 workers in that category also.

SHRI SHRICHAND GOYAL: The position is, we have recently received a memorandum from the persons working in the godowns; they have drawn a very horrid picture; they say that they hardly get Rs. 1.50 a day or Rs. 2 a day; there is absolutely no provision for any weekly rest or earned leave; no fixed weekly or fortnightly or monthly pay; no security, no old-age pension, no medical aid, no free passes, no accommodation, no canteen. How are you going to bring the contract labour on a par with other labour who are doing similar type of work? Simply because they happen to be contract labour, they are not enjoying or they are being denied all these benefits which are made available to their brethren working as permanent workers in the railway department. Have you thought of something to be done for them also?

SHRI B. C. GANGULI: So many things can be thought of. For instance, have we thought of the cultivator who is earning just six annas a day? One can go on thinking as much as one likes.

[26] Shrichand Goyal was an Advocate and Member of Parliament from Chandigarh of the Bharatiya Jana Sangh

SHRI SHRICHAND GOYAL: This Committee takes the view that this labour problem which is the human problem has got to be tackled, if it can be regulated, so as not to deny them these benefits. Have you any suggestions in regard to that?

SHRI DEVEN SEN: Is it not a fact that the Members of the Railway Board are the highest paid in the country?

SHRI B. C. GANGULI: I would like to exchange positions with you.

SHRI SHRI CHAND GOYAL: Does this device of employing contract labour enable the Government to carry on its various works at a cheaper cost than what it would be with permanent employees?

SHRI B. C. GANGULI: It all depends on the sphere of works. A limited amount of the works is done on contract basis. The majority of our works are done departmentally, at least, in the Railways. Certain works are definitely cheaper, like building construction, bridge construction, etc. **We cannot do it so cheap as the contractors will be able to do it because they have got the machinery and they have got the skilled men. We have only got 1 inspector of works for 50 to 80 miles and 1 Assistant Engineer for 200 miles.**

SHRI SHRICHAND GOYAL: So, it is the Railway Board which benefits from the employment of this particular device. Now, the question is whether the ultimate responsibility of making all payments to the labour of the Department is of the contractors. Since the contractor and the labour are both working for the benefit of the Railways, the ultimate responsibility of making all payments and of discharging all liabilities should be on the Railways and not on the middle-man, that is, the contractor.

Shri B. C. GANGULI: This is an impracticable thing.

SHRI SHRICHAND GOYAL: This can be done by legislation. Do you accept the position that since the ultimate gainer is the Department, the Railways; the ultimate responsibility of making all payments or of discharging all liabilities should be of the Department and not of the contractor?

SHRI B. C. GANGULI: I have not followed it.

SHRI SHRICHAND GOYAL: Supposing a particular labourer is unable to recover his wages from the contractor, he should be in a position to recover the same from the Department because he works for the Department.

SHRI B. C. GANGULI: I can't say.

SHRI S. KUNDU[27]: I would request you to see the Statement of Objects and Reasons of this Bill. It begins with one sentence, namely, "The system of employment of contract labour lends itself to various abuses" . I should confess here that we, during our study tour, had the opportunity of listening to some of the railway officers and, in general, I have the impression that the evidence that they give before the Committee goes directly contrary to this statement. But, in your evidence, of course, there is some departure and I must thank you for that. Therefore, the question arises whether, in principle, you agree— you are a senior Member of the Railway Board— that the contract system as such has lent itself to many abuses, many corrupt practices, producing things which are not up to the mark. From that premise we can go into the other questions. If you do not agree, then there is no use putting other questions. ... You raised the question of implementation. In some cases it is not implemented. I agree with you. But it is not enough to say that it is not implemented. My question is whether, in principle, you agree with the statement that I read out and then the ILO's declaration that this has lent itself to a lot of abuses, and then the Supreme Court's decision that contract labour must be abolished.

SHRI B. C. GANGULI: If I have understood you correctly, your question was whether the contract system leads to abuses. **It varies from contractor to contractor. Some contractors abuse, some contractors, as I told you before, have been treating their labourers so well that they have been able to maintain a very good reputation of executing very difficult work.** ... In fact. In the whole world, the contract system is functioning, Everybody cannot afford to keep specialised knowledge and equipment; they can be kept only with certain persons. There is nothing intrinsically wrong with the contract system.

[27] Samarendra Kundu, MP from Balasore, Odisha belonging to the Samajvadi Party, President of the Hind Mazdoor Sabha.

SHRI KUNDU: You are not giving a categorical answer. Is the system bad or not? In principle the system is good— is that what you say?

SHRI B. C. GANGULI: Contract system will be there in any country. Without contract system you will not be able to function in any country. You ask a question whether contract system will lead to abuse; my answer is that contract system is inherent in any economy.

SHRI S. KUNDU: Rs. 100 crores are there in Railways for development works which work through the contractors. You give 10 percent of the commission which they get. Above 10 percent they make 25 per cent. They get something from the labourers wages. If this is true 25 crores go to individuals and so don't you think these 25 crores could be saved for departmental works? You can plough it back for welfare of labourers and practise economy. Have you understood my point?

SHRI B. C. GANGULI: I don't know whether this figure is correct. Work means 2|3 capital and 1|3 labour. Labour element will be 30 crores and if you say that they are getting more than 25 per cent there is something wrong in the figure. Anybody would have jumped to come for this work rather than go to any other work, if there is such a lot of money.

SHRI S. KUNDU: You don't think there is a lot of money in the contract business?

SHRI B. C. GANGULI: Large number of contractors have gone out of business for some years past. Big houses are finding it difficult to carry on this work now.

SHRI KUNDU: You do not believe contractor make a profit?

SHRI B. C. GANGULI: Everybody makes a profit.

SHRI A. P. SHARMA[28]: It is said that 1,40,000 workers are there on contract basis in Railways, including project works. Does it include casual workers?

SHRI B. C. GANGULI: No.

SHRI A. P. SHARMA: These casual workers' number run into lakhs. Is it not that their wages are better than wages of contract labour? Indirectly we have discussed in this committee that railways should be treated as contractor employing the workers. Technically it may not be correct. How do the Railways propose to solve the problem of these casual workers?

SHRl B. C. GANGULI: Causal people are employed for causal type of work. There are 2 such types, construction, that is projects, and secondly we have some works like re-laying and things like that. We can't do it with our own permanent staff. We appoint casual labourers. They get pay as per rates fixed by States for similar types of labourers. We have somewhat liberalised these things. If he continues for more than 6 months his service will be of temporary nature. If job continues for more than 8 months, even this casual job, we give temporary status. This benefit we could not extend to projects because their job is for limited period, 2 years or 3 years, but otherwise we give temporary status. I don't know the real solution to casual labour because some sort of casual labour will be inherent. Even in various factories, textile industries and all that, you would need casual labour from time to time. I don't know the solution, how you can avoid casual labour.

SHRI A. P. SHARMA : Upto 6 months they are paid less than temporary/ regular employees as the nature of work is casual. The type, the category and the amount of the work may be the same but only because the work is of a casual nature, they get less. Can you pay them at the same rates and give the same facilities in respect of wages etc. at par with those doing regular work?

SHRI B. C. GANGULI: This really does not arise out of this Bill. This is a question I leave it to the Committee

SHRI BRAHMANAND PANDA[29]: If I understand you correctly, you do not believe in the abolition of contract labour— totally or partially

[28] Anant Prasad Sharma, MP from Buxar, Bihar. He was an erstwhile Railway Trade Union leader and was also a President of the Bihar Pradesh Congress Committee.

SHRI B. C. GANGULI: I have said that the contract system in the present framework within which we work in India, and in the present economic theory, it will be impossible to abolish contract labour except at a great waste of man-power and equipment.

SHRI BRAHMANAND PANDA: Don't you think that this Bill has been drafted keeping in view the ideals of the Welfare State?

SHRI B. C. GANGULI: I do not know what is the ideal of the Welfare State because I have read the Constitution once or twice and I have been trying to find out the ideal of the Constitution. So far as the Welfare State is concerned, I have heard it many times and I do not know what it consists of.

SHRI B. C. GANGULI: We only make a check if there are complaints. Up till now there is nothing called fair wages. Even what you call the Living Wage, we tried to define in one of the Labour Conferences, i.e., the 15th Labour Conference. We have not yet been able to define fair wage.

SHRI S. D. PATIL: Don't you feel that it is the moral duty of the principal employer to see that the labour doing their work should be paid in full as per terms between the contractor and the labour?

SHRI B. C. GANGULI: I don't think ethics count in government work.. Morals and ethics are not law.

SHRI B. SHANKARANAND: My question is as we are going to enforce this Bill whether it will help the contract labour or not?

SHRI B. C. GANGULI: No.

SHRI P. M. SAYEED[30]: Benefited in the sense that the work turned out by the employee is the ultimate benefit of the principal employer and not of the contractor?

SHRI B. C. GANGULI: We have paid for the work. Benefit has not come to me. The benefit has gone to everybody.

SHRI P. M. SAYEED: In spite of all this legislation we all know that the labourer does not get his proper due. This kind of provision has been put in in this legislation in order to make it more effective. The purpose of the Bill will be served only if this provision is strongly put in.

SHRI B. C. GANGULI: It is a matter of opinion, whether by a provision of this nature in the Bill you will serve your purpose or whether there is some other method of achieving it. But my opinion is that you are adding to the general charges of the exchequer for a doubtful benefit. That is my view.

SHRI B. C. GANGULI: So far as I am concerned, in the regular maintenance work, as you say, of locomotives, casual labour are not employed.

SHRI K. A. NAMBIAR[31]: But if it is there, and if it is proved that for three or four years casual labour are employed..

SHRI B. C. GANGULI: For the maintenance of locomotives? That information will be a surprise to me because it goes against the rules.

SHRI K. A. NAMBIAR: I shall spring upon you yet another surprise. For the maintenance work casual labour with five to ten years' service are employed as casual labour and they are not getting any benefit of permanent employment. Do you know this or not?

SHRI B. C. GANGULI: So far as I know, the rules lay down that if there is casual labour on any casual work, if the period has exceeded a continuous period of six months, then that labourer acquires a temporary status, and

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[29] Bramhanand Panda, was an independent MP from the State of Orissa.

[30] PM Sayeed was an MP from the Congress Party who represented Lakshadweep for 10 consecutive terms.

[31] K Ananda Nambiar was an MP from the Communist Party of India. At that time he was representing the constituency of Tiruchirapalli.

he continues like that till such time as he is selected for a permanent vacancy when he is absorbed in the permanent vacancy in his turn of employment.

SHRI K. A. NAMBIAR: If what you say is not in operation you are prepared to correct it? Your employment of casual labour on Rs. 2 or whatever is the market rate just like what a contractor will do for any work in your regular employment would by itself make you a contractor.

SHRI B. C. GANGULI: A job which is of a perennial nature and which comes in the process of manufacture should normally be done by permanent labour. That is the ruling of the Supreme Court round which all these things are hinging. If it is a job of a perennial nature and it is in the process of manufacture, you can ask for the provision of permanent labour.

SHRI K. A. NAMBIAR: There is the order of the Supreme Court. There are so many other legislations which you are not following in the railways. That is what we are finding.

SHRI B. C. GANGULI: If you would permit me to go a little aside, I may point out that you have provided for the enactment of the Indian Penal Code wherein you have laid down that no one should steal and so on. And yet stealing goes on. The point is whether we have permitted by rules or orders anything illegal. If we have permitted anything illegal in our rules and regulations, then you can say that it needs correction.

SHRI K . A. NAMBIAR: With regard to the responsibility of the principal employer for payment you have spoken very vehemently against it. But do you know that even today in your contract agreement with the contractor, there is already a provision that the contractor must fulfil the conditions of payment etc. etc.?

SHRI B. C. GANGULI: And indemnify us against the obligations under the Workmen's Compensation Act etc. The enforcement of that is not left to us; there is the labour inspector and there are other agencies for the contractors' labour to go to. We do not function in that sphere.

SHRI K. A. NAMBIAR: Is there such a provision or not in the contract agreement?

SHRI B. C. GANGULI: So far as the fair wages clause is concerned, I can say there is.

SHRI K. A. NAMBIAR: In all your contracts there is already a provision that you are responsible for payment etc. etc.

SHRI B. C. GANGULI: We are not responsible for the Payment of Wages Act, for complying with the Workmen's Compensation Act and so on. The contractor indemnifies the railways.

SHRI K. A. NAMBIAR: Then, what is the provision there?

SHRI B. C. GANGULI: That we should pay fair wages. As a parliamentarian, you know that we have yet to define what the term fair wages means.

SHRI K. A. NAMBIAR: When there is a stipulation that you should pay fair wages, then the responsibility goes along with it; if there is non-payment then you are responsible for ensuring payment. Does it not go with that?"

The recommendations of the JPC and the dissenting notes

After the long and detailed process of enquiry by the Joint Parliamentary Committee, it made the following recommendations for amendments which were accepted by the Parliament and incorporated into the CLRA Act as it was passed in its final form in 1970.

Clause 1.—The Committee feel that decision of the Central or the State Government, under clause 1 (5) on the question whether a work performed in an establishment is intermittent or casual in nature, should only be made after consultation with the Central or State Advisory Board, as the case may be.

Further, the Committee propose to insert an Explanation under clause 1 (5) to the effect that if a work in an establishment is performed for more than 120 days in the preceding twelve months or in case of a work of a seasonal character, it is performed for more than 60 days in a year, such work in an establishment shall not be deemed to be of intermittent nature.

The clause has been amended accordingly.

Clause 2.—In sub-clause (i) (B) of the clause, it was suggested. that due to steep wage rise in recent times, the raising of wage limit in respect of a workman in a supervisory capacity from Rs. 500/- to Rs. 750/- would be more realistic.

The Minister-in-Charge explained that this wage limit of Rs. 500 in respect of workmen in a supervisory capacity was laid down in several other labour laws and that the question of raising this wage limit in the various labour laws was already under consideration of his Ministry. He assured the Committee that he would bring forth suitable amendments to all labour laws in due course so as to put the wage limit on a uniform basis.

Clause 3.—In order to achieve a broad based representation on the Central Advisory Board, the Committee are of the view that the Central Advisory Board should consist of not less than 11 members excluding the Chairman and the Chief Labour Commissioner (C) and further, to safeguard representation of workmen on the Board, the number of members nominated to represent workmen should not be less than the number of members nominated to represent principal employers and contractors. Sub-clause (2) (C) of the clause has been amended accordingly.

Clause 4.—In accordance with the changes proposed in clause 3 above, the clause has also been amended to provide that a State Advisory Board shall not consist of less than nine members excluding the Chairman and the Labour Commissioner and a corresponding provision has been made in the clause that the number of members nominated to represent workmen shall not be less than the members nominated to represent the principal employers and contractors on the Board.

Clause 12.—Sub-clause (2) of the clause provides that a licence to be issued by the licensing officer to a contractor may contain conditions inter alia to provide for fixation of minimum wages to the contract labour. It was urged that the term 'minimum wages' had a definite connotation. In order to obviate any difficulty in providing payment of reasonable wages to contract labour which might be necessary in certain cases, the Committee decided to omit the word 'minimum' occurring therein. Sub-clause (2) of the clause has been amended accordingly.

Clause 28.—Under sub-clause 2(d) of the clause as it originally stood, the Inspecting Staff could only seize or take copies of the records of the principal employer. It did not empower the Inspecting Staff to seize or take copies of the contractor's record. The Committee has amended sub-clause 2(d) to provide that besides the records of the principal employer, the records of the contractor are also subject to seizure. Sub-clause 2(d) of the clause has been amended accordingly.

How did the Joint Parliamentary Committee balance the obviously dichotomous views of the trade unions and the employers? While the repeated plea of the employers to relieve the Principal Employer of the liability of timely or full payment of wages by the Contractor was rejected by the Committee; the pleas of the workers' organisations to strengthen the abolition aspect of the Act were also rejected. The inclusion of a definition of "intermittent" work and the assurance of an adequate number of workers representatives on the Advisory Boards were acceded to. The

inclusion of "wage parity", though only by a stipulation in the license, as opposed to inclusion in the main body of the Act, has resulted in this aspect being included in the Central Rules as opposed to the CLRA Act. Inclusion in the Act could have made the enforceability far more effective. Rule No. 25 of the CLRA Central Rules, 1971 lays down that:

25. Forms and terms and conditions of licence.—

…………………………………………

(2) Every licence granted under sub-rule (1) or renewed under rule 29 shall be subject to the following conditions, namely:—

………………………………………….

(iv) the rates of wages payable to the workmen by the contractor shall not be less than the rates prescribed under the Minimum Wages Act, 1948 (11 of 1948), for such employment where applicable and where the rates have been fixed by agreement, settlement or award, not less than the rates so fixed;

(v) (a) in cases where the workman 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 of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work: Provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Deputy Chief Labour Commissioner (Central);

(b) in other cases the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor shall be such as may be specified in this behalf by the Deputy Chief Labour Commissioner (Central);

Explanation.—While determining the wage rates, holidays, hours of work and other conditions of services under (b) above, the Deputy Chief Labour Commissioner (Central) shall have due regard to the wage rates, holidays, hours of work and other conditions of service obtaining in similar employments;

There appears to have been heated discussion in the Committee and several dissenting notes were submitted. 4 Dissenting Notes representing the interests of the workers were filed by a total of 8 members of the Committee; whereas 1 very long Note was filed representing the interests of the employers by 1 member of the Committee. These dissenting Notes are summed up as below:

1. KA Nambiar, Communist Party of India.

"I was one of those who strongly canvassed for a proper legislation to abolish the contract labour system in India. … No civilized world which preaches socialism can afford to tolerate this inhuman exploitation. ... **The Government of India, which is the biggest employer, which instead of setting an example to the private sector indulges very much in this atrocity and opens the floodgates of such inhuman exploitation of a section of labour, who by the nature of its employment are unorganised and unprotected. For example, I can quote the case of 3.5 lakhs of "casual labour" on Railways besides thousands of workmen employed through contractors for construction work. In the case of casual labour the Railway Officials themselves step into the shoes of the contractor and engage them for an indefinite period ranging from one to ten years and even more, denying them all the facilities that are normally due to a regular employee. .. We came across many such workmen in our study tour. Many more instances can be quoted in other Departments too.**

2. While the problem being so deep and complicated, the provisions like the ones envisaged in this piece of legislation are far from satisfactory. **Many members in the Joint Committee tried their best to improve upon the provisions of the Bill but could not succeed. Therefore, I regret to record my disagreement to the amended Bill on the following grounds**:—

(i) This is a measure which **does not intend abolition of the contract labour system** as such;

(ii) This measure **only regularises this atrocious system in the name of attempting to "gradual abolition"**;

(iii) Even the so-called **"regulation" which is contemplated will not give any material benefit to the unfortunate millions of contract labour**, who by circumstances beyond their reach are made the victims;

(iv) This **does not even put a break on the irregularities practised by the Government Departments, at least to begin with**.

3. In this background, **I am afraid this legislation also may turn out to be a dead-letter when put to practice. It will be only proper if the Government would reconsider the whole matter and bring forward suitable amendments to recast this legislation before it is finally adopted by the House**."

2. Deven Sen and Ranen Sen (Samyukta Socialist Party & Communist Party of India respectively)

"The emphasis in the Bill has been **more on regulating contract labour than on its abolition. Out of 35 clauses of the Bill only Clause No. 10(1) deals specifically with prohibition of employment of contract labour. Even this right has been hedged in with so many conditions as to make prohibition of contract labour almost an impossibility**.

2. **The Bill excludes from its purview the casual labour whose number is in the region of three lakhs in the Railways alone and whose service conditions are in no way better than those of the contract labour**.

3. The protection sought to have been given to workmen in establishments in which work only of an intermittent or casual nature is performed is through consultation of the Government in the Central or State Boards, but it is illusory, as **in all these Boards, the Government and the employers and contractors together will have a majority**. In the case of determination of whether an establishment is of a perennial nature or not even this consultation with the Boards, Central or State, has not been prescribed.

4. The **complicated system of registration of establishments employing contract labour and of appointment of licensing officers and of licensing of contractors is likely to give rise to corrupt practices on a large scale**.

5. Even under the amended Bill, the principal employer by engaging contract labour will have the opportunity to get labour at lower than the prevailing rates paid to permanent workers and make savings in fringe benefits such as Provident Fund, minimum profit—bonus and leave and holidays, housing etc.

6. **Further, contractors' scope to deprive the contract labour of their legitimate dues remains unfettered**.

7. **The punishments provided for contraventions of provisions of the Bill, particularly by the employers and the contractors are inadequate and will hardly be a deterrent against contraventions of the provisions**.

8. The Bill, in our opinion, will **fail in its primary objective of abolishing contract labour**."

3. Samarendra Kundu, Socialist Party.

"I have doubt that the Bill as it emerges from the Select Committee will meet the objects enunciated in the statement of objects and reasons of the Bill which provide for progressive abolition of the contract labour system and improvement of service conditions of contract labour. The Bill comes to light mainly due to the judgement of the Supreme Court in the Standard Vacuum Refining Co. of India Ltd. vs. Its Workmen, 1960, and the repeated demands made at the various Indian Labour Conferences to abolish the contract labour system. The Supreme Court judgement was delivered when there was no statutory provision for regulating the contract labour system. The Supreme Court had said that from certain categories of work the contract labour system should be abolished

forthwith. But the underlying principle of the judgement suggested that sooner this obnoxious system is done away the better for the country and the working class. Therefore, it is natural to hope and expect that the Bill should have enacted such provisions giving more protection to the contract labour than what the Supreme Court spelled out. On the contrary it will be found from the various clauses of the Bill that far from it becoming an effective legislative weapon meant for progressive abolition of contract labour **it has emerged as a confused and rambling one. It can therefore be said that the contract labour system has not been abolished even from the categories of work which the Supreme Court in its judgement had mentioned i.e. where the work is done through regular workmen.**

2. Most of the representatives of the Trade Unions which the Committee had the occasion to interview and record evidence demanded total and complete abolition of the contract labour system. The contract labour system besides exploiting the workers also exploits the economy to the advantage of a few. Large sums which are spent in the construction work are appropriated by a few at the cost of workers and by giving under-rated production. Therefore, the only solution to the problem is **complete and total abolition of the contract labour system which this Bill has failed to provide**.

3. Coming to some of the provisions of the Bill, Clause 1(4) (a) restricts the operation of this Bill to establishments employing 20 or more workers. **This will exclude a large number of organisations who employ lesser people than this and will provide a handle to the unscrupulous employers to break up the main organisation into small units employing less than 20 persons. It further restricts the operation of the Bill in clause 1(5) where the work is of intermittent and of casual nature**. The explanation provided to define what is intermittent and casual will hardly go to meet the limitations of its operation. In the chapter dealing with Advisory Boards the representative of workmen has been kept at the same level as others. **This being a Bill dealing with the contract labour system, it would have been fair to give a majority representation to the workers representatives in this Board.**

4. For the first time in a legislation of this sort a definition of workmen as "out worker" has been introduced. **In clause 2(i)(C), this "out worker" which has been defined in great length would block the operation of this Bill to a large number of workers employed in Bidi, Gold, Jewellery, garment industries etc. where "articles or materials are given out bv or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repairs. ..." etc. During our study tour we were shocked to see the miserable plight of the bidi workers who are employed under a contract system and whose wages and other living conditions are one of the worst. I am sorry to find that this Bill will not be of any help to them.** In clause 10 the Government reserved the arbitrary power to abolish the contract labour system as they choose under different conditions. In short this clause takes away all that has been given in other clauses of the Bill. Unless this clause is totally abolished the Bill will convey little meaning to the workers for whose benefit it is enacted.

5. Finally, due to various nagging clauses provided under this Bill the Government will not be able to abolish nor regulate the contract labour system. On the contrary I fear **it will give rise to a lot of litigation since various phrases and words will be open to numerous meaning and interpretations, with inadequate system of labour tribunals and courts, the litigation will always go to the benefit of the rich employers who are mostly the contractors in this case and, therefore, the net result will be that the bill will hardly meet the aspirations and hopes of the workers who wanted abolition of the contract labour system and will instead give rise to lot of confusion."**

4. **Shrichand Goyal (**Bharatiya Jana Sangh**), Hukum Chand Kachwai (**Trade Unionist associated with Koli Sangh and also RSS**), Prem Manohar (**Member of Parliament from Uttar Pradesh who later joined Janta Party**), RS Vidyarthi (**MP from reserved seat of Delhi Karol Bagh and President of the Haryana Harijan Ashram, Rohtak**.)**

"Having gone through all the Memoranda/ representations submitted by various organisations, trade unions, federations, Railways, CPWD, Ports and Docks, Coal and Steel Undertakings and also having actually studied conditions of contract labour in the States of Orissa and Andhra Pradesh we are of the opinion that the conditions of the labour working under the contract system are far from satisfactory. In some cases laborers,

specially women labourers, do not get even as much as Rs. 2 per day even after working for more than 8 to 10 hours. There are no satisfactory arrangements of canteen, housing accommodation, medical aid and drinking water in certain establishments. Almost the first time there is a reference to women labour.

2. It is true that certain categories of works, specially, the loading and unloading work or other works of seasonal nature are not of a uniform work-load and vary from day to day, week to week, and month to month, thus necessitating the employment of contract labour. The Government or public undertakings or other establishments cannot afford to keep a certain fixed number of permanent labourers because for a number of days or weeks there will be no work for them. However, it has been observed that even for maintenance work of buildings or other establishments, contract labour is being employed for construction work, white-washing work and on other maintenance jobs. It is desirable that the system of contract labour should be abolished totally on maintenance jobs and must immediately be replaced by permanent labour. **The disparities in the emoluments and facilities available to permanent labour and the labour working under contract system is so huge and glaring, that it is necessary and desirable to abolish contract labour in public interest. The considerations of economy should not outweigh the government or public sector undertakings or other establishments employing contract labour.** The problem has to be viewed from a human consideration.

3. The **contract labour should continue only in establishments where permanent labour, if employed, would have to remain unemployed for a considerable period on account of the intermittent nature or seasonal nature of the work. Serious efforts should be made by the Government to employ labour permanently, even where it costs more to the Government, and it should be retained only where it is absolutely necessary.**

4. The provisions of the Act are applicable to: (a) to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour; (b) to every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen. Keeping in view how the muster rolls are managed by the contractors, **it will be desirable to reduce the number from 20 to 10 so that contract labour could be abolished even from smaller establishments.**

5. Then again in the explanation of Section 1(5) (b) the work performed in any establishment shall not be deemed to be of an intermittent nature: (i) if it was performed for more than 120 days in the preceding 12 months or (ii) if it is of a seasonal character and is performed for more than 60 days in a year.

6. We suggest that in above **sub-para (i) the number 120 days should be reduced to 90 days and in sub-para (ii) it should be reduced to 30 days from 60 days**.

7. In Clause 2, it is desirable that owing to the steep wage rise in recent times, the **raising of wage limit in respect of a workman in a supervisory capacity should be raised from Rs. 500 to Rs. 750. The argument of the government that the question of raising this wage limit in the various labour laws was already under consideration of the Ministry was not a cogent and convincing one.** A beginning could be made with this new piece of legislation and this would have provided a precedent for other labour laws to follow.

8. In Clause 15, it is desirable that the appellate officer should be a person having legal qualifications, training of judicial work and a human approach. He should be able to decide appeals in an objective, legal and dispassionate manner. His approach should be legal rather than departmental. Therefore, it would be desirable if the **appellate officers are appointed out of retired District Judges or other judicial officers**.

In Clause 26, the right of filing a complaint has been given to the inspector or it has been made subject to his sanction. In fact, **the right of filing complaints should be available to trade union workers also and no rider or restrictions should be placed on their right of filing complaints for the breach of the provisions of the Act, in order to move the appropriate authority. It is also desirable that in Section 26, the period of limitation for filing complaints should be extended to six months** because it is likely that some of the contraventions of the provisions of the Act may come to notice after three months.

10. **Very wide powers have been invested in the Government under Section 31 for exempting establishments in special circumstances from the operation of the provisions of the Act and the entire matter has been left to the sweet will and discretion of the appropriate Government.** This provision of law, with uncontrolled and uncanalised power invested in the Government, may be abused by the appropriate Government in times of

emergencies or other serious circumstances. Some criteria must be laid down and the contingencies in which this Section is to be utilised have to be specifically mentioned to avoid abuse of this provision of law."

The lone dissenting Note from the viewpoint of the employers was of Shri RK Amin of the Bharatiya Lok Dal[32] whose salient points were as below:

"I cannot agree with this Bill, both as it is conceived and as it is framed. My objection to the Bill as it is conceived, is in regard to its approach. While it is true that every step should be taken to protect labour wherever employed against possible malpractices and also to ensure in regard to their employment, observance of fair standards and practices, this does not mean that one should throw away the baby with the bath. In fact, there are areas where the contract labour should be abolished, while, in others it should be restricted, **but there still remain some areas where it should be encouraged since it is both desirable and necessary for the efficiency of the economy.**

2. There exists a good deal of confusion in regard to the thinking on contract labour. On one hand, there is a demand for complete abolition of contract labour—although to begin with, it is conceded that in some sectors of the economy the restrictions may be imposed. **This is the view which emanates from the communist ideology—which hates anybody between capital and labour i.e. any middlemen, who is considered as sterile and useless and hence worthy of removal.** This view is totally wrong and cannot be sustained.

3. To some extent, the view just mentioned seems to be working in putting Bill forward—because its statement of objects and reasons starts with the statement that the contract system leads itself to various abuses. This is indeed a very odd way of putting the matter. **In fact, contract system is the necessary consequence of the process of division of labour so essential for economic development.** In fact, in the present system of our economy—every one other than entrepreneurs—receives contractual returns and therefore work on contract. In fact, each one of us adds to the utility of goods and services by one's own labour. And hence, such a view that, no middlemen is required cannot be sustained. **The move to introduce this Bill with such intention and understanding in the background should be nipped in the bud.**

4. But, fortunately there is another view regarding contract labour; that is labour employed by a contractor as conceived in clause 2 (c) of the Bill. It is generally believed that **whenever contract labour is engaged, the conditions of work of such labour are worse than regular labour. More often than not, the principal employer is averse to take any responsibility regarding wages and other conditions of labour employed by contractors**.

5. Real objection to contract labour in this sense is that **the contract labour is engaged by the employer through an intermediary to evade obligations cast on him under various labour enactments like Employees State Insurance Act, Employees Provident Fund Act, Industrial Disputes Act etc. Sometimes contractors are brought into the picture in order to use them against regular employees so that the strength of their union power be broken and they be prevented from a rise in their wages**.

6. Really speaking, this is a case where the Bill should try to separate corn from the chaff. **The contract labour used to evade the agreement deliberately entered by two parties should be abolished without delay. Because, such an attempt is a violation of the agreement voluntarily arrived at by two parties—labour and capital—in a particular industry. The criteria put forth by the Supreme Court become relevant in this regard. As a matter of fact, the Bill should have tried to bring out this intention of the Supreme Court in clause 10 of Chapter I. The four criteria stipulated by the Supreme Court in its judgment in the case of Standard Vacuum Refining Co. of India Ltd. vs. their workmen (1960 II ILS) are conjunctive i.e. all the four conditions must be satisfied for the abolition of contract labour in any establishment. In the Bill these criteria have been separately mentioned which is wrong and cannot therefore be accepted**.

7. It is pertinent to quote from the judgement of the learned judges. "In the present case no such thing arises and the only question for decision is whether the work which is perennial and must go on from day to day and which is incidental and necessary for the work of the refinery and which is sufficient to employ a considerable number of whole-time workmen and which is being done in most concerns through regular workmen, should be allowed to be done by contractors." **The Supreme Court wanted to abolish such contract work instead to extend the principle all over is acting against the interest of the Indian economy**.

[32] See 19 above for full details.

8. This question again needs to be examined in the context of the economy in general and Indian economy in particular. Various studies in the working of the economy all over the world have revealed that **contract labour contributes to increase in efficiency, reduction in costs, streamlined administrative and accounting procedures, a greater utilisation of technological changes, availability of outside expertise with superior technical know-how, stabilisation of labour force and elimination of wastage due to absenteeism**.

9. It may well be the case that an entrepreneur with a view to concentrate his administrative talent in more important task, may like to hand over certain work to others and in that case it is a desirable division of labour. Or else some type of work may require a certain type of expertise which may be needed for a short while only, in such cases the work done on contract basis may be useful both to workers as well as to consumers. Wage system based on piece-work is also a contract labour viewed differently but of the same nature. Sometimes, some type of work needs more supervision labour than the actual labour required to do the work. In that case contract labour may be more useful. Therefore, **there are circumstances when contract labour is a positive good—a necessity rather than an evil. In that case the economic organisation should not only permit but also should encourage its application on a wide basis.**

10. **Sometimes contract labour enables us to obtain goods and services with lower cost than otherwise possible. It should be then considered as a boon—if the benefit of lower cost goes to consumers,—or if it enables us to provide employment to large number of men and women, or it enables us to develop the industry concerned. It is just conceivable that by abolishing all contract labour, the principal employer may be compelled to employ permanent workers for all types of work and thereby incur higher costs. But as a result of this process, if he holds a monopoly, the output of the industry concerned may be restricted, his profit also restricted, prices high for consumers or if the industry concerned has to face competition, the industry becomes a sick industry and very soon has to be closed down. The abolition of contract labour in such cases is not only harmful but also disastrous.** It is only when elimination of contract labour reduces the excessive profits, or abnormal returns of contractors without hampering the growth of employment as well as the output, it may be helpful.

11. To some extent, **the organised industries in India agree to several concessions to labour because in the context of a more or less insulated economy of India against foreign competition, a monopoly condition—both of labour and capital has been created. It is in that condition, concessions are agreed which acts against the interests of consumers. This also makes the economy rigid and also retards the possible rate of growth of the economy**.

12. In India, since the economy is developing, it is likely that **changes in techniques of production should take place rapidly. To enable industries to have flexibility for rapid shifts in production, it is not desirable to put any industry into a straight-jacket or into a set pattern**. Complete abolition or imposition of many restrictions on the use of contract labour at this stage therefore are not desirable. Sometimes labour finds agricultural work during a particular season, say rainy season, or kharif season but is free during the Rabi season, or say in summer, when he would like to have seasonal work for a few days. **Sometimes, labour itself does not like to bind down to a particular factory, while many times, he could spare any one member of his family for some contractual work but not a particular member always**. In such cases, contract labour is convenient to the labourer himself. **The consumer also sometimes obtains cheap and efficient service**—only when contract system prevails—otherwise, division of labour is not possible. The **construction work, loading and unloading, transportation etc. are types of work which can be conveniently, cheaply and efficiently handled by contract labour.**

13. Thus, it is necessary to recognise (a) that contract labour is not only necessary but also a positive good in some sectors of the economy and hence it should be encouraged; (b) In some, it is likely to lead to abuses, and in that case, it should be abolished where only abuses and no good is possible; and (c) it should be restricted where both good and evil are likely to be reaped. Failure to bring these facts categorically in the statement of objects and reasons is likely to lead to its wrongful application in the present form.

14. Let me now come to the operative part of the Bill. In this regard **I do not agree with (a) definitions of establishment and contractor (b) powers given to the Government; and (c) location of responsibility on both the contractors and the principal employers as regards payment of wages and provision of amenities;**

15. The 19th Session of the Indian Labour Conference first took up the question of contract labour. It is worthwhile to note the conclusions of the Conference. It suggested that **as far as possible the regular work of establishments should be done by the principal employer with workmen engaged directly and that contract labour should not be engaged where the work is perennial and must go on from day to day, is incidental and necessary for the work of the factory, is sufficient to employ a considerable number of workmen and is being done mostly through regular workmen. Where this is not possible, the standards for weekly rest day and overtime should be fixed. Arrangements should also be made for providing essential amenities. The Bill in fact, ought to have embodied this spirit; instead it has gone beyond its required scope.** If the aim as suggested by the 19th Session is kept in view the clause 5(e) of the Bill should have been amended as to include "any process, operation or other contract work which is of intermittent or casual nature."

16. As regards the restrictions imposed on the use of contract labour, the definition of contractor is significant. **The types of benefits which the Act tries to impose are only necessary if the labour is employed for a longer duration. This should be reflected clearly in the definition but unfortunately Bill has tried to cover all contractors employing contract labour of more than 20 men, even for a day, during the preceding year**. This is totally wrong in principle as well as in regard to its execution. In fact, when all factory laws apply to employers having more than 20 workers, the contractor employing more than 50 men, say for more than 60 days or 90 days, ought to have been brought under restraint—or the Act should have been applied to an establishment which employs 20 or more contract labour, on an average per day—during the preceding six months.

17. The distribution work such as **loading, unloading and transporting also should be done by contract labour. The work which can't be done at one place or which can be separated from manufacturing process as such, or which can't be put under the discipline of factory work because of its uncertainty and irregularity should not be put under restrictions by this Act**. The work of loading and unloading, is of this type and therefore should be kept beyond the scope of this Act.

18. It is also wrong to put the responsibility on two agencies— principal employer and contractor in the Bill. **To make the Principal employer as well as the contractor responsible for the payment of wages etc. when a contractor is registered and given a licence is wrong. It is better to make any one of them responsible.** The Principal employer can be made responsible only when contractors are not brought under the clutches of law. **The Principal employer should be made responsible only when contractor is not given a licence; if the contractor is registered and holds a licence, the Principal employer should not be made responsible**.

19. Moreover, the responsibility regarding the provision of canteen, latrines, drinking water etc. be made also the responsibility of any one of them, and this should be decided by the Advisory Council. Sometimes, it may be better that the Principal employer is made responsible; while sometimes the contractor. The terms of contract should clearly lay down who should be responsible for what. And the appropriate Government should also be prepared in some cases to locate clearly the responsibility on any one of them.

20. In regard to locating of responsibility of making payment of wages and providing certain facilities on any one of the two — Principal employer or the contractor—**it would have been better if the definition of contractor was made clear and specific. In fact, such responsibility on contractor should be laid if he is an independent contractor i.e. a person who, in the pursuit of an independent business undertakes to do specific jobs of work for other persons without submitting himself to their control in respect of the details of the work.** While, in order to give relief to workers not directly employed by the owner, occupier or Manager of an industrial establishment, the Industrial Courts, High Courts and Supreme Court have laid down that where the principal employer exercises control and supervision over the worker, the worker should be deemed to be a worker under the Principal employer so as to attract the benefits of the Factories Act and the Industrial Disputes Acts. For such workers, Principal employer be made responsible. But the Act should not ride on two horses— which sometimes may mean riding on none. There is also an important mistake of disregarding equity in this Bill. It is known to all that probably public sector undertakings employ contract labour on a bigger scale than the private sector undertakings. **In that case, to leave the powers to appropriate governments either under clause 10(1) and 10(2) or 5(b) or clause 31 (power to exempt in special cases) may tantamount to giving special facilities to public sector undertakings. Such powers can be given for public purposes only and any private party which finds discriminatory treatment should have opportunity to approach the judiciary for redressing one's own grievances. It is to be regretted that such a fundamental right has not been granted to aggrieved parties in this**

Bill. Especially appeal to judicial authority should have been allowed in regard to the explanation given in clause 10(2) in the Bill."

It was in these circumstances and in this background that after 5-10 years of polarized public debate beginning with the judgment of the Supreme Court; the vocal protests of the trade unions, the discussions in the Indian Labour Conference and recommendations of the Tripartite Committees; the Parliamentary Debate and deliberations of the Joint Parliamentary Committee - that the Contract Labour (Regulation & Abolition) Act 1970 came to be passed. It was passed at a time when contract labour was already fairly well entrenched and against stiff resistance by the employers particularly in the public sector. The legislation itself, when weighed against its lofty aims, was already weak, cumbersome and not very effective, particularly for the workers or trade unions to utilise. Yet it openly recognised the device of contractualisation, not as the employers wished to see it - as just an efficient way of deploying labour for short periods, or for intermittent or specialised tasks - but as a means of exploiting labour. To that extent it was indeed a unique piece of legislation.

PART B: HOW THE CONTRACT LABOUR ACT ACTUALLY WORKED

Abolition of contract labour under the CLRA Act and the functioning and efficacy of the Contract Labour Advisory Boards

(*For the discussion under this part I am indebted to Dr. Vivek Monterio of the Central Trade Union CITU who shared with me his experience as a member of the Central Contract Labour Advisory Board from 2001 to 2018, and also many relevant documents such as agendas of meetings and applications that came before the Board during his tenure.*)

The law regarding abolition of contract labour under the CLRA Act is confined to Section 10 of the Act which reads as follows:

Section 10 in the Contract Labour (Regulation and Abolition) Act, 1970
10 Prohibition of employment of contract labour. -

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as-

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation that is carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ a considerable number of whole-time workmen.

(Explanation. - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.)

Thus, the process envisaged by the Act was that the Central/ State Governments could *suo motu*, after consultation with the Central/ State Labour Advisory Boards, prohibit the employment of contract labour in any particular process/ work in a particular establishment or class of establishments. Of course since such pro-activity is not to be expected from governments, it means in practice, that the aggrieved contract workers working in any particular process/ work in an establishment would either have to approach the Central Government/ Central Advisory Contract Labour Board or the State Government/ State Advisory Board, for prohibition of contract labour in that process/ work, depending on who was the appropriate Government in respect of the establishment of the Principal Employer. Many a time, such applications remained pending before Governments until the workers/ unions approached the High Courts/ Supreme Court which then directed the constitution of such an Advisory Board or the consideration of an application for regularisation by such an Advisory Board. The judgment of the Madras High Court in *Desiya Murpokku TNPL Oppantha vs The Government Of Tamil Nadu*[33] decided on 16 March, 2020 shows just how long winded this process could be (in this case a period of more than 6 years to merely obtain payment of gratuity):

"Perusal of record shows that the petitioner along with some other unions representing contract workmen under the 7th respondent, had filed W.P(MD)Nos.19476/2014, 7998/2015 & 9929/2015 to abolish the contract labour system in Tamil Nadu Papers Ltd and consequently to absorb their members as regular employees. This Court by order dated 22.06.2015 directed the Government for constitution of a special committee to take a decision in this regard, against which, the 7th

[33] "*Desiya Murpokku TNPL Oppantha vs The Government Of Tamil Nadu*" – Judgment passed on 16 March, 2020 in W.P.(MD)No.4927 of 2020 by the Madurai Bench of the Madras High Court on 16.03.2020 by the Hon'ble Mrs Justice J. Nisha Ban.

respondent filed W.A(MD)No.890/2015 contending that the Government has no power to constitute special committee under the Contract Labour (Regulation and Abolition) Act, 1970. The Division Bench by judgment dated 23.02.2017 directed the 2nd respondent/Tamilnadu State Advisory Contract Labour Board to take a decision either by themselves or by appointing a Sub-Committee with regard to the abolition of Contract Labour System within a period of 10 weeks. The State Advisory Contract Labour Board had constituted a Sub-committee to take up the study covering the entire Paper Industry in Tamil Nadu and the Sub Committee submitted its report stating that abolition of entire contract labour system in Paper Industries is not feasible and the Contract Labour System in the perennial nature of work may be abolished in Paper and Board industries. Since no orders were passed thereafter, the petitioner filed contempt petition and the 4th respondent/Commissioner of Labour issued a communication dated 08.06.2018, containing the decisions of the State Advisory Labour Board, wherein, in Clause 4.3, the State Advisory Contract Labour Board accepted the recommendation of the sub-committee that abolition of entire contract labour system in Paper Industries is not feasible, against which, the petitioner's Sangam (*Union)* filed W.P(MD)No.20496/2018 to quash the communication dated 08.06.2018 and sought for permanency of contract workmen. This Court by order dated 17.06.2019 set aside the communication dated 08.06.2018 and directed the Government to consider the entire issue on merits and in accordance with law. However, the Government again reiterated Clause 4.3 in their letter dated 04.10.2019 and denied abolition of the contract labour system. Now it is the only grievance of the petitioner that decision in clauses 4.1 and 4.2 of the State Advisory Labour Board has not been implemented.

13.Perusal of record further shows that some of the contract workmen who were deployed by the contractors in the respondent company, had filed cases before the Appropriate Authority under the Payment of Gratuity Act 1972, for payment of Gratuity which were dismissed on the ground that the contract workmen were not able to prove that they had worked under any particular contractor continuously as stipulated in the said Act and therefore, they are not entitled for gratuity. In my considered opinion, it cannot be expected that the contract workmen maintain proof for continuous employment and it is for the authorities to genuinely find out who had worked continuously and to comply with the report of the State Advisory Contract Labour Board. Mere dismissal of the above cases filed before the Appropriate Authority under the Payment of Gratuity Act, does not mean that the authority should not implement the decisions in Clause-4.1 and 4.2 taken at the 50th meeting of the Tamil Nadu State Advisory Contract Labour Board. It is very unfortunate that there is no such compliance till date. The sub committee was constituted as per the directions of the Division Bench of this Court in W.A.(MD)Nos.886/2015, 889-891/2015 dated 23.02.2017 and therefore, the authorities are obliged to comply with the decisions in Clause-4.1 and 4.2. 14.Therefore, the respondents 1, 4, 5 and 6 are directed to enforce and ensure implementation of the decisions in Clause-4.1 and 4.2 taken at the 50th meeting of the Tamil Nadu State Advisory Contract Labour Board held on 23.03.2018 and to grant all the statutory benefits like minimum wages, leave facilities, ESI, EPF, Canteen facilities, Medical facilities, Gratuity, Bonus, working hours etc., to all the contract labourers in TNPL, as stated in the Govt. Letter 1(D)No.542/H1/2018-1, dated 04.10.2019 and the direction issued in the Govt. Letter No.22104/H1/2019-2 dated 27.01.2020 addressed to the 5 th and 6th respondents, within a period of four months from the date of receipt of a copy of this order.”

The activity and effectiveness (and sometimes even existence) of State Contract Labour Advisory Boards have varied from State to State, and also in each State over time, depending on the strength of the unions of contract labour in the State, the attitude of the political leadership of the State, the clout of the concerned

industrial establishments, and pronouncements of respective High Courts. In many States these Boards are hardly functional and little secondary data is available regarding the same. In the State of Maharashtra, for instance, the State Contract Labour Advisory Board was constituted again in 2018 after three years of not being in existence during the Chief Ministerial tenure of Shri Devendra Fadnavis of the BJP.

But the Central Advisory Contract Labour Board has been relatively consistent, meeting at least twice a year. This is so largely because the members of the CACLB are:

a) Representatives of public sector managements such as SAIL, Coal India, Railways etc.
b) Representatives of Central Trade Unions.
c) Representatives of the contractors such as CPWD Contractors Association.
d) Chief Labour Commissioner and other bureaucrats from the Ministry of Labour, Women and Child Development etc.

At a typical meeting of the CACLB, the minutes of the previous meeting would be ratified by the members, a pre-circulated agenda would be taken up including - decisions on the formation of Committees to look into pending applications for abolition of contract labour, review of the progress of Committees formed earlier discussions on Reports placed by Committees, and finalisation of recommendations of the CACLB to be sent to the Central Government. Typically, a three-member Committee would be formed to look into a particular case of abolition in a particular process in a particular industry. The Board would delegate one representative of unions and one representative of the public sector managements to serve on the Committee, and also decide the Chairperson of the Committee. Generally, the local Regional Commissioner of Labour would be the third member of the Committee. The Committee would conduct an enquiry by visiting the particular area and hearing the workers/ union concerned as also the concerned management, and perusing relevant documents, and then present its Report to the Board, which after further deliberations would forward its recommendations to the Central Government.

Naturally this was a very time-consuming process, contingent upon the commitment/efficiency of the members of the Committee, and eventually that of the Board. Often the posts of Government representatives would remain vacant, the management representatives would obstruct a consensus, and sometimes the workers representatives would also differ among themselves. Many times, the Government would sit on the recommendation of the CACLB. Mr Monterio

described the peculiar case of Standard Chartered Bank where the management representative who was made Chairman of the concerned Committee, was himself heading the firm that supplied contract labour. When Mr Monterio pointed out this blatant conflict of interest, and his opinion was subsequently upheld by the Delhi High Court, he was "rewarded" by being dropped from the CACLB.

Notifications issued by the Central Government and the impact of the SAIL judgment.

A total of 84 Notifications have been issued by the Central Government beginning from the year 1975 till the year 2012 prohibiting contract labour in specified departments of various public sector establishments. 5 of these were subsequently quashed by High Courts and the Supreme Court when appealed by the public sector managements. (This included the Notification prohibiting contract labour in sweeping and cleaning in all offices under the Central Government). Some of the major industries/ establishments in respect of which notifications were passed over this period were as follows:

1) Mining - In Coal mines and washeries, Iron Ore, Limestone, Gypsum, Manganese, Chromite, Magnesite, Dolomite, Mica, and Fire Clay Mines - for the work of overburden removal, drilling and blasting, raising of ore, loading, muck removal etc.
2) Railways - Catering, cleaning, work in pantry cars, painting of signals, track maintenance (In all these work we find only contract work today.); Wheel and Axle Plant, Bangalore.
3) Food Corporation of India - loading, unloading, storing and stacking, godown staff. (Mostly contract labour does this work today.)
4) Major Ports - routine repairs, maintenance, cleaning, painting, removal of garbage. Jawaharlal Nehru Port Trust - tugs and pilot/ mooring launches.
5) Oil and Natural Gas Commission (ONGC) - Firefighting, Typists, Clerks, Data operators, Store keepers, Boiler operators, Telephone operators, Attendants/ Helpers/Peons, Instrumentation Technician & Helpers, Radio operators, Drivers of vehicles owned by ONGC.
6) Hindustan Petroleum Company Ltd - Various categories of work in Administration, Dispensary, Warehouse, LPG Plant etc.
7) Central Bank of India - Canteen Staff
8) Mahanagar Telephone Nigam Ltd - Canteen Staff in various Telephone Exchanges in Mumbai.
9) Pawan Hans Mumbai - Canteen Services, Housekeeping, Electrical Maintenance, Plumbing, Gardening and Horticulture, Pump Operation.
10) Liquefied Petroleum Gas Plants, Depots and Terminals of Indian Oil Corporation Ltd., at Jammu, Hissar, Pathankot, Delhi, Kotkapura, Ambala, Patiala, Jalandhar, and Sawai Madhopur - loading/ unloading, capping, transportation, testing, sorting of

cylinders; loading/ unloading of lube oil trucks; peons in plants, depots and terminals; Work in the Mathura Refinery.

11) National Thermal Power Corporation - Operators and Instrument Technicians.
12) Indian Iron and Steel Company, Burnpur, West Bengal.
13) Air India, Indian Airlines, Airport Authority of India Ltd. - Maintenance and operation of air conditioning plants, generator sets and electrical installations, Maintenance and operation of effluent treatment plants; Telephone mechanics; Cargo handling; Maintenance and operation of all fire-fighting equipment including fire extinguishers and appliances, Aero bridge workers; Lift operators; Sharpshooters; Conveyor system; Electrical maintenance of high mast towers, car park flood lights and street lights; Maintenance (and not repair) of air curtains and sliding doors; Telephone operators; Apron cleaning; Split flap display system operation.
14) Damodar Valley Corporation - Durgapur, Purulia and Majia Power Stations.
15) Visveswaraya Iron and Steel Ltd, Bhadravathi.
16) National Fertilizers Company, Nangal.
17) Kovalam Beach Resort, Kerala.
18) Rashtriya Chemicals and Fertilisers Limited in their plants at Chembur, Mumbai, Priyadarshini Complex, and Thal District Raigad, Maharshtra.
19) Hospitals of the Employees State Insurance Corporation at Kandivali, Merol, Thane and Ulahasnagar in the State of Maharashtra.
20) Sree Chitra Thirunal Institute for Medical Sciences and Technology, Thiruvananthapuram**.**
21) Kolkata Telephones - Linemen, Helpers, Operators, Maintenance Staff.
22) Metro Railways Calcutta - Checking Assistant, Safai Workers in all Metro Stations.
23) American Express Bank Limited, Travel Related Services, Gurgaon.
24) Offices/establishments of Central Public Works Department, Ministry of Urban Development and Employment, New Delhi
25) Jheel Siding Coaching complex and Howrah/Bamangachi Diesel Shed.
26) Kanchrapara Workshop of Eastern Railway, Kolkata.
27) Nuclear Science Centre, Aruna Asaf Ali Marg, New Delhi.
28) All India Institute of Medical Sciences at New Delhi - operation and maintenance of all pumps, lifts and generators.
29) Kolkata Port Trust, Kolkata - Sleeper renewal of railway tracks, repairing, restoration and laying and linking of tracks
30) Research Centre Imarat, Vignyana Kancha, Hyderabad - Sweeping and cleaning; and electrical sub statation.
31) M/s Balmer and Lawrie Company Limited, Kolkata - Electric and Mechanical Repairs.
32) Industrial Development Bank of India Limited, Kolkata - Security Guards.
33) Defence Institute of Fire Research, Delhi - Maintenance of Electric substation and pumphouse.
34) Central Warehousing Corporation, Delhi - Handling of import and export container and cargo, their loading and unloading from road vehicles and their stuffing, de-stuffing in and from container.

35) National Clearing Cell of Reserve Bank of India, New Delhi - Works of maintenance of electric fittings, operation and the maintenance of generator set and maintenance of central air conditioning system.
36) Paradip Port Trust, District Jagdisinghpur (Orissa) - repairs or maintenance work of Broad Gauge Permanent Railway Line.
37) Central Mechanical Engineering Research Institute (CMERI) Durgapur, West Bengal - Security Supervisors and Guards.
38) Establishment of Commissioner of Customs and Central Excise, Hyderabad - Sweeping and Cleaning.

What needs to be appreciated is the onerous efforts over long periods of time that each group of workers working in the above jobs must have put in, first to organize against all odds, and then to represent and establish their case, and also survive legal challenges in the High Court and Supreme Court, in order to achieve these notifications prohibiting contract labour.

It is equally clear that even after the issuance of such notifications, contract workers continued to work for decades together, against jobs where contract labour had been abolished. Many such groups of workers began to demand absorption as regular employees and eventually the matter travelled to the Supreme Court. A three member Bench of the Supreme Court on 6th November 1996 delivered a path-breaking judgment on this issue in "*Air India Statutory Corporation vs United Labour Union & Ors.*" [34] The operative part of the judgment is as follows:

"Thus, we hold that **though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification under section 10 (1) of the Act, in a proper case, the court as *sentinel qui vive* is required to direct the appropriate authority to act in accordance with law and submit a report to the court and based thereon proper relief should be granted**.

It is true that learned counsel for the appellant had given alternative proposal, but after going through its contents, we are of the view that the proposal would defeat, more often than not, the purpose of the Act, and keep the workmen at the whim of the establishment. The request of the learned Solicitor General that the management may be left with that discretion so as to absorb the workmen cannot be accepted. In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between the principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant."

[34] "Air India Statutory Corporation vs United Labour Union & Ors" – Judgment passed by a 3 member Bench of the Hon'ble Supreme Court on 6 November, 1996.

As a result of this judgment, more and more groups of workers were encouraged to approach the courts for absorption. **However, the SAIL judgment (** ***Steel Authority Of India Ltd. & Ors Vs National Union Water Front Workers & Ors*****)[35] decided on 30 August, 2001 by a five member Bench of the Supreme Court, reversed the judgment, and dealt a death blow to the prohibition of contract labour**. It held as follows:

"(3) **Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment;**

(4) **We over-rule the judgment of this court in Air India's case (supra) prospectively** and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following the judgment in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment **or for supply of contract labour** for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. **If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder**.

(6) **If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications**. We have used the expression industrial adjudicator by design as

[35] See 4 above

determination of the questions afore-mentioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. **Therefore, in such cases the appropriate authority to go into those issues will be industrial tribunal/court whose determination will be amenable to judicial review.**"

Thus the SAIL judgment made it impossible for millions of contractual workers working against jobs where contract labour had already been prohibited, to approach the courts, to demand absorption. The implication of the SAIL judgment was that, if such an illegality was indeed established, the existing workers would lose their employment and the Principal Employer would undertake fresh recruitment.

But that was not all. Mr Monterio also explained, in his interview in November 2022 that the perverse interpretation by the SAIL judgment also meant that workers/ unions stopped seeking notifications for the prohibition of contract labour. **The number of applications before the Governments/ Advisory Boards reduced and workers/ unions preferred to negotiate for an intermediate status between minimum wage workers and regular workers for long standing contract workers** such as:

a) security of tenure - even if contractors came and went, the workers would continue;
b) a 25% or 30% wage increase above minimum wage;
c) other incremental benefits with passage of time such as medical benefits, gratuity etc.

However this has **crystallised the existence of different categories of workers in an industry/ establishment, doing the same work but with differential wages and benefits - another "caste system"**. Today regular/ permanent workers are a fast diminishing minority in their places of work, even in the public sector. For instance, in the Bhilai Steel Plant where in the early 1960s there were more than 90,000 permanent workers, today there are merely around 12,000 while the number of contract workers has increased to more than 40,000 even though the capacity has almost tripled. (Of course mechanization/ automation have also played a role in this.)

Over time, the CACLB has also been dealing with more applications for exemption of establishments from existing notifications of prohibition, and these also take up a chunk of the CACLBs time and agenda. The apprehension of the trade unions that the CLRA Act would actually work to legitimize and entrench the contract labour system has proved to be only too true.

PART C: Lifting the corporate veil, sham and bogus contract system.

The only option left by the SAIL judgment for long standing contract workers to be regularised/ absorbed as permanent workmen is to establish before an Industrial adjudicator, on the facts of their case, that the so-called contractor is a mere "paper arrangement", a "camouflage" or "smokescreen", that the so-called contract is "sham and bogus." Then the contractor disappears as an intermediary and an employer-employee is established between the contract worker and the Principal Employer, thus regularising or making permanent the contract worker. This line of reasoning began to be used since the classic judgment of J Krishna Iyer in *Hussainbhai, Calicut vs Alath Factory Thozhilali* decided on 28 July, 1978[36]. Thereafter it was followed in a catena of judgments.

Amendments entrenching contractualisation

1. Over a period of time, various States made amendments of the CLRA Act, which unfortunately, rather than strengthening the abolition aspect, actually entrenched contractualisation further, for instance:

   a) **increasing the minimum number of workers for the applicability of the Act** - (such as from 20 to 50 vide the Maharashtra Amendment of 5th January 2017);
   b) **permitting application for license online and introducing a concept of deemed renewal of license** (such as vide the Maharashtra Contract Labour (Regulation & Abolition) Rules (First Amendment), 2014). This avoided the scrutiny of the Labour Department in carrying on permanent and perennial work through endless extensions of contracts.
   c) **deeming certain kind of work out of the purview of the Act**. (such as vide The Contract Labour (Regulation and Abolition) (Maharashtra Amendment) Act, 2005 (Maharashtra Act 13 of 2006), sec. 2 (w.e.f. 2-5-2006). which laid down that:

   > "That the work performed or carried out in the area of Special Economic Zone (declared as such by the Government of India), which is of ancillary nature such as canteen, gardening, cleaning, security, courier services, transport of raw material and finished products, or loading and unloading of goods within the premises of a factory or establishments which are declared 100 per cent. export units by Government, required to achieve the objective of a principal establishment in the said area, **shall be deemed to be of temporary and intermittent nature irrespective of the period of performance of the work by the workers in such ancillary establishments."**

[36] See 22 above

2. At an all-India level also, attempts were also made to amend (rather dilute) the CLRA Act, through a proposed amendment in 2017[37] and even a Bill for amendment in 2019[38], though so far none could be passed. Some of the major changes proposed to be made were:

   a) Including **"supplies contract labour for any work of the establishment as mere human resource; and includes a sub-contractor;"** in the definition of a contractor;
   b) Replacing Section 21(2) and (3) - the Responsibility of the Principal Employer for the Payment of wages with:

      "(2) Every contractor shall, as may be practicable, make the disbursement of wages in a mode otherwise than in cash **and inform the principal employer electronically** the amounts so paid by such mode: Provided that where it is not practicable to disburse such payment otherwise than in cash, then, it shall be disbursed in the presence of a representative duly authorised by the principal employer and it shall be the duty of such representative to certify the amounts so paid as wages in such manner as may be prescribed.

      (3) **It shall be the duty of every contractor to ensure the disbursement of wages under sub-section (2), primarily by electronic mode** and if not so practicable, then, in cash in presence of the authorised representative of the principal employer."

All these proposed changes were to further entrench contractualisation. Now the very necessity to pass such a Bill has been eliminated by the repeal of the Act by the Occupational Safety, Health and Working Conditions Code, 2020.

Impact of Judicial Pronouncements

In 1987, in the *Food Corporation of India* case[39], the Punjab and Haryana High Court, gave a strict interpretation to the CLRA Act, by suggesting that if

(i) If the Principal Employer did not have a valid registration; or
(ii) If the contractor did not have a valid license, (such as if his license had expired, or if he employed more workmen than mentioned in his license, then -
- **The contract labour in such a case should be considered to be the direct employees of the Principal Employer**.

[37] Notification F. No. S-1601111012016-LW(A) of the Government of India, Ministry of Labour and Employment Shram Shakti Bhawan, Rafi Marg, New Delhi dated, the 28th September, 2017.
[38] THE CONTRACT LABOUR (REGULATION & ABOLITION) AMENDMENT BILL, 2017
[39] "*Food Corporation Of India vs The Presiding Officer, Central Industrial Tribunal & Ors*" ... on 8 March, 1987 Equivalent citations: (1993) IIILLJ 347 P H

While this Judgment was never overruled, its ratio has been diluted in successive judgments by contradictory reasoning by other High Courts. Violations of the above nature began to be considered mere irregularities and not reasons to conclude that the contract system was sham or bogus and the contract workers deserved to be regularised.

For instance in *Airports Authority Of India vs A.S.Yadav & Ors.* [40] decided by the Delhi High Court on 28 November, 2019**,**

"I also find merit in the petitioner's contention that merely because the Labour Court found that the petitioner had engaged the respondents as contract labour through EATS without a licence for such engagement under the Contract Labour (Regulation and Abolition) Act, 1970 ('CLRA Act' in short), the respondents could not be automatically treated as the petitioner's employees. The provisions of the CLRA Act do not contemplate creation of a direct employer-employee relationship between the principal employer and the contract labour merely because the principal employer did not have a valid license for engaging contract labour under the Act. In my view, non- adherence of the provisions of the CLRA Act could, at best, lead to prosecution of the petitioner's responsible officers but could not be a ground to hold that the contract between the petitioner and the EATS was a sham, especially in the absence of any such plea by the respondents."

Similarly, the Delhi High Court has also held in *Delhi General Mazdoor Union Vs Standing Conference of Public Enterprises,* decided on 30th April 1991[41]:

"21) Contrary view has, however, also been, expressed by the Bombay High Court in General Labour Union (Red Flag) v. K.M. Desai and others, 1990 (1) L.LN. 181; and Madras High Court in Ashok Leyland Ltd. v. Government of Tamil Nadu and others, 1990 (1) L.L.N. 267. In the Bombay case the principal employer was having registration but the contractor was not having any license. Canteen of the principal employer was being run by the contractor and the court held that the employees of the contractor did not become direct employees of the company, the principal employer. The court noticed the decisions of the Madras High Court in Best and Crompton Industries Ltd. case to hold that the ratio of the case was not applicable to the case before the Bombay High Court. It held that there was no provision in the Act, whereby it could be construed even by remote possible way that upon the failure on the part of the contractor to register his contract under Section 12 of the Act the employees employed by him would become the direct employees of the company. It was noted that on the contrary for the failure of the contractor to register the contract penalty was prescribed."

PART C: WORSENING SITUATION OF CONTRACT LABOUR

[40] "*Airports Authority Of India vs A.S.Yadav & Ors*." – Judgment of the Delhi High Court passed on 28.11.2019

[41] "*New Delhi General Mazdoor Union Vs Standing Conference Of Public Enterprises*" – Judgment passed on 30 April, 1991 by Delhi High Court. Equivalent citations: ILR 1992 Delhi 358

Contractual workers as a share of total workers in Industrial Establishments.

Increased contractualisation in the formal manufacturing sector is apparent from the following state wise figures of contract workers as a percentage of total workers between 2000-1 and 2013-14.[42]

Table : Share (%) of contract workers in total workers in formal manufacturing by state

State	2000-01	20013-14	
Punjab	18.00	35.95	
Uttaranchal	23.95	52.16	
Haryana	31.33	47.38	
Rajasthan	23.81	40.88	
Uttar Pradesh	26.00	38.33	
Bihar	39.39	69.23	(highest)
Assam	7.27	19.32	
West Bengal	13.57	36.22	
Jharkhand	17.93	45.39	
Odisha	31.04	51.23	
Chhattisgarh	28.76	43.08	
Madhya Pradesh	23.68	34.57	
Gujarat	27.97	37.74	
Maharashtra	20.62	43.10	
Andhra Pradesh	27.34	33.11	
Karnataka	11.80	26.07	
Kerala	4.96	12.59	(lowest)
Tamil Nadu	8.30	20.17	

(Source: ASI unit-level panel data Full Reference)

Here we see an obvious and significant trend of increasing contractualisation. The difference between states is indicative the differing political climate, the clout of trade unions and the degree of unionisation. The main advantage of employing contract labour seems to be the avoidance of providing the benefits of labour laws, since often these contract workers were engaged in permanent, perennial and regular work necessary to the concern of the Principal Employer and often worked for years if not decades together.

[42] Analysis of Data of the "*Annual Survey of Industries*" as quoted in Working Paper 300 "*Contract Labour (Regulation and Abolition) Act 1970 and Labour Market Flexibility: An Exploratory Assessment of Contract Labour use in India's Formal Manufacturing.*" - by Deb Kusum Das, Homagni Choudhury and Jaivir Singh in June 2015 (Indian Council for Research on International Economic Relations.)

Contractualisation and its impact in the cement sector – a case study.

An interesting study was carried out by the global union IndustriALL in the year 2015-16 to interrogate working conditions of various categories of workers, particularly precarious workers, across 36 cement plants in India belonging to various groups of companies.[43] This included various units of the Associated Cement Companies (12 units), Ambuja Cements (4 units)and Lafarge India Limited (4 units) which at the time of the study had all been taken over by the multinational LafargeHolcim; 10 units of the Ultratech/ Birla Group; and 6 units of the JK Cement Group. The units of the former two groups were located in multiple states – Karnataka, Tamil Nadu, Telangana, Chhattisgarh, Jharkhand, Madhya Pradesh, Uttar Pradesh, Himachal Pradesh, Andhra Pradesh, Maharashtra, Gujarat and Rajasthan; whereas the last group was almost exclusively located in Rajasthan. Thus, the data involved several kinds of industrial groups – both multinational and Indian, large and relatively smaller.

Despite the cement sector being overwhelmingly comprised of private sector industries, right from the 1970's a strong process of collective bargaining at a national industry wide level was well established, something quite unique to the cement industry. National level arbitrations took place between the Cement Manufacturers Association (which at the time included almost all major cement groups) and the trade union federations led by the Indian National Cement Workers Federation on the other. This process, in the later part of the 70's and early 80's, led to the Cement Wage Board Awards being passed.[44]

One important result of these Awards was the setting up of benchmarks of wages, allowances and safety standards for the permanent workers of the cement industry all over India. On a regular basis these cement award wages are upgraded, through regular negotiations every 5 years thus maintaining standards of wages, even in units where there may not be strong unions to assert or negotiate the same. It has also meant a broad uniformity of wage levels of permanent workers – a very

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[43] Unpublished Survey carried out by the global union IndustriALL in the Cement Sector of India in the year 2015-2016. Data was collected through questionnaires administered to the workers through the INTUC unions in those plants which generally represented the permanent workers. I was personally involved in the analysis of the data.

[44] The Planning Commission in its Report on the First Five Year Plan had made the Recommendation that "*Permanent Wage Boards of a Tripartite Composition should be set up in each State and at the Centre to deal comprehensively with all aspects of the question of wages, to initiate necessary enquiries, collect data, review the situation from time to time and take decisions regarding wage adjustment suo motu or on reference from parties or from the Government*." The Cement Wage Board was appointed by the Government of India, Ministry of Labour and Employment, by Resolution No. WB – 6(5) dated 2nd April, 1958. The First Report of the Central Wage Board of the Cement Industry was issued in 1969 and already spoke of the need of wage parity of contract workers. Such Wage Boards were set up for Steel, Coal, Plantations, Textiles, Engineering, Sugar industries etc.

important factor in keeping wages up to the level of the "living wage" envisaged in the Constitution.

The Cement Wage Awards also laid down another very important standard, of limiting precarious work and also ensuring that even those who were not permanent would have decent wage levels. The provisions of the Ramanujan- Tewatia Award[45] of 1978 which have been reiterated successively have held that contract labour should not be engaged in cement production processes. And even where contract labour has been permitted in loading, unloading and packing activities, workers should be paid at the same rate as the Cement Wage Board stipulates. This has meant that a special category of workers - namely loading-unloading and packing workers - were created which had a higher wage rate equal/ equivalent to that of permanent workers, which was engaged in physically the hardest work, and occupied a strategic position in the production chain. Despite these workers working for decades, it is also significant that they are not regularized, so that they can actually be called at will when the railway rakes arrive or according to the crests and troughs, and seasonality of the production process. The existence of this layer of workers, in between permanent and contract workers, is a feature visible across cement plants all over the country.

However, the process of Cement Wage Board negotiations has been getting weaker over time.[46] Many industries have left the Cement Manufacturers Association and are engaging in separate wage settlements (which are claimed to be more beneficial). At the same time, we see an increasing trend of contractualisation of labour, with an increasing proportion of contract labour entering into cement production at only the (corresponding state's) minimum wages. The gap between the wages of these precarious workers and the cement wage board rate is an enormous one, up to a factor of three times as the above study concluded. It is also very interesting to note that while the Awards and Agreements were always entered into by the INTUC and the Cement Manufacturers Association, in practice there always existed other militant unions the pressure of whose existence continually forced the management into agreements with the INTUC. "*Workmen Of Cement Industry vs Union of India*"[47] – Judgment passed on 29 January, 1987 by the Karnataka High Court makes fascinating reading.

These were the findings of the Survey:

[45] G. Ramanujan – NP Neoatia Wage Arbitration Award, 1978, 1983. The issue of interim relief was also taken up in 1986.

[46] Interestingly the website of Ministry of Labour says, "At present, there is provision for only two Wage Boards, one for the Working Journalists and the other for the Non-Journalist Newspaper Employees which are in operation as statutory Wage Boards. All other Wage Boards have ceased to exist.

[47] "*Workmen Of Cement Industry vs Union Of India*"on 29 January, 1987. Equivalent citations: ILR 1987 KAR 2078

1. Proportion of precarious workers

If we look at the newer plants in the same group of companies, the proportion of permanent workers appears to be declining. The average proportion of permanent workers as seen in this study is 24.3%. The minimum proportion is 6.5% and the maximum 52.1%. It is clearly not practicable to run a cement plant with a mere 6.5% of the work force being engaged in permanent and perennial production activity. This is indicative that more and more such activity may be disguised as contractual activity. Generally, workers commented that there was no fresh recruitment for permanent workers. Only in 3 cases was it stated that there were Notice Board announcements, interviews or recruitment from training institutes. Only in 2 cases it was stated that a significant number of contract workers had been regularized (71 in one case and 100 in another.) Recruitment was perceived to be done only by contractors in quite an arbitrary manner using favoritism, even under political influence, apart from managerial influence.

2. Wage standards and disparities

In most plants it was reported that permanent workers were "covered by the Wage Board". In a few cases, it was mentioned that since the company was no longer part of the Cement Manufacturers Association, settlements were being signed at the group/ plant level but it was always claimed that such settlements were providing better and not less benefits than the Cement Wage Board settlements. Generally, wages for permanent workers were between Rs 20,000 and 25,000. The lowest Wage Board rate was around Rs 18,000 and the highest around Rs. 50,000.

The loading-unloading and packing workers formed an intermediate layer. In 18 out of 36 plants their wages were almost equal to those of permanent workers. Given the fact that usually such workers also put in a large amount of overtime due to the nature of their work, this would mean that they would be hard workers and good earners. It is significant that in most cases they were, however, paid "single overtime", in other words the overtime rate was not paid at double the rate as laid down in the Factory Act.

Even in the cases where loading-unloading and packing workers were not paid the Wage Board rates, their wages would be significantly higher than the minimum wages, for instance, around Rs 10,000 per month. This is evidently for historical reasons of this category of work being paid earlier at a higher rate, and therefore having greater bargaining power. Here the levels of unionization would play an important role in determining the wages. Generally, where the permanent workers' unions represented the loading workers, they had better wages and amenities.

The remaining contract workers were poorly paid at the level of minimum wages of the state and sometimes even below that. The wage discrepancy was of the order of

a multiple of three between these contract workers and the permanent workers. The only case where such contract workers had managed to secure significantly higher wages (half of wage board and even full wage board) was the case of ACC Jamul, where the Pragatisheel Cement Shramik Sangh, an independent contract workers union, had been able to negotiate with the LH Group after successive court victories to obtain such wages.

3. Statutory compliances for Contract Labour

Generally, in the cement industry, higher levels of basic labour law compliance are in evidence. Deductions for Provident Fund were seen across the study (only in two cases such deductions were not being made). Either ESI or Health Insurance deductions were also usually made. Only in 10 out of the 36 cases (5 of them in the JK Group alone) it was found that pay slips were not provided to the contract labour. Thus, a general atmosphere of compliance was created by the Cement Wage Award conditions and the higher wages of the permanent and loading workers.

One significant aspect of discrimination against precarious labour was the absence of provisions of leave. Casual and sick leave were not generally available to the contract labour. Only in 2 out of 36 cases, were contract labour getting all types of leave, and that, when a majority of them would be loading workers. An arbitrary number (ranging from 9 to 12 to 14) of leaves was provided, probably depending on the capacity of the contract workers, or the permanent workers union on their behalf, to negotiate the same.

Generally, the lower paid contract workers were found to be paid overtime at double the rate (in 20 out of 36 cases). This was so in works like kiln repair, major breakdowns or maintenance that required urgent and timely attention.

4. Amenities and Allowances

In the overwhelming majority of cases, contract workers were not granted special allowances, although they would have definitely been working in the same conditions of heat, dust, night shifts etc. as the permanent workers were working. The daily allowance, as part of the wage, was the only exception. In one case it was mentioned that contract workers were getting House Rent Allowance, this would most likely have been due to the plant's location, availability of company housing, or some local demands and negotiations.

Since the contract workers were working in a factory context, usually drinking water, cooler, first aid, urinals and latrines were available. Creches were generally not available, even in cases where more than 20 women were working. Rest rooms and washing facilities were also missing in more than half the cases for contract workers.

Contract workers were, in at least half the cases, not having access to the main canteen, let alone having a canteen of their own. It is extremely illogical that while in most cases permanent workers having three times the salary had access to subsidized food, tea and snacks; the contract workers were not provided such subsidy. It can only be explained on account of the caste-like hierarchy between the "company" workers and contract workers. In certain cases where the permanent workers union was able to break this and assure access to the contract workers, it has been an enormous source of good will and solidarity at the workplace. This demand, which has very meagre financial implications for the management, should certainly be pursued.

5. Bonus

Bonus was one of the most negotiated issues, and for the workers it is almost an indicator of the state of industrial relations in the company. It is perceived by the workers as a reward for their efforts and a "share" of the profits.

It is therefore not surprising that all across the cement industry, which had been doing fairly well even despite recession in other markets, permanent workers across all plants seemed to be getting 20% bonus. The actual amounts of bonus granted however varied significantly since, while legally there is a ceiling, this has been overcome by ex gratia payments. Bonus given to permanent workers was, on the average, of the range of Rs 16,000 to 25,000. The lowest bonus amount was Rs. 6000 and the highest more than a lakh of rupees. Clearly this would depend on the number of permanent workers, their levels of unionization, the profitability of industry etc.

On the other hand, in the very same plants, contract workers were usually paid only the statutory bonus of 8.33%. This perpetuated the glass ceiling between the contract and permanent workers, since legally it is the balance sheet of the company that ought to be the criterion and not that of the contractor. The amounts of bonus ranged between Rs. 3500 and Rs. 10,000 for contract workers, the average bonus being around Rs 6000.

6. Unionization

Generally, the contract workers were not found to have separate unions. Many of the permanent workers unions were trying to organize the contract workers and were also making them members of their unions. It is interesting however that the same management which would recognize the permanent works union, usually did not recognize the same union as a negotiator on behalf of the contract workers. No doubt this would be a major hurdle in collective bargaining, and would be another way to reinforce the discrimination between permanent and contract workers.

While in many cases, multiple unions were reported, it may also be that certain union formations were ignored by the respondents of the study, who were mostly affiliates of the INTUC. But it is fairly clear that the managements have not encouraged the unionization of the contract workers and have not been holding negotiations or signing settlements with them easily, even when the union may be a known permanent workers union with whom they have otherwise been dealing.

Where however, permanent workers had been able to facilitate the unionization of contract workers, the situation of contract workers had improved in quality, if not in terms of wage, but certainly in terms of statutory compliance - access to canteen, other amenities and bonus.

In two of the cases considered, both very new plants of the ACC, there was no union at all. While this did not affect to a great extent the wages of permanent workers, it certainly did affect the wages of loading workers, statutory compliances for contract labour and their working conditions and amenities.

PART D: Case Study of the Contract Workers of ACC Jamul

I would like to share here a case study of my own experience as a trade unionist and lawyer in the matter of the regularisation of the workers of the ACC (now Holcim/ Adani) company working in the Jamul Cement Works, District Durg, Chhattisgarh. This struggle began in 1989, and despite a positive judgment of the Industrial Court in the year 2006 reinstating and regularizing 573 contract workers, and an agreement with the multinational Holcim in the year 2016, it remains an unfinished battle. This case study is significant because it shows that, even when there existed a Cement Wage Award specifically abolishing contract labour in the production process of cement manufacture in all cement plants, how long and strenuously the workmen were forced to struggle and at what price. In this particular case the following factors were crucial to the union's very partial success – (a) the existence of a militant union of contract workers with a democratic groundswell of support; (b) the existence of committed union lawyers who could fight to win in the Industrial Court and High Court; (c) the support of International Global Unions such as IndustriALL and UNIA, when the company was taken over by a Swiss multinational, to access the system of grievance redressal of the OECD; and (d) the guidance of an expert trade unionist and negotiator of the Federation New Trade Union Initiative in the long drawn and complex negotiations between the union and the company that eventually culminated in an agreement.

In the year 1989, the Pragatisheel Cement Shramik Sangh (PCSS) affiliated to the Chhattisgarh Mukti Morcha (CMM) led by the creative and charismatic labour leader Shankar Guha Niyogi, began to draw membership in the ACC Jamul Cement

Works. The CMM struggle in ACC began with the coal-gypsum loading unloading workers who agitated to be paid at the same rates as departmental workers. After a brief struggle and a hunger strike by Niyogi, their demand was won.

This opened the floodgates to workers of the Bhilai Industrial Estate (where the Jamul Cement Works was located) with its tens of thousands of workers in various ancillaries and auxiliaries of the Bhilai Steel Plant, flocking to the CMM to join its various unions - PCSS, Pragatisheel Engineering Shramik Sangh (PESS), Pragatisheel Transport Shramik Sangh, and Chhattisgarh Chemical Mill Mazdoor Sangh (CCMMS). In all the establishments of the Bhilai Industrial Estate, labour was under contractors, there were no labour laws to speak of, industrial accidents were rampant, 12-hour shifts were routine and there was no trade union. It was the antithesis of the public sector Bhilai Steel Plant on the other side of the National Highway with its well laid out township, schools and hospital and well-paid regular workers with middle class aspirations, but where too, by then, the contract workers from surrounding villages had begun to outnumber the regular workers.

Following a common strategy of contractual workers in many compact industrial areas, contract workers through the length and breadth of the Bhilai Industrial Estate unionised with a common pamphlet, "*Chhoti chhoti nadiyan milkar mahasamudra banega*" ("Small rivers will merge to form an ocean") and gave a 9-point demand charters to their respective managements. These demands actually would never have needed to be made if labour laws had been implemented - demands for gate pass, attendance card, payment slip; an eight-hour work day; safe working conditions; ESI and PF facilities; a living wage; an end to the illegal contract system; and reinstatement of those who had been victimised. Thousands of workers took out a massive procession in the industrial area on 17th September 1990 - Vishwakarma Divas, sporting badges "*Industrialists, read the writing on the wall, struggle or settlement, we are ready!*!". The demands of the contract workers were popularised in the Industrial Area as standing for "*Permanent Workers in a Permanent Industry*" and a "*Living Wage*". Most factories closed their gates on the workers. Thus began, what was variously called a lockout and a strike, that continues to this day (in the sense that the workers have yet not returned to work nor has the litigation around their struggle concluded finally). The movement spread to the industrial areas of Urla, Kumhari and Tedesera in the neighbouring districts of Rajnandgaon and Raipur. Eventually Niyogi restricted the strike to the 16 units of 5 of the largest industrial groups - Simplex, Beekay, Bhilai Engineering Corporation, Kedia Distilleries, and Bhilai Wires from which about 4200 workers had been illegally dismissed. The industrialists refused to come for negotiations called by the Assistant Labour

Commissioner. The workmen continued their demonstrations at their gates.[48] Trade union activists and leaders began to be grievously attacked by armed goondas.[49] After a bloodcurdling incident at the gate of the Simplex Urla factory where goons armed with swords came out to attack protesting workers and injured three leaders seriously; Niyogi decided to take a large delegation of hundreds of workers to meet the Prime Minister and President of India armed with 50,000 signatures of workers and peasants of Chhattisgarh. He also met the BJP leader LK Advani, since it was the BJP in power in Madhya Pradesh at the time. On his way back from Delhi his efforts to meet the Chief Minister Sunderlal Patwa at Bhopal failed. Within a fortnight of meeting the President of India, Shankar Guha Niyogi was assassinated in the early hours of 28th September 1991, shot through an open window, while sleeping in his Bhilai residence.[50]

Following Niyogi's assassination, even more contract workers from new units joined the struggle as the Industrial Estate observed a spontaneous, week-long complete strike, terrifying the industrialists. A threat by the CMM to blockade Murli Manohar Joshi's Yatra to Kashmir - *"When you can't implement the labour laws and the Constitution for the workers of Bhilai, what is the point of going to Kashmir?"*- the State Government began negotiations in Indore. The industrialists claimed to be agreeable to settling 8 demands but not the 9th - that of taking back the dismissed workers. This was obviously a bizarre position to take. Finally, the Unions agreed to the managements' proposal of taking back the workers in two stages - something they had not expected. Reluctant to implement anything that could even remotely be considered a "victory" for the workers, the industrialists fled the negotiating table on 29th and 30th June 1992. Meanwhile the 4200 dismissed workers had been camping with their families in the open since 25th May 1992 braving first the unbearable heat and now the beginning of the monsoon rains. The "padav" (camp) of the workers had been slowly moving from place to place in the Industrial Area, drawing curious crowds, to finally arrive at the Sector 1 *Maidaan* beside the Powerhouse Railway Station. On 1st July 1992 at 9.30am the workers occupied the railway tracks demanding only the resumption of negotiations. There was no response from the administration except to surround the workers and their families, including children, squatting on the rail tracks, with more and more police. At around 4.30pm, the leaders were summoned to the Police Control Room and threatened that they

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[48] See "*Tall Chimneys Dark Shadows*" – a report by the People's Union for Democratic Rights published in 1991 on the Bhilai trade union struggle.

[49] A large number of these attacks are interestingly documented in the Judgment in the murder trial of Shankar Guha Niyogi in order to show that the incidents were culminating in an ultimate attack on the leader himself. See "*Central Bureau of Investigation Vs Chandrakant Shah & Ors*" – Judgment delivered by Shri TK Jha, Durg Sessions Court sentencing 2 industrialists and 7 henchmen to life imprisonment and a hired assassin to death sentence. Available on the Labour Archives of the VV Giri National Labour Institue.

[50] See 47 above. For a more detailed account see, "*Behind the Industrial Smokescreen*" – a Report by (Retd) Justice Tewatia, Kuldeep Nayyar and Vijay Tendulkar, Published by D. Thankappan in 1991.

should clear the tracks. Even before they could discuss the proposal of the administration or persuade the workers upon their return, by 5pm, tear gas shells had been hurled at the protestors followed by lathicharge and immediately afterwards by firing. Scores were injured, hundreds were arrested. 17 workers were to die in the police firing of 1st July 1992, three of them were contractual workers of the ACC.

The one member Bhilai Police Firing Judicial Inquiry Commission[51] constituted to inquire into this incident in its Report blamed the "sham contract labour system" for the unrest among the workers. It recommended that the industrial disputes that had given rise to such unrest be referred to the Industrial Tribunal for adjudication. After the Babri Masjid Demolition and the consequent violence in Bhopal, President's Rule had been declared in Madhya Pradesh. In the following election, the Congress Party which had protested Niyogi's murder as well as the police firing incident came to power in 1993. It was thus that the cases of dismissal from 16 engineering units of 5 industrial houses were referred to the Industrial Tribunal in 1993 by the Congress Government of Digvijay Singh. After pursuing the Labour Department continuously for several years, the industrial dispute regarding the ACC Jamul Cement Works, namely "Do the 573 workers listed in the Annexure, working in the ACC Jamul Cement Works, deserve to be regularised?" was referred to the Industrial Tribunal at Raipur in the year 2000. All these workers had been working in the cement production process for more than a decade each by then.

The ACC company responded by raising Preliminary Objections against the Reference, alleging that the Union was incompetent to represent workers not being a recognised Union, and demanding that the Reference be dismissed for non-joinder of necessary parties - the contractors. In the meanwhile the SAIL judgment had been passed, thus a mere declaration that these workers were working in the production process in violation of the Cement Wage Board Award prohibiting contract labour, could not have resulted in an automatic absorption.

Since the only legal contracts that were possible in Cement plants, given the Cement Wage Board Award, were contracts for "loading/ unloading" or "packing"; all contracts were either for "loading/ unloading" or for unspecified "earth works" unconnected with cement production. Whereas in fact all the workers listed in the Reference had been working in various departments connected with production. The challenge was to establish this in the Industrial Tribunal, because the contract workers had no documentation of the nature of their work. It is here that the fact that my being both a trade unionist deeply involved with and in fact living among the workers, as well as their lawyer in the case, came very much in handy. The

[51] Justice PC Agrawal carried out a Judicial Inquiry into the Bhilai Police Firing. A civil society Report – "People's Tribunal on Bhilai Police Firing" also describes the incident in detail.

workers and I spent large amounts of time trying to find all kinds of unconventional proof of the fact that these workers did carry out cement production. The numbered badges they wore to the power plant, the fact that a colleague had died in the hopper and been compensated, the notes that the gatekeeper had made assigning them, in fact rotating them in all the different departments of the plant as and when necessary, and detailed cross examination of the contractors (showing that they were mere names on paper having no control or supervision over production in the plant) were crucial. Each time a worker would enter the witness box representing all the workers with a particular contractor, he would face threats and we had to ensure that the court was made aware of this. Although we had obtained an interim order ensuring that the ACC would not change the conditions of service of the workers during the pendency of the Reference, the ACC began using the very device of contractorship that we were challenging, to retrench the workers group by group. The contractors forced the workers to accept VRS packages, actually paid for by the ACC, by refusing to give them work. This came to a head in Diwali of 2005 pressurising the workers to opt for VRS. By the end of the trial only around 150 of the 573 workers remained in work. However, ultimately, lifting the corporate veil, the Industrial Tribunal directed in 2006 that all 573 were to be regularised including those who had been coerced into taking VRS, who were to be reinstated and regularised. [52]

Workers tried their utmost to get this Order implemented but to no avail. Naturally, the ACC appealed the judgment. Section 51(3) of the Chhattisgarh Industrial Relations Act is commensurate with Section 17B of the Industrial Disputes Act[53] which lays down that when an employer appeals reinstatement, he must pay full wages last drawn, to the dismissed worker during the pendency of the appeal. While the ACC obtained a stay on the Order of the Industrial Court, subject to compliance with this condition, they interpreted the provision as the last wages drawn (not "full") which had been deliberately reduced to 1 day, 3 days or 5 days and in some cases even 0 days to force the workers to accept VRS. The Union appealed this non-compliance of the interim order before a Division Bench and all the way up to the Supreme Court but with no success, the case was remanded for final settlement to the High Court.

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[52] Award passed by the Industrial Court, Raipur in "*Pragatisheel Cement Shramik Sangh Vs ACC Jamul Cement Works*" on 28.02.2006.

[53] "17B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court.
Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

The High Court gave its judgment in 2011.[54] It denied relief to those who had been coerced into taking VRS, claiming that they did so with "their eyes open". It also claimed that all the workers had not submitted proof of membership of the PCSS Union, which was an incorrect proposition. Thus, as per the Single Judge, the number of workers entitled to relief was whittled down to around 75.

The Union demanded that even this whittled down relief be implemented, at least one worker be regularised. Workers struck work to protest that they should not be dragged into further litigation, and were slapped with civil cases of causing lakhs of rupees of losses to the company. However, the ACC appealed even this judgment of a Single Judge before a Division Bench of the High Court.

It was at this time that two important things happened - ACC was taken over by the Swiss Multinational Holcim and the ACC began to plan a state-of-the-art modernized cement plant at Jamul, which would require retrenchment of a large number of workers.

The global union IndustriALL connected our union PCSS with the Swiss union fighting Holcim on its home turf under the federation - UNIA. It was this global solidarity of the Holcim workers that enabled a small cash strapped union of contract workers in a developing country like PCSS, to prefer an OECD complaint; and its worker representatives to travel to Berne to negotiate with the top executives of Holcim. To cut a long story short, it was upon the directives of the OECD, that the ACC company sat down to negotiate with representatives of the PCSS and its federation New Trade Union Initiative represented by Ashim Roy for the very first time in 2014, almost 25 years after the original dispute had been raised with the company.

The 75 workers involved in the "regularisation case" faced a difficult choice - either to receive considerable personal packages of arrears that the High Court judgment had entitled them to; or negotiate with Holcim to give a just transition to all the contract workers facing retrenchment in the modernisation of the plant. It goes to the credit of the union that after a long process of difficult discussions with different sets of workers, and after going through a tedious back-and-forth negotiation with the company, a settlement could be arrived at. While this settlement provided a decent retrenchment compensation to even the junior-most worker, it also made several categories of workmen eligible to significantly higher pay and eventual regularisation through a time bound process. It was certainly much tougher talking than fighting, but it was the best bargain the PCSS had the power to negotiate.

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[54] "ACC Jamul Cement Works Vs Pragatisheel Cement Shramik Sangh" – Judgment passed by J Manindra Mohan Shrivastav on 22.03.2011 in Writ Petition 1659/2006.

Even today, the workers entitled to regularisation, three decades after raising the original dispute for regularisation in the year 1990, and now approaching superannuation, remain "Temporary Production" workers. As Adani takes over ACC, the Central Government tries to implement the Labour Codes which do away with the CLRA Act altogether, and fragmentation of even the non-regular workers into different categories causes friction within the union, another dream of retiring as regular employees fades away.

CONCLUSION

By the late sixties, contract labour had become rampant in the Public Sector in the railways, ports, steel plants, and iron ore mines; private plantations, coal fields, bidi factories, sugar mills, rice mills etc.; and even in new development projects. The condition of these workers was pitiful.

However, trade unions still had a strong political voice across parties, were well represented in the Parliament and were vocal in their opposition to contract labour. Through unions of permanent workers, they were also engaged in representing if not organising such contract labour. The tripartite Indian Labour Conference demanded the abolition of contract labour. The historic judgment of the Supreme Court in the case of "Standard Vacuum" supported the case of abolition of contract labour where work was regular, perennial, necessary or incidental to the manufacturing process, and was sufficient to support the employment of regular workmen. This was the context in which The Contract Labour (Regulation & Abolition) Bill was brought by the Government in 1967.

The passage of the Bill involved debate in the Rajya Sabha, the formation of a Joint Parliamentary Committee, and detailed inquiry by the Committee including receiving representations from and conducting hearings with trade unions, public and private sector employers and governments. The Committee also engaged in a large number of visits all over the country to sites where contract workers were present in large numbers. We see the active involvement of members of the Communist parties, the Socialist parties and the Congress on the side of the workmen. The parties close to the Bharatiya Jana Sangh/ Bharatiya Lok Dal on the other hand can be seen vocalising both the sides of the debate.

The trade union federations - irrespective of political affiliations – were strong and united in demanding that the Bill should speak only of abolition and not regulation; that the government must take exemplary action by abolishing contract labour in the public sector and government sector; that wage parity between contract workers and regular workers performing the same nature of work should be included in the body of the Act; that workers and unions should have direct methods of redressal of

their grievances rather than through inspectors; and that workers' representatives should constitute half the members of the Advisory Committees as the Government itself had the character of an employer and not that of a neutral arbitrator. In this we find at that time the AITUC, INTUC, HMS, and various independent unions echoing similar concerns.

If we carefully observe the role of the INTUC in the cement sector we find that from a position of strongly representing contract labour; over time they had to be pressurised by left leaning or independent unions to insist upon implementation of the provisions of the Cement Wage Board protecting or giving rights to contract labour; and finally such as in the long drawn battle of the workers of the ACC Jamul Cement Works were outright hostile to the contract workers agitating for regularisation and their union the Pragatisheel Cement Shramik Sangh. Today with increasing contractualisation, the strength of permanent unions has weakened considerably and contractual workers are barely organised in this sector. This reflects in the enormous gap in wages and benefits between the two sections despite the continual formal existence of a clause abolishing contractual labour in the manufacturing process in the successive Cement Wage Board agreements.

The public sector employers were vociferously in support of contract labour, pre-empting the typical neo-liberal economic logic that was come in its full glory in 1990-91 with the Liberalisation-Globalisation-Privatisation paradigm. They succeeded in counteracting the unions, influencing the political leadership and thus in diluting the provisions of the Act. This is vividly exemplified in the debate between Shri BC Ganguli, member of the Railway Board and other members of the Joint Parliamentary Committee on the Contract Labour Bill that we have extracted here.

The State Labour Advisory Boards have not been effective in a majority of states but the Central Contract Labour Advisory Board has succeeded in passing 84 Notifications of Abolition of Contract Labour in the past 5 decades of existence of the CLRA Act, 5 of which were subsequently quashed by the High Courts/ Supreme Courts. Since the SAIL judgment[55] in 2001 there have hardly been any References for Abolition of Contract Labour to this Board, rather the applications are for exemptions from existing Notifications of Abolition.

The CLRA Act has also been diluted by various states through amendments making "supply of labour" also a "work" of a contractor; by increasing the minimum number of workers in an establishment for attracting the provisions of the Act; by diluting the provision for the presence of the representative of the Principal Employer when wages are paid by a contractor or for the signature of such a representative on the Wage Register of the Contractor; by making the processes for

[55] See 4 above

registration of the Principal Employer, licensing of the Contractor online processes with deemed clearances and self-certification; by notifying economic zones whether the Act is not applicable etc.

The attitude of the Judiciary has also significantly changed from that of "*Standard Vacuum*"[56], "*Food Corporation of India*"[57], "*Hussainbhai*"[58] and the "*Air India Statutory Corporation*"[59] to "*SAIL*"[60] and "*Umadevi*"[61]. In particular the *SAIL* judgment has dealt a body blow to the abolition of contract labour by holding that if so-called contract workers have been working even for very long periods in jobs where contract labour has been abolished, **they cannot be absorbed**. This has effectively ended efforts by workers seeking abolition of contract labour in the work they are performing. The only method available to such workers is to prove that the contractors for whom they are working are "sham and bogus", a "paper arrangement" or a "smokescreen or camouflage" – in other words that the real control and supervision of their work is done by the Principal Employer and thus, on examining the evidence and lifting the veil an Industrial Court can declare the relationship between them and the Principal Employer.

The actual struggle for the regularisation of contract workers is extremely onerous and requires a militant and democratic union, committed legal advice and assistance, political pressure being brought to bear on the Principal Employer to negotiate and capacity for complex negotiations – as borne out by the case study of my union Pragatisheel Cement Shramik Sangh and their experience of the regularisation of 573 contract workers in the Jamul Cement Works of the ACC Cement Company situated in District Durg, Chhattisgarh.

The Occupational Health and Safety Code, 2020 – one of the 4 Labour Codes passed during the pandemic, in the teeth of opposition by most central trade unions, and almost without debate – has no aim or objective in common with that of the CLRA Act, namely "the abolition of contract labour wherever possible, and wherever not possible, its regulation". Yet it has been used to repeal the CLRA Act without any inquiry into the impact of such repeal on the conditions of contract labour. The Code elevates a contractor by definition to the status of an employer, and thus does away with the notion of a Principal Employer. It in effect abolishes the permanent workman. The consequence of this upon the capacity for unionization is incalculable, in the absence of which it will become virtually impossible for

[56] See 6 above
[57] See 22 above
[58] See 44 above
[59] See 4 above
[60] See 18 above
[61] See 18 above

workmen to avail other benefits. The effect is bound to be a virtual landslide in the conditions of the working class in the formal manufacturing sector.

The Contract Labour (Regulation & Abolition) Act is one of the unique labour legislations worldwide, that explicitly recognises that sub-contracting is actually a device used by employers for exploitation and in order to avoid their liabilities under the labour laws. Repealing the same does away with this fundamental understanding of the power equation between a Principal Employer and a Contract Worker.

One can only conclude that **not only should the CLRA Act not be repealed, but it should be strengthened** to effectively curb contractualisation, particularly by (a) providing for more rights/ powers to workers and trade unions to take action under the Act; (b) de-bureaucratising and expediting the procedure for abolition and giving a greater role to workers and unions in this process; (c) overcoming the obstacle created by the SAIL judgment through including a clause for absorption of those contract workers working against notifications of prohibition; (d) by including wage and benefit parity for contract workers and regular workers in the Act itself and making the Principal Employer responsible for the same; and (e) by stricter enforcement of the provisions of registration and licensing including by ensuring that licenses are not mechanically issued or renewed without proper inquiry, and that full details are provided by the Principal Employer and contractors.