

Pankaj Kumar · Jaivir Singh

# Issues in Law and Public Policy on Contract Labour in India

Comparative Insights from China

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# Foreword

A comparative study of India and China is critical to understanding the forces driving contemporary and socio-economic development. Very few studies which look systematically at labour are regulated in the two countries. Pankaj Kumar and Jaivir Singh fill this gap through legal analysis and fieldwork in the two countries. They point to China's higher literacy rate, superior state capacity and more homogeneous culture (including the absence of religious strike) as among the factors which differentiate it from India. Taking a closer look at the labour market, they point out some of the paradoxes of the India–China comparison. India inherited from the colonial period labour laws which were strong on paper and were even reinforced in later decades. These apparently stringent laws were, however, qualified by the exemptions made for contract workers and by the problems of enforcement. Since the 1990s, the move to a more liberal economic policy has not been accompanied by the systematic reform of India's labour laws. The formal economy has been slow to emerge, and this is holding up a wider socio-economic development. Let us consider China. Beginning in the 1980s, it began to dismantle its command economy and replace it with a hybrid 'socialist market' system. Initially, there were very few protections for workers newly exposed to labour market risks. But in 2008, China implemented labour law reforms which, as Kumar and Singh point out, put it on a par with many 'First World' countries. The enforcement of these laws may be another matter, but in fact there is evidence that they are being implemented by an effective local state in the rapidly industrializing coastal regions. This effective enforcement is partly why critics of the laws point to fears that capital will now leak out of China in search of low labour cost regimes elsewhere in East Asia and in parts of Africa. But there is also a case for worker protections, recognized by the Chinese authorities, which is that they will encourage technological upgrading by firms, mitigate social tensions associated with rapid industrialization and help ease China's transition across the 'middle-income gap'. These are the issues raised by the authors,

and they could hardly be more important for understanding the future of labour law, and of socio-economic development more generally, in what will before long be the world's two largest economies.

Cambridge, UK  
June 2018

Simon Deakin

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New Delhi, India  
June 2018

Pankaj Kumar  
Jaivir Singh

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# Abbreviations

AAV	Antyodaya Anna Yojana
ACFTU	All-China Federation of Trade Unions
AITUC	All India Trade Union Congress
BKS	Bhartiya Kamgar Sena
BMS	Bhartiya Mazdoor Sangh
BOWCESS	Building and Other Construction Workers Welfare Cess
BPL	Below Poverty Line
CAT	Central Administrative Tribunal
CB	Collective Bargaining
CLS	Core Labour Standards
CTUO	Central Trade Union Organization
DMRC	Delhi Metro Rail Corporation
DMRCU	Delhi Metro Rail Corporation Employee Union
DMRCWU	Delhi Metro Rail Contract Workers Union
EPF	Employees' Provident Fund
EPZ	Economic Processing Zone
ESI	Employees' State Insurance
FPRW	Fundamental Principles and Rights at Work
FTDC	Fixed Term Direct Contract
FTZ	Free Trading Zone
FYP	Five-Year Plan
GIDC	Gujarat Industrial Development Corporation
ICFTU	International Confederation of Free Trade Unions
ICSSR	Indian Council of Social Science Research
ILC	Indian Labour Conference
ILO	International Labour Office
IMF	International Monetary Fund
JCM	Joint Consultative Machinery
LTV	Labour Theory of Value
MDG	Millennium Development Goal

MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act
NCEUS	National Commission for Enterprises in the Unorganised Sector
PE	Principal Employer
SEZ	Special Economic Zone
SIIDCUL	State Infrastructure and Industrial Development Corporation of Uttarakhand Limited
TNAs	Transnational Agencies
VVGNLI	V. V. Giri National Labour Institute
WCA	Workmen's Compensation Act
WDC	Written Direct Contract

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# Chapter 1

## Introduction



The twenty-first century has seen the continued emphasis on mechanization and computerization by industry to contain the hassle of ‘labour’, trumping otherwise seemingly generous objectives. The investment on capital goods has thus increased manifold among the primary factors of production.<sup>1</sup> Globalization has also furthered the cause of industry by easing the movement of material across the world. These ongoing movements have definitely helped the pace and quality of production worldwide, but at the same time the role of ‘labour’ as the force behind production has come to be relegated over time. This is troublesome because ‘labour’ is the factor that supplies livelihood—being the cause and end use of production and remains one of the driving forces behind investment decisions worldwide.

The flight of industries from USA to China started in late twentieth century but now as wages rise in China, there is the ever-looming threat of the drift of these industries to India and other developing world as we progress in this century. Our research is thus obliged to trail the path of industrial migration from—Detroit to Guangzhou—to the cities of India. The story of Detroit—the motor city that rose into prominence in the twentieth century with the setting up of car manufacturing plants by Ford, General Motors and Chrysler—is worth briefly recalling. The city, which was the 13th largest city in 1901, became the fourth most populated city within the USA by the 1950s on account of the addition of manufacturing jobs.<sup>2</sup> However thereafter, alongside other causes, the rise of labour wages and powerful unions that further raised wages led to the gradual decline of the city. The aftermath saw the automaker giants relocating in more lucrative manufacturing locations. In July 2013, the city filed for bankruptcy marking the largest municipal bankruptcy in history. Meanwhile, the population of the city plummeted and continues to do so. The decline of Detroit in the northern hemisphere can be juxtaposed with the rise of

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<sup>1</sup>The other two factors being labour and land.

<sup>2</sup>For detailed timeline of the history of Detroit city, see <http://theweek.com/articles/461968/rise-fall-detroit-timeline> (accessed on 15 January 2018).

Guangzhou city in the south. Guangzhou was one of the first cities earmarked for open market reforms in the late 1970s and early 1980s under Chinese open market policy. Initially, it was the rise in labour cost in neighbouring Hong Kong that led to the industrialization of the region. However, there has been no looking back since the setting up of Guangzhou Technological and Economic Development Zone in the year 1984.<sup>3</sup> The massive influx of capital from around the world made Guangzhou the manufacturing and outsourcing hub for all kind of automobiles, motor parts and electronic accessories, etc. The city often referred as ‘Oriental Detroit’ or ‘eastern Detroit’ (Li 2010, p. 139) has been scaling new heights in terms of foreign investments due to its magnificent infrastructure and labour potential. The city population meanwhile has grown by 13 times since 1950s with the growth in employment opportunities. Today more than 297 of the Fortune 500 companies are operational in the city (September, 2017 figures)<sup>4</sup> including the three automobile giants of the erstwhile motor city Detroit.<sup>5</sup> However of late, rising labour rates in Guangzhou and China as a whole due to improving living standards and continual collective bargaining have raised concerns for the city. The slowdown in economy since 2014 in comparison to an earlier period of double-digit growth is also reflected in the demography of the city. In 2017 for the first time since 1950, Guangzhou recorded a population growth of less than 10%.<sup>6</sup> The low wages in India and competing industrial hubs and special economic zones in India are now causing concern among the industrial circles in Guangzhou and China as a whole.

In fact, India and China were more or less in a similar economic position in the early 1980s, but thereafter China went on to liberalize its economy and achieve high levels of growth. The unprecedented inflow of capital into China has captivated many Third-World countries, including India who has gone on to mimic similar strategies particularly in terms of labour market deregulation. However, a set of crucial questions can be raised—Can enforcing ‘labour market flexibility’ in itself provide the required impetus for a nation’s industrial growth? Is the Chinese success in becoming the major destination for FDI a consequence of a flexible labour regime or is there some other concealed strength to be found in Chinese labour

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<sup>3</sup>A special economic zone (SEZ) is like a foreign territory created within a country to provide amiable environment for foreign investments and exports. China commissioned four SEZs, namely Shenzhen, Zhuhai, Xiamen and Shantou in 1980s. The success of these zones led to the establishment many other zones in the country.

<sup>4</sup>For details see, <http://lifeofguangzhou.com/whatsNew/content.do?contextId=7020&frontParentCatalogId=199> (accessed on 16 January 2018).

<sup>5</sup>In fact, (while going to press) it is being reported in media that Chrysler automobiles now in tie-up with Fiat and called Fiat Chrysler Automobiles (FCA) is in talk for takeover by Guangzhou Automobile Group company limited. See <https://www.reuters.com/article/us-fiat-chrysler-china-breakingviews/politics-aside-chinese-bid-for-fca-has-some-merit-idUSKCN1AV04Z>; <https://www.usatoday.com/story/money/cars/2017/08/14/fiat-chrysler-chinese-automaker/564033001/>; <https://www.nbcnews.com/business/autos/chinese-automaker-buying-detroit-s-fiat-chrysler-n792541> (all accessed on 16 January 2018).

<sup>6</sup>The population of the city rose between 10.1 and 54.48 every 5 years since 1950. See <http://worldpopulationreview.com/world-cities/guangzhou-population/> (accessed on 16 January 2018).

market institutions? In particular it needs to be noted that after consecutive double-digit growth for more than 25 years, China has realized some of the fallacy of its development path and adopted fairly stringent labour laws in 2008 that now regulate the labour market. This Chinese trajectory has perhaps lessons for India and other countries that are still struggling on the liberal path.

Given this context, the book focuses on the increasing use of contract labour in India that has accompanied attempts to liberalize the economy. After briefly examining the labour laws and public policy in India, the book juxtaposes labour market practices against international labour standards. The questions that are raised thereupon are explored through a series of empirical studies exploring the use of contract labour in a variety of industries and locations, manifesting a wide spectrum of concerns including labour standards, productivity and employment relations. The set of comparative research studies within India are supplemented with a field study from Shenzhen and Guangzhou industrial regions of South China, which are in an advanced stage of industrial development. The Chinese example helps put the Indian field studies in a perspective and provide the authors with some insight to suggest some India-specific policy recommendations that could also be useful for the developing world. The book concludes with the understanding that where production entails long-term relationship, both the interest of the employer and the workers need to be maintained sustainably.

## 1.1 Background

The period of imperialist capitalism in the pre-war period saw the division between European core where capital was largely concentrated and continental peripheries which provided for labour, material and markets to the former. The European masters and their corporate entities monopolized their peripheries to protect their interests. Later, in the second half of the twentieth century, with the independence of Third World, end of Cold War, and the coming-up of the age of globalization, the control of the First World over its erstwhile peripheries started loosening up and gradually led to the flight of capital to those regions of the world which provided for ambient conditions for capitalist growth. Consequently, a multitude of interconnected cores and peripheries have now come up around the world criss-crossing regional, territorial and national boundaries. In this world economy,<sup>7</sup> where the consumer is the king, business concerns aim to maximize their market share and expect suppliers to deliver best quality at lowest cost. Both the manufacturing and service sectors of industry thus have to produce better products at reduced costs to remain in the market. Material cost being largely constant, the pressure builds upon

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<sup>7</sup>World economy has been defined by Wallerstein (2004; p. 23) as a loosely tied interstate large geographic zone within which there is significant internal exchange of basic or essential goods as well as flow of capital and labour.

the labour market to devise novel means to cut labour cost while ensuring the maximum output. The ensuing practice worldwide entails cutting down the permanent workforce, mechanization, outsourcing non-core activities, delegating unskilled floor jobs to labour contractors and increasing work pressure across the table by devising management techniques. Job security and labour unions are seen as impediments to this path of development. ‘Competition’ is considered sacrosanct in the development process as it helps in amassing quality at lowest possible cost of both men and material. Labour is thus treated like a ‘commodity’ which is open to ‘hire and fire’ at the command of the economy. Decisions in such a society are taken keeping the interest of the capital in mind, so much so that the whole society becomes subservient to the economy. Contract labour emerged in its present form in such a scenario to lower the transaction cost of the employer and to infuse flexibility in employer–employee relationship to ensure competitiveness in the manufacturing and service sector. This trend towards labour market flexibility to ‘offset risk and cost’ (Barrientos 2011, p. 4) through informalization and contractualization of labour is now a worldwide phenomenon in liberal economies. Such flexibility of keeping the workmen in a vulnerable state of employment relationship is considered vital by the industry for its long-term survival in the competitive market as this helps the entrepreneurs in offsetting the risks of the market onto the workers by tempering with their wages and tenure. Such forms of indirect employment are on the rise throughout the world—as per an ILO report (2012), the number of workers in vulnerable employment globally in 2011 was estimated at 1.52 billion, an increase of 136 million since 2000. The regional statistics reveal that the vulnerability has largely increased in South Asia and Latin America, India being the main contributor in increasing the numerical count. These workers are captured using multiple terminologies such as agency workers, indirect workers, outsourced workers, precarious workers or contingent workers. Bibby (2011) in his study of cleaning and security service providers portrays the rise of trans-national agencies (TNAs) worldwide in property services like security and cleaning what Green (2006) calls as the return of servant occupations in affluent economies. The characteristics of most of these security and cleaning manpower service providers are shadow self-employment and savage cost-cutting methods through triangular work relations (Bibby 2011, pp. 8–10). It is through such mechanisms that security TNAs like G4S & Securitas and Cleaning TNAs like ISS & OCS are now listed in leading stock exchanges worldwide, operate individually in more than 100 countries, employ lakhs of employees and have annual turnover of billions of dollars. At the global level, in order to make their industries and services competitive, ‘governments of developing countries are increasingly adopting policies depriving regular workers of job security and promoting contract labour in the name of labour market flexibility’ (Tulpule 1997, p. 1) (also see, Guha 2009; Sen et al. 2010). However, the essential change in this variant of capitalism is that capital keeps on moving in search of cheap labour thus ensuring a ‘race to the bottom’ (Lee and Vivarelli 1996, p. 18) of labour standards. The politics of the capital owning class, largely concentrated in the west and also in some of the affluent metropolis of the east is seen as increasingly being articulated in the politics of globalization and

development. Rising contractualization and marginalization of workplace relationship is projected as a cost-cutting measure towards the path to an affluent and egalitarian world. The rise of some economies in the Third World is thought to largely sourced in the flight of capital to these countries due to the presence of large scale cheap, improvised rural labour. To be more precise, the coming-up of China as a major manufacturing hub for the world in the wake of globalization has become a thriving example of liberal market-led growth for the developing world. The process of contractualization started in China in 1980s and by the end of 1997, almost 97% urban workers were under contract.<sup>8</sup> The flight of capital to China since 1997 has enthralled many Third-World countries including India to follow similar lines if not forward steps in the area of labour market deregulation.<sup>9</sup>

## 1.2 Contract Labour in India

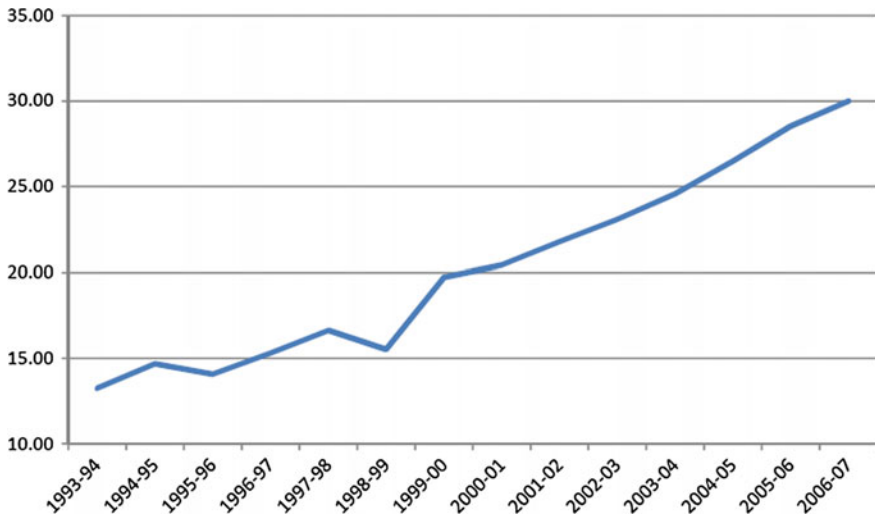
‘Contract labour’ in India can be distinguished from ‘direct labour’ in terms of the employment relationship with the establishment and the method of wage payment (1st National Commission on Labour report, 1969, p. 418). As per the Contract Labour (Regulation & Abolition) Act, 1970, contract workers are those that are ‘employed by or through a contractor’ (service provider) [Section 2(b)] on temporary basis depending on the availability of work. Generally with no written contract of employment, contract workers in India remain on the borderline of formality and informality. In the organized sector, a workman is deemed to be a contract worker when she is hired in connection with the work or ‘contract for service’ of an establishment through a contractor.<sup>10</sup> In other words, they are indirect employees, persons who are hired, supervised and remunerated by a contractor who, in turn is compensated by the establishment. This triangular relationship of employment seeks to insure the employers from the vagaries of employment and to ensure them complete manoeuvrability over the forces of production, since unlike regular workers, contract workers are hired and fired at will, are cheaper and are generally unorganized. Contract labour is termed in some studies as informal worker in formal sector, who are better placed than

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<sup>8</sup>In China, primarily the workers are in direct fixed-term contract. See Xu (2014; p. 146): *Temporary work in China*, in, Fudge and Strauss (2014).

<sup>9</sup>Since 1997 up till 2015, China has received foreign direct investment (FDI) averaging \$40,287 million, reaching a record high of \$224,800 million in 2014–15. In comparison, the FDI received by India averaged \$1048 million in the period 1995–2015, with a record high of \$5760 million in 2007–08. See <http://www.tradingeconomics.com/china/foreign-direct-investment&http://www.tradingeconomics.com/india/foreign-direct-investment> (accessed on 07 April 2015).

<sup>10</sup>In the organized sector, in India contract workers are engaged by the principal (main) employers in a triangular employment relationship through contractors/agencies, as provided vide the Contract Labour (Regulation & Abolition) Act, 1970. This may be on ‘job contract’ on work basis or ‘manpower contract’ for the supply of labour. This form of contract labour system is the focus of this book.



**Graph 1.1** Proportion of contract workers to regular workers in the manufacturing sector in India. *Source* Annual Survey of Industries/CSO, In ShyamSundar (2012) (Reprinted with permission)

those in informal labour contracts (in agricultural, garment and household sectors) and petty contracts (in construction sector) (Dhanya (2013; Planning commission report 2011, p. 21). With about 92% labour employed in the informal sector, ensuring better labour standards has always been a challenge for policymakers in India. More so, since economic liberalization (1991), the organized sector has seen a gradual substitution of direct employment from contractual jobs (Shyamsundar 2011, pp. 11–13) (see Graph 1.1), whereas the size of the informal sector continues to remain the same.<sup>11</sup> A recent study has assessed that in India contract labour accounts for about 55% of

<sup>11</sup>As per 2011–12, Government of India, National Sample Survey Office (NSSO) data about 437 million out of total 474 million workers (39% of total population) in India work in the informal sector. Among the total working population, 40% are employed in rural area and 36% in urban area. Informal workers constitute the unorganized sector workers plus informal workers in the organized sector. Within the overall category of informal workers, the largest group is own-account workers (32.2%), followed by informal employees in the informal sector (30.0%) and contributing family workers (17.9%). For details on informal sector, see Report on Informal Sector and Conditions of Employment in India, NSSO 68th round, 2011–12, <http://admin.indiaenvironmentportal.org.in/files/file/Informal%20sector%20and%20conditions%20of%20Employment%20in%20India%2C%20NSS%2068th%20Round.pdf> For full details on labour scenario in India, see ILO India labour market update, 2016, [http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-sro-new\\_delhi/documents/publication/wcms\\_496510.pdf](http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-sro-new_delhi/documents/publication/wcms_496510.pdf) also see, <https://economictimes.indiatimes.com/news/politics-and-nation/india-has-a-workforce-of-47-41-crore-government/articleshow/38486047.cms> (all accessed on 10 March 2018).

public sector labour employment and 45% of private sector jobs.<sup>12</sup> The numbers may vary but there is no denying the fact that contract labour or indirect work relations have emerged as the major form of employment in India since economic liberalization.<sup>13</sup>

It is not that contract form of employment is new in India; in fact, this form of labour was prevalent since time immemorial as employers always found it convenient to hire middlemen who helped them in recruitment and control of labour. However, historically contractors were mainly village, caste or community leaders who were used by employers more for recruitment and less for supervision and control. The contract system was termed as '*badli*', '*theka*', '*tundu*', etc., where contractors or intermediaries with names like *Sirdars*,<sup>14</sup> *Mistris*,<sup>15</sup> *Jobbers*, *Mukadams and Kankanis*<sup>16</sup> used to recruit workers through their rural links. These intermediaries were important for the production system of an earlier era as they formed the essential link between the production houses and the highly segregated rural societies providing labour. Studies by labour historians such as (Report of the 1st National Commission on Labour (1969); Report of the 2nd National Commission on Labour (2002)) portray in detail the condition of contract labour at the Ichapur gunpowder factory near Calcutta in the 1790s. Similarly, Joshi (1981) study of Kanpur textile workers at the end of the nineteenth century has put forth the predominant position of labour contractors in regulating the entry and exit of labourers into organized employment. Job market scarcity strengthened caste and community linkages and simultaneously ensured a hefty cut from the salaries of the workers in the form of bribes to the *mistri* or contractor who otherwise had no other fixed remuneration. This system continued in the post-colonial period with increased demand for temporary workers who constituted the pool of labour ready to enter the factory gate, in-between the permanent workers inside and the large unemployed populace outside (Breman 1998; Lambert 1963). Breman found in his study of labour in post-colonial India that 'temporary workers often remain stuck at the

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<sup>12</sup>See [http://articles.economicstimes.indiatimes.com/2012-10-10/news/34363332\\_1\\_contract-workers-contract-labour-act-regulation-and-abolition](http://articles.economicstimes.indiatimes.com/2012-10-10/news/34363332_1_contract-workers-contract-labour-act-regulation-and-abolition) (accessed on 20 July 2014).

<sup>13</sup>There seems no consensus over the data on contract labour in India since economic liberalization (1991). The V V Giri National Labour Institute (VVGNI) in a study has estimated the number of contract workers as 36 million out of which about 6 million are covered under the Contract Labour (R&A), Act, of either the Centre or the State. The Annual Survey of Industries (ASI) data quoted by Bhandari and Heshmati (2006) show that employment through contractors constitutes 23% of total organized workforce in 2003 compared to 11% in 1992. As per NCEUS data on manufacturing sector in India, contract workers have risen from 12% in 1985 to 26% in 2004, and the number is ever increasing (see Sen et al. 2010). The planning commission in its report (2011) for the 12th FYP has noted that 'all the increase in manufacturing employment that took place through the decade was confined to informal employment (contract and adhoc workers)' (p. 108). Also see Bhowmik (2009).

<sup>14</sup>Used for labour intermediaries in eastern parts of India.

<sup>15</sup>Used for labour contractors in central and northern India.

<sup>16</sup>Mostly used in Tamil Nadu for contractors who used to recruit labourers for plantations both within India and for overseas.



bottom of the work hierarchy. This reserve pool, although better off than the labour nomads beyond the factory gates, can make no claim on the secure conditions of employment enjoyed by permanent hands' (1998, p. 29). The contractors who were earlier entrusted largely with recruitment functions were gradually engaged for supervision and control of the workers, also dues of the workers were increasingly paid through the contractor. The intermediary thus slowly took over as the *de jure* employer of the contract workers and shielded the *de facto* principal employer from the hazards of employment. This system was countered formally with the passage of Contract Labour (Regulation & Abolition) Act in (1970). It may be noted that policy initiatives by the government and judicial interpretation over a period aimed at protecting the interests of the working class. Before the Contract Labour Act was enacted, a landmark judgement in the Standard Vacuum Refinery Company versus their workmen case (1960 AIR 948; 1960 SCR (3) 466) the Supreme Court<sup>17</sup> had observed that contract labour should not be employed where, the work is perennial, or of a core nature, or when the work is sufficient to employ considerable number of whole time workers or where work mostly concerned regular workmen. Thus, wherever the courts found that jobs were of perennial nature or a type that involved core activities, it sought regularization of the workers engaged. Also, the central and state governments encouraged direct engagement and the process of grant of licences to labour contractors was deliberately kept low.<sup>18</sup> Instead, a system of casual employment was followed in public sector where direct payment was made to the employees with some assurance of regularization in services after a certain period.<sup>19</sup> In the 70s and 80s, several legislations were enacted which were considered labour friendly and against employers interest.<sup>20</sup> It was only since 1990s with the opening up of the economy in pursuance to the quest towards making the Indian manufacturing and services sector competitive that contract labour system proliferated in a big way. The government in the liberalization phase is itself emphasizing on reducing permanent jobs in public services and is found to be more comfortable in adopting indirect employment as an employment policy.<sup>21</sup> The courts on their part have also shed their protectionist approach and have adopted an approach that encourages the use of contract employment as can be seen in more recent judgements of the apex court. The Hon'ble Supreme Court in the State of Karnataka vs. Uma Devi case (AIR 2006 SC 1806) has ruled out any right to regularization or

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<sup>17</sup>For Supreme Court of India judgements, search <https://sci.gov.in/judgments>.

<sup>18</sup>This was conveyed confidentially to the author by some senior labour officials interviewed during field study.

<sup>19</sup>See, Government of India (GOI) instructions on engagement of casual workers since 1961–1993. Also at <http://contractworkersfordignity.blogspot.in/> (accessed on 27 July 2014).

<sup>20</sup>The amendments to the Factory Act, the insertion of Chapter V-B in the Industrial Dispute Act (1976), and the promulgation of Inter-state Migrant Labour Act in 1979 can be seen in this direction.

<sup>21</sup>The sixth pay commission (1996) has done away with Group-D post and advices to outsource peripheral jobs in government. The General Financial Rules promulgated in 2005 (and later in 2017) and provided for contracting out services in the government departments.

permanency to a temporary worker, thus opening the avenue for large scale employment of contractual workers in the future. This change in approach has signalled the reduction of regular employment in the country and propelled the drive towards labour market flexibility as told to be prevalent in most liberal countries of the world. As assessed from the recent state policies and judicial pronouncements, no doubt contract labour in all likelihood would be the primary form of labour employment in India in the coming days.

Chapter 2—*Contract labour in India: In law and public policy*—provides an overview of the jurisprudence and policy associated with contract labour in India, with comparative insights from China. This chapter presents a brief summary of the existing laws related to contract labour in India, important judicial pronouncements and interpretations, and other aspects of labour jurisprudence, which have formulated contract labour relations in the country. While describing the laws, the authors simultaneously perform a Hohfeldian analysis of these laws exposing the fact that (barring a few cases) most of the laws are badly structured with ill-defined rights, duties, powers and immunities—creating Hohfeldian molecules of rights that are of low valence. The difference between the tenors of judicial pronouncements of pre-liberalization period from those delivered in the post-liberalization period is also explored in the chapter. The dynamics of state policy in relation to labour which are marked by the gradual shift from regular employment in public establishments in the early post-independence period, to casual employment during 1970s and 80s, to emphasis on contract labour engagement since economic liberalization are laid out to portray the changing face of the government policy towards labour matters. In particular we highlight the variation in state policy that emphasizes the ‘abolition’ or ‘regulation’ of contract labour as per the policy orientation of the moment. Finally, we also point to the variance between law and policy with actual practices on the ground, which are analysed in detail using field data in Chap. 5. At the end of the chapter for some comparative insights, an attempt has been made to outline the prevalent labour laws and policy in China.

The debate on labour market flexibility is an ongoing discussion which has been deliberated for a long time. There are conflicting views which are equally strong on both sides—whether the labour market should be regulated by the state by enforcing minimum wages, working hours, etc., or, labour should be left to the demand–supply mechanism of the market? The institutionalists want state regulations and control for equity so as to protect the unevenly placed workers from the uncertainties of the market. However, the proponents of market abhor any form of interference in the labour market, as such intrusion raises the cost of production, pushes mechanization, raises prices and ultimately leads to an increase in unemployment and the informal sector. Chapter 3—*Globalization, Labour Market Flexibility and Labour Standards*—starts with examining the pros and cons raised in this debate and the empirical support put out by the protagonists. The contestations of international organizations like the International Labour Organization (ILO), United Nations (UN) and the World Bank (WB) on the perplexing question of labour market flexibility particularly in relation to contract labour are documented. At times some of these international organizations, on specific occasions,

are seen to selectively advocate decent labour standards and state regulations, while on other platforms the same organizations or their counterparts propagate deregulation and labour market flexibility. The chapter showcases the politics of selective application of labour regulation by global governance organizations and the interplay of international labour standards.

It has been generally observed that the right to form associations or unions available to regular workers distinguishes them from the contract workers or other temporary workers. Whereas these rights are intended to give the workers some bargaining power and voice in the production process, there is widespread apprehension among the employers that granting freedom of association and collective bargaining rights mostly foretells soldering (slowing down), politicization and strife in the production process and hence adversely affects production. Thus, it has been the intent of the employers to create a group of indirect workers with no collective bargaining rights. In India, though the Trade Union Act, 1926 does not bar contract workers from forming unions, their temporary status creates numerous hurdles which makes actual union formation difficult.<sup>22</sup> Even where unions have been formed by contract workers serious disabilities exist in their joint mobilization for long-term sustenance. In fact on the policy front, India has played a dual role in relation to collective bargaining right since independence. While on the one hand India, as one of the founding members of ILO, has been vociferous in demanding workers rights on international platforms, on the other hand India refuses to ratify the ILO convention no. 87 (1948)<sup>23</sup> and no. 98 (1949)<sup>24</sup> on grant of Freedom of association and collective bargaining to its workers. Even the ILO Declaration of fundamental principles and right to work, 1998, has not been fully ratified by India on the grounds of being incoherent with its existing domestic policies/legal structure and due to other technical reasons. China on the other hand alludes to communist past for not ratifying these ILO Conventions and declaration. Collective bargaining in China is said to be based on the principle of grassroots democracy with unitary top. All workers including the contract (dispatch) workers have unions and participate in CB now made compulsory with the promulgation of new Chinese Labour laws of 2008. However, the role of the all powerful All-China Federation of Trade Unions (ACFTU) which is under control of the ruling communist party is problematic. There have been alleged instances where the ACFTU appears to be siding with the employer as against the interest of workers. Thus, collective bargaining as the thriving mechanism for negotiation between employees' association/unions and

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<sup>22</sup>The same was accounted during field study and has been detailed in Chap. 5.

<sup>23</sup>The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), is an instrument which provides to all workers without any discrimination the right to join organizations of their own choosing without previous authorization. See [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C087](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C087).

<sup>24</sup>Right to Organize and Collective Bargaining Convention, 1949 (No. 98), provides that the workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. See [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C098](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098).

the employers is a focal point of our book. In this context, the avenues available for collective bargaining to contract workers, the apprehensions of employers, concerns of employee rights vis-à-vis production, weakness of collective bargaining, and the options available within the contract labour system in India and the practices in China are all issues pursued over the fourth chapter. Chapter 4—*The Concept of Collective Bargaining: ILO-India & China*—traces the origin of ‘collective bargaining’ as a concept for labour advocacy. In particular the chapter dwells on the history of collective bargaining in India and China, moving on to legal framework and recent trends especially the decline in regular employment and the simultaneous rise of indirect system of employment. The ILO Conventions on these issues and the stand taken by India and China are also discussed in the chapter.

Any comprehensive study on law and public policy cannot be complete until it encompasses the ground application of these formulations. More so as against the laid down doctrines, the large variations found in workplace practices make fieldwork an essential component especially for labour studies. The mainstay of the book is thus Chap. 5—*Contract Labour in Practice: Some case studies from India with comparative insights from China*—which is based on extensive fieldwork carried out intermittently over more than eighteen months. To cover the variations in the practice of the contract labour system in India, an attempt has been made to cover contract labour systems in a variety of circumstances ranging from workers labouring in the brick kilns of Bihar to multinational export oriented heavy industries of Dahej SEZ. The authors have made an effort to include private industries of different sizes (Rudrapur), government sector (DMRC) and a volatile export zone (SEZ), so as to learn from the diverse labour markets that have come up after liberalization in India. Over the period, the field studies were conducted moving from a traditional contract labour setting (brick kilns) to different parts of India such as Rudrapur and Dahej SEZ, the idea of a field visit to China came to be spontaneously conceptualized and planned. Taking comparative insights from Chinese industries became all the more imperative for a conclusive study when it became clear that the Indian manufacturing sector faced upfront competition not so much on the wage front but from the skilled and organized contract labour system located in the advanced manufacturing zones of China. These ‘multi-sited ethnographic’<sup>25</sup> case studies primarily focus on the prevailing labour standards, ‘flexibility’ aspect of the employer–employee relations and the ‘collective bargaining practices’ in the organizations/establishment under study besides other facets of contract labour working that became evident during the field study. The case studies conducted at Rudrapur and DMRC largely depict first-hand field data on, labour standards, legitimate and illegitimate contract labour practices, alternate grievance redressal mechanisms, collective bargaining tools and best labour practices found

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<sup>25</sup>Unlike the single-sited traditional ethnographic study limiting to thick description of a particular tribe, culture, caste, etc., the post-modernist multi-sited methodology is apt for studying emergent issues like precarious labour in the wake of globalization at numerous locations. For details, see Marcus (1998).

on the ground. The inclusion of cases studies of brick kilns of Danapur, Dahej SEZ & GIDC Makarpura area of Gujarat, is an attempt to include all spectrums of contract labour working for comparative analysis. The comparative field study conducted though at a smaller scale at the Guangzhou and Shenzhen industrial zones given the limitation of resource and logistical constraints provides vital insights for analysis at the end of the study.

*Observations and Analysis* comprises Chap. 6 which is also the fulcrum of the work. This chapter relates theoretical insights with real-time data obtained from the field. A comparative analysis between the Indian case studies and the experiences from China is performed in this chapter to deliberate upon future developmental path. The analysis pursues the answer to one of the central questions the authors raise—*Are present Indian laws and public policy on contract labour, collective bargaining, social security, skill development, etc. good enough for inclusive development or some alterations need to be made?* To answer to these questions, the field data obtained on some good management practices, collective bargaining agreements and labour enforcement methods are discussed in this chapter with their legal and policy implications. The manner in which law and public policy can be aligned in relation to how contract labour is dealt with on the ground is also laid out in the chapter. The analysis revisits with field knowledge, the questions discussed in Chaps. 3 and 4; *Has the global drive towards labour market flexibility helped the production process, industry and workers of India, in the liberalization phase? Is collective bargaining a viable advocacy tool for contract workers?* Above all in this chapter and in the **Conclusion: Lessons learnt**, through comprehensive analysis of primary and secondary data, a set of policy recommendations which are equally pertinent for all developing world are laid out responding to the all important question, as to *How to device labour laws and public policies which can ensure required flexibility for the employers while providing voice to the workers in the production process?*

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## Chapter 2

# Contract Labour in India: In Law and Public Policy



## With Comparative Insights from China

A 'contract' as per the Indian Contract Act, 1872 is an agreement which is enforceable in the court of law. Section 10 of the Act says that a contract shall have mutual obligation, the object of agreement shall be legal, and parties should be competent to contract and shall contract with free consent. The contract can be for goods or services including the 'contract to hire'. Section 163 of the Act provides for obligations and liabilities and also a provision for the sharing of future profits, if any, arising out of contract. The 'contract to hire' can be a fixed-term direct employment in which the terms of engagement like tenure, wages are fixed between the employer and employee,<sup>1</sup> or a flexible indirect employment where the employees are tied in a triangular contractual arrangement with a third party (contractor or agency) intermediating between the real employer (principal employer) and the worker. Whereas both the types of engagement are on the rise in India since liberalization, the former type is largely used for white-collar workers falling in the knowledge sector, while the latter form of engagement through third party (contractor or agency) is practised among blue-collar workers engaged in manual jobs. The latter form of contract labour employment which is the focus of our book in turn can be divided into 'manpower contract' and 'job or work contract' as per the nature of control and supervision<sup>2</sup> exercised over the workers. Under 'manpower contract', the contractor supplies the labour to the principal employer, who assigns work and exercises supervision and control, while in 'job or work contract' the contractor exercises all supervision and control on the workers for the job assigned by the principal employer. However, in both cases the primary control of recruitment, work distribution and compensation are to be exercised by the contractor, whereas the secondary control is to be exercised by the principal employer who is the ultimate beneficiary and payer of the work.

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<sup>1</sup>As largely seen in practice in China, refer Chap. 5.

<sup>2</sup>Also, defined as primary and secondary control, by the Supreme Court in IAAI versus IACWU (2009) (13 SSC 374, pp. 387–388).



## 2.1 Acts and Statutes Concerning Contract Labour

The Constitution of India guarantees the right to life and liberty (Article 21) to every citizen. The right to life has been interpreted by the Supreme Court as meaning right to live with dignity which can only be ensured in the case of workers by providing fair wages and decent working conditions to them.<sup>3</sup> The constitution also provides the right to form associations and join unions to the workers [Article 19(1) (C)]. The Directive Principles of state policy stated in the Constitution as set of non-justiciable principles are supposed to guide doctrines so as to grant a decent living to the working population. Article 39 states that the state should strive towards seeking adequate means of livelihood and that the operation of economic system should not result in the concentration of wealth and means of production to the common detriment. It further directs the state to ensure that the health and strength of workers are not abused due to vocations unsuited to their age or strength. The Directive Principles also asks the state to endeavour to secure for the workers a living wage and such standard of life which can ensure them full enjoyment of leisure and for social and cultural opportunities (Article 43). In the legal domain, there are about 44 central labour laws and 200 state laws (Datta and Sil 2007) governing labour matters. There are laws governing almost each and every aspect of labour. However, in relation to contract workers the key laws that govern them are the Contract Labour (Regulation and Abolition) Act, 1970, followed by the Workmen's Compensation Act, 1923, the Factories Act, 1948, the Employees' State Insurance Act, 1948, Minimum Wages Act, 1948, Industrial Disputes Act, 1947, the Employees Provident Funds Act, 1952, the Maternity Act, 1961, the Trade Union Act, 1926, and the Inter-State Migrant Workers (Regulation of Employment and Conditions of service) Act, 1979 (see, Kumar 2012). It may also be noted that labour is a concurrent subject<sup>4</sup> on which both the central and state governments can legislate. Hence at any given time, there are another set of laws (mostly modified version of central laws) enacted by the state governments that are applicable concomitantly to every establishment. The study of state laws separately is beyond the scope of this book; however, we make a reference to this variation in relation to some of the important labour laws pertaining to contract workers, especially the Contract Labour (Regulations & Abolition) Act, 1970. Most of these laws come into operation on the basis of thresholds; thus, the laws contain provisions which state thresholds pertaining to number of workers, duration, income, etc., that determine the threshold whereupon these laws become applicable.

**The Contract Labour (R&A) Act, 1970** It regulates the legal entitlements or the rights, privileges, power and immunity of workers, contractors, and enforcement

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<sup>3</sup>For details on legal provisions under the constitution and judicial interpretation see, Gopalakrishnan and Mirer (2014).

<sup>4</sup>The Constitution of India in the 7th schedule delineates legislative power into central, state and concurrent list. The concurrent list constitutes the powers which can be both considered by the central and the 29 state governments of India.



agencies (state). The Act applies to all establishments in which 20 or more workmen are employed. The Act provides for licensing of both the contractor and the ‘principal employer’ and lays down a list of facilities like canteens, toilets, rest rooms, crèches, washing facilities, first aid to be provided to the workers while on job. The regulation also outlines the duties of the contractor with respect to payment of wages to workers and binds the contractor to pay wages in a timely manner before a representative of principal employer. The Contract Labour (R&A) Rules provides that ‘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, the wage rate, holidays, hour 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’ [Chapter III, rule 25 (2) (v) (a)].<sup>5</sup> The social security laws, i.e. The Employee’s (Workmen’s) Compensation Act, 1923, The Employees’ State Insurance Act, 1948, The Maternity Act, 1963 and The Employees Provident Funds Act, 1952, aim to provide long-term coverage to the workers, include contract labour in a variety of ways. For instance, **The Employee’s (Workmen’s) Compensation Act** has a specific provision for contract workers in that the contractor or ‘managing agent’ [Section 2 (e) and (f)] has been included in the definition of an employer. **The Employees’ State Insurance Act** provides much wider coverage to the workers than the Employee’s Compensation Act. The Act is applicable to establishments<sup>6</sup> employing ten or more workers and provides for employees’ insurance courts and special tribunals to deal with primary and secondary claims arising due to breach of its provisions. Just like the Employee’s Compensation Act, the ESI Act specifically makes provision for contract workers because the term ‘contractor’ or ‘immediate employer’ [Section 2 (13)] is mentioned in the definitional clauses. **The Maternity Act** is a legislation that follows from the provisions contained in the ESI Act.<sup>7</sup> As per Section 3(O) of the Act, ‘woman means a woman employed, directly or through any agency’ thus covering women contract workers. A working woman can avail 26-week paid leave for her first two children.<sup>8</sup> The Act, however, provides for the exclusion of women workers who were employed for less than one hundred and sixty days in the twelve months period immediately preceding the date of their expected delivery [Section 5(2)]. **The Employees Provident Funds Act** lays down provisions for employees’ provident fund scheme, employees’ pension scheme, employees’ deposit-linked insurance

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<sup>5</sup>The provision for equal pay and benefits for equal work is provided in the rules (and not the act) and that too only as a condition of issue of licence to the contractor.

<sup>6</sup>The original act covered mostly factories and had delegated the power to the appropriate government to extend the provisions of this act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise [Section 1(5)]. Thus with the passage of time, more and more establishments have been covered.

<sup>7</sup>See Section 95(2)(ef) of ESI Act.

<sup>8</sup>The number of weeks was raised to 26 from 12 by the Maternity Benefit (Amendment) Act, 2017, making India provider of third longest paid maternity leave in the world after Canada (50) and Norway (44). See, <http://www.bbc.com/news/world-asia-india-39227964> (accessed on 28 January 2018).

scheme and delineates the composition and function of different bodies to run these schemes. The EPF Act covers contract workers in that the Act says ‘employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment’ [Section 2(f) and (i)]. Similarly, contractors are covered under the definitional clause associated with employers, as ‘employer means in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier’ [Section 2(e) and (i)]. The Act like the ESI Act provides for contribution from the principal employer which is to be deducted from the contractor’s bill. The EPF Act provides for severe penalties to enforce compliance. **The Factories Act** interprets ‘worker’ as a person employed, directly or by or through any agency (including a contractor<sup>9</sup>) with or without the knowledge of the principal employer [Section 2 (L)]. The employer is termed as the ‘occupier’ on whom the ultimate control over the affairs of the factory lies. Section 119<sup>10</sup> of the Factories Act provides for an overriding effect to the provisions of the Factories Act over the Contract Labour (R&A) Act wherever the provisions of the latter are inconsistent with the former. **The Minimum Wages Act, 1948** is a comprehensive piece of legislation covering all scheduled employment types (Section 2 (b) i and ii) and employer types [Section 2(e)]. The contract workers are covered by the Act because the defining clause for an employer says ‘employer means any person who employs whether directly or through another person’, and ‘employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment’ [Section 2(i)]. Even when any contract or work agreement is made in which ‘an employee either relinquishes or reduces his right to a minimum rate of wages... shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act’ (Section 25). The Act provides for fixing wages on hourly, daily or even on piece meal basis and delineates the basis and the mode for calculation of the minimum wages. **The Industrial Disputes Act** makes provision for the ‘investigation and settlement of industrial disputes’. The Act primarily lays down the procedure to raise and settle industrial disputes and makes no distinction between regular and contractual workers. By definition, a ‘workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied’. While there is no explicit reference to contract workers—the IDA being a law meant for raising industrial disputes especially in the case of retrenchment, it may be implicitly possible to think that it can provide respite to contract workers also. The Act after all recognizes the right of workers and their unions to collectively raise their voice and protects workers during the pendency of conciliatory, adjudicatory or arbitration proceedings. The IDA distinguishes between legal and illegal strikes and requires

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<sup>9</sup>Added by the Factories (amendment) Act, 1976.

<sup>10</sup>ibid.

employers to bargain with workers in good faith who indulge in lawful collective bargaining practices. The Act discourages the continuous engagement of temporary or *badli* workers by an industry and grants several rights to workers who have been engaged continuously for one year.<sup>11</sup> Besides this, the **Trade Union Act, 1926**, provides for the registration of trade unions by the workers of an industry. For registering and running a trade union, the membership ‘shall at all times continue to have not less than ten per cent or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected’ (Section 9-A).<sup>12</sup> The Trade Union Act does not bar contract workers from forming unions; however, it does say that it is necessary for ‘the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the trade union is connected’ [Section 6 (e)], thus creating a disability for those workman who do not have a conventional employee–employer relationship. The Indian Constitution under Article 19 provides the fundamental right to every citizen ‘to move freely throughout the territory of India (d), to reside and settle in any part of the territory of India (e); and to practise any profession, or to carry on any occupation, trade or business (g)’.<sup>13</sup> **The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979**, lays down the employment conditions of the migrant contract workers ‘who are recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state’ [Section 2(e)]. The act, inter alia provides for, minimum wages as per state regulations, journey allowance, displacement allowance, residential accommodation at work sites, medical facilities, protective clothing and other welfare measures for migrant workers employed in the formal sector. The Act is applicable in establishments where five or more migrant workers are engaged on a regular basis.

### 2.1.1 *Structural Analysis of Contract Labour Laws in India*<sup>14</sup>

In spite of a plethora of legal doctrines and laws, the contract labour system in the country is not well governed. The ground scenario is very different from the impression gained by an initial reading of labour laws across the board. A part of the problem is contained in the laws themselves which can be highlighted by

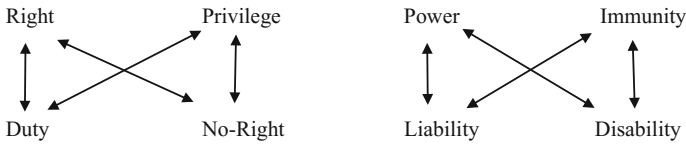
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<sup>11</sup>Section 25-B of the IDA, terms engagement without break of 240 days (195 days for mines) including period on paid leave, disability leave, as equivalent to one year of continuous engagement.

<sup>12</sup>Inserted by the Trade Union (amendment) Act, 2001.

<sup>13</sup>The right provides certain exceptions, for details see, the Constitution of India (part.III).

<sup>14</sup>For details on the structural analysis of labour laws see; Kumar (2013).



**Fig. 2.1** Hohfeld correlatives and opposites

performing a structural analysis of these laws, using some of the central insights offered by the Hohfeldian analysis of rights.<sup>15</sup>

Hohfeld noticed a pattern among legal relationships, noting first of all that that four distinct notions had been commonly referred to as a right–right (or claim right), privilege (or permission, liberty), power and immunity but noting also that these terms were not adequately distinguished one from the other. To provide for the distinction he noted each of these terms can be correlated with yet other terms such that two individuals X and Y can have a variety of possible legal relationships. Thus, if one were to say that X has a right then Y would have a duty in relation to X, if X had a privilege then Y would have no-right to interfere with X, if X had a legal power then Y would have liability towards X, and if X has a legal immunity then Y would have a legal disability. To give further substance to the distinctions, he also identified the opposites of rights (or claim rights), privileges (or permission, liberty), powers and immunities. Thus, if X has a right then the opposite of that is no-right, if X has a privilege (say to scratch his ear) then it is the opposite of having a duty not to do so, if X has a power then he does not have disability, and if X has an immunity then he does not have a legal liability. These relationships can be seen in the Figure 2.1.

Hohfeld correlatives (denoted by  $\leftrightarrow$ ) and opposites (denoted by  $\nabla\triangle$ ) as given in Figure 2.1 can be used in the analysis of all legal entitlements.

The Hohfeldian system is relational in another sense as well. It was pointed out by Hohfeld that some claim rights are held against the world (in rem) and others only in relation to a set of people (in personam). Accordingly, a contractual relationship generates rights in personam, generating claim rights within the relationship but no duties outside the relationship. Thus, a teacher employed in a school has a duty to teach enrolled students but no duty to teach those not enrolled. Also, to be noted in this scheme the pairs of claim rights and duties as well as privilege rights and no-rights are thought of as ‘first-order’ rights and privileges. These in turn are supported by ‘second-order’ powers and immunities in the sense these legal incidents govern changes in first-order rights and privileges. A standard example puts

<sup>15</sup>Part of the analysis was published by the author with the title ‘A structural analysis of Indian contract labour laws’, This work took on board the writings of Wesley Newcomb Hohfeld (1879–1918) who was an American jurist whose two essays on jurisprudence published in Yale Law Journal in the years 1913 and 1917, found acceptability in legal circles for analysis of law.

the Hohfeldian system in perspective. Say X owns a gadget, then a privilege right allows X to use the gadget and a claim right ensures that every other person has a duty not to use the gadget. These are the first-order rights associated with the ownership of the gadget. X also has second-order rights since she has the legal power to grant permission to use the gadget (extending privilege of use to someone else), annul the claim right (abandon the gadget) or transfer the claim right to the gadget (sell). X also enjoys an immunity from individuals other than her own self from waiving, annulling or transferring X's claim right over the gadget. As can be seen from this example, the set of four Hohfeldian incidents in conjunction with their opposites and correlatives can be combined to form molecules of rights. In our context, it is instructive for us to see what molecules shape up from the contents of Indian labour law.

### 2.1.1.1 The Contract Labour (Regulations & Abolition) Act, 1970

To start with the structural analysis of labour laws, we may first start with the Contract Labour (Regulations & Abolition) Act, 1970, which is the major law regulating contract workers relation in India.<sup>16</sup> The Act can be said to be a progressive piece of legislation as it incorporates provisions for providing flexibility to the employers while taking care of the welfare of the workers. The Act regulates the legal entitlements or the rights, privileges, power and immunity of the workers, contractors, and the enforcement agencies (state). The Act provides both for primary and secondary entitlements to these stakeholders but has some structural issues leading to irregular realization of these entitlements.

The Act applies 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' (Section 1). Thus, the act in its applicability provides a disability to the enforcement agencies in regulating organizations that are on the borderline of thresholds and a correlated immunity to the contractors against prosecution.<sup>17</sup> As will become evident in later chapters that on the ground there is a conscious attempt by both the principal employer and the contractor in the first instance to explore the possibility of avoiding the law based on the limitations of the Act.

The Act prominently provides for licensing of both the contractor and the principal employer, thus entrusting power upon the enforcement agencies and correlated liability on the part of the licence seekers. However, claims arising due to the breach of these liabilities are so minuscule that enforcement becomes a problem.<sup>18</sup> To further elaborate on this type of structural problem, it may be noted that

<sup>16</sup>For details see the Contract Labour (R&A) Act, 1970 & Rules, 1971, available at, Ministry of labour and employment website at URL <http://labour.gov.in/content/innerpage/labour-welfare.php>.

<sup>17</sup>Shastree (2013, p. 6) the author has cited that paltry fines like Rs. 200/- or even less make a mockery of labour law entitlements.

<sup>18</sup>ibid, p. 6.

Section 20 provides the principal employer the power to recover money from the contractor by deductions or as a debt payable, 'if the contractor does not provide amenities under Sections 16–19 within the time prescribed'. However, no specific liability has been imposed on the contractor, thus creating a rather disjoint situation. Another structural problem is the lack of joint entitlement or liability of the other stakeholder, i.e. the enforcement agencies that is essential to effectuate the first-order rights of workers. The result is the abject lack of facilities like canteens, latrines, urinals, rest rooms, crèches, washing facilities and first aid for the workers, though they are expressly provided for in the Act. Turning to wages that are prominent first-order rights of workers, Section 21 outlines duties of the contractor with respect to payment of wages to the workers. The section binds the contractor to pay wages in a timely manner and before representatives of principal employer, but nothing in the Act penalizes the contractor in the event of breach of these provisions. Though power has been delegated to the principal employer to recover from the contractor by deductions when the contractor fails to pay wages or other entitlements to the workers [Section 21(4)] and the jural power to enforcement agencies is implied, but a direct jural relationship (co-relative) between the contractor and the workers is missing. Moreover, just as in Section 20 there is a lack of joint entitlement between across the stakeholders, namely the principal employer and enforcement agencies, thus creating an unavoidable disability to put push for the first-order rights of workers flowing from the immunity available to contractors. It may be due to this structural problem ingrained in the Act that most contract workers face, among other things, delayed or short payments.

Under Chapter III, rule 25(2) (v) (a) of the Contract Labour (Regulations & Abolition) Central Rules, 1971, it has been provided that 'in cases where the workman employed by the contractor performs the same or similar kind of work as the workmen directly employed by the principal employer, the wage rate, holidays, hour 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'.<sup>19</sup> However, while providing these rights to the workers, no simultaneous duties have been created on the other parties by the Act. In fact, while making this provision in the law, it appears that no serious attempt was made to make suitable provisions to ensure implementation. Moreover, judicial interpretations demarcating core and non-core areas<sup>20</sup> within the organization have created a disability for law enforcement agencies or even the courts from implementing this provision of the Act and consequently endowed principal employers an immunity from facing a penalty of breach.

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<sup>19</sup>See, Kumar (2012): *Contract Labour—Regulation and abolition act and rules*, p. 288.

<sup>20</sup>Even before the promulgation of the Contract labour (R&A) Act, in the case of Standard Vacuum Refinery Company—versus—their workmen (1960 AIR 948; 1960 SCR (3) 466) the Supreme Court observed that contract labour should not be employed where the work is perennial, or of core nature, or when the work is sufficient to employ considerable number of whole time workers or where work mostly concerns regular workmen.

The structural analysis of the Contract Labour (R&A) Act, 1970 and the Rules put into effect in 1971, shows that the Hohfeldian combinations of right-duty, power-liability or immunity disability combine together to produce molecules that have a low valence—giving rise to legal relationships that are not able to sustain the first-order rights aspired by the Act. Till these structural impediments are taken care of the entitlement problems are bound to remain.

Given the importance of this Act in relation to contract labour, a list of the structural inconsistencies and other discrepancies<sup>21</sup> is shown below:

First, the Act (as described earlier) being circumscribed in scope due to its restricted coverage manifests itself through two limiting provisions. One, the Act applies only to those establishments that employ 20 or more contract workers. Second, the Act excludes those establishments where work of a casual nature for less than 120 days or seasonal work for less than 60 days is performed. The impact of this is open disregard of the law in those industries where the number of workers amount to less than 20 persons or where seasonal nature of work take place. For instance, most Small and Medium Enterprises (SMEs) tend to employ less than 20 contract workers and fall outside of the reach of law. Furthermore, the brick kiln industry employing millions of workers in India stretch themselves on paper to fall within the ambit of seasonal industries.

Second, there are several problems resulting from the process of registration and licensing, and the way various powers are exercised therein as described earlier. The application for a licence is in itself voluntary. There is no comprehensive survey whereby all parties could be mandatorily brought within the scope of law. As a result, many establishments do not have an incentive to apply for licence in the first place. Furthermore, even where registration has been done, due to faulty implementation and the weak system of checks-and-balances, most contract workers remain unaccounted for—the net result is that the exact quanta of contract workers in the country remain unknown.

Third, though there is an express provision in the Act for the abolition of contract labour where the work is of a permanent or perennial nature [Section 10(2) (b)]. However, this provision in application has resulted in permitting contract labour rather than prohibiting it. This is so because until an abolition order is issued by the appropriate government, the enforcement officials at the ground are unable to restrict the use of contract labour in spite of violation of the provision. Therefore, if there is no abolition notification, workers can be employed for any kind of work and indeed contract workers are endemically employed for almost every kind of work. It can be seen that in the central sphere, only 76 notifications were issued under Section 10 for abolition of contract work<sup>22</sup> in about the 40 years following the promulgation of the Act.

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<sup>21</sup>Some of these discrepancies were raised by Ramapriya Gopalakrishnan in her address at the one-day conference on 'Contract labour in India: Issues in law and public policy', held at JNU, New Delhi (21 April 2014).

<sup>22</sup>See the MOLE Annual report (2009–10).



Fourth, there is no provision for the absorption or regularization of contract workers in the Act or even in the accompanying rules. The Act is thus silent on the material progress of an employee in terms of pay-increments, promotion or change in the nature of job after a certain period of employment. This has resulted into much litigation besides much distress among employees who continue working on contract for long durations of time. The labour courts, industrial tribunals and higher courts are flooded with claims of workers seeking to become permanent.<sup>23</sup>

Lastly, the provision of 'equal pay for equal work' as provided in the Contract Labour (R&A) rules, 1970 (Chapter III, rule 25(2) (v) (a)) is ambiguous and lacks teeth notably because it is situated in the rules (that too only as a condition of licence) and not in the main Act. Employers always dispute 'same or similar' nature of work, moreover due to different designations and nomenclature taking definitive position is difficult. In practice, the equality rule seems to be possibly implementable in a newly established factory. This parity is not possible in older establishments where regular workers get increased entitlements due to their seniority and experience—in such cases contract workers can never catch-up. In those new establishments also where initial parity is given, the wages to contract workers will fall behind due to the fact there are no provisions for assured pay enhancement for a contract worker other than the requirement that they be paid at least minimum wages. Thus, it can be seen that in most industries, the contract workers form the bottom class of workers in terms of monetary compensation.

### 2.1.1.2 The Social Security Acts

*(The Employee's (Workmen's) Compensation Act, 1923, The Employees' State Insurance Act, 1948, The Maternity Act, 1963 and the Employees Provident Funds Act, 1952)*

By law, the Employee's (Workmen's) Compensation Act, 1923 and the Employees' State Insurance Act (ESIC), 1948 are exclusive of each other. There is an express provision in Section 53 of the ESIC Act that says, 'an insured person (under the ESIC Act) or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's compensation act, 1923 or any other law'. Therefore, the employer needs to provide either of the two social security covers to workers. Similarly, the Maternity Act of 1963 has an exclusion provision for those working women who are covered under the ESIC Act.<sup>24</sup> The Employees Provident Funds Act, 1952 on the other hand provides broadly for 'the institution of provident funds, pension fund and deposit-linked insurance fund for employees'.

<sup>23</sup>For details, see <http://www.indialabourstat.com/labourandworkforce/380987/labourcourts/151/stats.aspx> (accessed on 21 December 2014).

<sup>24</sup>See Section 2(2).



- (i) The coverage of The **Employee's Compensation Act, 1923**,<sup>25</sup> includes all workmen (except casual workers) [Section 2(n)] and specifically creates provision for the contract workers as the contractor or 'managing agent' [Section 2 (e) and (f)] has been included in the definition of an employer. No major exclusion has been made in the act except that no liability lies upon the employer when the worker is disabled for less than three days [Section 3(a)]. While imposing a duty upon the employer for compensation in case there is a job-related disablement, it creates rights to the workers for their legal entitlement. Though there is an ambiguity in the tripartite relationship of workers-contractor-principal employer in the contract labour system as to on whom among the contractor or the principal employer this duty would ultimately lie, but as there is a jural joint relation between the principal employer and the Contractor, broadly speaking the Hohfeldian structure points to stable first-order rights for workers.
- (ii) **The Employees' State Insurance Act** provides a much wider coverage than the Employee's Compensation Act, albeit for certain exclusions. The Act is applicable to establishments<sup>26</sup> employing 10 or more workers and also excludes workers getting more than Rs. 21,000 (\$314) per month.<sup>27</sup> The Act provides for employees' insurance courts and special tribunals to deal with primary and secondary claims arising due to breach of its provisions. Just like the Employee's Compensation Act, the ESIC Act specifically makes provision for contract workers as the contractor or 'immediate employer' [Section 2 (13)] has been included in the definition of the employer. The Act makes a clear distinction between the principal employer who is the owner or 'occupier' of the establishment and the contractor who is the intermediary. The Act imposes duty upon the employer for compensation in the case of job-related disablement, and it can be said that workers have correlative rights to their legal entitlement. The Act states that the principal employer at the first instance shall pay the contribution of both the employer and the employee (Section 40) and later shall recover the same from the 'immediate employer' (contractor), and at other places uses the term 'employer' or 'principal employer'<sup>28</sup> to define legal relations between the principal employer and the Contractor. Thus in terms of the Hohfeldian structure, the first-order rights of workers come to be well defined under this Act.

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<sup>25</sup>The Worker's Compensation Act has been renamed as the Employee's Compensation Act.

<sup>26</sup>The original Act covered mostly factories and had delegated the power to the appropriate government to extend the provisions of this Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise [Section 1(5)]. Thus with the passage of time, more and more establishments have been covered.

<sup>27</sup>There is no fixed period for revision of such limit in the laws. The limit for ESIC was Rs. 15,000 (\$224) up to 31 December 2016, Rs. 10,000 (\$150) up to 30 April 2010, Rs. 7,500 (\$112) up to 30 September 2006 and Rs. 6,500 (\$97) p.m. up to 31 March 2003 (\$1 = Rs. 66.8).

<sup>28</sup>At some Sections like 40, 44, 73A (Chapter V-A), the term principal employer has been used.

- (iii) **The Maternity Act, 1963** is a legislation made as per the provisions contained in the ESIC act.<sup>29</sup> As per Section 3(O) of the Act, 'woman means a woman employed, directly or through any agency' thus covering contract women workers. While creating rights for the workers, correlative duties have been created upon the employer who is the principal employer or an official who is in control of the establishment. Thus, the Act creates no joint jural relation that includes the contractor who is the real employer of these workers. Moreover, the Act provides for exclusion of those women workers who were employed for less than one hundred and sixty days in the twelve months period immediately preceding the date of their expected delivery [Section 5(2)]. The Act thus creates entitlements for the workers based on the duties enforced upon the principal employer who is neither their direct employer and nor can he ensure the continuity of their tenure. The secondary liabilities on breach<sup>30</sup> also fall upon the employer and not on the contractor. Thus, though the Maternity Benefit Act was enacted for providing better coverage to the working women, the Act brings little relief to women contract workers seemingly due to these structural issues.
- (iv) **The Employees Provident Funds Act, 1952** lays down provisions for the employees' provident fund scheme, employees' pension scheme and employees' deposit-linked insurance scheme and delineates the composition and function of different bodies to run these schemes. The EPF Act covers contract workers in the sense that as per the act 'employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment' [Section 2(f) and (i)]. Similarly, the definition of employers covers contractors also, as 'employer means in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier' [Section 2(e) and (i)]. The Act like the ESI Act provides for a contribution from the principal employer which shall be deducted from the contractor's bill. The Act makes elaborate provisions for recovery of money (Section 8) and for the imposition of penalties<sup>31</sup> (Section 14) on employers and contractors in case of default. The Act at the same time provides for certain exclusions which are uniformly applicable to both regular and contract workers. The Act is not applicable to those establishments where less than 20 workmen are employed and also where employees are

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<sup>29</sup>See Section 95(2)(ef) of ESIC act.

<sup>30</sup>The penalty under Maternity act for breach has been weakly formulated. The act provides for punishment with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or both (Section 21).

<sup>31</sup>The penalty as per EPF act is imprisonment up to three years or a fine of up to Rs. 10,000 (\$150) (Section 14).

getting wages more than Rs. 15,000.<sup>32</sup> In terms of the Hohfeldian structure, the EPF Act seems to have well-positioned correlatives where rights have been created for workers and proper duties have been defined for both the principal employer and the contractor. A structure of secondary rights has been set up in case there is a breach of law. The powers of law enforcement agencies are backed by the liabilities of the contractor and principal employer, as well as the provision of severe penalties if the parties are non-compliant. The exclusions made in the law need amendment for better applicability, and some special protection/provision should be made for unskilled contract workers because the EPF Act makes no differentiation between a well-qualified regular worker of an MNC and an illiterate contract worker labouring in a construction site. However, overall the structure of the Employees Provident Fund Act seems to provide workers with strong first-order rights in terms of an Hohfeldian formulation.

Therefore as per the above analysis, while the social security regimes of the Employee's (Workmen's) Compensation act, 1923, the Employees' State Insurance Act, 1948 and the Employees Provident Funds act, 1952, are found to be broadly structurally sound, though there are issues with the structure of the Maternity Act, 1963.

### 2.1.1.3 The Factories Act, 1948

The Factories Act interprets 'worker' as a person employed, directly or by or through any agency (including a contractor<sup>33</sup>) with or without the knowledge of the principal employer [Section 2 (L)]. The employer is termed as the 'occupier' on whom the ultimate control over the affairs of the factory lies. Section 119<sup>34</sup> of the Act gives an overriding effect to the provisions of the Factories Act against the Contract Labour (R&A) Act wherever the provisions of the latter are inconsistent with the former. This section thus does not pronounce that the Contract Labour (R&A) Act would not apply but that the provision is for the precedence of the Factories Act. Unlike the other legislations, the Factories Act is predominantly a welfare legislation aimed towards the health, safety, proper working hours and other entitlements of the workers, but from the contract workers point of view, the Act suffers from serious structural anomalies. By adding the phrase 'including a contractor' in Section 2(L), the amendment attempts to provide all benefits available in the Act to regular workers to contract workers. However, while creating the

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<sup>32</sup>With effect from 01 September 2014, the wage ceiling for EPF deduction is Rs. 15,000/- (\$224) per month. The same is expected to be revised at par with the ESI wage ceiling of Rs. 21,000/- (\$314) per month. For details, see <http://www.financialexpress.com/money/good-news-epf-cover-wage-limit-to-be-raised-from-rs-15000-to-rs-21000/957142/> (accessed on 28 January 2018).

<sup>33</sup>Added by the Factories (amendment) Act, 1976.

<sup>34</sup>ibid.

right structure for contract workers, the duty structure was not suitably changed. Unlike as in other laws, the employer has been clearly identified and termed as ‘occupier’ (Section-119) in the Act, and no legal relationship is established between the employer and the contractor who is the real employer of the contract workers. Thus, the liability in all cases of breach falls upon the ‘occupier’ and not the contractor. Section-92 clearly states that, ‘if there is any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment’. Similarly, Section-88 provides for penalty upon the ‘occupier’ in the case of accidents or workplace injury to the workers, and Sections 87 and 102 relate to penalty provisions in the case of breach of welfare measures providing for the ‘occupier’ or manager as the sole party liable for proceedings. Section 111A which elaborates upon the right of workers imposes duties upon the ‘occupier’ and ‘the enforcement agencies’ and not upon the ‘contractors’.

Thus, though the Factories Act following up from the landmark amendment act of 1976 provides for uniform entitlements to regular and contractual workers, it fails structurally in creating joint duties upon contractors.

#### **2.1.1.4 Minimum Wages Act, 1948**

The Minimum Wages Act can be said to be a comprehensive piece of legislation covering all scheduled employment types (Section 2(b) i and ii) and employer types [Section 2(e)]. Contract workers are also covered by the Act because it is stated that ‘employer means any person who employs whether directly or through another person’ and ‘employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment’ [Section 2(i)]. The Act provides for rights and duties and powers and liabilities such that joint liabilities have been created in a company on ‘every person who at the time the offence was committed, was in charge of, and was responsible to, the company’ (Section 22 C). Thus even if any contract or work agreement is made where ‘an employee either relinquishes or reduces his right to a minimum rate of wages... shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act’ (Section 25). The Act provides for fixing wages on hourly, daily or even on piecemeal basis and delineates the basis and the mode for calculation of the minimum wages.

The structural analysis of the Act shows it to be structurally sound; the problems in implementation need to be found beyond the domain of law.

### 2.1.1.5 Industrial Disputes Act, 1947<sup>35</sup>

The Industrial Disputes Act makes provision for the ‘investigation and settlement of industrial disputes’. The Act mainly lays down the procedure for raising and settlement of industrial disputes. On the question of contract workers, the Industrial disputes act makes no distinction between regular and contractual workers. By definition, as per the act a, ‘workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied’. However as one proceeds with the structural analysis of the Act, one can see that the rights of the contract workers have not been correlated with the creation of duties on the part of other parties anywhere in the law. Most of sections clearly entitle only those workmen who are on the industrial establishment muster roll<sup>36</sup> and that to since the last one year.<sup>37</sup> Even the newly incorporated Chapter V-B<sup>38</sup> provides relief against lay-off to those workmen, ‘whose name is borne on the muster rolls of an industrial establishment to which this chapter applies’ (Section 25-M, Chapter V-B) and ‘who has been in continuous service for not less than one year’ (Section 25-N, Chapter V-B). The contract workers being indirect employees are on the pay roll of the contractors and do not have any tenure claims. The Act also does not cover the establishments’ set-up for the construction works or projects where most of the contract workers are typically found (Section 25FF). The IDA further provides for representation of workmen who is party to a dispute only through ‘any member of the executive or office-bearer of a registered trade union of which he is a member’ or ‘other office-bearer of a federation of trade unions’ or ‘where the worker is not a member of any trade union, by any other workman employed in the industry in which the worker is employed and authorized in such manner as may be prescribed’ (36, Chapter V-B). Thus, the Act in its very provisions denies contract workers second-order Hohfeldian powers and immunities to constitute their first-order rights and thus excludes contract workers from any meaningful coverage.

### 2.1.1.6 Trade Union Act, 1926<sup>39</sup>

The Trade Union Act is one of the oldest laws governing industrial relations in the country. It provides of mode of registration and working of trade unions within an establishment. The Act, however, is not very helpful to contract workers who are engaged in a tripartite relationship. Though, by definition a ‘workmen’ vide the act

<sup>35</sup>The act has been elaborated in detail in Chap. 4 on collective bargaining.

<sup>36</sup>See Sections 2 (kkk), 25C, 25D and 25M.

<sup>37</sup>See Sections 25B, 25C, 25F, 25FF.

<sup>38</sup>Inserted by amendment of 1976, prohibits lay-off without prior permission of the Government.

<sup>39</sup>The act has been also dealt in the Chap. 4 on collective bargaining.

‘means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises’ [Section 1(g)], however for union to be registered, the Act provides that ‘no trade union of workmen shall be registered unless at least ten per cent or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such trade union on the date of making of application for registration’ [Section 4 (1)]. Likewise, in matters related to office-bearers, continuance of trade union, etc., the Act provides for those ‘who are workmen engaged or employed in the establishment or industry with which it is connected’, thus creating a disability for contract workers because their *de jure* employer is the contractor. By not providing joint *jural* relation with the contractor, the Act inhibits third-party workers like contract labour from trade union registration and collective bargaining.

### **2.1.1.7 Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979**

The Act provides for benefits like transport allowance and accommodation for migrant workers coming from other states of India. However, by putting the onus on the ‘contractor’ who is a profit-making agent to identify migrants to whom the benefits will accrue has made the law unworkable.<sup>40</sup> Section 2(e) of the act defines ‘inter-state migrant workman’ as ‘any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state’. The Act provides for the contractor to recruit labour, but no consequential ‘right’ has been created in the Act per se for the migrant workers in the event of breach of provision of benefits. Though power has been delegated to the principal employer to recover from the contractor by deductions when the contractor fails to pay wages or other allowances to the migrant workers [Sections 17 (2) and 18 (4)] and *jural* power to enforcement agencies is implied, a direct *jural* relationship (co-relative) between the contractor and the workers is missing. Further, as the migrant workers are anyway covered under the Contract Labour (R&A) Act, contractors prefer not recognize the ‘migrant status’<sup>41</sup> of the workers to avoid dual registration, dual compliance procedures and the additional cost. Also, no incentive has been provided to the contractor to registering his workers under the Act.

Thus, the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, with all good intentions fails structurally to provide the intended benefits to migrant contract workers.

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<sup>40</sup>The Planning Commission of India has recognized that the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 197, in the present form has been not implementable and needs revision. For details, see MOLE Working Group Report on ‘Labour Laws & Other Regulations’ (2012).

<sup>41</sup>The Act does not recognize a worker from another state as ‘migrant’ who reaches the job site by self.

It is obvious from the structural analysis of labour laws that part of the problem lies within the laws themselves, though the actual process of its application on the ground determine its impact on the lives of the workers whose interest is the primary concern of these laws. Basu (1977) while detailing the application of the Contract Labour (R&A) Act in the initial years after it was introduced underlined the futility of the act in serving the interest of the workers due to faulty provisions contained in it. Hohfeld (1917) was himself concerned with the problem of equity in law. He had added a supplementary note ‘On the conflict of equity and law’ at the end of his second paper published in the Yale law journal where he categorically stated that when equity laws are created with special tribunals for upholding them, these may sometimes come in conflict with the common laws which may get the former repealed. The powerful may thus use the common laws to get the equity laws revoked or modified in their favour. Hohfeld cites the example of Workman compensation act as, ‘the many Workmen’s compensation acts effecting important changes in the substantive law and at the same time establishing special tribunals for enforcing the law are thus (been) modified’. In India given the structural problems that we have highlighted—the inability of many laws to construct bundles of rights that are beneficial to contract workers because of poor valence among the constituent elements that make up the molecules of rights, tell us that the structural problems of these laws per se need to be removed gradually through amendment legislations and/or judicial pronouncements, so as to make them more effective. However, perhaps a caveat needs to be kept in mind—such change while necessary may not be sufficient in solving the many issues confronting contract labour in India.

### ***2.1.2 Judicial Interpretation of Labour Laws***

Labour laws have been one of the most contested laws in Indian jurisprudence since their inception. In the British period, these laws were often interpreted in a way that benefitted the employers who were mostly the British owners of mills and plantations. Lakshmanan (2010) has cited ‘judicial coercion’ during British period when ‘under the Workmen Breach of Contract Act, 1859, a workman was tried before a magistrate for not performing a contract for which he had received an advance and was sentenced to imprisonment on his failure to obey an order to repay’ (Lakshmanan 2010, p. 142). These contracts were often signed by poor workmen in British India to escape the clutches of village creditors who bonded them for life on failure to pay back their loans. With the gradual change in employment relationship from master–servant to employer–employee, many new labour laws were enacted by the British government to regulate the conditions of wage labour. The enactment of these laws and the numerous litigations and judgements which followed brought about considerable changes in the application of these laws. In early twentieth century, the change in approach of the British government from ‘labour control’ to ‘labour welfare’ was noticed with the grant of ‘provincial autonomy’ and the emergence of union and party politics. Labour jurisprudence in India during the

Second World War period was more towards dispute settlement than labour control. However, Mitchell et al. (2012) differ and hold the view that judicial approach in pre-independence period remained largely confirmatory as the legislations enacted during the period ‘were historically directed more towards the control of labour than towards the settlement issue’ (p. 10). It was only with independence that labour legislation and judicial approach followed the socialist paradigm with the courts often playing a proactive role in protecting the cause of the workers. The paradox of the court protecting the right to property of the propertied class on the one hand and the working class on the other hand was the highlight of jurisprudence in those days. The judgements of the Supreme Court of India since independence up till about 2001<sup>42</sup> with respect to employer–employee relations were generally inclined towards employees and their welfare. Thereafter with liberalization and globalization, the approach of the Court has generally moved towards supporting labour market flexibility, buttressing the efforts of the Indian state towards the process of liberal development.

One of the earliest noteworthy judgements on labour matters was delivered by the Federal court (now Supreme Court) in the case of *Western media automobile association—versus—Industrial tribunal, Bombay and others* (1949 *I L.L.J* 245), which was later reconfirmed by the Supreme Court in the case of *Bharat Bank ltd—versus—their employees* (1950 *II L.L.J.* 921).<sup>43</sup> The court in this judgement opined that unlike civil courts which shall restrict itself to the provisions of contract, the powers of Industrial tribunals and labour courts were enormous. The Industrial tribunals can go beyond the provisions of employment contracts to order back wages and even reinstate employees. In the latter case of *Bharat Bank ltd. versus their Employees*, the court said that industrial tribunals are not merely restricted by contractual rights and obligations between parties; in fact, the tribunals can create new rights and obligations which are considered essential for maintaining industrial peace. Further, the Supreme Court in this judgement asserted its right to grant special leave for appeal against any judgement or order of labour courts and industrial tribunals under Article 136 of the Indian Constitution. Since the *Bharat Bank* case of 1950, the Supreme Court has allowed the exercise of Article 136 on numerous occasions to adjudicate labour/industrial cases. Both these progressive judgements of the initial days in practice formed the basic structure of labour jurisprudence in the country.

Turning to cases related to contract labour, the *Standard Vacuum* case decided by the Supreme Court in 1960 (1960-II-ILJ 233) laid the benchmark for labour legislations and judicial pronouncements in relation to contract labour for a long time. The court in its judgement viewed contract labour as a primitive form of employment which ‘shall not be encouraged’ (p. 60) and directed that contract

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<sup>42</sup>The reference point of 2001 has been taken on account of the Supreme Court judgment in the case of *Steel Authority of India—versus—National Union Waterfront Workers* (7 SCC 1, 42-63, 2001), where the court diluted workers’ claim for absorption on abolition of contract labour.

<sup>43</sup>See, Singh (2000): *Judicial Intervention in the Contract of Employment—Some Reflections on Labour Adjudication in India*.



labour shall not be employed where (i) the work is of a perennial nature, (ii) the work is incidental to and necessary for the factory, (iii) the work is sufficient enough to employ a considerable number of full-time workers, and (iv) the work is normally done through regular workmen (p. 7). The judgement by upholding the orders of the Bombay Industrial Tribunal on the ground of discouraging the engagement of contract labour led to judicial activism by the lower courts in relation to contract labour practices for almost four decades. Section 10(2) of the Contract Labour (Regulation & Abolition) Act, 1970, reflects the judgement arrived by the Supreme Court in the Standard Vacuum case.

Following its judgement in the Standard Vacuum case, the Supreme Court reiterated the stated position in many of its judgements starting with the Gammon India Ltd. case (1974 I SCC 596) to the Dena Nath case (1991 SCR suppl. 2 401). The court has repeatedly stressed on the basic premise (as also stated in the opening paragraph of the Contract Labour (R&A) Act) that the contract labour system shall be abolished wherever possible; however, in cases where the system could not be abolished, the working conditions of the workers should be improved and payment of minimum wages be ensured. However, it is the question of 'absorption' or regularization of contract workers following 'abolition' of contract work from an industry after a judicial pronouncement or government order, which has remained the bone of contention.

In the case of Air India Statutory Corporation versus United Labour Union (1997 9 SCC 377), the scale was momentarily tilted towards the side of the contract workers. The court in this judgement pioneered the clause 'automatic absorption' upon abolition of contract work by the appropriate government, and even ordered the adoption of class IV wages and the criteria of 'last come, first go' in retrenchment, if required. The basic premise of the judgement was that once the abolition clause is invoked, the contract no longer remains tripartite but becomes bipartite between the principal employer and the employees.

Within a few years, the balance tilted in the favour of employers when in the Steel Authority of India limited versus National Union Waterfront Workers case (2001 7 SCC 1), the Supreme Court overruled the Air India judgement and ruled against 'automatic absorption' of workers in cases of abolition of contract labour by the government. It was held by the court that contract workers were only entitled to preference in employment by their principal employer and the court also held that the workers are entitled to raise an industrial dispute under the Industrial Disputes Act if it is felt that the contract was a 'sham contract'<sup>44</sup> and the principal employer exercises all control over the workers. While prior to the SAIL judgement, contract workers often sought abolition of contract work and petitioned the courts for permanent employment; however, subsequent to the judgement, their hopes of regularization have remained suspended. Later in the International Airport Authority of

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<sup>44</sup>For identifying whether a contract is a 'sham contract', the court has later laid that this can be found by looking at the employer-employee relationship and the actual nature of contract by examining facts like who exercises the primary control on the employees through wage payment and supervision.

India versus International Air Cargo Workers' Union case (2009 13 SCC 374), the court laid down the criteria for identifying sham contracts through distinguishing primary and secondary control exercised on the contract workers in an establishment.

However, it was in the State of Karnataka versus Uma Devi case (2006 4 SCC 1) that the Supreme Court turned the tables upon the 'absorption' demand of the contract workers and ruled that 'there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service' (p. 20). Invoking the principles of 'equality before law' (Article 14) and 'equality of opportunity' (Article 16) enshrined in the Constitution of India, the court ruled that any temporary worker cannot claim permanency just on the ground of extended continuance in service or just because s/he was granted 'equal pay for equal work'. The Supreme Court ordered that all public employment shall be filled through a competitive process of selection and barred all high courts from issuing directions under Article 226 for absorption of services of a temporary worker.

Thus, it can be seen from judicial interpretation of labour laws since independence that the apex court which earlier took up the cause of precarious workers by setting parameters for the state regarding their engagement, with liberalization the courts have come to dilute these parameters and make the engagement of contractual workers a matter of choice for the employers. The laws in themselves provide negligible avenues for the workers in terms of promotion in job, pay-increase, regularization or skill upgradation even after years of service.<sup>45</sup> Moreover, the actual working of these laws as detailed in the case studies later in Chap. 5 showcases their futility on the ground in begetting the rights of the workers. The protracted debate on 'absorption with abolition' which ended with the judgement against absorption shattered the hopes of contract workers. The argument of the court for refusing to prohibit precarious employment was 'that would mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them' (State of Karnataka vs. Uma Devi case (2006 4 SCC 1), p. 18), is going along with the liberal argument that some job is better than no job. The refusal by the court to grant permanent status to those workers engaged continuously for years together in low-paid perennial contractual jobs, infuses the flexibility sought by the employers, however the court has not denied 'equal pay for equal work'. In fact in the same Uma Devi judgement, the court has re-emphasized that 'equal pay for equal work' is enshrined in the Directive Principles and is very much part of the equality principles ingrained in the Constitution of India. The Uma Devi judgement has since reined in labour jurisprudence in the country with the courts allowing little beyond. However, a little relaxation has been permitted by allowing some weightage for

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<sup>45</sup>In contrast as elaborated in the Chinese case study in Chap. 5, the 2008 Chinese Labour Contract law provides for unlimited contract after second extension besides providing avenues for job progress and skill development.

service rendered in temporary capacity [*Sachivalaya Dainik Vetan Bhogi Karamchhari Union, Jaipur vs. State of Rajasthan* (SC 7260/2016 on SLP 3159/2015)]. Nevertheless with growing numbers and brewing discontent among contract workers, it remains to be seen how future judicial pronouncements shape contract labour entitlements.

### 2.1.3 Policy on labour

Public policy is comprehended as a pattern of government decisions to address a particular civic issue.<sup>46</sup> Policy draws legitimacy from the institution of state and is reflected in the legislations, office orders and deliberations of various committees, conferences and commissions set up by the government in different periods. Labour policy in British India was largely concerned with protecting the interest of the mills of Manchester and Lancashire against poor labour practices among their counterparts in Bombay and Bengal. The earlier labour regulations were thus formed to protect female and juvenile workers aimed to relieve the Indian industries of their competitive advantage in terms of the availability of cheap labour (Punekar 1957). The Factories Act, 1881, which is considered the basis of all industrial and labour laws in India, was predominantly about restricting the employment of women and children. The imperialist government preferred to follow a policy of *laissez faire* on labour matters till its business interest seemed secure. However, since the First World War, growing workers' consciousness; the establishment of International Labour Office (ILO); popular representation in legislatures<sup>47</sup>; and pressure from newly formed unions, induced the government to play a more proactive role on labour matters. The Royal Commission set-up in 1929 was the first major policy initiative of Her majesty government to improve working conditions of labour. The recommendations of this commission laid policy directions for many future legislations and initiatives on labour reforms. Later with independence, the government of India adopted an interventionist policy on labour matters which emanates from a complex interplay of different sources. At the central level following the international standards, a tripartite body consisting of government representatives, employers and worker unions, called the Indian Labour Conference (ILC), meets every year to contemplate on labour issues.<sup>48</sup> The Standing labour committee is a

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<sup>46</sup>For details, see Jann and Wegrich (2007): Theories of the policy cycle. In, Fischer, Miller and Sidney (Eds.) (2007): *Handbook of Public Policy Analysis: Theory, Politics, and Methods*.

<sup>47</sup>The Indian National Congress since its formation was very active in taking up the cause of labour. The passage of the Workmen's compensation Act, 1923 and Trade union Act, 1926 by the British-India government was due to its relentless efforts. At the Karachi session, 1931, the Indian National Congress (INC) passed a resolution seeking safeguarding the interests of workers by legislation and other means.

<sup>48</sup>The first session of the Indian Labour Conference was held in January 1940. The 47th meeting of the ILC is slated to be held in 2018.

much smaller body which deliberates on labour-related matters on a regular basis. Besides, the government time to time constitutes National Commissions on labour for policy recommendations on labour issues. Also the Planning Commission (now *Niti aayog*), the Labour Ministry, state governments and other wings of the government formulate their own committees for specific policy directions. Another major policy space which influences labour market policy is the industrial policy. In 1948 immediately after independence, the government of India introduced an industrial policy resolution outlining the future industrial plan of the country. The first comprehensive industrial policy was adopted in 1956 in which the government recognized labour as a partner in development in the socialist democracy. Hence, Joint Management Councils (JMCs) were encouraged as a tripartite committee in industries for dispute resolution. The industrial policy was revised subsequently in 1973, 1977, 1980 and 1986 to meet new challenges from time to time—however, the primacy of all these policy doctrines was state control and protection. It was only with the industrial policy of 1991 that the government for the first time opened all manufacturing activity to competition.<sup>49</sup> This change in the industrial policy and consequent increase in non-state-led economic activity led to increased informalization and contractualization of labour. The government at the centre has announced its intention to formalize a new industrial policy catering to the world market which is expected to be unveiled in 2018. The policy is likely to impart further flexibility in labour market though some major steps towards ‘fixed-term employment’ are also expected.<sup>50</sup>

The Indian government since long has acknowledged the exploitative nature of contract labour relationship and attempted to act to abolish this form of labour engagement. In British India, the Whitley commission (1879) had recommended the abolition of contract labour by implication; the Bombay textile labour enquiry committee (1938) had called for the immediate abolition of the contract labour; the Bihar labour enquiry committee (1941) condemned the practice of recruiting labour through contractors because ‘the contractors ordinarily lack a sense of moral obligation towards labour which the employers or the managers are expected to have’.<sup>51</sup> Later in independent India with the adoption of socialist model of development, a series of protective legislation on Labour were enacted to highlight government commitment to protect interest in labour matters. The Factories Act was redrafted, incorporating more welfare measures and re-legislated as the Factories Act 1948. Further, new legislations aiming at welfare enhancement such as the Minimum Wages Act, 1948, the ESIC Act, 1948, and the EPF Act, 1952 were enacted in very

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<sup>49</sup>The 1991 policy states that except for some strategic and military considerations, the government intends to end the monopoly of any sector or an individual enterprise. For details, see Statement of industrial policy, Department of Industry, Government of India, 24 July 1991 at [http://dipp.nic.in/English/Policies/Industrial\\_policy\\_statement.pdf](http://dipp.nic.in/English/Policies/Industrial_policy_statement.pdf) (accessed on 12 April 2015).

<sup>50</sup>Please see <https://economictimes.indiatimes.com/news/economy/policy/india-may-have-a-new-industrial-policy-in-two-months/articleshow/62964359.cms> (accessed on 22 February 2018).

<sup>51</sup>See Report on the working conditions of Contract Labour, Labour Bureau (2000–01), Chap. 1.1; also see report of 1st National commission on Labour (1969), Section 29.6, pp. 418–419.

short span of time after independence. The government policy during the period was largely to regulate the labour market by keeping flexibility at bay. The policy was, however, incoherent.<sup>52</sup> In the government sector, a hybrid form of ‘casual employment’<sup>53</sup> prevailed. However, in spite of these efforts the contract labour system prevailed unabatedly largely in the manufacturing, mining and construction sectors of India. The first Indian National Commission on Labour while acknowledging the widespread use of contract labour called for stricter regulation of contract work and suggested that ‘the general direction of policy should be towards abolition of contract labour in due course’ (Report of the first Indian National Commission on Labour, 1969, Main conclusion and recommendations, Section 28.86 (239)). It was following the recommendations of this commission that the Contract Labour (R&A) Act was passed in 1970 set-up to abolish contract labour wherever possible.

In the liberalization period, the government seems to be, however, in a dilemma on the policy to be adopted on labour market. On the one side, the government has been under tremendous pressure to deregulate in order to provide required labour market flexibility for the manufacturing sector to attract foreign investment and to face-off competition in the sector, while on the other side the government could ill-afford to portray itself to be siding with the industry. Thus on the policy front, the government has adopted a twin strategy to deal with labour issues, i.e. ‘(a) use social dialogue mechanisms to build consensus among the social partners to effect some critical labour reforms; and (b) build public support by instituting enquiry and tripartite bodies to look into the issues relating to critical labour reform and to keep them in the public policy domain’ (ShyamSundar 2011, p. 18). In pursuance, a group of ministers (GOM) was constituted in the year 2000 to deliberate on amendments in Contract Labour (R&A) Act. The GOM identified ten activities as support services to be excluded from the abolition provisions of Section 10 and called for registration instead of licences for contractors under the Act. However, this could not be adopted due to change in government as well as due to the lack of a political will. The change

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<sup>52</sup>The policy on labour market in the pre-liberalization period kept on wavering as can be seen in the policy of recruitment of class IV workers and policy on casual workers in government departments. Since independence, recruitment in class IV were several times banned and restored (See, Ministry of Home Affairs OM dated the 24 September, 1958, August 1977, 21 March 1979 and 07 June 1988, Also see, Ministry of Finance OM No. F. 10 (15)-E.Coord./67 dated the 23rd September, 1967, etc.) (see, Ministry of Home Affairs/ Finance circulars on casual labour, also available at <http://contractworkersfordignity.blogspot.in/>, accessed on 27 September 14).

<sup>53</sup>Unlike Contract labour system, casual workers enjoyed weekly paid holidays, somewhat fixed tenure, direct payment and permanency claims on two years of regular engagement. Casual employment which was formalized by the Ministry of Finance order No. F. 8 (2)-Est (Spl)/60 dated 24 January 1961, sought for minimum wages and preferential appointment at the time of open recruitment for regular workers. The term for preferential appointment was fixed as two years by subsequent orders of the Ministry of Home Affairs in 1966, and was later reduced to 240 days (206 days for establishments having 5 days a week) of engagement including broken period in-between. The casual worker scheme continued up till about 1993, i.e. till the launch of Casual labourers (grant of temporary status and regularization) scheme by the Ministry of Personnel, Public Grievances and Pensions (Dept. of Personnel and Training), thus lakhs of casual workers were gradually regularized through the casual route (See, *ibid.*).

in government policy towards gradual acceptance of labour market flexibility from the earlier pre-liberalization protective stand can also be seen in the policy recommendations of the Second Indian National Commission on Labour which acknowledged that in the changed economic circumstances in view of globalization, 'there cannot be a fixed number of posts in any organization for all time to come. Organizations must have the flexibility to adjust the number of their workforce based on economic efficiency' (Report of the 2nd Indian National Commission of Labour 2002, p. 364). The Commission also diluted the prevalent distinction between core and peripheral work areas for engagement of regular or contractual labour, when it stated that 'for sporadic seasonal demand, the employer may engage temporary labour for core production/service activity' (ibid.). Thus, the rise of contractual manpower in the public sector since liberalization outlines the government direction towards informalization of work in a subtle way (ShyamSundar 2012, p. 12). Contrary to the policy of absorption of casual employees followed in the pre-liberalization period, in the latter phase the government became averse of all regularization proposals in public jobs. In the private sector, the government policy was more towards opening up the labour market increasingly through an emphasis on capital investment and job creation rather than on job quality. Apart from the pre-liberalization phase when the government was wavering on cutting down its regular workforce, since liberalization the government has followed a determined policy of reduction of regular staff strength through an Annual Direct Recruitment Plan (ADRP) from the year 2001–2009 vide which all government vacancies needed to be reflected and filled only after clearance by a screening committee at the government level.<sup>54</sup> The sixth Central Pay Commission (2008) in its recommendation did away with Group-D (unskilled) posts altogether and instead lay emphasis on multi-skilling of the workforce. The sixth CPC asked for flexible contractual (fixed term) engagement in expert positions to be guided by market variations and at the lower end it recommended 'that all non-essential jobs that can be done by outsiders without any operational problems but are presently done by followers, should be henceforth be contracted out or outsourced' (Report of the sixth CPC, p. 463).<sup>55</sup> Moreover, side by side, the General Financial Rules (GFR), which regulate the financial matters in all government departments, makes a specific provision for 'outsourcing of services', 'in the interest of economy and efficiency' (rule 178, GFR, 2005) through third-party contractors. The GFR, 2005 in rules 178–185 laid down basic guidelines for outsourcing through open bidding and espouses the ministries and departments to frame their own procedures in this direction.<sup>56</sup> The new GFR,

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<sup>54</sup>The policy was targeted for a yearly cut of 1/3 of vacant posts in all ministries, departments and autonomous bodies. For details, refer Ministry of Personnel, Public Grievances & Pension, MHA, Office Memorandum No. No.2/8/2001—PIC dated 16 May 2001, 30 August 2006 and 09 April 2009.

<sup>55</sup>The Sixth Pay Commission for the first time laid wider emphasis on contractual engagement in government at every level. For details, see <http://finmin.nic.in/6cpc/6cpcreport.pdf> (accessed on 27 September 2014).

<sup>56</sup>For details on GFR, see [http://finmin.nic.in/the\\_ministry/dept\\_expenditure/gfrs/GFR2005.pdf](http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/GFR2005.pdf) (accessed on 27 September 2014).

2017 (rule 198 to 2015) follows a similar line. Besides, the government has been running number of schemes for the general welfare of the populace which provide a foundation for the rural poor to bargain for better wages, living condition and rightful dues. The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) launched in the year 2006 is such a flagship scheme aimed towards providing 100 days of guaranteed unskilled employment to rural populace within five kilometres of their place of residence. With more than 250 million registered workers and 110 million active workers, the scheme is one of the largest employment schemes in the world.<sup>57,58</sup> Kheera (2011) in her study based on survey data found that MAGNREGA has helped to avoid desperate migration from rural areas to cities. The *Pradhan Mantri Kaushal Vikas Yojana* (PMKVY) is a skill development initiative scheme which is part of National Skill Development Mission<sup>59</sup> launched in July 2015 to bridge the skill gap for ‘Make in India Scheme,’<sup>60</sup> launched a year before in 2014. PMKVY targets to train 10 million Indian youth in industry relevant employable skills by 2020 which would help them in securing a better livelihood.<sup>61</sup> Another incentive scheme worth mentioning here is the *Pradhan Mantri Rojgar Protsahan Yojana* (PMRPY), 2017, vide which the government has assured to contribute EPF pension contribution (8.33%) of employers for their new employees for first three years of engagement.<sup>62</sup> The incentive by reducing employer’s pension liability may help workers movement from informal sector to formal jobs. However, by far the most ambitious scheme of the Government of India is the proposed Labour code bill on social security, 2018, encompassing all social security schemes pertaining to retirement, old age, health, disability, unemployment and retirement benefits. The comprehensive social security scheme proposes to cover 500 million workers from both formal and informal sector in a phased manner.<sup>63</sup> This Labour

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<sup>57</sup>See [http://mnregaweb4.nic.in/netnrega/all\\_lv1\\_details\\_dashboard\\_new.aspx](http://mnregaweb4.nic.in/netnrega/all_lv1_details_dashboard_new.aspx) (accessed on 27 February 2018). For other details on the scheme, see <http://Nrega.nic.in>.

<sup>58</sup>The Economic survey, 2018, reports that among the beneficiaries of MAGNREGA 54% were women. See <http://mofapp.nic.in:8080/economicsurvey/> (accessed on 27 February 2018).

<sup>59</sup>Skill India mission aims to develop the institutional capacity for skilling 300 million people in different schemes by 2022. See National skill development mission: A framework for implementation, p. 3, <http://www.skilldevelopment.gov.in/assets/images/Mission%20booklet.pdf>.

<sup>60</sup>Make in India is a major policy initiative designed to make India a global designing and manufacturing hub by improving ‘ease of doing business’ environment in the country. Since the launch of the scheme, India has gained 42 ranks from 142 in 2014 to 100 in 2018. See <http://www.makeinindia.com/eodb> (accessed on 27 February 2018).

<sup>61</sup>For details, see <http://pmkvyofficial.org> (accessed on 27 February 2018).

<sup>62</sup>For details, see <https://pmpy.gov.in/> (accessed on 28 February 2018).

<sup>63</sup>For the draft Social security code, 2018, please see, <https://labour.gov.in/sites/default/files/SS%20Code%202018-02-28%20FOR%20UPLOADING.pdf>.

Also see, <https://economictimes.indiatimes.com/news/economy/policy/government-readies-social-security-scheme-for-50-crore-workers/articleshow/63130835.cms> (accessed on 04 March 2018).



code bill is part of the larger goal of the government to consolidate all labour laws into four codes, namely Code on wages, Code on industrial relations, Code on social security and labour welfare and Code on occupational safety, health and working conditions.<sup>64</sup>

An overview of policy on contract labour over the Indian history after independence shows a movement from an overt emphasis on ‘abolition’ in the initial period to ‘regulation’ in the 70s and 80s towards a policy of ‘acceptance’ in the liberalization phase. The marked change in government approach now with matching judicial pronouncements will define the Indian labour market in the future. Over these developments, the debate over ‘job availability’ and ‘job quality’ continues to loom at large in policy circles. It has been argued that in the globalized world, absence of labour standards in a free labour market may create the condition of persistent inequality and unemployment. Fields (2007) is of the view that, ‘labour market policies intended to foster economic development should target job quality rather than maximum levels of employment’, as precarious labour faced by job insecurity and lack of social security only adds up to poverty. ‘The focus of policy must shift towards the design of labour legislation with these economic policy goals in mind’ (Deakin and Wilkinson 1998, p. 37). The state efforts through mega schemes for employment generation and social security need to be properly targeted so to reach the intended beneficiaries. The Indian Industrial Policy, 2018, rightly places job creation at the centre of policy objectives,<sup>65</sup> but with surplus labour market and limited resources, job creation in India in itself is an uphill task which cannot be attained without keeping business interest in mind. Policies thus need to cater to both the interests of business as well as labour. The furtherance of India as a global power can be based on the understanding that ‘policy discussions... need to abandon the state versus market dichotomy and need instead to focus on the various ways in which states and markets can work together to promote development’ (Kohli 2004, p. 423). Ideally labour policy shall aim on those aspects which can ensure required flexibility for the employers while providing voice to the workers in the production process.

Overall, law and public policy present a gloomy prospect for the contract workers in India. Recent shift in judicial and policy approach leaves little hope for the workers in the system. Another deterring factor for the workers with regard to the application of laws is the delay in adjudicating labour cases by the courts and the long channels of appeal and review to seek legal remedy. This sorry state of affairs of judicial adjudication has been pointed out by the CAG audit report (2007) based on a study conducted in four metro cities during the period of 2001–2006:

In the central sphere, out of 7454 cases taken up for adjudication by two NTs (National tribunals) and six CGITs (Government Industrial Tribunal cum Labour Courts) during

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<sup>64</sup>Simplification, rationalization and amalgamation of central labour laws into broad codes were part of the recommendations of 2nd National Labour Commission (2002).

<sup>65</sup>Please see <https://economictimes.indiatimes.com/news/economy/policy/india-may-have-a-new-industrial-policy-in-two-months/articleshow/62964359.cms> (accessed on 22 February 2018).



2001-06, only 4286 were disposed. In the state sphere, out of 86245 cases taken up by 34 labour courts and 20 industrial tribunals, only 52374 were disposed after considerable delay. Delay in publication of awards in the official gazette was observed in the state sphere in Chennai and Delhi. Delays in disposal and failure to monitor implementation of awards were noticed in both Central and State spheres in all the four metros.<sup>66</sup>

Above all, it should always be kept in mind that labour laws in India cover only a miniscule population of the working class about 92% of which falls in the informal sector. The much-hyped talk of rigidity and flexibility is absurd when the reach of 'the Factories Act and Chapter V-B of IDA is as low as 2.45% and 1.8% of the workforce respectively' (Kapoor 2014, p. 17). Kapoor (2014) asks the government to focus on increasing the penetration of labour laws as presently these laws cover only about 10% of the workers who are in the organized sector, whereas the majority of workers who are in the unorganized sector remain uncovered. The limited penetration of law and the lax practice in application even in those limited section of population makes the labour law system for all intent and purpose a 'non-functioning system' (Mitchell et al. 2012, p. 47). Of late, there has been increasing voice within legal and policy circles to initiate reforms of some of the labour laws to remove their inherent inconsistencies to make them more amenable to the need of the industry. Though the central government has till date avoided any major change in the structure of the laws, some modifications have been initiated to gauge the mood of the things to come. At the first instance, some flexibility has been set off in the organized labour market by increasing the limit of overtime from 50 to 100 h per quarter and by allowing night-work to the women workers. Also, some provisions in the Apprenticeship Act, 1961 and the law on exemption from furnishing of returns and maintaining registers by certain establishments, 1988, have been amended. Most recently, the Indian government has notified the proposed amendment to the Industrial Employment (Standing orders) Act, 1946 (XX of 1946), by gazette notification dated 8 January 2018. This amendment extends the provision for fixed-term employment contract for all sectors.<sup>67</sup> What is noteworthy here is that the new industrial policy slated to be unveiled in the year 2018 'supports extending the provisions of permitting fixed-term employment, as against permanent workforce, to all sectors'.<sup>68</sup> The move may lead to the proliferation of fixed-term work in India as existent in the Chinese labour market. Besides the

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<sup>66</sup>For details, see Report of the Comptroller and Auditor General of India containing the results of performance audit of Implementation of Industrial Disputes Act, 1947 and Contract Labour (Regulation and Abolition) Act, 1970, Report No. 15 of 2007, p.v, Ministry of Labour and Employment, Government of India. <http://www.prsindia.org/uploads/media/1237548159/CAG%20report.pdf>.

<sup>67</sup>The provision for fixed-term employment contract was introduced in apparel manufacturing industries under the industrial employment (Standing Order) Act vide notification dated 07 October 2016. For details on the amendment proposal, see <https://labour.gov.in/sites/default/files/FixdTerm%20Employment%20for%20all%20sectors.pdf> (accessed on 10 February 2018).

<sup>68</sup>Ibid., footnote 65.

central government, many state governments like Gujarat, Maharashtra and Tamil Nadu have been in the forefront in effecting law and policy reforms to ‘ease doing business’ within the state. The case of Gujarat, the relatively developed state of India, has been elaborated in the case study of Dahej SEZ in Chap. 5.

However, any attempt to alter the law and policy regime in India has been vociferously questioned by political opposition and also within academic circles. The intent of the government and the class for which the labour reforms are intended has throughout been the bone of contention in democratic polity. Kapoor (2014) laments the predominant understanding that labour regulations were a hurdle and the reforms were necessary for industrial growth and improve the chances of enterprise. Instead, she argues that there are a variety of other factors which shall be looked into by the government to improve the industrial climate of the country. Sood et al. (2014) in their study terms the present thrust towards labour law reforms as pro-market intended to increase vulnerability of labour. By exempting certain industries from filing returns and by encouraging self-declarations, they view that the reforms ‘seeks to free the employer from a number of obligations towards labour’ (Sood et al. 2014, p. 67). Deakin and Haldar (2014) while acknowledging the role played by labour law deregulation in industrial growth of Gujarat<sup>69</sup> doubts the possibility of replication of such a model in other states of India as there are many institutional factors which need to be accounted. Moreover, they view that ‘the Gujarat model also poses some difficult questions over potential trade-offs between equity and efficiency’ and hence haunts Indian policymakers with the question whether growth through labour law deregulation ‘is to be seen as an end in itself or a means to other ends’ (Deakin and Haldar 2014, p. 55).

### ***2.1.4 Law and Public Policy: Comparative Insights from China***

India and China are worth comparing on many accounts. Both nations with about 1.3 billion people individually subsume more than one-sixth of mankind.<sup>70</sup> Though China with 933 million ha land area is more than three times to India, the arable

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<sup>69</sup>Deakin and Haldar (2014) in their paper mainly study ‘dismissal protection’ as available under the Indian laws and the Gujarat Industrial Disputes Amendment Act, 2004, which replaces Section V-B of the Industrial Disputes Act making a provision of compensation in case of retrenchment or closure.

<sup>70</sup>Some demographers have estimated that India has already crossed China in 2017; see <https://www.nytimes.com/2017/05/24/world/asia/china-india-population.html>. Further, whereas the working age (15–64) population in China is shrinking, the same is rising in India. In fact, China was compelled to scrap the one-child policy due to its ageing population after 35 years. For details, see <https://timesofindia.indiatimes.com/world/china/china-working-age-population-shrinks-presenting-pitfall-for-pension-plans/articleshow/63111005.cms&https://www.theguardian.com/world/2015/oct/29/china-abandons-one-child-policy> (all accessed on 06 March 2018).

and irrigated land area in India is slightly more than that in China.<sup>71</sup> India and China have ancient civilization history which is rich in culture and heritage. Although mainland China never came under direct British control as India did, both the countries were under British influence for a substantial period.

China has always been far ahead of India on the education front. During 1982, the adult literacy rate in China was 64.4% compared to India's 37,<sup>72</sup> the difference persists till today as while Indian literacy rate hovered around 64% during the turn of the century, China was approaching the cent-per cent mark.<sup>73</sup> Vocational education and skill development always remained the mainstay of Chinese education system ensuring relatively higher productivity of Chinese workers. Above all, India being a democracy and a diverse society, law and public policy is much differently positioned in the country in comparison to China.

The continuity and strong leadership provided by the ruling communist party and the umbrella of the All-China Federation of Trade Unions (ACFTU) have kept the socialist principles functional in employment relations. When seen in the historical perspective when compared to other communist countries like Russia, while Russia faltered by adventuring upon 'openness' (glasnost) and 'restructuring' (perestroika) simultaneously, China methodically followed a policy of restructuring its economy but kept a closed political system. Thus, the communist party managed to implement a liberal agenda with much more precision than other developing democracies like India. Moreover, while in other communist countries which transformed into liberal economies, all the strengths of the erstwhile communist systems were effectively decapitated before the seeds of capitalism could germinate,<sup>74</sup> China utilized some of its communist institutions like unions and education system to advance in the capitalist path of development. The Chinese model of 'grassroots democracy',<sup>75</sup> unified union and single party is presumably a winning combination for industrial development.

Lastly, whereas in India multi-party democracy and political uncertainties makes decision-making difficult and sometimes unsafe for long-term investments, in China on the other hand the assurance provided by the single-party government through its ubiquitous union makes investment feel secure.

**Labour Law and policy in China** The late 1940s when India gained independence from British imperialism (1947) and the Communist revolution led to the

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<sup>71</sup>The arable land area of India is 161 million ha versus China's 130 million hectares; whereas the irrigated land area is 55.8 million ha to China's 54.5 million ha. See, <http://www.thehindu.com/todays-paper/tp-opinion/Agriculture-where-India-and-China-stand/article14827791.ece> (accessed on 06 March 2018).

<sup>72</sup>For details, see <http://businesstoday.intoday.in/story/what-took-china-ahead-of-india-and-what-keeps-it-ahead/1/201565.html> (accessed on 07 March 2015).

<sup>73</sup>Also as seen during the field study (elaborated in Chap. 5), most Chinese workers were able to read and write.

<sup>74</sup>For details, see Hanson (1997): *What sort of capitalism is developing in Russia?*

<sup>75</sup>Refer Chap. 5 on fieldwork in Guangzhou, China.

establishment of Peoples Republic of China (1949) can be taken as a good reference point for explaining the current state of labour law and public policy in both the countries. Whereas India followed a mixed path since independence, China strictly adhered to state-controlled economic development. State-owned enterprises (SOEs) or public sector units (PSUs)<sup>76</sup> with pensionable regular mode of employment were the mainstay of industry for the next 30 years in both the countries. China adopted a life-long employment policy also called the ‘iron rice bowl’<sup>77</sup>, practice by enacting the Ordinance of Labour Insurance in 1951 in the state-operated enterprises (SOEs). Yi-Chong (2012) terms the period of state-controlled economy as ‘state capitalism’ or ‘state back capitalism’ (Yi-Chong 2012, p. 1). The *hukou* system<sup>78</sup> or the household registration system which has a precedent in Chinese ancient history gained ground during the communist rule to control the movement of people from rural to urban cities. The family registers maintained under the *hukou* system provided for rationed food and other welfare services at the place of residence. In communist China, about 97% of the SOE workforce had regular employment. These workers producing 75% of total industrial output of the country constituted 42% of the entire industrial labour. Followed by this group what Lee calls ‘labour aristocracy’ (Lee 2005, p. 1), the second rung of 18% comprised of workers who were employed in urban industrial enterprises-collectives funded by local government with variable wage and welfare provisions. Beyond this two groups were temporary workers in SOEs and workers in rural enterprise with rural residency rights having even fewer benefits (Lee 2005, pp. 1–2). In India, however, with an informal sector encompassing 92% of workforce with little known wage and welfare benefits, things were much more fluid and difficult to comprehend. In early 1980s, the state workforce constituted of less than 6% of total workforce and contributed less than 20% of total industrial output (Nagaraj 2006). With time, the SOEs became plagued with inefficiency and stagnation and were known more as employment hubs. Overall, the state-led development in India and China during the period 1950–1980 maintained a moderate rate of growth of around 3.5–4.5%.<sup>79</sup> Thus in early 1980 before China and India embarked upon the liberalization

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<sup>76</sup>As termed in India.

<sup>77</sup>The ‘iron rice bowl’ was the term given for regular employment in military, civil services and state-run enterprises in communist China in which security from ‘cradle to grave’ was guaranteed by the state. The job security with steady income and benefits was part of the socialist ideology of communist China. (For details, see Kuruvilla et al. (2011).

<sup>78</sup>The *hukou* system is controlled by the state which classifies people from their place of residence. The Chinese labour market is thus differentiated between urban and rural workers. For details, see Afridi et al. (2012).

<sup>79</sup>For detailed statistics comparing India and china, see Srinivasan (2003): *China and India: Growth and Poverty*, 1980–2000. The rate of growth of India however remained slightly lower than China during the period 1950–1980. This dismal growth rate averaging 3.5% in India during the planned period (1950–1980) was also called the Hindu rate of growth.

journey, both the economies were more or less equally placed in terms of per capita GDP and manufacturing strength.<sup>80</sup>

Large-scale unemployment with growing population; poverty and hunger led both India and China to alter its policies since 1980s. The Indian progress towards liberalization in the first decade was, however, overly cautious and sometimes contradictory.<sup>81,82</sup> The fiscal crisis of 1990–91 compelled the Indian state to shed its socialist overtures and to start the process of liberalization.<sup>83</sup> Unlike India, China marched relentlessly ahead on the path of liberal growth. In 1980, a three-in-one policy called ‘*sanjiede*’ was introduced which ‘allowed job placement through, the introduction of labour bureaus, through workers’ voluntary organizations, and through self employment’ (Ngok 2008, p. 47). Though the rationing system was now over, the differentiation of Chinese labour market into rural periphery and urban core continued over the liberalization period. Gradually private business or self-employment gained ground and started competing with the SOE in many sectors.<sup>84</sup> The break came in 1986 when fixed-term labour contracts were introduced by provisional regulations, and all new SOE employees were made to sign contracts which could only be extended with mutual agreement with the SOE and the employee. Like all policy changes brought about by the ‘communist’ Chinese government, the transition from a regimented secure labour set-up under the planned economy to the reality of informalization and marginalization of labour market was completed in about a decade. The process of contractualization of labour was extended to all sectors in 1991 followed by massive lay-off of unwilling workers of the state-owned enterprises (SOEs) and by the end of 1997 almost 97% of workers were under contract.<sup>85</sup> The creation of labour market opened avenues for both the employer and the employee to negotiate and led to the formation of labour-dispatch firms (as called in China) which in turn ensured availability of labour for national and foreign private enterprises. These labour-dispatch firms act as intermediaries for employers for recruiting workers with rural *hukou*. The mainstay of Chinese expansive growth is thus these rural migrants who provide

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<sup>80</sup>Ibid, in fact India was slightly better placed in per capita GDP.

<sup>81</sup>Kohli (2012) argues that the talk of socialism was only rhetoric and the Indian state was even pro-business in pre-liberalization period.

<sup>82</sup>The slow movement in liberalization by the Indian state has been often criticized by the liberal protagonists as detrimental to India’s all-round progress; however, at the same time the same sometimes has been lauded for absorbing the shocks of economic depressions. See Bhatt (2011): *Recent global recession and the Indian economy: an analysis*.

<sup>83</sup>For full story on the liberalization of the Indian economy, see Kohli (2006): *Politics of economic growth in India, 1980–2005*, part-I and II.

<sup>84</sup>For statistical and other details on decline of the SOEs and rise of private sector in China, refer Lee (2005): *Livelihood struggles and market reform: (Un)making Chinese labour after state socialism*.

<sup>85</sup>Feng Xu (2014): *Temporary work in China* (p. 146). In, Fudge and Strauss (2014): *Temporary work, agencies and unfree labour- Insecurity in the new world of work*.

cheap and flexible labour to the industries at the metropolis hubs.<sup>86</sup> By the end of 2004, Beijing alone had 680 dispatching agencies. Industry-wise, in the telecommunication industry, in 2007, the three state-owned telecoms (China Telecom, China Mobile and China Unicom) had 480,000 dispatched workers, accounting for about 40.5% of the total 1.18 million workers. In the state-owned railway system, there were 320,000 dispatched workers amounting to 13.3% out of the total 2.4 million workforce; in coal mining about 80% of workers were dispatched. The number of dispatched workers continued to grow, reaching 60 million or 20% of the working population by the end of 2010 (Lan et al. 2015, p. 279). An investor-friendly environment and deregulation of the labour market thus led to an unprecedented flight of capital from all over the world to China.<sup>87</sup> Mega industrial cities like Shanghai, Shenzhen and Guangzhou came up. ‘The per capita disposable income of urban residents rose by an annual average of 9.7% and the per capita net income of rural residents by 8.9% in real terms’<sup>88</sup> which is impressive by all standards. After three decades of double-digit growth, China’s manufacturing sector grew almost eight times that of India, and China recorded overall growth in all economic and social sectors. Since the initiation of economic reforms, the success of China in reducing poverty by three quarter of its population is remarkable. China reached all the Millennium Development Goals by 2015.<sup>89</sup> In comparison, during the period 1980–2010, Indian economy grew by about 6%. Thus, India could achieve only four out of eight MDGs by 2015, including the MDG for reducing the number of poor people by half.<sup>90</sup> ‘In 1980, the gross national income (GNI) per capita based on purchasing power parity (PPP) was US\$430 in India and US\$250 in China. By 2010, this had increased to US\$3,560 and US\$7,570, respectively’.<sup>91</sup>

Communist China identified itself with labour and hence managed labour affairs through a series of ordinances and promulgation. No consolidated labour law was thought to be initially considered as necessary. However, with economic liberalization and rise of the private sector, the role of the state became increasingly regulatory. In 1994, the Chinese government enacted the first unified labour law to

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<sup>86</sup>It is estimated that the cost of engaging Chinese rural migrant workers is only about 40–55% to the cost of engaging Chinese urban workers due to the prevalence of the *hukou* system which prevents the migrant workers from claiming equal status to that of the local urban *hukou*. For details, see Leong and Pratap (2011): *China’s Capitalist Development and its Implications for Labour with Special Reference to the Shenzhen SEZ*.

<sup>87</sup>In 1980, the flow of FDI into China totalled less than \$200 million (US dollars) which exceeded \$44.9 billion, i.e. more than 225 times in 1997. Coughlin and Segev (1999).

<sup>88</sup>For details, see full text of the ‘Report of the work of government’ presented by Premier Wen Jiabao (05 March 2011) at <http://english.cpc.people.com.cn/66102/7320564.html>.

<sup>89</sup>The net reduction in poverty figures is estimated to be 800 million persons since initiation of reforms in China. For details, see [www.worldbank.org/en/country/china/overview](http://www.worldbank.org/en/country/china/overview) (accessed on 06 March 2018).

<sup>90</sup>See <http://www.in.undp.org/content/india/en/home/post-2015/mdgoverview.html> (accessed on 06 March 2018).

<sup>91</sup>See <https://unu.edu/publications/articles/redefining-poverty-in-china-and-india.html> (accessed on 06 March 2018).

cover matters concerning workers' rights, collective bargaining, wages, working hours, social insurance, etc. The law established labour standards in China by fixing eight hours workday, limits on overtime and matters related to workplace hygiene and safety. The 1994 law<sup>92</sup> 'marks a drastic break from socialist to market socialist employment system' (Lee 2005, p. 9) by encouraging 'enterprises, institutions and public organizations to initiate industries or expand businesses for the increase of employment' (Article 10) and entrusting 'Local people's governments at various levels to ... (take measures) by developing employment agencies of various forms, to provide employment services' (Article 11). By heralding written contracts (Article 19) into fixed-term, non-fixed-term and specific assignment-based employment types (Article 20), the law sought to definitively secure workmen entitlements at workplace through union intervention (Article 30) and signing of 'collective contracts' with enterprise (Article 33). With time, the 1994 labour laws were increasingly blamed to be too flexible with abundant loopholes for benefitting employers. The lack of any clear provision on term-period of contracts and the mushrooming of labour-dispatch firms providing agency labour<sup>93</sup> increased precariousness of workers with firms adopting short-term direct contracts or third-party indirect contracts to engage workers. In spite of legal provision, only 25–30% of migrant workers had written contracts (Lee 2005, p. 5). It was due to growing workers' unrest and pressure from the ACFTU that the government acted by enacting three labour laws in 2007 which came into effect in 2008. The three laws, namely the Labour Contract law, the Law on Mediation and Arbitration of Labour Disputes, and the Labour Promotion Law, plugged in the gaps left in 1994 laws. Unlike the 1994 law, the 2008 Labour Contract law compulsorily requires all labour relationship to be written and which shall be formalized within one month of the commencement of the work. If the contract is not formalized within the specified period, it results into an open-ended contract besides other penalties for the employer (Article 12). The new law permits workmen to seek an open-ended after second renewal [Article 14(3)]. The contracts shall cover working hours, overtime, remuneration, social insurance, working conditions, probationary period besides training conditions. The 2008 Labour contract law contains an elaborate provision for 'collective contract' or agreement which need to be compulsorily signed between the union representing the workers and the employer. Whereas the 1994 law simply instructs local governments to develop agencies for employment generation, the 2008 Labour contract law devotes a full section on labour dispatch. Article 58 requires the terms of contract, period of contract and jobs to be undertaken laid down in the contract to be signed between the labour-dispatching unit (agency) and the workers to be dispatched. The receiving unit or enterprise is required to provide on-job training besides regular wage adjustment mechanism in

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<sup>92</sup>Full text of the law may be seen at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/37357/108026/F1930029246/CHN37357%20Eng.pdf> (accessed on 09 March 2018).

<sup>93</sup>In China, the third-party workers are often called 'agency labour' or 'outsourced labour', whereas the term 'contract labour' is used for workers on fixed-term contract.



case of continued employment [Article 62 (3) and (4)]. The dispatched workers who are generally required to be engaged for temporary, auxiliary or substitute jobs (Article 66) have the right, in accordance with law, to join the trade union of the labour-dispatching unit or the receiving unit or to organize a trade union, in order to protect their own legitimate rights and interests (Article 64).

The Labour Promotion Law, 2008, lays down elaborate policy guidelines for promoting ‘employment, coordination between economic development and employment expansion, and the harmony and stability of society’ (Article 1).<sup>94</sup> The measures in the law supported with provisions related to training and inspection are supposed to act as policy guidelines for the state for upholding labour standards.<sup>95</sup>

China has a well-laid four-stage labour-dispute resolution system starting with informal consultation between the employer and employee. If the consultation process fails, the two parties can move for mediation or if still not resolved, for arbitration. Finally, if the worker still remains dissatisfied she can bring the case to civil courts for formal adjudication. The Law on Mediation and Arbitration of Labour Disputes, 2008, further refines the existing procedure by laying clear guidelines for the whole process of dispute resolution.

The three labour laws enacted in 2008 have transformed the legal and policy backdrop of the Chinese labour market. Since 2008 with the new legal regime, the Chinese labour market is as regulated as any other labour market in the First World. The organized dispatch (agency) workers with written contracts are no more open to a crude hire and fire regime. It has been projected by some that the Chinese labour market may gradually lose shine and investments may move to other favourable locations like India where labour market is still predominantly precarious and informal.<sup>96</sup> Others cite instances of labour market realignments with the promulgation of the laws.<sup>97</sup> Another development of significance is the spurt in number of labour disputes raised since the promulgation of the 2008 laws, ostensibly due to additional ability and rights granted to the workers by these laws.<sup>98</sup>

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<sup>94</sup>For the Labour Promotion Law, 2008, please see <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/76984/81380/F1735089926/76984.pdf> (accessed on 11 March 2018).

<sup>95</sup>Though largely devoted for creating employment opportunities, the Chinese Labour Promotion Law, 2008 especially Chapter III on fair employment remind of the Directive Principles of state policy Chapter III (Articles 16, 19, 21, 23 and 24) and Chapter IV (Articles 39, 39-A, 41, 42, 43, 46, 47 and 54), related to labour matters enshrined in the Constitution of India.

<sup>96</sup>Karindi (2008, p. 13) cites several sources to indicate that many foreign-owned enterprise especially those of Hong Kong, Taiwan and South Korea have either fled China by night or are planning to close their business since the passage of the 2008 labour laws.

<sup>97</sup>Lan et al. (2015) narrate employers’ strategies including lay-off, re-engagement on short/fixd terms, abridging contracts, adopted by firms to deal with the 2008 laws. The authors point out cases in 2008 just before the promulgation of the Labour contract law, where many firms terminated fixed-term contracts of long-term workers and engaged the same workers through dispatch firms.

<sup>98</sup>The total number of cases settled by Labour Dispute Arbitration Committees (LDACs) more than doubled from 340,030 in 2007 to 711,044 in 2014, the number of cases resolved by LDACs through mediation nearly trebled in the same period, increasing from 119,436 in 2007 to 321,598



Whatever be the outcome of the now-regulated labour regime in China that will be divulged in time to come, what is crucial as of now is that the Chinese pathway has ample law and public policy lessons for India and other developing countries who are trailing behind.

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# Chapter 3

## Globalization, Labour Market Flexibility and Labour Standards



The universalization of markets has exposed labour to the world arena which otherwise had largely local reach and pitted workers in/among developed and developing countries against one another. Developed countries see this phenomenon as a threat to their merchandise and workforce from the much cheaper substitute available in the Third World. Outsourcing is thus seen as the cause of many evils in the global north but at the same time is accepted as a panacea to many irritant labour problems. The resultant increase in economic activity in developing countries has brought about a quantitative change in the lifestyle of their populace; however, if seen in qualitative terms, this has also led to an increase in labour market flexibility with extensive use of precarious (contract) workers which has augmented income-inequality, insecurity and social dumping. The process of globalisation is blamed for erosion of already weak edifice of labour standards prevailing in these countries and has acted against the principles of labour standards set through international conventions. However, on the other hand, the proponents of global market consider degradation of labour standards as imperfections of market process which has been aggravated by excessive use of regulations in the Third World. With the free flow of capital, goods and technology in the world market, they argue, prosperity will trickle down to the deprived nook and corners of the world. This debate largely revolves around the effects of labour market flexibility on labour standards; while the market advocates view that flexibility raises labour standards, the opponents argue that a free labour market compel the workers, especially the unskilled ones to increasingly accept lower standards at workplace.

### 3.1 Globalization

Globalization as a stage in free-market development in the ‘world economy’ is characterized by, ‘increases in trade and liberalization policies as well as reductions in transportation costs and technology transfer’ (Lee and Vivarelli 1996, p. 3).

In the globalized world, 'when capital accumulation catches up with the labour supply (and) surplus is adversely affected' (Lewis 1954, p. 436) in one part of the globe and 'if there is still surplus labour in other countries, the capitalists can avoid this in one of the two ways, by encouraging immigration or by exporting their capital where there is still abundant labour at a subsistence wage' (ibid). The employers find the latter option convenient and pragmatic in the new world order. Those with liberal inclinations believe that a 'free market' driven by demand and supply would benefit the workers and raise their living standards in the end. It is considered that 'a society is endowed with given amounts of basic productive resources (Labour, land and capital), and according to which a competitive market economy is capable of ensuring the full utilization of the scarce resources' through changes of prices of these productive resources (Sraffa (1960), as cited in Kregel et al. 1988, pp. 11–12). In a nation where employers can flexibly adjust employment in response to market variations and employees strive hard to perform to the best of their capabilities, the country may get rich but workers will be subject to a precarious employment relationship.

Globalization proponents like Sachs and Krugman view the spread of technology and capital as a boon for the Third-World nations that will help them to climb the ladder of development. The technology barrier is seen by them as the major impediment in the development of poor nations. They decry protection and regulation which are seen to be associated with inefficiency and underdevelopment as seen in the failed communist economies and instead argue that globalization with its 'trickle-down effect' would lead to an egalitarian world free from poverty. Globalization it is said will to allow the free flow of information enable greater specialization, innovation and diffusion of technologies (Sachs 1998). In poor countries, policies must be such that 'the returns on new investment should be high, which ought to promote savings and inflows of capital from abroad' (Sachs 2000). Through such a process of 'convergence' made possible by globalization, Sachs (2000) views those poor countries with scarce capital resources will progress. He cites the example of China, India, and Mexico, which have gained from the policy of 'convergence'. Sachs calls upon the rich nations, 'to help them (the underdeveloped) onto the ladder of development, at least to gain a foothold on the bottom rung, from which they can then proceed to climb on their own' (Sachs 2005, p. 2). Krugman (1979) sees free trade being welfare oriented towards the cause of workers, as trade in general leads 'to the rise in the 'real wage' moreover there is also a gain from increased choice, as the number of available products increases' (p. 476). He further argues that globalization has helped to raise the lot of population segments who would otherwise have remained deprived. Outsourcing or off-shoring work through contracts, he feels has helped in income distribution from the north to the south. Paul Krugman views globalization and its export orientation as a means of diffusion of wealth across nations—citing the example of Bangladesh, Philippines, Indonesia and other East Asian nations, Krugman (1997) argues that though the process of globalization may have benefitted few capitalists, the biggest beneficiaries are the poor workers of these Third-World nations who would otherwise be in a penury.

The free-market model of development is, however, criticized on the ground that an ideal state of perfect labour market is non-existent in reality since the economic position of labourers by nature is weakly placed in relation to the employers. Smith (1776) one of the greatest exponents of free market himself recognized that employment relationships are not symmetrical as labour power cannot be stored and is thus perishable, so the capacity of workers to hold out for better terms is limited (p. 60). Moreover, it has been seen in most labour markets that there are fewer employers than there are prospective employees (Deakin and Wilkinson 1998, p. 15). The economics of labour is thus pitted against the employers who are in a better bargaining position. Amin (1976) sees capitalistic model of development as causing perpetual unification and differentiation between a core and the periphery. Frank (1996) looks upon this differentiation in terms of metropolis and satellites where 'each national and local metropolis serves to impose and maintain the monopolistic structure and exploitative relationship of this system as long as it serves the interests of the metropolises' (p. 10)—it is an advanced stage in the process of division of labour on the stage of the world, which helps in the maximization of production while reducing the cost. Such exchange which started at a regional level has gradually subsumed the whole world system with its 'imperative for the endless accumulation of capital (which has) generated the need for constant technological change, a constant expansion of frontiers-geographical, psychological, intellectual, scientific' (Wallerstein 2004, p. 2). Thus, in globalization, affluent core centres and peripheries are seen crisscrossing regional, territorial and national boundaries. Moreover, capital keeps on migrating to poor regions and countries which are sometimes forced to reduce wages and deregulate labour market, and thus, workers are forced to accept worsening wages and working conditions. Wallerstein (2004) in his 'World system analysis' sees the periphery essentially as rural which refuels the core with its perpetual supply of cheap labour. As material cost remains largely constant for all producers in the world economy, the impetus falls upon entrepreneurs to lower the cost of labour—thus they adopt the tactics of 'run-away factories' (Wallerstein 2004, p. 81) that reduce the cost of production while maintaining profit margins. It is therefore argued that with globalization 'working conditions have eroded under pressure from global competition to stay in supply chains' (Melamed et al. 2011, p. 4). The greatest critic of free labour market was perhaps Polanyi (1944) who felt that separating 'labour from other activities of life and to subject it to the laws of the market was to annihilate all organic forms of existence and to replace them by a different type of organization, an atomistic and individualistic one' (p. 163). Polanyi was for non-contractual obligations of neighbourhood, kinship, profession, etc., which were based on trust and decried the tendency of the market to suppress the sublime affiliations of the workers within the labour market. Polanyi wrote about destruction of old social formations in India with the onslaught of market during the colonial times. These social formations of nobility, clan, village reserve, etc., protected the village folks in famines and scarcity. In fact, it was the policy of the East India Company to destroy the old formations so as to expose the village folks to hunger to compel them to sell their labour in the market. Polanyi argues that 'Indian masses in the second half of the

nineteenth century did not die of hunger because they were exploited by Lancashire, they perished in large numbers because the Indian village community had been demolished' (ibid, pp. 159–160). He calls for social reawakening and institutional regulations against the uncertainties of the market. The push towards liberalization undertaken in the former communist countries of Europe has brought more agony than laurels for the proponents of free market and globalization. The most recent example cited is of the transformation of communist Soviet Union to an open market capitalist Russia. 'Perestroika' (restructuring) and 'Glasnost' (openness) followed by the 'shock therapy model of development' in Russia saw the rejection of all structures of the old order without subsequent growth of newer complimentary structures. The strength of the Soviet system was effectively dismantled before the roots of capitalism could germinate. In fact, it has been seen that workers are hit severely when economy is opened as 'unemployment rises on account of economic restructuring, unemployment also rises with a fall in domestic demand, and real wages decline on account of the rising unemployment as well as due to the depreciation of the exchange rate' (Haque 2004, p. 18). Thus, free market and globalization by augmenting division of labour and trade are not seen to benefit the labouring class; instead, it has been argued that where further division could not be reached 'degradation of labour' within labour into casual workers, dispatch labour or contract labour is done to create a category of workers within workers who could perform the same function at lower wages and poor working conditions. The contract labour system providing un-unionized and flexible manpower gained ground to fill in such a labour demand created by globalization. Radice (2008) terms 'neoliberal globalization' as the 'historical consequence of global capitalist development' (p. 1160) which intends to complete the process of primitive capitalist accumulation in the post-colonial phase.

## 3.2 Labour Market Flexibility

Flexibility in the labour market can take variety of forms. There can be 'numerical' flexibility where both the employer and employee may have an easy 'exit' option or where the employer can resize his/her workers on periodic basis on production variations. 'Functional' flexibility allows an employer to employ his/her workers in multiple or different tasks as per work requirements. 'Payment' flexibility allows (mostly) the employer to design compensation structure and fix quantum of basic pay and variable pay as per market scenario. 'Work-time' flexibility is often sought by employees who tend to adjust their duty hours with their other day-to-day needs. Also, there is an increasing trend towards employers seeking employees with 'collective' flexibility (as seen increasingly in the automobile sector of the USA, the employers negotiate directly with the workers to maintain a union-free workplace), i.e. workers free from union activities. While 'labour market flexibility' in the



developed world is somewhat seen as a modern employment tool for inculcating ‘choice’ in the work environment or a pathway to regular employment,<sup>1</sup> however, in the Third World with abundant supply of labour, it is largely a tool for cost reduction leaving little choice for the workers in the domain of employment.

In the international sphere, the talk on labour market flexibility gained ground with the Washington consensus in 1989.<sup>2</sup> Though most international bodies espouse the practice of core labour standards (CLS) in tandem with the conventions of the UN/ILO, under the veil of trade deregulation, the demand for labour market flexibility also gained momentum subtly on international platforms. Excessive labour regulations and institutional determinants on matters like unemployment benefits, employment protection, minimum wages, collective bargaining, de-hiring costs are projected as the reason behind inefficiency and the flight of capital to less regulated regions. The ‘Doing Business Report’ which is the largest circulated publication of the World Bank ‘through employing workers indicators, measures flexibility in regulation of employment relating to hiring, work scheduling, redundancy rules and redundancy costs’ (World Bank 2014). The Bank goes ahead and encourages member countries towards reforms deregulating their labour standards to make ‘hiring and firing’ easier and as a consequence doing business convenient. In fact, the Bank projects in its website a list of those countries that deregulated to the maximum in the reported year. Though the World Bank in its report states that ‘these measures are fully consistent with the conventions of the International Labour Organization (ILO) but focuses on formal labour regulations rather than whether such regulations are enforced in practice’, the statement in itself exemplifies the intent of the Bank in this direction. The four measures of labour market flexibility performances in the ‘Employing workers report’ as identified for ease of doing business are as given below<sup>3</sup>:

i. The difficulty of hiring index measures:

Whether fixed-term contracts are prohibited for permanent tasks

The maximum cumulative duration of fixed-term contracts

The ratio of the minimum wage for a trainee or first-time employee to the average value added per worker

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<sup>1</sup>A study on flexibility in workplace conducted among fixed-term workers in countries like USA, UK, Canada, Netherlands, Finland and Spain, having more than two-decades experience with workplace flexibility, showcases that while flexibility has been a bridge for many to a more regular employment, however, but for the unskilled and deprived, it has been more of an endless trap. The study maps common concerns like work-place stress, health hazards due to insecure work. For details see Zeytinoglu (2005).

<sup>2</sup>Washington consensus is a term coined by John Willaimson in 1989 for ten broadly shared policy doctrines of the US-based international funding agencies like the World Bank and the IMF. The Washington consensus largely advocates trade liberalization and deregulation for the Third World countries. For details see Serra and Stiglitz (2008).

<sup>3</sup>For details see <http://www.doingbusiness.org/data/exploretopics/employing-workers#>.



ii. The rigidity of hours index has five components:

Whether there are restrictions on night work

Whether there are restrictions on weekly holiday work

Whether the workweek can consist of 5.5 days or is more than 6 days

Whether the workweek can extend to 50 h or more (including overtime) for 2 months a year to respond to a seasonal increase in production

Whether the average paid annual leave for a worker with 1 year of tenure, a worker with 5 years and a worker with 10 years are more than 26 working days or fewer than 15 working days.

iii. The difficulty of redundancy index has eight components:

Whether redundancy is disallowed as a basis for terminating workers

Whether the employer needs to notify a third party (such as a government agency) to terminate one redundant worker

Whether the employer needs to notify a third party to terminate a group of nine redundant workers

Whether the employer needs approval from a third party to terminate one redundant worker

Whether the employer needs approval from a third party to terminate a group of nine redundant workers

Whether the law requires the employer to reassign or retrain a worker before making the worker redundant

Whether priority rules apply for redundancies

Whether priority rules apply for reemployment.

iv. The redundancy cost indicator measures:

The cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

The World Bank views that though ‘labour market policies—minimum wages, job security regulations, and social security—are usually intended to raise welfare or reduce exploitation. But they actually work to raise the cost of labour in the formal sector and reduce labour demand... increase the supply of labour to the rural and urban informal sectors, and thus depress labour incomes where most of the poor are found’. (World Bank 1990, p. 63). The Bank counts upon studies like the Harris–Todaro model (1970)<sup>4</sup> which blames institutional wage-setting for large informal sector, joblessness and other ills. It is argued that excessive regulations in the Third World induce the employers to employ casually thus raising the informal sector. The burgeoning size of informal sector<sup>5</sup> in most developing countries is

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<sup>4</sup>John Harris and Micheal Todara developed an economic model in 1970 which maps rural–urban migration and the development of informal sector in the urban economy. See Harris and Todaro (1970).

<sup>5</sup>A World Bank study estimates that more than 75% of urban employment in Sub-Saharan Africa is informal, in the Indian sub-continent the situation is even worse. See World Bank (1990), pp. 63–64.

blamed due on the protectionist approach of their governments. The Besley–Burgess study (Besley and Burgess 2004) conducted for India drew similar conclusions and surmised that there is no evidence to suggest that pro-worker legislations have helped in income distribution in Indian states. It has been assessed that the condition of labour is far worse in the informal sector than the formal sector and that deregulation and labour market flexibility would encourage the employers to hire from the formal sector and thus would raise the labour standards as a whole.

Similarly, the International Monetary Fund (IMF) in its lending strategies, issues advisories to borrowing countries that they must undertake structural adjustment programmes, which typically contain prescriptions for economic deregulation, financial liberalisation and labour market flexibility. The IMF stipulations are based on some cross-country studies conducted which suggest that properly designed policies aimed at economic liberalization and labour market flexibility may reduce unemployment and induce growth and industrialization in a country (see Verdugo et al. 2002).

Though the intent of these World Bank and IMF programmes is in general to improve the economic health of the borrowing country and make it attractive for foreign investment, these policies have been widely criticized for coercing poor nations towards a ‘race to the bottom’ and for creating conditions of continual dependence.<sup>6</sup> ILO blames the IMF studies for ‘encouraging policymakers to make hasty and ill-informed reforms on sensitive political issues with far-reaching economic and social consequences’ (Aleksynska 2014, p. 12) and instead argues for state intervention and a balance between labour market flexibility and employment security through a number of country-specific studies conducted on its own (see Jha and Golder (2008), Tchetvernina and others (2001) and De Gobbi and Nesporova (2005)).

### 3.3 Labour Standards

“Labour standards are norms and rules that govern working conditions and industrial relations” (OECD 2000, p.17). Labour standards are enforced through state regulations on variety of issues including, forced labour, child labour, labour wages, working conditions and social security. These regulations are intended for ensuring allocative efficiency (matching supply with demand), dynamic efficiency (increasing the quality of labour force), besides, equity and social justice. The regulations backed by the state are designed to protect the workers from the vulnerabilities of the market. Though labour standards are generally codified through national laws and policies at the national level and have the sanction of the state, there is a general understanding that these standards promulgated by the national

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<sup>6</sup>Critics blame the World Bank and IMF programmes and policies for decimating social safety network and worsening labour standards in developing countries (especially in Africa). For details see <http://www.globalissues.org/article/3/structural-adjustment-a-major-cause-of-poverty> (accessed on 14.04.2015).

governments especially in the developing countries are in itself inadequate to safeguard the interest of the working class in general and those of the weaker sections like women, children and the differently abled. Thus, the international community through the United Nations and the International Labour Office has stepped in by laying out a series of conventions and declarations setting labour standards worldwide. The conventions on labour standards can be called ‘soft laws’ (Duplessis 2006) in the international sphere. These soft laws propagated by ILO and advocated by NGOs, civil society organizations and trade unions are standards of labour relations applicable for the states worldwide as a yardstick to align their national laws and policies to the internationally accepted principles. Hart (1961) calls such international standards as primary laws which are obligatory, as ‘there is a generally diffused sense that it is morally obligatory to conform to it’ (p. 232) and that it ‘must rest on the conviction of states that there is a moral obligation to obey them’ (ibid, p. 231). These conventions being acceptable in the legal order as ‘civil laws’ bind the states (who ratify them) into legal and moral obligations to enact laws and enforce these international standards within their domestic realms. ILO promotes the supervision of these standards through disclosures and voluntary compliance. Following the UN and the ILO, the World Bank has taken up core labour standards (CLS) in its lending strategies since 2006 when the International Finance Corporation (IFC) adopted the ‘policy and performance on social and environmental sustainability (performance standard—2) on labour and working conditions’, in its lending activities. The Doha negotiating rounds (2007) echoed fair trade concerns.<sup>7</sup> The Asian Development Bank (ADB) followed suit and published a ‘core labour standards handbook’ guiding its staff in implementing the CLS. Other multilateral banks like the Inter-American Development Bank (IDB), African Development Bank (ADB) and the European Bank for Reconstruction and Development (EBRD) also followed similar lines. Besides the World Bank, many nations and nation conglomerates made CLS a part of their trade agreements. The USA has been in the forefront in professing CLS in its trade relations. The NAFTA agreement<sup>8</sup> (1994) started with a side agreement on CLS, followed by the CAFTA,<sup>9</sup> USA–Jordan, USA–Panama, USA–Columbia and other free trade agreements. Canada and MERCOSUR<sup>10</sup> followed similar arrangements as those of the USA. The European Union with its trading agreements with the developing

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<sup>7</sup>The Doha negotiations saw WTO-ILO cooperation on labour matters with the issue of their first joint publication, *Trade and Employment: Challenges for Policy Research*. The publication acknowledged that ‘trade policies and labour and social policies do interact and that greater policy coherence in the two domains can have significantly positive impacts on the growth effects of trade reforms and thus ultimately on their potential to improve the quality of jobs around the world’ (WTO & ILO 2007, p. 90).

<sup>8</sup>NAFTA (North American Free Trade Agreement): Canada, Mexico and the USA.

<sup>9</sup>CAFTA (Central America Free Trade Agreement): USA, Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

<sup>10</sup>MERCOSUR Countries include Brazil, Argentina, Uruguay and Paraguay.

world also refers to CLS in all its trade agreements.<sup>11</sup> A parallel policy on labour standards has been adopted by Bilateral Development Finance Institutions (BPFI) and Foreign Institutional Investors (FIIs).

### 3.3.1 *ILO and Labour Standards*<sup>12</sup>

The establishment of International Labour Office (ILO) in 1919 and formation of socialist and countries governments in many parts of the World facilitated the debate for improving labour standards. Since its creation, the ILO has maintained and developed a system of international labour standards aimed at ‘promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity’ (see ILO 2014, p. 143). Later with the general dismay with the socialist model of development in the latter part of twentieth century and the emergence of the liberal framework of global production, network has brought on renewed pressure on labour standards. Till February 2018, ILO has promulgated 189 conventions starting with the landmark ‘Hours of work (Industry) convention, 1919 (No. 1)’ limiting the hours of work in industrial establishments to eight hours a day and 48 h a week which came into force way back in 1921 to the much debated ‘Domestic workers convention, 2011 (No. 189)’ concerning decent work for domestic workers which has come into effect in 2013.<sup>13</sup> Recent years have seen a renewed emphasis within ILO on strengthening the mechanisms for the protection of dependent workers who work under various types of contractual agreements without any legal protection. In 1995, the ILO recognized the plight of dependent workers. Subsequently, the governing body of the ILO placed the issue of contract labour on the agenda of the International Labour Conference (ILC) in 1997. At the same time, in 1997, the ILO adopted convention 181 on private employment agencies which recognizes the role of these agencies in a well-functioning market and allows ways for workers to benefit through their services.<sup>14</sup> In 2006 as a step in proactive direction, the ILC adopted a Recommendation on employment relationship (R198) to deal with disguised and ambiguous employment relationships. More recently, the Recommendation 204 of 2015 on ‘transition from the informal to the formal economy’ seeks ‘decent work’ for all including those in sub-contracted jobs.

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<sup>11</sup>However, unlike USA which follows a punitive approach on CLS, the EU favours a supportive approach by funding and building capacities in those countries who wish to adopt these labour standards (see Bakvis and McCoy 2008).

<sup>12</sup>Some of the matter especially focused on ‘contract labour’ has been referred from the presentation by Anandan. P. Menon, Programme Officer, ILO, at the conference on ‘Contract labour in India: Issues in law and public policy’ held at JNU, New Delhi (21 April 2014).

<sup>13</sup>For details see ILO website [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312146:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312146:NO).

<sup>14</sup>Both India and China remain to ratify this convention.

The **Private employment agency convention (181)** adopted in 1997 is by far the most important instrument adopted by the ILO to raise the labour standards of contract workers. The convention provides for:

Recognition of agency work: This implies services consisting of employing workers and making them available to third-party user enterprises. It includes recruitment agencies and temporary work agencies (labour contractors).

Licensing and certification form a mandatory part of the rules.

It emphasizes the principle of non-discrimination.

No fee is to be charged from the workers.

There are special provisions for 'migrant workers'.

Child labour is prohibited.

There are mechanisms and channels through which complaints can be made.

Allocation of responsibilities between user enterprise (principal employer) and private employment agency.

Article 11 of the convention is particularly important as its provisions deals with providing adequate protection to the workers and offers a wide range of benefits to the workers including:

Collective bargaining.

Minimum wages.

Proper working time and working conditions for workers.

Statutory social security benefits.

Access to training.

Occupational safety and health.

Compensation for accidents and diseases, while on occupation.

Compensation on insolvency of the employing unit.

Maternity protection and benefits.

While Convention 181 is the far-reaching convention covering contract labour, there are some other conventions, recommendations and policy instruments through which the ILO intervenes on matters related to contract labour, like:

R198: Employment relationship recommendation, 2006: The main purpose of this recommendation is to address disguised and ambiguous employment relationships.

R188: Private employment agencies recommendation, 1997: The provisions of this recommendation supplement those of the private employment agencies convention.

C173 on Protection of workers' claims (employer insolvency): This convention concerns the protection of the claims of the workers in the event of the insolvency of their employers.

C 94 and R 84 on labour clauses (public contracts): These instruments seek to prevent the labour costs from being used as an element of competition among bidders for public contracts, by requiring that all bidders accept as minimum, certain locally established standards. Further, it seeks to ensure that public contracts do not exert a downward pressure on wages and working conditions.

Further due to the fact that there are numerous conventions, declaration and instruments promulgated by ILO, but still labour standards remain poor in the Third-World countries, therefore to reassert its conventions the ILO repositioned eight vital conventions in a set of four in the form of declaration on ‘Fundamental principles and rights at work (1998)’<sup>15</sup> which are binding in nature.<sup>16</sup> The conventions absorbed in the declaration on FPRW comprise of:

- Convention on forced labour (convention No. 29).
- Freedom of association (convention 87).
- Collective bargaining (convention 98).
- Equal remuneration (convention 100).
- Abolition of forced labour (convention 105).
- Discrimination (Employment and Occupation) convention (convention 111).
- Minimum age (convention 138).
- Worst forms of child labour convention (convention 182).

### **3.4 The Debate on Labour Market Flexibility and Labour Standards**

There is an enormous range of the literature both in support and against regulating labour relations. Liberal theorists take the view that the market should be left to demand and supply since when labour supply is more than the demand for it—wages are likely to fall till hiring begins again, likewise when labour supply is less than the demand for labour—wages will rise. They view state interventions into the market through legal measures, living wages or social support as disturbing the forces of perfect competition and affecting the freedom of employers to make the optimal use of resources as per market conditions. Smith (1776) was against all form of regulation as these induce inefficiency and apply brake in the creation of wealth in the nation (see Reisman 1998, p. 360). In primitive society, writes Smith, all the fruits of labour were of the worker but with ‘division of labour’, productivity increased and some workers collected returns beyond the subsistence level and started investing this surplus in stock for creating capital and employing labourers on subsistence wages. This led to the rise in private property, and thence rent was

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<sup>15</sup>These declaration grouped into four fundamental principles, i.e. freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation, has been issued in the form of directives to the member states and are thus obligatory on the part of governments who have ratified these conventions to follow them. For full details see ILO website, <http://www.ilo.org/dyn/normlex>.

<sup>16</sup>As on January 2018, India remains to ratify 58 conventions and China 64 conventions, including the conventions related to collective bargaining. For details on ratifications see *ibid* (accessed on 21.02.18).

deducted by the owners from individual produce. As surplus rose, more and more workers were employed and surplus accumulated in the nation. A stage was reached where workers demanded more wages than subsistence level to lead a better life. Thus, for Smith (1776) 'the demand for those who live by wages, therefore, necessarily increases with the increase of the revenue and stock of every country' (Smith 1776, p. 62). Smith further adds that in those countries where capital and stock keeps on accumulating workers naturally get an increase in their wages, however, in a stagnant economy there is severe clamouring for wages among owners and workers which ultimately lead to reduction of wages to mere subsistence level. He compares North America, China, Britain and Bengal of his times and views that poverty in China was due to stagnation in its economy, and also the wages in Britain was not as high as that of North America where wealth was growing. 'Trade' for Smith was essential for prosperity of a nation. Countries around the Mediterranean, Arabian Sea, etc., had developed due to the exchange of commodities allowed by the sea route. China and India had extensive trade through inland waterways. Trade leads to mutual prosperity only when it is free and devoid of any regulation. Flourishing economies are often disturbed by state taxes and regulations. Markets provide the power of exchanging and determine the division of labour (ibid, p. 21). Free markets where all human endeavours are aimed towards one's own individual interest would be regulated by the 'invisible hand' (ibid, p. 364) for creation of wealth in the nation. The role of the state as per Smith is then limited to maintain a system of natural liberty where individuals are free to pursue their own interest in their own way and to compete in the market (Elliott 2000, p. 441). The whole idea of Smith revolves around his concept of free market and perfect competition where all individuals pursue their own self-interest in the overall interest of the nation. Ricardo (1817) was also against regulations on wages as though these aimed towards universal happiness, in the long run this leads to thwarting enterprise and stressing the rich. He wrote that 'wages should be left to the fair and free competition of the market and should never be controlled by the interference of the legislature' (Ricardo 1817, Section 5.34, p. 67). Ricardo further took the view that while wage-control is found acceptable when the economy is on the ascendant, but during an economic downslide wage regulations are seen as being alarming. The neo-liberals blame institutional wage-setting for large informal sector, joblessness and other ills and seek to find solution to these ills within the market. It is argued that when all individuals pursue their self-interest and apply 'rational-choice' to maximize their gains, wealth is added as a whole. Job market flexibility allowing employers to 'hire and fire' at will would encourage entrepreneurs to invest in new-new ventures which would create more jobs and better opportunities for the workers. In a state with abundant jobs, an increase in demand for workers would raise their salary, while in a state where regulations make retention and retrenchment difficult, this would discourage entrepreneurs and in turn thus would lower the demand of workers resulting into lowering of their wages. The neo-liberals cite the example of the failure of Soviet Union and other communist

countries due to excessive regulation of their economies. As pointed out in the preceding sections, this view of the distortionists<sup>17</sup> finds support among global governance institutions like the World Bank and the International Monetary Fund (IMF) who worry that the labour institutions would undo macro- and structural adjustment policies in the developing world by restricting shift of resources like labour to the traded goods sector.

However, the institutionalists argue that the biggest flaw of the liberal argument is its premise that labour market is perfectly competitive. Even Adam Smith who is by far the greatest proponent of free market was himself aware that a perfectly competitive market was nearly impossible in the real world and employment relationships were not symmetrical as the capacity of workers to hold out for better terms is limited. In a realistic world, it is the employer who dominates wage settings (Schulten 1995). The liberal theorists themselves had recognized the importance of decent wages and working conditions to improve the conditions of the working class. Smith (1776) took the view that ‘the wages of labour are the encouragement of industry, which, like every other human quality, improves in proportion to the encouragement it receives’ (Smith 1776, p. 72). Marshall (1920) acknowledged the fact that ‘wages... almost always increases the strength, physical, mental and even moral of the coming generation’ (Marshall 1920, p. 305). Wages being consumption oriented would create demand in the economy and would have a multiplier effect. Keynes (1936) was against reduction of workers’ wages during recession as this may in all probability make the recession worse. As per Keynesian principles, minimum wages might have a positive effect on growth and employment, as statutory minimum wages can help to stabilize the consumer demand since low wage earners spend a relatively large proportion of their income on consumption and only a small proportion for savings. Also, living wages can create an institutional barrier against deflationary wage cuts in times of high unemployment and slowdown. For the Marxian philosophers, ‘competition’ and ‘trade’ are the tools of capitalism for refurbishing the means of production to cater to market competition. In the cut-throat competition, ‘the one capitalist can drive the other from the field and carry off his capital only by selling more cheaply. In order to sell more cheaply without ruining himself, he must produce more cheaply, i.e., increase the productive force of labour as much as possible’ (Marx 1849, p. 36). ‘This is the law that continually throws capitalist production out of its old ruts and compels capital to strain ever more the productive forces of labour for the very reason that it has already strained them’ (ibid, pp. 42–43). The Marxist philosophers view the renewed demand of labour market flexibility as a form of capitalist tool for surplus extraction. The obsession with competition, it is argued is based on a false premise of separation of ‘subject of productivity’ from the ‘object of production’. A labourer is both a producer and a consumer. A worker who sweats to raise the production, if not paid enough to enjoy the produce, is a liability for the consumer market if not

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<sup>17</sup>The term institutionalists and distortionists were used by Jha and Golder (2008) and others for categorizing those who oppose and support labour market flexibility.



the production market. Lowering of demand may lead to deindustrialization and unemployment. In countries like India and China, the challenge is both-sided to keep the productivity and simultaneously the demand high. It is argued that the disappearance of the Keynesian concern due to market-oriented propaganda has shifted the attention from aggregate demand to a blinkered view of production (see Jha and Golder 2008). Bhaduri (2005) contends that an increase in productivity is not sufficient to maintain the higher total output if the percentage of decrease in the level of employment is more than the increase in labour productivity (Bhaduri 2005, p. 7). He also suggests that the strategy of maintaining high employment has a built-in mechanism for maintaining high domestic demand and relatively equitable distributions of income. The basic premise of the institutionalist argument is that an employer has two options before her/him in this era of competitive production, either s/he can reduce unit cost by compromising on labour wages and labour standards, i.e., the low and easier road to growth, or, the employer may choose raising productivity through innovative methods, better technology and cutting wasteful expenditure, i.e., the high and difficult road to growth. As long as there is little motivation in the system to undertake the higher path, companies will keep on lowering the labour standards to compete and remain in the race. However, if by effective regulation a floor of minimum labour standards is compulsorily maintained, the employers would be left with no option but to follow the higher path of growth.

To conclude with an afterthought, management theorists like Taylor (1911) believed that the application of modern techniques would lead to the prosperity of both the employer and the employee. Physical creation of goods cannot be termed as the source of all value, as it is the 'human mind' which is the source of all value. The relationship of employer and employee need not be antagonistic and the principal object of management should be 'to secure the maximum prosperity for the employer, coupled with the maximum prosperity for each employee' (Taylor 1911, p. 1). Scientific application of management practices can facilitate a worker to himself exert to his maximum capacity. Taylor further cites loss of ambition and initiative in workers herded together in gangs, but when the same workers are separated and given incentive for good work their performance improves (ibid, p. 25). Such incentive structure should be devised in such a manner that the same should be visible and imminent (ibid, p. 33). In their work on 'the theory and practice of contracting', Deakin and Michie (1997, pp. 7–8) too call for a specialized incentive structure or an optimal compensation scheme through which the principal can induce the agent to act in such a way as to maximize the principal's utility. 'Profit sharing', 'joint ownership', 'social security' and other management techniques are considered as tools within free-market mode of production for seeking workers' cooperation towards wealth maximization. It is only through striking the right balance between flexibility and labour standards at workplace that industrial prosperity can be achieved. In between all the debate for and against flexibility and labour standards, it needs to be kept in mind that employment is

essentially a livelihood function which needs to be protected at all cost, as human beings are not merely means of production, but also end of the exercise (Dreze and Sen 2002, pp. 6–7). Any debate should focus around the central question, ‘flexibility for whom?’

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# Chapter 4

## The Concept of Collective Bargaining: ILO—India and China



The ILO's 154th Convention (1981)<sup>1</sup> concerning the promotion of collective bargaining, states 'Collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for, (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations'. In simple terms, it is the process of negotiation undertaken by the worker's associations or unions with the management seeking better wage rates, improved working conditions, social security and other conditions of service. 'Collective bargaining has become widely recognized by scholars as a key instrument for regulating working conditions and employment relations in a manner that ensures fairer distribution of productivity gains, improves working conditions and enhances the dignity of workers' (Hayter 2011, p. 4).

As stated by Ricardo, it is considered that the produce of the earth is derived by the united application of labour, machinery and capital; the product is then divided among the three classes of the community, namely the proprietor of the land, the owner of the stock or capital necessary for its cultivation, and the labourers by whose industry it is cultivated. The principal problem of the political economy then is to determine laws to regulate this distribution of products among the community (Ricardo 1817). The wages of labour are dictated primarily by the competition among labourers and their masters. When labourers compete among themselves for limited opportunities, wages are bound to fall; however, when the supply of labour is low and the masters bid among themselves for these limited supply of labour, wages rise. When the workers form unions and no longer compete among themselves, wages rise; similarly, when the employers collude, wages fall. Smith (1776, p. 60) further states that, while collusions of the masters 'are never heard by the

<sup>1</sup>For details, see ILO website [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312299:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312299:NO).

people’, such actions are ‘always’ and ‘everywhere’ taking place. On wage negotiations, he opined that ‘what are the common wages of labour depends everywhere upon the contract usually made between those two parties whose interests are by no means the same. The workmen desire to get as much, the masters to give as little, as possible. The former are disposed to combine in order to raise, the latter in order to lower, the wages of labour’ (ibid, p. 60). The masters with the tacit support of state laws and state machinery in their favour are able to suppress the voice of the workers who are weakened by their subsistence existence. To quell the workers’ collective efforts ‘the masters, upon these occasions, are just as clamorous upon the other side, and never cease to call aloud for the assistance of the civil magistrate, and the rigorous execution of those laws which have been enacted with so much severity against the combination of servants, labourers, and journeymen’ (ibid, p. 61). Following up from these initial political economy insights, Marxist writings radicalized collective bargaining and altered the nature of employment relations. Marx (1844) felt that throughout history employer–employee relationship has been asymmetrical and called upon the workers of the world to unite against complicity of their employers. Marxists opine that power relation between the capitalist and the workers can never be symmetrical and thus placing faith in the market for amelioration of the condition of the workers is absurd. Their projection of employers as adversaries of employees in the realm of production has made collective bargaining, a virile tool in the hands of the workers and is much dreaded by the employers. Marx and Engels (1867) see precarious workers like contract labour as ‘an army of reserve labour’ that the capitalist creates to break the collective bargaining efforts of the existent working class. By such reserve manpower, the employers keep an upper hand in both the demand and supply of labour. When workers become aware, unite and form unions, to create a problem in supply, this reserve labour is released to break their unity, whereas when supply is more, the reserve labour is projected by the employers as substitutes to the existing workers to fall in line to their demands of production (*Capital*, Vol. 1, Chap. 25, Sect. 3). Polanyi (1944) decries the commodification of labour by making it an object of demand and supply in the name of protecting the self-regulative nature of the market, as human society would have been annihilated but for protective countermoves (such as collective bargaining) which blunted the action of this self-destructive mechanisms (p. 76). With the advent of globalization and increasing precariousness at workplace, it is often felt that labour movements have a very crucial role to play economically, politically and culturally to establish democratic and social control over globalization (Munck 2004).

## 4.1 Collective Bargaining: Past and Present

Employment relations were largely feudal in the medieval world of Europe, characterized by the master–servant relationship. Agriculture and agro-based industries were the major job providers for people living in the country, while some

small-scale industries and handicraft centres did provide employment in urban locales. Later, since the eighteenth century with numerous discoveries and innovations especially of the steam engine, industrialization started in Europe. Mass production transformed employment relations from master–servant to entrepreneur–workman and also saw the emergence of industrial settlements with huge working populations. Whereas in the former feudal relationship, the master was an informal retainer who controlled and cared the subsistence of the worker and his family in return of his labour, in the latter relation, the workman provided his labour for wages and was himself responsible for the subsistence of his family. This new employment relationship which was initiated in Europe gradually spread to other part of the world including the Third World through imperialist capitalism. In this workplace scenario, collective bargaining gained ground in Europe with industrial development in the eighteenth and nineteenth centuries. Workers initially formed small guilds to jointly present their grievances before the employers, which gradually transformed into large unions having considerable hold on the production process. The recognition of workers’ entitlements through socio-democratic movements in the late nineteenth century led to the formation of International Association for Labour Legislation (IALL) and the International Labour Office at Basel (1900).<sup>2</sup> The Bolshevik Revolution (1917), the formation of the International Labour Organization (ILO) in 1919, followed by the formation of socialist and leftist governments in many countries of Europe brought the issue of labour to the forefront. Union formation soon spread to other parts of the world where nation states, though sometimes reluctantly, gradually recognized collective bargaining rights through legislations. The All-China Federation of Trade Unions (ACFTU) was formed in 1925. The USA enacted the National Labour Relations Act in 1935 to allow the formation of associations among workers. In India, the Trade Union Act, 1926, and later the Industrial Disputes Act, 1947, were passed on similar lines. In the international sphere, the Universal Declaration of Human Rights (Article-23, UN, 1948) recognizing the right to form association as a fundamental human right was enacted followed by the ILO convention no. 87 (1948) and no. 98 (1949) on grant of freedom of association and collective bargaining rights. Unions at their peak were characterized by ‘close shops’<sup>3</sup> and ‘hiring halls’<sup>4</sup> which were later outlawed in most parts of the world. Union activities which were at their peak in the 1970s thereafter saw a general decline. Later, the gradual disillusionment with the communist model of development, the fall of Soviet Union in 1991, the opening of China and the concurrent acceptance of liberal model of market led growth, brought about significant changes in the nature of CB efforts worldwide. Also production circles in the West that were entrenched with collective bargaining saw a dip in

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<sup>2</sup>See Reinalda (2009).

<sup>3</sup>Close shop is a form of union agreement under the auspices of collective bargaining, wherein the employers are bound to recruit union members only or else wherever new recruit is allowed to join the employer, he or she has to compulsorily join the union.

<sup>4</sup>Hiring halls are union controlled organizations, wherein the unions under collective bargaining agreements recruit new workers for the employers.

profit margins. Faced with a limited supply of labour and high wage rates, it came to be felt that ‘the export of capital is therefore a much easier way out for the capitalists, since trade unions are quick to restrict immigration, but much slower in bringing the export of capital under control’ (Lewis 1954, p. 437). The integration of the world economy made it easier and provided the required mechanism for the shift of capital. Thus, capital found it expedient to shift to Third World and other regions providing ambient conditions and cheap unorganized labour. This strategy of ‘runaway factories’ (Wallerstein 2004) ran counter to the very foundation of collective bargaining which drew its strength on the inability of capital to dislocate itself. Further, in order to attract investments, many developing countries relaxed their labour laws to make collective bargaining difficult for the workers; in fact, some created Free Trading Zones (FTZs) and Special Economic Zones (SEZs) devoid of any collective bargaining driven by the aim of providing ambient conditions to employers.<sup>5</sup> Moreover, earlier CB often found support from some state governments and civil society organizations; however with liberalization, it has come to be decried by governments for industrial unrest, flight of capital, unemployment and poverty. Another factor which led to the weakening of unions worldwide is the rise in the number of precarious workers who are too hard pressed to join any CB efforts. Also, precarious workers like contract workers are often tied in triangular employment relationship which shields their real employers and creates impediments in their collective efforts. For identifying the reasons behind weakening of labour movements in the world, Silver (2003) traces labour movements through history. The labour movement earlier centred around the call for a strong workplace bargaining power in textile industries in the nineteenth century and later shifted to the automobile sector where even a slight work disruption was disastrous for capital. Silver views the non-emergence of a leading industry which could replace the automobile industry in the twenty-first century as the cause behind current weakening of the labour movement. Besides, while the earlier labour movements were nation specific, Silver (2003) states that the new movements have to be international as they would need to counter global capitalist and consumerist culture that subordinates livelihood of all to profits. Others like Van Roozendaal (2002) cite the disagreements among unions on aspects like social clause as the reason behind lack of a united front on the face of the onslaught of globalization. She argues that though there is no disagreement on the question of whether global competition needs to be regulated, the nature and coverage of such regulation is subject to change. Most countries have different levels of adoption of international labour standards—while in India and China considerable attention is paid to child labour and forced labour, the USA has included these labour standards in its foreign and development policy. The trade unions of the respective countries in this context have taken a contradictory stand. In India and China, most trade unions side with

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<sup>5</sup>See Gopalakrishnan (2007). Also see Singh (2009).



the government in opposing the inclusion of social clause in trade, and in the USA on the other hand unions favour such an inclusion. The International Confederation of Free Trade Unions (ICFTU) at the international level favours such an inclusion but faces distrust from the unions of the developing countries (Van Roozendaal 2002, pp. 202–03). In between, the worldwide rise in precariousness at work has renewed the need for collective bargaining to safeguard the interest of the workers against the much dominant drive towards labour market flexibility.

## 4.2 Collective Bargaining in India

Collective bargaining gained ground in British India during the world war period when the British became increasingly dependent on Indian industries and manpower to support its war efforts worldwide. Major trade unions like All India Trade Union Congress (AITUC) and the All India Railway Federation (AIRF) were formed during this period. With the passage of the Trade Union Act in 1926 and later the Industrial Dispute Act in 1947, collective bargaining came to be formalized as a part of the industrial relation apparatus of the country. The Indian Constitution adopted in the year 1950 specifically grants the ‘right to form associations and unions’ to its citizens. The Industrial Disputes Act, 1947, recognizes collective bargaining rights, acknowledges workers’ right to strike and provides for protection against anti-union discrimination. The ID Act also categorizes (under Chapter VII, Section 33) trade union office-bearers under the category of protected workers.<sup>6</sup> Furthermore, under Section 25T (V-C) of the ID Act, unfair labour practices have been identified as well as penalties for indulging in such practices.<sup>7</sup> Since independence up till about the early 1990s when liberalization started in earnest, there have been intermittent periods of ups and down in union activities.<sup>8</sup> Numerically, the number of registered trade unions increased from 3522 in 1949–50 to more than 50,000 in 1990, after which in the post-liberalization period the number has seen a general decline; see Table 4.1. As also has been explicitly brought out in Chap. 5 in our case studies, the decline is more conspicuous within the organized sector where the permanent workforce is gradually getting replaced by contractual manpower. In general,

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<sup>6</sup>See the Industrial Disputes Act, 1947, <http://labour.nic.in/upload/uploadfiles/files/ActsandRules/LawsRelatedtoIndustrialRelations/THE%20INDUSTRIAL%20DISPUTES%20ACT%2C%201947.pdf>.

<sup>7</sup>In 1982, the Indian legislature amended the Industrial Disputes Act of 1947 by introducing the concept of the ‘unfair labour practice’. This amendment outlawed various practices by employers, unions and workers designed to disrupt the legitimate processes of dispute settlement under the Act. The refusal by an employer to bargain collectively in ‘good faith’ with the recognized trade union was listed as an unfair practice. For details, see *ibid*.

<sup>8</sup>For full details on unions and collective bargaining activities in India since independence, see Bhattacharjee (1999).

**Table 4.1** Number of registered trade unions in India\*

Year	Workers' unions		Employers' unions		All unions	
	On register	Submitting returns	On register	Submitting returns	On register	Submitting returns
1	2	3	4	5	6	7
2000	41,136	7231	409	22	41,545	7253
2001	41,563	6513	416	18	41,984	6531
2002	37,903	7734	189	78	38,092	7812
2003	42,207	7229	419	29	46,215	7258
2004	30,009	5217	382	25	30,391	5242
2005	45,842	8255	464	62	46,306	8317
2006	42,448	8411	469	60	42,917	8471
2007	40,175	7405	74	3	40,249	7408
2008	27,063	9702	74	7	27,137	9709
2009	22,284	3861	–	–	22,284	3861
2010	19,320	2936	56	1	19,376	2937
2011	10,264	2769	–	–	10,264	2769
2012	16,712	4785	–	–	16,712	4785

Source Labour Bureau, Ministry of Labour and Employment. <http://www.mospi.gov.in/statistical-year-book-india/2016/210> (accessed on 10 March 2018)

\*The data is uneven as it is based on the number of returns filed every year

CB efforts in the country work at three levels. At the national level are the powerful and most vociferous central trade union organizations (CTUOs)<sup>9</sup> who are well entrenched in public sector undertakings (PSUs) and other large enterprises. Most CTUOs are affiliated to national political parties who define their CB strategies. The CTUOs are officially involved in tripartite bodies, coordination committees, wage boards, etc., where they participate in CB. In the past, many nationwide strikes were successfully led by CTUOs.<sup>10</sup> The second level of bargaining is at the regional-industry level like those pertaining to cotton, tea, rubber industries or ports and docks in a region. Many regional affiliates of CTUO and regional unions participate in CB at both enterprise level and regional level. Bargaining here is particular to the industry and region and is limited to specific allowances

<sup>9</sup>To be recognized by the central government, a CTU and its affiliates shall have a verified membership of eight lakhs and union registered in at least eight industries. As per the annual report (2016–17, p. 51) of the Ministry of Labour and Employment, there are eleven CTUs whose cases are admitted for verification and recognition process. For details, see <https://labour.gov.in/annual-reports> (accessed on 18 March 2018).

<sup>10</sup>The notable among them is the AIRF-led Indian Railways' strike in 1974 in which about 1.4 million unionized workers participated directly or indirectly. For details, see <http://www.frontline.in/static/html/fl1819/18190750.htm> (accessed on 18 March 2018).

and benefits.<sup>11</sup> The lowest level is the enterprise-level CB which takes place typically between the management and the trade union. Here too though the management decries outside interference, unions having outside affiliations and external members often enough define the terms of engagement. The outcome of collective bargaining may take a variety of forms. It may conclude with bilateral agreement between the trade union and the management, or a settlement with the involvement of a conciliatory officer, or else if the CB fails, the union may put pressure by giving a formal notice of strike as per the ID Act.

Even in the limited domain, collective bargaining in India faces a number of problems exhibiting its inherent weaknesses. Firstly, in India there is no uniform legally binding union recognition—compulsory for an employer. Some states like Maharashtra and Madhya Pradesh have made union recognition compulsory by enacting state laws, while some others have made union recognition dependent on majority vote and other factors (see Ratnam 1999, p. 85). Though the 1982 amendment to the Industrial Disputes Act mandates employers ‘to bargain collectively, in good faith with the recognized trade unions’ (V (I).15), the absence of the provision of compulsory recognition of trade unions hits at the very root of CB in the country. There have been many industrial agitations in the country on the issue of recognition of trade unions, especially those formed by contract workers. The famous cases of Maruti (Sehgal 2012) and Hyundai (Gopalakrishnan and Mirer 2014) are worth recounting in this regard—we will see that the Indian case studies laid out later in Chap. 5 vividly show the general weakness in CB activities due to the lack of specific provisions that allow the enforcement of compulsory recognition of unions in industries.

Secondly, even if there is a recognized union in an establishment, there remains a problem of multiple bargaining agents. Trade unions being highly politicized on party lines often split workers according to their political affiliation. As per Trade Union Act, 1926, or the Industrial Disputes Act, 1947, there is no provision for a single bargaining agent in an establishment. Multiple unions in one enterprise have been lamented by even employer organizations as these promote ‘inter and intra union rivalry adversely affecting production, productivity, industrial relations’ (FICCI 2014, p. 15), and it has been suggested that ‘a union with 51% membership should be recognized as the sole bargaining agent. In case, no single union has 51%, the top 2–3 unions with more than 25% membership may come together to form joint bargaining council’ (ibid). The multiplicities of bargaining agents have another dimension in terms of acceptance of collective bargaining agreements by the worker organizations. Whereas the agreements are accepted by the contracting union, other union functioning within the same establishment refuses to accept the same, sometimes leading to furtherance of strife and agitation.

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<sup>11</sup>The 1982 strike of Bombay region textile workers led by INTUC affiliated *Rastriya mill mazdoor sangh* is an example of regional-industry level collective bargaining. For details, see <https://www.nytimes.com/1982/05/04/world/3-months-into-strike-bombay-s-workers-bear-up.html> (accessed on 18 March 2018).

The provision of the Trade Union Act (Section 22) allowing external members who are not employees of the establishment, as office-bearers, creates avenues for perpetual disharmony and strife in an industry by persons who have no direct concern. Much of the strife is seen to be endemic at the behest of external members, whereas the enterprise workers and management want an early settlement.

- Fourthly, Indian policy and legal circles have since independence favoured adjudication over collective bargaining. During the Indian freedom struggle, the intent of many Congress leaders was towards pushing for a system that encourages amicable settlement of industrial disputes first by mutual consent or negotiation, and not by adjudication in the first instance.<sup>12</sup> As per Section 10, Chapter III of the Industrial Disputes Act, the government retains the sole right to refer an industrial dispute for adjudication after the failure of conciliatory initiatives. Further whereas conciliatory agreements or CB agreements are non-binding on those parties (unions) who are not signatory (Industrial disputes act, 18(1), Chapter III), adjudicative proceedings are bindings to all within an establishment (ibid, 18(3), Chapter III).<sup>13</sup> Moreover, even ‘the appropriate government may by order prohibit the continuance of any strike or lockout in connection with such dispute which may be inexistence on the date of the reference’ (ibid, 10(3), Chapter III). Thus, ‘the consequence of the above legal position is that where an employer settles an industrial dispute bilaterally through a union, s/he can still be dragged into litigation at the instance of the union or unions, which are not parties to the settlement’ (Sharma and Kumar 2013, p. 34)—however if a dispute is settled through adjudication, the same is enforceable and binding to all.

Lastly, as already explained in Chap. 2, both the Trade Union Act and the ID Act create serious impediments in the collective bargaining of precarious workers. The requirement of direct employer–employee relationship and representation through an office-bearer causes problems in membership and union recognition of contract workers. The ID Act provides relief against lay-off to only those workmen who were engaged for a minimum of 240 days and whose employment record can be verified through a muster roll or payroll. Moreover, the Act does not require notice before lay-off for construction work or in projects where most of the contract workers find employment (ID Act, 25FFA (1) (b), Chapter V-A).

The weak edifice of collective bargaining in India is exposed on going through the dispersion of CB among working class. Ratnam (1999, p. 91) estimates that only about 2% of the total workforce or over 30% of organized sector workers participate in CB in India. Even the first Indian National Commission on Labour expressed concern regarding the state of ‘collective bargaining’ in the country.

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<sup>12</sup>In the famous industrial agitation of Ahmadabad textile workers led by Mahatma Gandhi in 1918, Gandhi appealed to the workers to settle all disputes amicably by mutual consent and negotiation.

<sup>13</sup>As included by Industrial Disputes (amendment) Act, 1956.

The Commission in its report stressed on the significance of ‘unions’ and even suggested the need of ‘strikes’ and ‘lockouts’ in industrial set-up. The Commission took the view that ‘conditions have to be created for promotion of collective bargaining. The most important among them is statutory recognition of a representative union as the sole bargaining agent. The place which strike/lock-out should have in the overall scheme of industrial relations needs to be defined; collective bargaining cannot exist without the right to strike/lock-out’ (Report of the first Indian National Commission on Labour 1969, Main conclusion and recommendations, Section 23.36 (165)). With time, policy dynamics within the country have of course changed with liberalization of the economy. Unlike the first Labour Commission which emphasized the need of collective bargaining as also the need of strikes and lockouts, the second Labour Commission sought ‘voluntary dispute settlement’, ‘negotiation’ ‘arbitration’ and ‘participation’ for the health of the industry. The Commission took the view that for the Indian industry to be competitive in cost and quality, a system of mutuality and cooperation needs to be put in place. The second Commission sought a negotiating agency instead of unions as it ‘is difficult for the employer to deal separately with multiple unions having different ideologies’ (Recommendations of Second National labour commission 2002, pp. 33–34).

The next chapter on case studies divulges in detail the state of collective bargaining in India and the hindrances being faced by contract workers in a variety of workplace settings, but before that it is important to look at collective bargaining in China.

### 4.3 Collective Bargaining in China

Unions in China gained ground in the first half of the twentieth century during the struggle between the Chinese Communist Party and the Nationalist Party. In the initial days, the unions played an important role in organizing the workers as a group to fight for their rights. The 1925 Chinese Revolution, though short-lived, in its formative years gave a platform to the unions to vent their demands. With the ascendancy of the nationalist government in 1927, all collective bargaining activity was seen with suspicion and often crushed with brute force. The Communist Revolution in 1949 brought the ACFTU and the unions to prominence, though they were again relegated to the background during the days of the Cultural Revolution (1966–76). Throughout the command economy regime, the punchline was that the workers own the enterprise and the governments’ prime intent was to protect the interest of the workers. ‘Right to strike’ which was introduced vide the constitution of 1975 was removed within a few years in 1982 when the revised constitution was introduced (Chang and Cooke 2015). It was only with the opening up of China since the early 1980s that the ruling hierarchy acknowledged the obligation of collective bargaining institutions to protect the rights of the workers against private concerns (Metcalf and Li 2005; Traub-Merz 2011, pp. 1–2). However, in tandem

with the communist doctrine of command and control, the ACFTU remains the single national union having full control over the unions down the hierarchy; with the status of ‘right to strike’ is ambiguous being neither permitted nor banned under law.

The PRC Trade Union Law<sup>14</sup> of 1992 makes no distinction between workers and permits all workers doing physical or mental work to participate in and form trade union organizations (Article 3). At the enterprise levels, ‘25 or more members may establish a primary trade union committee’ (Article 12) which need to be compulsorily recognized and supported by the enterprise. The law also provides for local industry specific trade unions, provincial-level federation of trade unions and ‘the All-China federation of trade unions (which) shall operate uniformly at national level’ (ibid). Unlike the Indian collective bargaining laws which are regulatory and worker-centric, the Chinese laws espouse the production concerns of the employers. The Trade Union Law specifically calls upon the unions to, ‘organize the employees to participate in the economic development actively, and to complete the production and work assignments’ (Article 7) and to ‘assist the enterprise or public institution in its work so as to enable the normal production process to be resumed as quickly as possible’ (Article 27). The law further provides overriding powers to the ACFTU ‘to make corrections or be given punishment; .... those causing losses shall bear the responsibilities for compensation’ (Article 55). Secondly, the Trade Union Law entrusts upon the unions to protect workers’ rights by signing collective contracts with the employers. The 1994 labour law further elaborates the methodology and content of the collective contract to be signed by the unions on behalf of the workers and the management (Articles 33, 34 and 35). The 2008 labour contract laws go a step further and entrust unions to ‘supervise the performance of labour contracts and collective contracts by employers’ (Article 78). The 2008 law even specifically provides contract (dispatch) workers with the right ‘to join the trade union of the labour-dispatching unit or the receiving unit or to organise a trade union, in order to protect their own legitimate rights and interests’ (Article 64).

In China, one out of every three worker is a member of an union (2012 figures<sup>15</sup>). The numbers have increased from 137 million workers (18%) in 2004 (Metcalf and Li 2005) to 258 million (33%) in 2012. The ACFTU membership figures are more than the combined membership of all unions in rest of the world (Traub-Merz 2011, p. 15). Further, the Chinese government has drawn an ambitious plan to enrol almost 90 per cent of working population under union membership over the period 2014–18.<sup>16</sup> The ACFTU claims to establish unions in 5.2 million

<sup>14</sup>For full text of the law, see <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/30352/81429/F566563397/CHN30352%20MoC.pdf> (accessed on 01 April 2018).

<sup>15</sup>Considering 258 million workers unionized out of a total of 789 million workers in 2012, every third worker (or every fifth Chinese) is unionized. For details, see [http://www.chinadaily.com.cn/china/2012-01/07/content\\_14400312.htm](http://www.chinadaily.com.cn/china/2012-01/07/content_14400312.htm) (accessed on 04 April 2018).

<sup>16</sup>For details, see the ACFTU website <http://en.acftu.org/28739/201502/10/150210152553792.shtml> (accessed on 04 April 2018).

**Table 4.2** Organizational structure of trade unions in China (2006)

Organizational level	Unions	Full-time union officials	Part-time union official
National	1	99,674	236,792
Provincial	31		
Prefecture	333		
County (district)	2860		
Township and subdistricts	22,000		
<i>Grassroots unions</i>	1,323,965	443,112	483,990

Source Traub-Merz (2011): *All-China federation of trade unions: structure, functions and the challenge of collective bargaining*, p. 9

businesses and that ‘the collective wage negotiation system has covered more than 100 million employees and 1.74 million businesses’.<sup>17</sup> Unions in China at the enterprise level are democratically elected with all workers participating on an equal plane. However, as one moves upwards from the regional level to the ACFTU, at the national level the control of the ruling communist party becomes increasingly evident. ‘Democratic centralism’<sup>18</sup>, as also contained in the Trade Union Law, 2001 (Article 11) is reflected in the principle that all decisions of higher bodies are absolutely binding on the lower body—this is the organizational principle of the unions in China. Traub-Merz (2011) identifies a six-tier hierarchical structure of unions in China with a unitary top (see Table 4.2).

The organizational structure of the unions which allows the central command to control the large democratic base, though often criticized for concealing the real picture, is a critical factor behind investors’ confidence in the Chinese workplace. The next chapter which documents field experiences in Guangzhou and Shenzhen shows instances of the containment of industrial strife through top order union intervention. Besides the organizational structure, the collective bargaining arrangement in China has many inbuilt strengths. The communist ideology identifying workers as owners of enterprise works in the background during collective bargaining negotiations. Secondly, unlike the contribution-funded unions in India who always face resource crunch,<sup>19</sup> the unions in China have been made financially independent. Besides the contributions from the members, the Trade Union Law directs all enterprises to ensure ‘monthly allocations of 2% of the total wages of all of its employees (to be) paid to a trade union’ (Article 36(2)). Thus, unions in China

<sup>17</sup>See [http://www.chinadaily.com.cn/china/2012-01/07/content\\_14400312.htm](http://www.chinadaily.com.cn/china/2012-01/07/content_14400312.htm) (accessed on 4.04.18).

<sup>18</sup>Democratic centrism as a principle expounded by Lenin acts as a tool to command and control the subordinate organizations in a hierarchy.

<sup>19</sup>In India, multiplicity of unions forces them to compete with low subscription charges which too largely pile up as unpaid dues. The Trade Union Law has set a minimum threshold of 25 naya paisa (\$0.006) per month per member (Article 6(ee)), whereas most unions charge anything between Rs. 1 (\$0.015) to Rs. 8 (\$0.12).

are vibrant large entities with budget in millions and with thousands of full-time officials who enjoy immense clout with respect to workplace affairs.

#### 4.4 The Debate on Granting Collective Bargaining Rights: ILO—India and China

The ILO Conventions 87 and 98 as reaffirmed by the 154th Convention and resurrected by the ‘Declaration of Fundamental Principles and Right to Decent Work’ now form the baseline for international standards on collective bargaining. Both these conventions apply to the workers with the exception of the armed forces and the police, as elaborated below:

The **87th Convention**, guarantees to all workers, without any distinction, the right to establish and join organizations of their own choosing, without prior authorization. It makes an exception in the case of the armed forces and the police by providing that the extent to which the Convention shall apply to the armed forces and the police shall be determined by national laws or regulations. It further provides that workers’ and employers’ organizations shall have the right to establish and join federations and confederations and also to affiliate with respective international organizations.

The **98th Convention**, guarantees to all workers adequate protection against acts of anti-union discrimination in respect of their employment. It provides that such protection shall apply more particularly in respect of acts calculated to: (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership or (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or with the consent of the employer, within working hours. It also protects workers’ organizations from acts of interference by employers or their organizations. In addition, the Convention requires member states to take appropriate measures to encourage and promote collective bargaining between workers’ organizations and employers or employers’ organizations and workers’ organizations in order to regulate the terms and conditions of employment by means of collective agreements. (ILO 2011 (II))

Both the conventions are universalistic in nature incorporating all workers including, ‘part-time workers; workers in export processing zones; domestic workers; self-employed, casual and informal-sector workers; workers in cooperatives; those covered by other forms of contracts, irrespective of the existence of a labour relationship; and all migrant workers, whether in a regular or irregular situation’ (Vacotto 2013, p. 119). The ILO insists that these conventions provide the ‘right to organize’, even in those situations where clear employer–employee cannot be established or in informal work situation or even in cases where ‘the employer is not a party in the dispute’ (ibid).



The inclusive nature of these conventions is cited by India as the reason for not ratifying these conventions. Besides, the ‘right to strike’ as implied<sup>20</sup> under convention number 87 has been the bone of contention. India does not allow public servants engaged in essential services to strike work. The ILO, on the other hand, contends that the provisions of Convention no. 98 are not applicable to public servants who are involved in essential activities of the state as Article 6 of C. 98 explicitly outlines that ‘this convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way’. This means a country may ratify C. 98 without dealing with those public servants engaged in the administration of the state. As per practice, the ratification of an ILO convention is a voluntary process where the ratifying country itself undertakes to apply these provisions and accordingly to adapt national law and policies to its requirements.<sup>21</sup> India’s guarded stand on the issue of ratification remains with the stated rhetoric being that India signs a convention only on being satisfied that its ‘laws and practices are in conformity with the relevant ILO Convention’, or else it is considered better ‘to proceed with progressive implementation of the standards, (and) leave the formal ratification for consideration at a later stage when it becomes practicable’.<sup>22</sup> Similar lines of argument have been put forward by India for not signing the conventions on collective bargaining rights which form the part of Declaration of Fundamental Principles and Right to Decent Work.<sup>23</sup> India’s policy response to the ILO on collective bargaining rights has always been that Indian Constitution vide Article 19(1) (c) already provides for the right to form associations or unions to its citizens.<sup>24</sup> India cites its concerns over allowing collective bargaining rights universally to all workers as this may hinder service delivery in essential areas of public utility,<sup>25</sup> also allowing these rights in the manner prescribed by the ILO runs

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<sup>20</sup>Though ‘right to strike’ was not part of the original convention, it was later implied in the proceedings of the ILO Committee on Freedom of Associations (CFA) since the 1950s. The right to strike is interpreted ‘on Articles 2, 3, 8 and 10 of Convention No. 87, which gives workers full freedom to join organizations of their own choosing, bestows upon those organizations the right to organize their own activities and formulate programmes, and deems the purpose of the organizations to be that of furthering and defending the interests of their members’ (see Bellace (2014): *Right to strike*, pp. 47–48).

<sup>21</sup>Except in the case of the ILO Declaration of Fundamental Principles and Rights, 1998, vide which the Declaration ‘commits member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions’. See ILO website <http://www.ilo.org/declaration/thedeclaration/lang-en/index.htm>.

<sup>22</sup>See Indian Labour Ministry website [http://labour.nic.in/upload/uploadfiles/files/footergallery\\_pdf/India%20is%20founder%20member%20of%20ILO.pdf](http://labour.nic.in/upload/uploadfiles/files/footergallery_pdf/India%20is%20founder%20member%20of%20ILO.pdf) (accessed on 27.10.14).

<sup>23</sup>Interestingly, India continues to fulfil its responsibilities with respect to reporting requirements of the Declaration of Fundamental Principles and Right to Decent Work, 1998, without ratifying the conventions. See ILO website,

[http://www.ilo.org/declaration/follow-up/annualreview/archiveofbaselinesbycountry/WCMS\\_DECL\\_FACB\\_IND/lang-en/index.htm](http://www.ilo.org/declaration/follow-up/annualreview/archiveofbaselinesbycountry/WCMS_DECL_FACB_IND/lang-en/index.htm).

<sup>24</sup>Refer Constitution of India, p. 9, <http://lawmin.nic.in/coi/coiason29july08.pdf>.

<sup>25</sup>In India, even the Special Economic Zones are covered under the exempted category of public utility services. For details, see Singh (2009).

counter to the Central Civil Service (conduct) rules, 1964<sup>26</sup> and similar State Civil Service Rules prescribed for government officials as there are Joint Consultative Machinery (JCM) and specialized tribunals like CAT available for the government employees. The Indian government also cite many inconsistencies between the Indian laws and articles of these conventions as the reason behind not ratifying the same (ILO 2011 (II)).<sup>27</sup>

For China, the provisions of the ILO 87th convention bestowing workers ‘the right to organize their own activities and formulate programs’ run counter to its unified union set-up. Though the unions at the enterprise level are democratically elected by the workers, the law of ‘democratic centrism’ making all unions subordinate to the ACFTU overshadows collective bargaining efforts. The Chinese workers are not free to form or join trade union of their own choosing. The government considers PRC as workers’ state with strong socialist traditions and views the ILO Conventions governing freedom of association and collective bargaining as too ‘Western’ and lacking ‘Chinese characteristics’.<sup>28</sup> Unlike India whose affiliation with ILO has been more or less even, China’s relationship with ILO has not been smooth. Though the official ILO website lists China as a member since 1919, there were many grey phases up till about 1983<sup>29</sup> when China officially acknowledged its full-time membership after extracting many concessions from the world body (for details, see Kent 1999, pp. 123–26). Thereafter in 1984, the PRC government declared ultra vires the 23 conventions ratified by the nationalist government of Taiwan between 1949 and 1971. In 1985, ILO opened the country office in Beijing. It was only in 1989, 40 years after the formation of the Peoples Republic of China that the government sent a full delegation to the ILO. The Chinese government has since signed the first MOU with ILO in 2001 and the second one in 2016, though it continues to only wade in the waters on the convention front.<sup>30</sup>

India and China have both been among the founding members of ILO, but when it comes to ratifying its conventions, both the nations have been overly cautious.<sup>31</sup> The International Labour Office and union advocates decry the stand taken by the governments of the two countries representing more than one-third of the

<sup>26</sup>Indian service rules especially prohibit strike by government servants (Rule 7 (ii), Central Civil Services (Conduct) Rules. For details, see Department of Personnel & Training, Govt. of India, website [http://www.persmin.gov.in/DOPT/EmployeesCorner/Acts\\_Rules/CCSRules\\_1964/ccs\\_conduct\\_rules\\_1964\\_details.htm#07](http://www.persmin.gov.in/DOPT/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_details.htm#07) Govt Decision 02.

<sup>27</sup>Also see paper presented by Gopalakrishnan (2011).

<sup>28</sup>‘Chinese characteristics’ is attained by the pursuit of harmonious labour relationship through the principle of leadership of the communist party of China over the unions. See ITUC report [https://www.ituc-csi.org/IMG/pdf/Chinal\\_Final-2.pdf](https://www.ituc-csi.org/IMG/pdf/Chinal_Final-2.pdf) (accessed on 8.04.18).

<sup>29</sup>ILO recognized the PRC as the legitimate representative of its people only in 1971 since the formation of the nationalist government in Taiwan in 1949.

<sup>30</sup>For details, see [http://www.ilo.org/wcmsp5/groups/public/—dgreports/—exrel/documents/publication/wcms\\_550919.pdf](http://www.ilo.org/wcmsp5/groups/public/—dgreports/—exrel/documents/publication/wcms_550919.pdf) (accessed on 8.04.18).

<sup>31</sup>India has ratified 47 out of the 189 conventions, whereas China has ratified only 26. See ILO website: <http://www.ilo.org/dyn/normlex/en/> (accessed on 6.04.18).

mankind for denying these important rights to their working populace. Some point out that the stand taken by the respective governments was more from the economic perspective as the grant of collective bargaining rights was thought to erode their comparative advantage in the globalized labour market. Others argue that with the application of collective bargaining rights, foreign investment may move to those countries which have unorganized flexible labour.<sup>32</sup> However, the ILO contradicts these apprehensions based on several studies conducted on its own (see Shyamsunder 2011, p. 39; Jha and Golder 2008, pp. 8–9) and the one by the World bank which concludes based on empirical data that ‘countries with highly coordinated collective bargaining tend to be associated with lower and less persistent unemployment, less earnings inequality and wage dispersion, and fewer and shorter strikes compared to countries with semi coordinated or uncoordinated collective bargaining’ (Tzannatos 2002, p. 12). The ILO tells policy makers that unions facilitate worker participation and worker–manager cooperation in the workplace which can only have efficiency-enhancing effects that jointly benefit both the workers and the management (ibid., p.26). The ILO contends that 154 and 164 countries have ratified C. 87 and C. 98 respectively, including countries that restrict the right to strike and the right to collective bargaining to some groups of public sector workers, but a member state cannot exclude all public sector workers including drivers, transport workers, teachers, healthcare workers, from collective bargaining. Also, there is no legal possibility for countries to decide unilaterally exclusions or reservations concerning parts of a convention, as this would run contrary to the very idea of universally applicable labour standards.<sup>33</sup>

The apprehensions of both the countries towards the ILO Conventions need to be seen within the context of the prevailing nature of the state and market in the world. India and China with a huge working population cannot ostensibly afford to tread into those domains which may harm their economic prospects. Bellace (2014) while noting that opposition to the convention rose from the side of employers due to increased competition since globalization further states that ‘it is a fact that in an organization nearing its centenary, some conventions are out dated. However, there are methods for dealing with this when a consensus is reached; a convention can be withdrawn, deemed obsolete, or revised’ (p. 64). Even as the convention no. 87 needs to be revisited, India and China need to balance its growth pursuits and the simultaneous rise in labour standards with the growing pressure towards deregulation and informalization. Meanwhile, the conventions 87 and 98 have been included in the ILO Declaration of Fundamental Principles and Right at Work (1998) which is binding in nature to all ILO member nations. In between, the whole debate on ratification or no-ratification should be considered in the context of the present-day workplace where collective bargaining is increasingly getting confined

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<sup>32</sup>For details, see Gopalakrishnan (2011).

<sup>33</sup>There are a number of ILO conventions that include flexibility clauses in which a member state can qualify its ratification by making use of the multilaterally agreed flexibility options; however, conventions on collective bargaining (87 and 98) do not entail such flexibility clauses.

within the organized sector that too in the domain of permanent workers. Large chunks of short-term, casual, temporary, and contractual and dispatch workers are banished from the folds of organized unions. In 2003, in a remarkable development China opened up its unions to migrant workers who mostly constitute the dispatch labour.<sup>34</sup> Such an attempt though within the framework of the unified union set-up has given some voice to precarious dispatch workers in the Chinese workplace, but for India with more than 90% of the workforce engaged in the informal sector, the grant of universal collective bargaining rights remains an uphill task.

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## Chapter 5

# Contract Labour in Practice: Some Case Studies



Law and policy are generally framed keeping in view of a typical workplace where employers and employees behave in a particular fashion within a given space and time. A workplace is however an uncontrolled environment where variations are bound to occur making any uniform application of law and policy difficult. Over the previous chapters, we have concentrated on the general principles that govern or should be governing the workplace. The ground scenario however may show many variations and complexities which often enough require us to revisit our entrenched positions. For any comprehensive work on labour that seeks to provide legal and policy recommendations at the national scale, an extensive field study is essential to corroborate theory with practice. Thus, an attempt here has been made to cover contract labour working all over India<sup>1</sup> ranging from unskilled workers labouring in brick kilns of Bihar to multinational export-oriented heavy industries of the Dahej SEZ. Efforts have been made to include private industries of different sizes (Rudrapur), government sector (DMRC) and a volatile export zone (SEZ), so as to capture the variation of labour markets that have come up with liberalization. It may however be noted that we also look at a traditional contract labour setting (brick kilns) so that we can provide the broadest comparative research perspective.

It became increasingly apparent while conducting the field study in different parts of India, especially in Rudrapur and Dahej SEZ, that any comprehensive research on the Indian labour market requires a comparison with China as the labour markets of both countries are competing in the global market. The Indian manufacturing sector faces upfront competition not so much on the wage front but from the skilled and organized labour force located in the advanced manufacturing zones of China. Employers in India often cite the advantages of the 'flexible' Chinese labour market among other reasons for the industrial success of Chinese industry. Additionally, the general direction of law and public policy related to manufacturing in India seems to apparently emulate China. Thus, a first-hand field

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<sup>1</sup>However, many forms of contract work especially the variety found in agricultural, mining, part-time construction and small-scale sectors could not be covered in the field study.

study of an industrial region of China was imperative to gain a comparative understanding of the strength and weakness of the labour markets of both the countries. Of course, given the resource and logistical constraints, the fieldwork conducted in China is smaller in scale than the field studies conducted in India. Nevertheless, a few comparative insights into the Chinese manufacturing sector and its labour market have been included as an essential component of our work.

**The Methodology of the Fieldwork:** The primary method adopted for our qualitative data collection is ‘multi-sited ethnography’. Multi-sited ethnography follows a topic or social issue across different field sites geographically and/or socially. This method was particularly chosen for fieldwork on contract labour because the topic merits a multi-site study on account of the many different dimensions to the issue and to take in the diverse industry types and manufacturing zones. Multi-sited ethnographic technique as advanced by Marcus (1995, 1998) is especially useful to study a subject like ‘contract labour’ with its links to the process of liberalization and globalization. It has been suggested by Kjeldgaard et al. (2006) that, ‘multi-cited ethnographic inquiry can bring out the multifaceted character of globalization through the analysis of different experiences of its impact on communities’ (p. 521). Unlike conventional single-site participatory ethnography which is appropriate for thick description of a particular culture, tribe or village community, the new approach divulges inter-related issues at multiple settings simultaneously and helps in performing comparative analysis. Though the multi-site approach may not be that comprehensive as the former however the ‘circumstantial commitment that arises in the mobility of multi-site fieldwork provides a kind of psychological substitute for the reassuring sense of ‘being there’, of participant observation in traditional single-site fieldwork’ (Marcus 1995, p. 113). Moreover, ‘the movement among sites lends a character of activism to such an investigation’ (ibid, p. 112). Our case studies attempt to adopt the ‘follow the thing’ (Marcus 1998, p. 91) mode of ethnographic research in which the movement of workers from rural to urban industrial centres onto the path to precariousness is mapped along with related developments in employment relations.<sup>2</sup>

All possible effort was made during the fieldwork that the data collection procedures and methods were meticulously followed within the limitations of time and space.<sup>3</sup> Most workers from whom responses were taken through informal interactions and/or personal interviews were selected randomly from the available population within a zone of consideration. It was attempted to interact with them in an ‘uncontrolled’ environment preferably outside their workplace where their

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<sup>2</sup>The method as quoted by Marcus (1998) was followed by Wallerstein (2004) in his ‘world-system analysis’ in which he maps the movement of men and material from the rural periphery to the industrial hubs in the urban core.

<sup>3</sup>Whereas in the Indian case studies, some names of firms and individuals have been divulged, the same has been intentionally left out in the case of China. Photographs were taken with consent and have been added for the readers to relate with the study.



unfettered responses could be gathered.<sup>4</sup> As far as possible, data collection from workers was followed up with interviews with other stakeholders of the industry/zone. Overall the constraint of such a study is that only those responses from those who were willing to be interviewed could be recorded, and the population for the study was widely dispersed in a large area and only select zones<sup>5</sup> could be considered for data collection. A ‘semi-structured face-to-face interview’ method was followed with part scheduling, though due to variation in the perception of the respondents, the standardization of the interview was not done.<sup>6</sup> The semi-structured technique provided the flexibility for both the interviewer and interviewee to amend their responses as required and also supplied the qualitative information on perceptions, value, attitude and lifestyle of the respondents. The face-to-face interviews were generally conducted as much in-depth as possible—taken on trains, railway platforms, tea-stalls, canteens, bus stops, etc., during the lax time of the workers. However, wherever it was not possible to seek responses of the workers outside their work premises (like brick kiln workers), interviews were conducted on the work site. Wherever questions were left incomplete or the interview was truncated in between, the same was followed with telephonically (where numbers were provided) or filled-in based on the empirical understanding gained from the part interview.<sup>7</sup> While the workers interviewed were randomly selected, the contractors, union leaders or employers who were interviewed were identified through some of the workers. The cases for in-depth study emerged from the broad perception and insights gained over interviews. The labour enforcement officials belonging to an area under study and experts on labour matters were interviewed based on their availability and willingness to participate in the research. While in the case of workers ‘part-scheduling and non-standardized’ interview method was followed, with contractors, union leaders, employers and labour enforcement officials the interviews were more structured. However, in the case of experts all combination like, ‘generalized interview on specific aspect’, ‘semi-structured questionnaire-based interview’, ‘semi-structured questionnaire-based

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<sup>4</sup>Though, due to limitations of language and access in Shenzhen and Guangzhou, select industries were visited and interviews conducted with the help of an interpreter as determined by the hosts. Also the interview of workers in the brick kilns at Danapur could only be conducted in a ‘controlled setting’ under the watchful eyes of the owners.

<sup>5</sup>Like in the Rudrapur study, population of contract workers travelling by train in morning (6:00–8:00 a.m.) and evening (8:00–10:00 p.m.) was considered; though workers travel by other trains and other modes too. Also in DMRC, only TOM operators of few stations and construction workers of few companies/sites were interviewed, though there are other stations, sites/companies too.

<sup>6</sup>Scheduling is asking the questions in same order, while in standardizing method questions are asked in same way to each respondent. See, Phellas et al. (2012): *Structured Methods: Interviews, Questionnaires and Observation*.

<sup>7</sup>The interviews with workers were often interrupted or left, due to arrival of trains to destinations, or due to intervention of contractors or employers, or due to variety of other reasons. Incomplete interviews were only completed by author where broad understanding of the interviewee intent on the remaining issues was understood.



face-to-face interview', were followed as per their expertise and availability. In specific situations, where interviews could not be noted down first-hand or were perceived improper by the respondents, the same were jotted down later relying on memory. In almost all cases, the purpose of the interview was disclosed beforehand to the respondents verbally and/or in-writing.<sup>8</sup> Secondary data for the select field study was collected from labour department records, media reportings, government reports, third-party assessments and related websites.

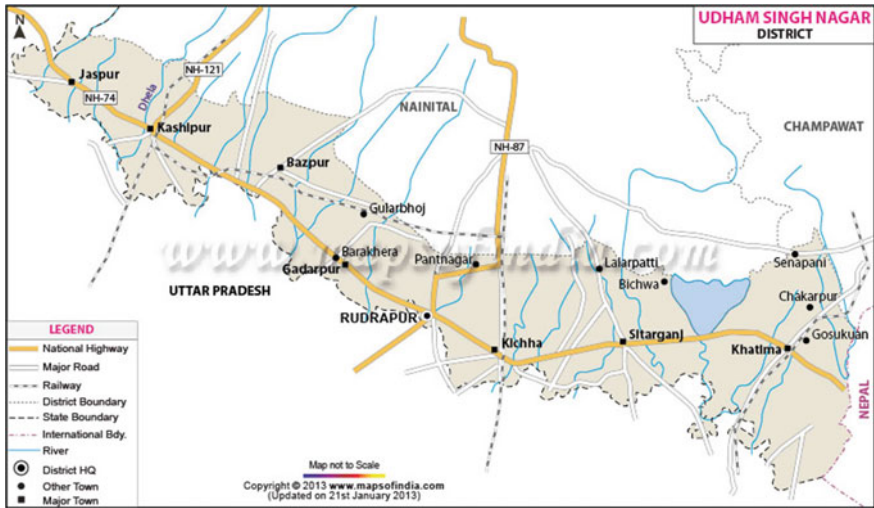
## 5.1 Fieldwork in Rudrapur Industrial Area

*Rudrapur industrial area represents one of the industrial clusters that have come up with liberalization in India. The industries here are part of the global supply chain and are thus volatile in nature. Contract labour system in practice here caters to uncertainties of the sector.*

The very first fieldwork visit was conducted in the Rudrapur Industrial area (In district Udham Singh Nagar, see Map 5.1) over the summer of 2013 to get a feel of the labour scenario there and to plan the *modus oprendi* of future fieldwork in the region. During the summer visit, there was extensive travel in the area, meeting contract workers, contractors and employers in an informal manner. It came to be realised that some workers reside in the area within factory premises or in rented accommodation in neighbouring regions, but the bulk of them travel to and from Rudrapur by passenger trains, which is the cheapest mode to travel from adjoining districts of Rampur, Bareilly and Nainital. It was found that the industries of newly set-up Rudrapur region were of all sizes and types. Moreover, the contract form of employment was the predominant form of engagement in the area. The study was designed considering Rudrapur and adjoining industrial regions as a single unit in which data collection involved meeting the workers, contractors, union leaders/regular workers at public places like railways stations, bus stands and parks. It was planned that major data collection was to be gathered while travelling with the workers in the train so as to get detailed first-hand information during their leisure time. Thus, it came to be that there was regular travel with the workers from Izatnagar Railway station to Kichha (via Dohna, Bhojipura, Baheri) on the Bareilly-Lalkuan train route and later from Kichha to Rudrapur on Tempo, as majority of workers travel to Rudrapur by this route only. The principal employers, contractors and enforcement officials were interviewed at their duty stations. However, before getting into the field study per se, it is useful to briefly go over the background of industry in the region.

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<sup>8</sup>It was found that the method of disclosing purpose with identity helped in gaining confidence of the respondents, especially when it was informed that the study is being conducted to explore possibilities of improving the contract labour system.



**Map 5.1** Map of Udham Singh Nagar district, Uttarakhand, India. *Source* <http://www.mapsofindia.com/maps/uttaranchal/districts/udhamsinghnagar-district.jpg>

**Rudrapur Industrial Area:** An organization called State Infrastructure and Industrial Development Corporation of Uttarakhand Limited (SIDCUL) was set up in 2003 when the Government of India came up with a special package of fiscal incentives for the development of northern hill states. One of the three sites chosen by SIDCUL was Rudrapur on the foothills of Himalayas near Nainital in the *terai* belt. The government already owned large tracts of land here, and moreover, Rudrapur was well connected by rail and road network.<sup>9</sup> More than 300 industries mostly in private sector came to be set-up here—the list includes top companies like Tata Motors, Bajaj Auto, Escorts, Voltas, Britannia, Nestle, Parle Biscuits, Mahindra, Hindustan Computers Limited (HCL), Hewlett-Packard, Dabur, Kores India, Ashok Leyland and Lenovo. Rudrapur falls in Udham Singh Nagar district of Uttarakhand state and is about, 230 km from Delhi, 360 km from Lucknow and 250 km from Dehradun where the seats of power are located. Rudrapur being located at the border of Uttarakhand adjoining Uttar Pradesh state in the rural–urban arena has abundant labour resources at its’ disposal as unemployment rates here are very high. Most of the workers employed at Rudrapur stay in the surrounding districts of Rampur (UP), Bareilly (UP) and Nainital (Uttarakhand), and travel daily by train which is the cheapest mean to travel to the town. As the industries here have been setup in post-liberalization period to meet the demands of the markets located in India and abroad, companies were found to adopt all possible means to

<sup>9</sup>Even an airport largely catering to private chartered flights is operational in Pantnagar, which is about 12 km away from Rudrapur.

cut cost including adoption of dubious labour practices. Companies here operate with a minimal permanent workforce and manage most of its affairs through the engagement of contract labour.

### **Fieldwork**

The regular fieldwork in Rudrapur Industrial area started in December 2013, with data collection from contract workers and regular worker/union leaders. To infuse confidence among the respondents, they were handed an introductory letter and some showed their willingness to become part of the interview process. Finding an initial willing respondent sometimes was rather difficult; however, once a person in a group started to respond, the interviewer was soon surrounded by other workers and onlookers. Sometimes the whole group started to respond to questions and it became difficult to concentrate on a single respondent. For the Rudrapur field study, the preference was to travel with the workers in trains because while travelling, the workers had ample relaxed time to respond. Moreover, this allowed one to chance upon random respondents from different factories, job profile and region, with the respondents being able to answer freely without any restriction of being on factory or work premises. However, in spite of the introductory letter and long episode of convincing individual workers, most respondents wanted to know how this would help him/her or benefit them as a group. Some workers refused initially to participate in the interview, but later agreed upon being reassured or on seeing others participate. Some respondents were also found at the railway station as they were waiting for the next train since they were returning home after night duty. Others were spoken to near their factory premises while waiting for their shift to start. The data was collected through semi-structured interviews and wherever workers were found to be illiterate or semi-literate, answers were read out to them in the end and confirmed. The interviews of the contract workers were mostly taken on trains and railway platforms and were random, and thus are expected to be representative of the whole population of contract workers of Rudrapur industrial area.<sup>10</sup> Sometimes a few small contractors were also found travelling with workers but they were cautious in responding to questions in front of the workers. In between, wherever possible relevant interviews were also taken of regular workers/union leaders, contractors, principal employers and enforcement officials.<sup>11</sup> Sometimes the trains became too crowded to conduct an interview or even stand easily. It needs to be pointed out that commuting by train while being in search of willing respondents was difficult and often curious onlookers wanted to know in detail the intent and purpose of the study which could be quite disruptive. Sometimes an assistant was

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<sup>10</sup>However, the general limitation is acknowledged that the responses could be taken only from those workers who willingly participated in the interview process. The views of silent sufferers might have gone unrepresented.

<sup>11</sup>Besides the contract workers, about 35 regular workers/union leaders, 14 contractors, 10 principal employers and 4 enforcement officials were also interviewed during field visit at Rudrapur industrial area.

used to take photographs, but the purpose of photography was disclosed beforehand and individuals who refused to be photographed were not photographed.

**Data Collection:** A typical day of fieldwork started by catching the morning passenger train at 6:20 a.m. from Izatnagar Railway station, a time when it would be dark in winter. Most workers travelled by this train. A whole lot of travellers including government servants, casual visitors, students, farmers, daily workers (who find job on daily basis<sup>12</sup>), and white-collar workers travelled along with the contract workers on this train. The train got progressively congested as additional passengers got on at Dohna, Bhojipra, Atamanda, Deorania, Richa and Baheri railway stations on the way. Normally, for a conversation to start took 30–40 min as considerable time was often required to identify a willing respondent. Once an interview started, generally others joined into add their individual experiences. An interview took between 20 and 30 min and an onward journey could fetch 2–4 interviewees. By the time the train approached Kichha at about 8 a.m. it became more lit, however being close to the mountains the chill in the air increased. On reaching Kichha, one could see a sea of workers getting down from the train (see, Photos 5.1 and 5.2). On alighting from the train, one could see company buses waiting for regular workers outside the railway station. However, it was noted that most workers walk to the Kichha bus stand or *chouraha* (road intersection) to catch a bus or a tempo to Rudrapur. While the train journey costs only between Rs. 5 and 15 (\$0.077–\$0.23),<sup>13</sup> travelling to work via road destinations was a much dearer proposition for the workers. A journey to inner sectors of SIDCUL Integrated Industrial Estate from Kichha could cost anything between Rs. 25 and 40 (\$0.38–0.61) one way. Some factories do exist at Lalpur or other locations on the way to Rudrapur for which the workers needed to spend only about Rs. 10 (\$0.15) on the road journey. Another train from the hillside (Lalkuan-Bareilly) reaches Kichha before this train at about 7:40 a.m., and though the alighting passengers from this train are not many, this train caters to night-shift workers who have to catch this train back to their homes. Surprisingly, only four passenger trains run on this track in a day. If one misses the 7:40 train, the next train is at 9:30 a.m., after which the next one is at 2:21 p.m. Those who miss this afternoon train have to wait till 8 o’ clock in the evening to catch a return train. It was conveyed to the interviewer by some of the fellow passengers that earlier about six trains plied on this track including some long-distance better trains; however, as the track has been converted into broad gauge from narrow gauge about six months backs the frequency of the trains had been reduced. It was also pointed out that since the bulk of the travellers on these trains were workers, no politician or railway officer cared to notice the fact that all these trains ran packed to the brim. While the road journey is an option, first

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<sup>12</sup>On conversation with some of the daily workers, surprisingly it was found that they seemed to more satisfied and better paid. They viewed themselves as self-employed working at will, more so unlike contract workers employed in the organized sector on monthly basis, they worked for ready cash. However, their job seemed to be intermittent and hard mostly in the construction sector.

<sup>13</sup>The cost of a daily passenger one-way rail ticket from different station on the Izatnagar-Kichha route. Monthly railways pass costs much less, but most workers avoided a question on this issue.



**Photo 5.1** Workers alighting from trains at Kitcha

of all it is 4–6 times costlier<sup>14</sup> and furthermore the condition of the road is so pathetic that regular travellers to-from Kichha who travelled by their own vehicles to Bareilly take a route which is about 40 km longer via Milak, Rampur. In spite of this being a national highway, little attention was paid to improve the condition of the road.<sup>15</sup> After both the train left Kichha station, silence reigned at the station. One could find only a few sleepy red-eyed workers who had missed their trains. Over the next two hours, other workers arrived so that they could catch the next

<sup>14</sup>Road journey by public transport from Kichha to Bareilly costs around Rs. 60–80 (\$0.92—\$1.23).

<sup>15</sup>Both the approach roads on NH-74 to Rudrapur, Uttarakhand via UP which were in a pitiable state during research period were subsequently re-laid however as conveyed by locals the situation becomes similar after most monsoon season. The other entry point from Rampur (via-Bilaspur) deteriorates as one approach Rudrapur.



**Photo 5.2** Workers alighting from trains at Kitcha railway platform

train. Most such workers were found to be too tired to talk but could be easily befriended by offering a cup of hot tea. The responses from workers who were returning from work were found to be in variance from the responses gathered on the train on their way to work, as most of these workers seem to be dejected after long hours of tiring work. Some said that they were going back to their villages and would not return. There was general complaint of long hours of work, no paid leave, less pay, delayed payment, withholding of payments by contractors, lack of dignity of labour, excessive hard work with no return/reward and no future. Also, these workers returning from night work were at a loss when asked to suggest an alternative to their existing situation. To the ones' surprise, some workers had passed high school (class 12th) or were graduates but were doing physical work at their workplaces. When questioned on improving their lot in the workplace, they replied in different ways but altogether sought some *haq* (rights) and *awaz* (voice) in the system for contract workers which they felt was presently lacking. The regular or permanent workers whom met at the platform sounded better-off than their contractual counterparts.

After spending a couple of hours at the Kichha railway station, the author typically proceeded to Rudrapur via the route generally taken by the workers. Kichha is a small but lively *tehsil* town in Uttarakhand state bordering Uttar Pradesh. The town itself has



a few industries which largely cater to its' bigger counterparts located in Rudrapur. One can catch a bus or a shared auto to Rudrapur from here. The bus stand wore a deserted look may be because of the condition of roads around Kichha (see, Photo 5.3). The shared auto journey takes about an hour to reach Indira Chowk/bus stand at Rudrapur, from where one can take another tempo to reach different sectors of industrial area (see, Photo 5.4). On the journey from Kichha to Rudrapur, one can see the changing landscape on both sides—Large housing projects, schools, malls, line



**Photo 5.3** Deserted bus stand at Rudrapur



**Photo 5.4** Taking Tempo to Rudrapur industrial area

the road along with industrial enclaves, but it is the SIDCUL area which is truly grand. Wide roads, lightings, arranged pathways welcome one to Rudrapur. The first impression from the viewpoint of a worker of Rudrapur industrial area is probably rather inspiring, but as one enters deeper beyond the factory gates, the simmering discontent is palpable among the rank and files. The practice of hiring in contract labour is found to be extensively practiced in almost all industries in the region—primarily to cut cost and to ensure flexibility with limited manpower liability. Though a formal written contract of mutual obligation exists between the management and the contractor however no such contract was found between the contractor and the contract workers. Employer–employee relationship is maintained more or less on hearsay where the contractor governs the terms. Unscrupulous contractors reign over the labour market by creating an artificial shortage for the employers and job scarcity for the workers. The owners or the management being the principal (indirect) employer keep themselves away from contract labour affairs and let the contractor run the relationship. Regular workers and their unions were found to be more concerned with their own affairs and took no initiative for the cause of the contract workers. Though informal associations of contract workers of different forms and kind such as those formed by workers belonging to same village or family or caste or community were seen to put pressure on the management, these entities could exert influence only in a limited manner and that too only sometimes. Some contract workers cited instances of collective bargaining in their companies which later broke up due to management stance or internal backbiting. In one rare case discussed later in the chapter, collective bargaining efforts of contract workers in a heavy industry were seen to find support from the union of regular workers thus raising the labour standards of these precarious workers.

On their part, employers were found too busy in other priority areas (as considered by them) like procurement, sales, taxes—labour management for them seemed a side issue till production was directly affected due to labour problems. Some of the employers however were found to be averse to the practice of contract labour due to poor skill of these workers and their irregular nature. They lamented the lack of proper law and public policy which could give them better flexibility to manage their production resources. Though no direct evidence of cartelization of the employers could be found on labour matters like fixing wage rates<sup>16</sup> however the presence of a strong association of employers in the Rudrapur region with no comparable union of workers to counter them, point towards greater power with employers.

### **Rudrapur Fieldwork: Some Insights**

The extensive fieldwork conducted at the Rudrapur industrial area brought out the facets of contract labour system prevailing in a region with abundant supply of unskilled labour. The field visit to multiple industries and interviewees conducted

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<sup>16</sup>It was seen that the Kumaon Garhwal Chamber of Commerce and Industry (KGCCI) acted as a formidable pressure group to put the cause of employers before government agencies and was aptly working on many other fronts for protecting the interests of the employers.



over an elongated period in the region with workers brought out the intricacies of prevailing labour relations in the region. The data gathered from contract workers through semi-structured interviews<sup>17</sup> is placed in tabular form in Tables 5.1 and 5.2.

From the data compiled, it can be seen that about three-fourth of the contract workers were working in the region for less than 6 months, while 90% were engaged for less than 2 years. Only a small minority of workers were found to be engaged for more than 2 years in the region. The figures show the high turnover rates<sup>18</sup> of labour prevailing in the region and showcase the concern raised by some enterprise managers later in the chapter on high absenteeism and infrequency among the contract staff. Also, it can be seen from the data gathered with regard to personal details that about 85% of the workers were within 45 years of age—thus very few workers preferred to opt working at Rudrapur as a late-life option. Of course, it might be the case that<sup>19</sup> workers find it difficult to withstand the hard work when they are older. From the background of the workers, one can see that a majority of them belong to rural areas and very few were from urban region. Almost all the workers who disclosed their caste were found to be from the backward caste. Most workers belonged to the unskilled category with little formal education and had many dependents to cater to. Though in the interview questions were asked about the background and family income of the respondents; however, most respondents did not give a direct reply on their income status.

As seen from the data, vast majority of the workers were dejected with their status as contract workers. It was often said that there was huge difference between the status of regular workers who are respected and contract workers who are generally humiliated at the workplace. While the regular worker had some flexibility as regards coming in late to work and had to do light work, a contract worker—in spite of reaching before time and slogging whole day had a faceless existence. It was also said that there were few rewards, incentives or compensation for innovation and hard work, often benefits accruing due to good work of a contract worker were bestowed upon the regular worker or the supervisor, i.e. the entities that are recognized in the system. Though in the survey-data it comes that about 80% of the workers were somewhat satisfied with their payment terms and hours of work and little less than 40% were overall okay with the contract labour system, these were responses expressing satisfaction that they had received what they were promised by the contractor before the start of work. Most workers were unconcerned with stipulation on minimum wages or minimum hours of work, but instead argued that as the contractor had delivered what he had promised—they were

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<sup>17</sup>Though as acknowledged by Phellas et al. (2012), data collected through semi-structured interviews are mostly qualitative and less quantitative, thus comparison is difficult; however, an attempt is here made to tabulate the responses for a quantitative study.

<sup>18</sup>Labour turnover rates are used for statistical projection of workers switching jobs in a region. It can be further analysed in terms of accession rate and succession rate. For details see, [http://labourbureau.gov.in/STAT\\_ASI\\_JUN2014.pdf](http://labourbureau.gov.in/STAT_ASI_JUN2014.pdf).

<sup>19</sup>It could also be assumed that some workers got absorbed into regular work after some years; however, this could not be ascertained from field data.

**Table 5.1** Personal information of contract workers, Rudrapur

Total contract workers interviewed (sample size) = 105						
Age	<20	20	20–45	70	>45	15
Background	Rural	60	Semi-urban	30	Urban	15
Education	Illiterate	10	Matric (10th class) and below	55	>Matric	40
Caste/class <sup>a</sup>	Backward	15	OBC	5	Upper	
No. of family/dependents	<4 (small)	20	4–8 (middle)	65	>8 (Higher)	20
Type of industry working in	Large	40	Medium	40	Small	25
Working since	<6 months	80	6 months–2 years	15	>2 years	10

+85 respondents preferred to not to disclose their caste/class status

<sup>a</sup>In India, a person is born to a particular caste which also has been given legal status. For legal status of caste in India, see, Ministry of Social justice and empowerment website, <http://socialjustice.nic.in/Viewdata?mid=76656> (accessed on 14.04.18)

**Table 5.2** Responses of contract workers, Rudrapur

Total contract workers interviewed (sample size) = 105					
S. No.	Type of inquiry	Response type			
		Yes/fully/good	Somewhat/partially/average	No/never/poor	Not known/nil reply
1.	Whether satisfied with the contract labour system	25	15	60	5
2.	Satisfaction with payment terms/hours of work	35	50	20	
3.	Status at workplace	5	35	60	5
4.	Reward at workplace	10	25	65	5
5.	<i>Role of</i>				
	Contractors		75	10	20
	Union leaders			35	70
	Enforcement officials			5	100
6.	Knowledge of labour laws		15	30	60
7.	Relation with regular workers	40	30	20	15
8.	Whether formation of Unions/associations has/may improve/improves their position	80	10		15
9.	Impact of workers' association/unions on production	35	15	20	35
10.	Awareness of national/international initiative on collective bargaining				105

satisfied with their compensation.<sup>20</sup> A fair good number of contract workers had no ill-will against the regular staff or the contractor and said that they had decent working relations with them. Only about 15% of the workers had some inkling of

<sup>20</sup>It was found that workers who were promised even Rs. 4500 (\$69) monthly for 12 h of daily work were satisfied when they were paid accordingly at the end, though he/she may be otherwise dejected with the quantum and nature of work.

labour laws and/or regulations, but had no idea of any national or international collective bargaining initiative. None of them had interacted with any labour enforcement official or a union leader of regular workmen and were thus unaware of the role of such functionaries. However, to the authors' surprise most respondents were aware of the strength of collective bargaining though in a primeval sense. The workers said that they belonged to groups of individuals belonging to the same village, caste or clan at the workplace and cited numerous instances of their successful collective bargaining efforts with the contractor or principal employers on petty matters. On being questioned on a contract workers union at the workplace duly recognized by the employer, about 85% clearly felt that such an association would give them a voice at their workplace. None disagreed on the importance of CB at workplace. On the question of employers' apprehension about the effects of CB on production, most workers felt that they would perform better when they had a voice in the system, but a good number of workers felt that the effects could only be seen when the things shape up to counter the fact that they had no unions or association to represent them jointly at their workplace.

## 5.2 Rudrapur Case Studies

The limited fieldwork experience over the summer and winter of 2013 was followed by a return to the field in 2014 to pursue detailed case studies of firms representing three types of industry which in turn represented the general nature of industries located in the region.

### 5.2.1 *Medium-Scale Seasonal Enterprise*<sup>21</sup>

We start with the case associated with a unit that was both medium-scale and seasonal—The enterprise studied was manufacturing rice bran oil, de-oiled cake (animal feed) and other products from agricultural by-products. Given the very nature of the raw material used as inputs, the industry is seasonal and showed fluctuations in production and consequently in the demand of labour. Contract

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<sup>21</sup>As per the Micro, Small and Medium Enterprises (MSME) Development Act of 2006, a medium enterprise is where the investment in equipment is more than two crores rupees (\$0.3 million) but does not exceed Rs. 10 crores (\$1.5 million) for manufacturing sector industries as per Ministry of Micro, Small and Medium Enterprises recent ceilings).

labour<sup>22</sup> is the main form of employment, with regular workers forming a small percentage of the working strength of the unit. As the industry is seasonal, migrant labour formed the bulk of the labour force with tasks that were mainly confined to loading and unloading of the raw material and products. The industry was a proprietary firm with an entrepreneur heading the family enterprise with his son and other relatives assisting him in the business. Located at the periphery of the main Rudrapur industrial area, the enterprise was aptly situated at the midst of the rice-growing region. However, to compete in the market, the industry needed to produce cheap rice bran oil and other products to face-off competition from similar industries located in other parts of the country and to counter still cheaper imports from China and other producing countries.<sup>23</sup>

**State of Labour:** The labour force consisted primarily of migrant workers from Champaran and other regions of eastern state of Bihar who were found residing on the unit premises on a location facing the road. The labourers were in the same groups as were the case in the village, region and/or caste/community in Bihar, which was apparent from their language and appearance. As they were found residing in industry premises on the road side, one could easily approach them.<sup>24</sup> Upon being approached, all the workers immediately got curious and surrounded the interviewer. It was difficult to imagine all the workers staying in two rooms of size about 10 ft. × 15 ft. with cooking area inside one of the rooms (see, Photo 5.5). The living area made one think of urban slum dwellings. Over this visit, it was found that the workers seemed to be cheerfully engaged in some game of cards. It was said by the workers that their work depended on material received in the factory and that since the last three days no material was received hence they were without work though their '*khuraki*'<sup>25</sup> was adding up. The workers were engaged for loading/unloading for which payment was made through the labour contractor on per piece basis. No other payment or facility was provided by the industry to the workers. The workers seem to be aware of the prevailing rates of loading/unloading present in the region and were ready to migrate to other regions in the country (like Punjab) where better rates or more work was available. On enquiring about the contractor through whom the workers were employed, it was

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<sup>22</sup>Though termed as contract labour due to the presence (*de-jure*) of a contractor however for all practical purposes the workers represented informal labourers with no legal coverage whatsoever.

<sup>23</sup>See, for details, <http://www.commodityonline.com/commodities/oil-oilseeds/ricebranrefinedoil.php> (accessed 8.2.14).

<sup>24</sup>Normally, wherever labourers are residing or working within the industry premises, prior permission from the management need to be taken for interview.

<sup>25</sup>'Khuraki' is the daily diet cost charged by the contractor for providing daily meal to the workers. It is generally deducted from the salary to be paid before the workers leaves for home or some other destination of work. As informed by the workers, the existing rate of 'khuraki' was Rs. 65 (\$1) per day.



**Photo 5.5** Living-cum-dining room of workers at the Medium Scale Seasonal Enterprise, Rudrapur

surprising to discover that one among the workers (see, arrow in Photo 5.6, the person with a paper in hand is the contractor), who was himself illiterate, was acting as the contractor for the workers. The contractor failed to produce any registration paper or document of registration—in fact he seemed to have no idea of any contractual obligations. It was very much evident that the contractor was a shadow contractor, put up by the management to manage work of the factory. On being questioned, the contractor said that he and his elder brother were earlier labourers like others however gradually they started bringing workers from their village in Bihar and providing labour to industries. His brother has a knack of identifying industries that require labour in different regions and accordingly they charter their movements as per his directions. The contractor and the workers had no clue of any social security program or insurance scheme for the workers. The labourers however seemed to have no ill-will against the contractor or the principal employer for not providing them any social security benefits. One of the workers who seemed to be more literate than others even assisted the contractor in answering some of the difficult questions.

Turning to issues of collective bargaining and union formation, the workers were of the view that such an instrument was not possible in their type of irregular mobile



**Photo 5.6** Interviewing the contractor at the Medium Scale Seasonal Enterprise, Rudrapur

work, moreover most workers opined that as they worked in a group and being from the same region/village, they work in tandem with each other and may strike work if one among them is insulted or mistreated by the owner. One of them narrated an incident of accidental death of a fellow worker in Karnal, Haryana, in which the local police colluded with the owner and forced the worker's family to leave for home with little compensation in spite of vociferous protests by all the fellow workers. Others echoed this concern saying that since they are from a distant region, sometimes employers collude with the local workers and police to usurp their genuine rights for which some mechanism of support was necessary.

**Management View:** The principal employer or the owner in this case is a middle-aged entrepreneur who was also an office bearer of the Kumaon Garhwal Chamber of Commerce and Industry (KGCCI), a powerful organization of entrepreneurs and heads of industries in the region with headquarters at Kashipur and with branch offices at Dehradun and Rudrapur.<sup>26</sup> Being in the family business and also an office bearer of the KGCCI, he explained things from his perspective. When

<sup>26</sup>For information on Kumaon Garhwal Chamber of Commerce and Industry (KGCCI) see their website, <http://www.kgcci.in>.



asked for labour registration papers of the firm and the contractor, he said that they are not readily available. Oblivious of the state of living condition of workers residing in his premises just outside the factory gate, he refused to acknowledge any possibility of exploitation of workers in the region. On the contrary he said that entrepreneurs like him were always hard pressed to retain labourers and were sometimes obliged to meet up with their uncalled demands. His reasoning was as follows—he felt that labour is purely a matter of demand and supply; in Rudrapur due to the presence of many industries, workers were free to move to those industries which paid them better or gave better facilities. The government, he felt, should leave labour to the market mechanism and not interfere in the market. On being questioned about labour laws like, minimum wages—he countered the government policy of paying *aganwadi* workers, home guards,<sup>27</sup> etc., below minimum wages, while forcing such a law on the entrepreneur. He felt that such laws are there to keep the entrepreneur at his/her toes so that he/she fulfils the unsolicited demands of government officials; moreover, there were so many laws besides labour laws which the entrepreneur was supposed to cater to, and it was simply impossible to fulfil them. In fact, he blamed this existing state of affairs as the reason that was forcing entrepreneurs to close down their industries or sell them to MNCs. As a researcher, he asked the author to do research and find out, how many children of entrepreneurs have taken to the profession? On a serious note, he requested to look into questions surrounding how small entrepreneurs like him can run a seasonal type of business as there was no provision in present labour laws for such an industry.<sup>28</sup> He felt an industrialist takes immense risks to run his business which in turn creates jobs for workers, and the government should help in providing ample flexibility in the system to support them.

On granting right of collective bargaining to workers, a counter question was raised asking the author to find out the number of entrepreneurs who owned small enterprises and where strikes take place. He suggested that strikes take place in units that form large management-controlled industries, where the management does not keep in touch with their workers. Moreover, he continued, strikes take place in government establishments and big industries where workers get enough and still they want more.<sup>29</sup> In small industries like this, the owner keeps tab on the problems of each and every worker himself. Thus, he said, such a right is totally irrelevant in relation to entrepreneur owned small industries. The owner avoided any direct reply on questions related to profit margins and profit sharing.

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<sup>27</sup>There are about 1.3 million *aganwadi* workers (for details see, [www.wcd.nic.in/schemes/anganwadi-services-scheme](http://www.wcd.nic.in/schemes/anganwadi-services-scheme)) and half a million home guards who are considered as voluntary service and not provided minimum wages and social security coverage (ESI/ EPF) in many states of India.

<sup>28</sup>As per Contract labour (R&A) Act, the Act applies to every establishment which is in operation for more than 60 days in a year, even though having seasonal character (Section 1(5)). The EPF act requires deduction to be made even for a workman employed for one day.

<sup>29</sup>He cited the recurrent strikes conducted by bank employees of nationalized banks in India who are getting all the benefits under labour laws, to support his arguments.

**Labour Standards:** As we have noted, the company provided living arrangements were found to be deplorable as many workers were sharing the same cramped residential space. The payment of minimum wages and hours of work could not be established<sup>30</sup> and no social security benefits were made available to the workers. The workers being mobile and working in seasonal industry, ‘security of tenure’<sup>31</sup>, was not material. It may also be noted that no women or child labour was evident in the concern visited.

**Collective Bargaining:** Again, as we have noted there was no organized collective bargaining seen among the workers however primordial alliances do exist in groups among them.

### 5.2.2 Large-Scale FMCG Industry

The next case study pertains to Parle Biscuits Pvt. Limited, which is a part of the multi-million dollar Parle Products Ltd., which is a leading fast-moving consumer good (FMCG) brand name concentrating on the biscuits and confectionery sector in the country.<sup>32</sup> It has 14 self-owned and 75 biscuit manufacturing units given out on franchisee basis in different regions of the country. Parle has two manufacturing plants in the Rudrapur region one at Sitarganj and other in the SIDCUL Rudrapur industrial area. Parle plant in the SIDCUL area of Rudrapur is a large employer of contract workers in the region. The company also has a sizable number of regular workers (about 50%) who seem to be better placed than their counterparts on contract.<sup>33</sup> The company had a ‘no vacancy’ board hung on the gate to dissuade job seekers who (as told by the guard) keep visiting the company on regular basis in the hope of a job. Long queues of contract workers were seen waiting for their shift so

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<sup>30</sup>Even when calculated with the Food Corporation of India (FCI) rates (based on some of the tender documents) for loading and unloading, the individual payments to the workers could not be ascertained with respect to the number of hours laboured.

<sup>31</sup>‘Security of tenure’, in the case of contract workers can be termed as ensuring continuity in the case of change of contractor. In many organizations one can see the same workers continuing inspite of change of contractor, but whereas in employer controlled settings the workers are forced to continue on the terms of the contractor, in the workers’ controlled settings ensured through collective bargaining the workers continue on mutually agreed conditions. The Contract Labour (R&A) Act, 1970 however makes contract workers as employees of the contractor and requires workers to change on change of contractor. Some Court judgments have considered continuity of workers in spite of change of contractor as a likely sign of Sham contract. (For full details on Sham contracts see, Gujarat Electricity Board, Thermal Power Station v. Hind Mazdoor Sabha case (1995 SCC (5) 27).

Security of tenure for contract workers in seasonal industries can be considered as assurance of getting job in next season.

<sup>32</sup>For details see Parle website; [http://www.parleproducts.com/about\\_parle/overview.php](http://www.parleproducts.com/about_parle/overview.php).

<sup>33</sup>It was told that the Parle Rudrapur plant employs about 500 workers in total. The quantum of contract workers keeps on changing due to seasonal variations in the demand of biscuits, on an average it was conveyed that the ratio of regular workers to contract workers remains 50:50.





**Photo 5.7** Workers at the factory gate at the Large scale FMCG industry, Rudrapur

that they could enter the company premises (see, Photo 5.7). There are five contractors supplying workers to the company who control their entry and exit at the company gate.

**State of Labour:** It seems to be the case that most of the workers engaged in the plant were *paharis*.<sup>34</sup> The contractor and the workers evaded speaking to a stranger in front of the company gate; however, they opened up when taken nearby aside. The workers said that earlier in 2011 there was a strike by regular workers in which some of the contract workers had also participated, after which about 300 contract workers and few regular workers were removed by the company. Since then the company keeps a strict watch on the workers. The contract workers interviewed complained of little incentive to work for the company and were willing to shift to better companies if the opportunity arose. It was said that the contractor exploited workers by cutting their salary on minor reasons, and additionally he does not disclose EPF or ESI contribution details, though these are deducted from the salary

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<sup>34</sup>Though not very obvious, but at the ground level one can feel workers distinguished on being *pahari* (of the mountains) or *maidani* (of the plains).

of the workers.<sup>35</sup> The workers also complained of working for 12 h for the wages of 8 h. There was no job security or paid leave and the contractor could simply ask them to leave if they raised any issue. On collective bargaining, the view of the contract workers was that the contractor or the company may fire anybody found indulging in union activities. Earlier due to union formation some privileges were extracted from the management, but with the break-up of the union, each worker was left to fend for himself.

**Management View:** The management of M/S Parle Biscuits SIDCUL plant is professionally managed through policy directives from the headquarters and the regional unit. The plant head sits at the Sitarganj plant, and the Human Resources department of the Rudrapur plant is headed by a young professional who was found to be cognizant with contract labour issues.<sup>36</sup> He apprised the interviewer that all attempts are made by the management to fulfil the requirements of labour laws but they are unable to stop the dealings of the contractor. Contract labour law provision stops the management from directly dealing with the workers or interfering in the affairs between the contractor and their workers. Moreover, he said that it was not clear in law as to which type of jobs contract workers can be engaged for and for how long. On the need for contract workers, he informed the interviewer that in industries like Parle the demand for labour keeps on fluctuating and thus the management cannot afford to hire full-time workers on a regular basis. Later, while on an on-site visit at the biscuit manufacturing plant, he showed the author contract workers working alongside regular workers but only in unskilled manual side jobs like packaging and segregating. On being questioned for the reason behind not engaging contract workers in machine operation and other skilled jobs, he stated that there was a severe problem of irregularity and absenteeism among contract workers. Most contract workers did not last for more than a month and the company had to regularly train new workers.

On the issue of grant of collective bargaining rights to contract workers, the management representative put out the view that though these kind of rights if responsibly worked may help the cause of workers in the long run, but in general it has been seen that worker's unions are often hijacked by unscrupulous outside members who have no concern for the production or livelihood of the workers. He cited the episode that took place around February–May 2011, when due to a higher wage settlement after prolonged strike in a neighbouring FMCG plant,<sup>37</sup> the regular workers along with contract workers of his own plant started agitating to implement similar

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<sup>35</sup>The contractor agency found working in Parle was a renowned Pune based manpower company providing manpower to organizations all over India, including some of the top establishments of the country. For details see, <http://bvgindia.in/>.

<sup>36</sup>While acknowledging the issues which the contract workers face, he recounted numerous efforts many of them initiated by him in building better relationship with all employees including contract workers.

<sup>37</sup>It was later found that the strike and settlement took place in Nestle Pvt. Ltd in 2009 (which is the biggest FMCG unit at the Rudrapur region), under the aegis of Nestle Mazdoor Sangh (NMS) an offshoot of Bhartiya Mazdoor Sangh (BMS). BMS have wing in both Nestle and Parle units at Rudrapur.

wage agreement. In spite of an agreement reached with majority of the employees, some political groups constituting of outsiders along with few workers continued to interrupt the plant work and even started threatening the management and properties of Parle. It was then that the management as a 'last resort' decided to handle the situation with a heavy hand and expelled most of the unruly workers. The HR head also recounted that after expelling the workers the management signed an agreement with the union representatives in the office of the Labour Commissioner for the peaceful running of the factory. Since the labour unrest of 2011, the management has shown zero tolerance towards union-related activities in its campus.

**Labour Standards:** During visit to the biscuit-making sites and other workplaces, it was observed that the working conditions provided by the company to contract workers were same as those provided to regular workers and can broadly be said to be decent. Most welfare provisions like on-site toilets, restrooms, first-aid facility and canteen were found at site.<sup>38</sup> However, as per assessment made on the basis of the labour profile<sup>39</sup> and discussion with workers and the management, it was surmised that the minimum wages<sup>40</sup> and ESI/EPF of the contract workers were not being met. Working hours are much longer<sup>41</sup> than prescribed provisions. There were no paid weekly off, holidays or transport facilities provided to contract workers as were being provided to regular workers. However, some incentives in the form of biscuit packets were given as reward for good or exceptional work. It may be noted that no child labour was seen.

**Collective Bargaining:** The regular workers are represented by the Parle Mazdoor Sangh which is affiliated to the Bhartiya Mazdoor Sangh (BMS).<sup>42</sup> The contract workers have no union and are not represented by the union of regular workers. As discussed earlier, when the collective bargaining episode took place in 2011, contract workers joined the regular workers in their strike on the promise that their wages would increase. An agreement was finally reached after months of protest but was declared to be too little by the political leaders involved. Due to continued work disruptions, infighting within the union, politicization and outside interference; the management got perturbed and managed to get the union dismantled using all means.<sup>43</sup> The Parle

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<sup>38</sup>The management stated that it provides subsidized food to the contract workers at par with regular employees; however, the same was not confirmed by the workers interviewed.

<sup>39</sup>As the workers sometimes being illiterate and ill-informed are unable to provide correct information, an assessment is made by the author based on parameters which are grouped as 'labour profile'. Labour profile is generally based on, background of workers in terms of their educational level, awareness, collective strength; prevailing labour market rates; rates in neighbouring factory, demand-supply of labour; category of workers, etc.

<sup>40</sup>The minimum wages w.r.t. the prescribed hours of work.

<sup>41</sup>As told by most workers, they worked for 12 h and paid for 8 h of work.

<sup>42</sup>The BMS is numerically the largest and one of the most powerful workers unions in India. For details see <http://www.bms.org.in/>.

<sup>43</sup>It was told by some contractual employees who were earlier working as regular employees of the company that Parle management took the help of police, and even local goons provided by the contractors, to physically remove the workers from protesting against their dismissals.

management in collusion with the local administration and contractors successfully broke the strike and more than two-third of the contract workers were dismissed by the management. The contract workers who did enjoy better terms in the past before the CB episode were the worst sufferers in the whole process. The fate of the workers formerly involved in collective bargaining efforts was found to haunt the existing workers and prevented them from organizing themselves again. The past experience of the management and lack of clear laws on collective bargaining for the contract workers aids the Parle management in keeping the workers disorganized. The regular workers' union though a branch of a national federation remains unconcerned with the issues of the contract workers who constitute half of the workforce. As the management considers CB as an irritant and with the workers divided, it manages to keep CB at bay by adopting over and covert management techniques.<sup>44</sup> The contract workers in such a scenario have no voice in the system.

### 5.2.3 *Heavy Automobile Industry*

We now turn to our third case study in Rudrapur area—with worldwide presence in 40 countries, Mahindra Tractors Pvt. Ltd. claims to be the largest tractor manufacturer in the world volume-wise.<sup>45</sup> Part of the well-known Mahindra group, Mahindra Tractors Pvt. Ltd is a major brand name in the farm automobile sector. The Rudrapur plant is one of the largest manufacturing factories of Mahindra tractors in the country. It is apparently the case that the Mahindra Rudrapur plant has 450 regular workers and 258 contract workers. On preliminary inquiry, the author got to know that the status of contract workers was better than other similarly situated contract workers at the Mahindra Rudrapur plant due to joint collective bargaining efforts. It was particularly interesting to do an in-depth study of this factory because it became apparent that there was a healthy atmosphere prevailing on the premises among all section of the employees, as well as between the employer and the employees in spite of the strong undercurrents of collective bargaining.

**State of Labour<sup>46</sup>:** The state of contract labour appeared comparatively better at Mahindra tractors due to several reasons as was uncovered in the process of gathering information for the case study. Firstly, the company provides meals and snacks to all the employees including contract workers at a very nominal cost. The

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<sup>44</sup>The scenario is a representative of the prevailing state of things in most large-sized establishments at Rudrapur.

<sup>45</sup>For details see, <http://www.mahindractorworld.com/> (accessed on 9.02.14).

<sup>46</sup>Data was collected on the state of labour from the factory gate itself by interviewing the workers who came out in-between their work-shift. No permission was granted by the Mahindra management for the fieldwork inspite of repeated persuasion.

workers felt elevated by the fact that the company did not distinguish between them and the top management. The same food is served to everybody at the canteen and all members of the company are supposed to queue up and take meals together at the same table. Secondly, it came to be known that the same contractors and workers had been engaged in the factory for many years and that the contractors and workers enjoyed a healthy relation. In a subjective sense, it could be easily noticed that the uncertainty visible in the eyes of the contract workers waiting at the gates of other factories in Rudrapur was not evident among the contract workers at Mahindra. Upon inquiring further, it came to light that due to the combined efforts of the national and local chapter of *Bhartiya Kamgar Sena*<sup>47</sup> and the *Netas* (self proclaimed leaders) within contract workers, the management had signed an agreement a year before (2013) which gave many benefits to contract workers bringing them at par with regular workers and also safeguarded them from arbitrary removal till they attain the age of 58 years. It was conveyed that with the signing of the agreement, absenteeism and irregularity among contract workers have greatly reduced and they keenly participated in the affairs of the factory as was the case with regular workers. It was also apparent that the company seemed to follow a strict policy in implementing labour laws. All the relevant laws like the Contract Labour (Regulation and Abolition) Act, 1974, the Industrial Disputes Act, Factories Act were prominently displayed at the entry of the premises alongside the mandatory display of the rates of minimum wages. The contractors interviewed showed the author, the EPF deposits list, payslips and ESI smart cards which they had kept at the company gate for information of the workers. The contractor who was signatory to CB agreement with the management put out the information that since he was being paid a reasonable commission<sup>48</sup> by the company as stipulated and on time, his firm was inclined to fulfil all rightful dues of the workers as per the contract document. When asked about the quantum of commission the contractor was getting from Mahindra and what should be the commission amount which can be considered as reasonable—he replied that anything between 10 and 12% was adequate.<sup>49</sup> One of the contract workers whom the author met at the factory waiting

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<sup>47</sup>BKS is a Mumbai based union see, <http://www.suryakantmahadik.in/>.

<sup>48</sup>Payment of commission to contractors' is more often the criteria for selecting the contractor by an enterprise. In public contract, 'commission' form the basis for tendering and the contractor who quotes the lowest commission (L1) is mostly selected for manpower supply or work contract. While competing on commission it is seen that in majority of cases contractors quote low commission rates just to grab the order and later manage his/her profit by adopting illicit labour practices or/ and deducting labour wages. Many contractors and even principal employers agree that 'competition on commission' leads to lowering of labour standards; however at the same time otherwise the criteria of choosing a contractor on 'competitive bases' by giving 'equality of opportunity' becomes obscure.

<sup>49</sup>The quantum of commission of the contractor which shall be reasonable is often a matter of dispute. While the contractor seek a high percentage quoting his expenses on, fetching the workers, supervisory staff, maintaining office, dealing with departments like ESI/ EPF, demurrage-payments, besides taxes; the principal employers consider anything above the taxation cost as reasonable.

lounge was not allowed to work as he could not produce his medical fitness to the contractor before resuming duty. This worker said that he had an accident at home due to which he was on paid medical leave. All medical expenses had been met through the ESI card provided by the contractor. Other contract workers present there also confirmed that paid medical leave, earned leave and casual leave were all available and allowed to each worker. The workers also said that after the signing of the agreement with the management, they were getting regular pay hikes and bonus as applicable to regular workers though at a lower scale. The contract workers were even engaged in skilled work at the factory and were provided uniforms accordingly; however, no transport facility was allowed to them. Most of the workers also stated that the production at factory had improved after signing of the agreement; some even gave figures on the actual numbers of tractors being produced before and after the CB agreement.<sup>50</sup> The contractors interviewed at the waiting lounge agreed with the workers' version that production had improved after the agreement as now the workers were much more disciplined and showed more dedication towards work. On being questioned on his status as a contractor, now that an agreement had been signed directly between the management and the workers, the contractor replied that though his status has now become obscure as he had little control over 'hiring and firing' workers; however, he continued looking after the affairs of the workers as an HR firm since for all legal purposes the workers remained his employees. Moreover, it was pointed out, this agreement was applicable only on to the already employed workers and not to the few new workers who had joined since the agreement had been signed.

**Management View:** Getting the management view on the state of affairs prevailing at Mahindra Rudrapur plant proved to be the toughest episode in the whole fieldwork.<sup>51</sup> After seeing the state of labour and the particular CB arrangement prevailing in the plant, the management version was particularly essential—especially to discern whether the effects of CB on production were corroborated by the management. After pursuing the issue for about a year, the management finally relented and a brief interaction was possible. The Sr. manager who gave the interview said that Mahindra Tractors Ltd. provides good working environment and maintains labour standards of the highest kind. He further said that the company did not differentiate between a regular workman and a contractual workman and that all

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<sup>50</sup>As the figure quoted by the workers greatly varied this has not been reproduced here, but there was a general agreement among all workers on the increase of production since CB arrangement.

<sup>51</sup>Unlike the workers and contractors who were interviewed outside the factory gate, to get the official view from a senior functionary of the company required an appointment and entry into the company premises. The HR head of the plant who was a gentleman from the army background refused entry in the factory premises on some pretext or other. Later when pursued he plainly said that, why should the company share secrets with researchers with no concern for the company? The plant head though responsive, when contacted on several occasions told that he was too busy to have such an interaction. It was only after exploring all options for almost a year that the author finally requested a senior official from the labour department to intervene and arrange an interview in the interest of research. Even after his phone call and fixing an appointment, getting the short interview cost the author almost a whole day mostly waiting at the reception.



workers were treated equally which can be seen at the mess table where even the plant manager shares the same food as the manual worker. He felt that in such an environment the workers also do the best for the company and place their faith on the management. On collective bargaining agreement signed with the contract workers, he opined that the management had not signed any direct agreement with the workers but the contractor had complied with some of the demands raised by the workers with the concurrence of the management. He laid emphasis on the 'productive clause' incorporated in the agreement and stated that any collective bargaining effort can only be sustainable in the long run if the productivity concerns of the management are taken into consideration, as any company cannot go on increasing its financial burden without a simultaneous increase in productivity. Mahindra had a well-established practice of sharing workload within the company which had been formalized through internal research and the wages of the workers had only been increased on the basis of an undertaking signed by the workers to raise their MPS.<sup>52</sup> The official stated that he did not face any problem with the contract workers or the contractor after signing of the agreement. On being specifically asked about the effects of the collective bargaining agreement on production, he stated that collective bargaining had benefited all sides including a boost in production. After the signing of the agreement, tractor production has almost multiplied by 1.5 times,<sup>53</sup> also absenteeism and indiscipline among the contract workers had greatly reduced. On the role of the contractor after signing of the agreement, he answered questions saying that the contractor continues to be the real employer of the workers and manages their HR matters.

**Collective Bargaining:** The CB agreement prevailing at Mahindra tractors Rudrapur plant was found to be exemplary in view of the satisfaction expressed by the workers, contractor, union leaders and even the management on the running of the CB arrangement.

As explained by one of the union leaders<sup>54</sup> of contract workers, the contract workers of the unit started organizing themselves for the first time in 2011 against the discriminatory approach of the management. It took several episodes of sit-ins and demonstrations by the workers to finally make their voices heard by the management. As the regular workers and their union (BKS) extended support to the contract workers in their struggle against the management, the management was

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<sup>52</sup>MPH as understood is the rate at which one tractor is assembled in the production line during peak production demand. It was also conveyed that from an earlier speed of 7–7.5 min, the workers have agreed to reduce the MPS to 5.75 min.

<sup>53</sup>It was learned by some of the colleagues of the official interviewed that while earlier 140–150 tractors were produced per day, after signing of the agreement 210–225 tractors were being produced per day with the same manpower strength at peak time.

<sup>54</sup>The union leader was interviewed at the factory premises and later was also called to present his experiences of mobilizing the contract workers, at the CSLG/ICLR conference on 'Precarious workers in the manufacturing sector of India' held on 5 November 2014 at the JNU convention centre, New Delhi. The views expressed by the union leader was also seconded by the President of the local chapter of BKS regular workers union during his interview and confirmed by supporting documents.

compelled to listen to their grievances. It was in 2012 that a charter of demands was raised by the contract worker through the BKS, in response to which the management of Mahindra tractors produced a counter list of production requirements expected from the contract workers to be complied with if their demands were to be met. The negotiation process involving the management representatives, contract workers representatives (through workers committee) and the leaders from the BKS central unit<sup>55</sup> continued for about a year after which the management agreed to the demands of the workers but in turn required an undertaking from the contract workers agreeing to fulfil the levels of production sought by the management. It was also agreed that the management will have full flexibility in deputing the contract workers on any job required in the factory. The agreement was finally signed on—25th May 2013 between the BKS with representatives of the contract workers and the contractor which was duly vetted by the officials from the management side. As per the agreement, a total of 181 workers<sup>56</sup> working through a single contractor had been divided into four different categories depending upon their duration of service within the company. The benefits of pay raise and arrears have been granted based on the category to which the worker falls upon. Besides a substantial pay rise, bonus, annual increment, arrears, etc., the agreements also contained explicit provisions for medical insurance for the worker and his/her family members, easy loan, paid leaves, casual leaves, holidays, uniforms, etc., at par with the regular workers of the same category.<sup>57</sup> It was also learnt that the contract workers at Mahindra tractors regularly engage in union-related activities. A re-election took place in the union once the agreement had been signed whereupon a new set of office bearers were elected. The office bearers of the union regularly corresponded with the management and union leaders of central BKS and raised their demands relating to bonus, arrears and other issues. It needs to be mentioned that there were also indications of tensions between the contract workers union and the regular workers union. The rationale of forming two unions in same premises emanating from the same parent body (BKS) sounds at one level a bit peculiar, however, when the issue was discussed with respective union leaders separately, it was said that this bifurcation was mandated by law<sup>58</sup> and was also

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<sup>55</sup>It was seen on examination of the documents that the office bearers of BKS based in Mumbai were involved in the process of collective bargaining on behalf of the contract workers at the Rudrapur unit.

<sup>56</sup>It was seen that almost 70% of the contract workers were covered under this agreement, the remaining workers were either very new or were unwilling to bind themselves in productivity clauses.

<sup>57</sup>While on perks and privileges, equivalence of contract workers and regular workers of same category to certain extent was established by the agreement; however, substantial difference remained in pay and allowances of regular workers and contract workers. For the regular workers also similar agreement though much elaborate and signed directly between the management and the union (BKS) exists. Copy of both the agreements was obtained by the author though with some difficulty during the field visit.

<sup>58</sup>The Trade union act, 1926 (Section 6 (e)) speaks of union membership of 'connected' employees. As the contractor is the *de-jure* employer of contract workers, for CB or for raising an



required by the management. It was also pointed out there would be several problems in case of joint union as regard selections, membership, etc. The Trade Union Act allows multiple union registrations against same employer, and in this case, legally there are two separate employers (Mahindra tractors and the contractor) for regular and contractual employees within the same premises. Though no major conflict was noticed between the two unions during the time of research; however, it is apprehended that separate unions of separate categories of workers may cause frictions in the future.

**Official View:** The labour officials of the state Uttarakhand Labour Department posted at Rudrapur were interviewed after getting the version of the Mahindra management—they expressed their ignorance on such an agreement signed by the contract workers of Mahindra tractors with their contractor, BKS and the management. The officials took the view that even if such an agreement was signed, the agreement would be illegal and would not stand scrutiny by the law of the land. The official interviewed said that Contract Labour (R&A) Act under Section 10 prohibits contract work if the nature of the job is perennial and if such an agreement had been signed which grants job security to the contract workers up till the age of 58 years, it is a fit case where the ‘abolition’ clause could be applied. On being questioned on the benefits which the agreement had bestowed upon the contract workers who were otherwise deprived of their dues, the labour official refused to budge from the position of the law as contained in the Act and instead questioned the management for not regularizing the contract workers in perennial jobs and keeping them in a state of flux by signing a dubious agreement which was unlawful. He also stated that since the powers of ‘abolition’ reside with the state, in such a scenario he is helpless and can only write to the state government recommending the abolition of contract labour from such perennial jobs. It was also pointed out that this would also involve a time taking procedure.<sup>59</sup> The labour official argued that the Factories Act and the Contract Labour (R&A) Act provide enough provisions for the welfare of contract workers and only if the management complies with these welfare provisions then no contract worker can be denied of his lawful dues.

On the overall scenario of contract system prevailing in Rudrapur, the official agreed that in spite of his best efforts, many inconsistencies exist due to the prevalence of unscrupulous contractors, and the illiteracy and unawareness of the labourers. This allowed many employers to maintain an informal environment in relation to their workers. After examining the record he confirmed that no exclusive union of contract workers is registered in the Rudrapur region. When questioned on local chapter of BKS with a registered union of contract workers at Mahindra tractors, he stated that he has come across instances when an union having wings in several states seek registration at Rudrapur; however, he had returned the case file

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industrial dispute, the BKS union leaders find it convenient to maintain separate membership and office bearers for them.

<sup>59</sup>Though on a side note the labour official acknowledged the lack of a clear provision of absorption of the workers on abolition and quipped that it was better to ignore such win-win position when nobody complains even if the same is at variance with law.

**Table 5.3** Labour standards in Rudrapur industrial area

	Medium-scale seasonal enterprise	Large-scale FMCG industry (Parle)	Heavy automobile industry (Mahindra tractors)
Minimum wages <sup>a</sup>	+	X	√
Working hours	+	X	√
Social security (EPF/ESI/BOWCESS) <sup>b</sup>	X	X	√
Working conditions <sup>c</sup>	X	√	√
Security of tenure <sup>d</sup>	+	X	√
Equal pay for equal work <sup>e</sup>	X	X	X
Equal remuneration to men and women	+	X	+
Special benefits under inter-state migrant workers' act, maternity act, etc.	X	X	+
Incentive/recognition/award for good performance	X	√	√
Child labour	X	X	X
Collective bargaining	X	X	√

<sup>a</sup>Minimum wages as, as per the specified hours of work

<sup>b</sup>BOWCESS or building and other construction workers (Regulation of Employment and Conditions of Service) Act provides for a cess to be imposed on all construction activities which need to be used for the welfare of the construction workers

<sup>c</sup>Working conditions as specified in the Contract Labour (R&A) Act and factories act

<sup>d</sup>'Security of tenure' in the case of contract workers can be termed as ensuring continuity in the case of change of contractor (for seasonal enterprise this may mean assurance of getting job in the next season)

<sup>e</sup>With regular workers as for performing same type of work as per Contract Labour (R&A) Rules (chapter III, rule 25 (2) (v) (a))

+ Cannot be established

√ Higher entitlements. Wages at enhanced rate with annual increments, and security of tenure up to 58 years of age as fixed by collective bargaining agreement

as, as per him, no provision exists in the rules under which a union can be registered simultaneously in several states.

**Labour Standards:** On examination of relevant facts and after discussion with officials, workers, contractors and the union leaders of Mahindra plant—it could be fairly well established that the labour standards in the Mahindra tractors plant for the contract workers were reasonably good, more or less at par with the standards existing for the regular workmen. Most of the provisions of the Contract Labour (R&A) Act and the Factories Act were found to be complied with. Even in the case of benefits like paid leave, medical insurance, hours of work and bonus<sup>60</sup> the

<sup>60</sup>On bonus howsoever there exist some grievances of the contract workers that they do not get at par with regular workers.

contract workers were at par with regular employees. However, the provision under the Contract Labour (R&A) Rules on ‘equal pay for equal work’ is not being fulfilled by the company. The company provides subsidized food and snacks to all its’ staff without any discrimination. Working conditions and safety features were found to be reasonably good—restrooms, toilets, canteen, first-aid and recreational facilities were found in place and no child labour was noticed.

To summarize—the detailed case studies of some of the select industries at Rudrapur show a wide spectrum of contract labour practices—from the indiscreet informal contract labour in a seasonal proprietary industry to the elaborate occurrence of hundreds of contract workers under multiple contractors in large industries, were reported. In-depth semi-structured face-to-face interviews conducted with union leaders, contractors, government labour officials and principal employers, besides workers gave us an impression of the state of contract labour system at the place. The prevalence of labour standards in these industries has been represented in Table 5.3.

Unlike the grim scenario prevailing in most of the industries of Rudrapur, the scenario at Mahindra tractors was found to be poles apart. It could be seen from Table 5.3 that due to collective bargaining in Mahindra tractors, the labour standards in the plant for the contract workers were reasonably good, more or less, at par with the standards existing for the regular workmen. Most of the provisions of the Contract Labour (R&A) Act and the Factories Act were complied with. This is quite in contrast with the other industries.

### 5.3 Fieldwork at DMRC

*The DMRC represents India trying to put its best foot forward and is moreover based in the national capital. Presumably such an organization is expected to practice the best labour standards.*

The fieldwork at Delhi Metro Rail Corporation was preceded with long parleys for getting required permission to do the fieldwork at DMRC premises in and around Delhi. Approaching DMRC officials directly at the Metro *Bhawan* headquarters proved to be a futile exercise as the corporation refused to engage with a research venture. Finally, the DMRC was approached through the Ministry of Urban Development (MUD) which has the administrative control over the corporation. The keen interest taken in the research by the then Secretary, MUD, followed by some phone calls made by MUD officials, led DMRC to allow field research at their premises. While the fieldwork was getting delayed on account of

pursuing permissions, attempts were made to conduct some interviews outside the gate at different DRMC premises, but in view of the scattered nature of establishments of DMRC, identification difficulties, security concerns and other apprehensions, the idea was dropped.

**About DMRC:** In 1995, the Delhi Metro Rail Corporation was registered as a joint venture (equal equity) company of Government of India and the Delhi Government for running an integrated Mass rapid transit system (MRTS) for the commuters of the National Capital Region (NCR). Commissioned in 2002 with a short stretch of about 8.5 km in the first phase, the corporation now runs metro trains on a combined route of about 252 km through more than 185 stations and boasts of running one of the most modern elevated and underground metro rail networks in the World.<sup>61</sup> The DMRC is one of the few metros in the world which has shown operational profit since its very day of first operation. With an impeccable track record of before time completion, world-class infrastructure, and spotless services, the Delhi Metro represents the face of modern India.

The DMRC has around 7000 regular employees, 10,000 contract workers in regular work and 30,000<sup>62</sup> contract workers in construction work.<sup>63</sup> To manage the contract workers, it was conveyed by the nodal officer<sup>64</sup> that there are four principal employers (PE) designated for different category of contract workers at DMRC.<sup>65</sup> For housekeeping work, the CGM (Civil) has been designated as the PE. Similarly for operators and station security, the GM (operations) has been defined as the PE. The Company Secretary has been delegated the powers of PE for contractual

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<sup>61</sup>For details on DMRC see, [http://www.delhimetrorail.com/about\\_us.aspx#Introduction](http://www.delhimetrorail.com/about_us.aspx#Introduction) (accessed on 14.04.18).

<sup>62</sup>The number of contract workers in construction varies as per the ongoing work. As informed by the nodal officer during discussions the existing strength of these workers were about 30,000 however during peak construction period in the first phase the number touched even 80,000. The number is however only indicational as many contractors hire sub-contractors or manpower contractors for short durations to complete their work.

<sup>63</sup>The annual report of DMRC speaks of '7035 highly dedicated personnel, 1124 in Project and 5911 in Operation & Maintenance Wing'. Also, it talks of itself as a 'caring organization' with a 'people's first policy' towards its' employees. However, there is no mention of the contract employees anywhere in the report or the website of the DMRC. See, DMRC annual report, 2012–13 at, [http://www.delhimetrorail.com/OtherDocuments/DMRC\\_Annual-Report-2012-2013.pdf](http://www.delhimetrorail.com/OtherDocuments/DMRC_Annual-Report-2012-2013.pdf) (accessed on 1.12.14).

<sup>64</sup>The Nodal officer (labour) who is also an HR manager is supposed to look after all labour matters of the construction activities of the DMRC; being well versed in labour related issues she was seen to be looking after labour matters of other departments also like sanitation, security. She was entrusted to coordinate the authors' research work at DMRC.

<sup>65</sup>The delegation of powers of Principal employer to different officials in the same premises is difficult to explain. For example at a Metro station, the PE of the TOM operators/ Contractual Security staff is different from that of the sanitation staff. The Contract labour (R&A) act though is silent about this aspect but as various provisions in the act entrusts responsibility of maintenance of restroom, toilet and other facilities on the PE, and as work outside the premises of PE is considered outwork (Section 2(i)(C)), the provision of a single PE for one premise seem implied.

employees at the Metro *Bhawan*. For the construction work which engages the major chunk of the contract workers and which is spread over around 200 sq kms., nine different chief project managers (CPMs) who are equivalent to chief engineers are designated as PEs of their respective sites.

**Management View:** Fieldwork at DMRC started in March 2014 with semi-structured interviews of the officials from the management side based at DMRC headquarters at Metro Bhawan. Most of the officials in their responses stated that the DMRC as a principal employer is very strict on labour laws, some even produced documentary evidence like terms of engagement, penalty imposition clause to support their claims and viewed that if ever there was some lacuna left on the part of contractor the same is fixed immediately when found. The DMRC enjoins each of its construction contractors to have a labour welfare officer<sup>66</sup> on its site and follows a policy of zero tolerance on labour matters and moreover labour matters are also monitored by DMRC labour welfare inspectors.<sup>67</sup> The Nodal officer showed BOWCESS cards issued by the Delhi Government Labour Department to construction worker of DMRC. She also said that there is no registered union of either regular or the contract workers within DMRC. One of the senior HR officials interviewed stated that cleanliness at metro station could only be maintained due to prevalence of contract labour system, as it was rather difficult to maintain high cleanliness standards with regular workers. Quoting his experience in the Indian Railways, the official added that unlike the Railways where there are regular problem of absenteeism and indiscipline among regular workers, in DMRC all such matters are taken care of by the contractor and the management is free from these issues and can concentrate better on core jobs. The other officers interviewed from the personnel department put their faith in the DMRC tender document that calls for strict compliance with labour laws.<sup>68</sup> After taking a general overview from the HR officials some of the designated principal employers (PEs) were also interviewed. The principal employers (PEs) in general were found to be oblivious of ground realities prevalent at different work sites. Though concerned with the cause of the workers, they largely trusted the DMRC tender documents and the HR officials. Most of the principal employers were technical personnel who were not aware of labour laws or other labour-related regulations and were too busy to look into these matters themselves and thus were dependent on the nodal officer and her team of inspectors to oversee them. To pointed questions on Collective Bargaining (CB) within DMRC, the officials avoided a direct reply and instead preferred to

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<sup>66</sup>As per clause 6.1.2 of 'Conditions of Contract on Safety, Health and Environment, Version 1.2' of civil tender document of DMRC. See <http://www.delhimetrorail.com/tenders.aspx> (accessed on 1.12.14).

<sup>67</sup>As informed two Labour welfare inspectors assist the Nodal officer (Labour) in monitoring work.

<sup>68</sup>The DMRC tender document even contains format of ID card given to contract workers, list of awareness campaigns to be conducted and number of posters for awareness to be displayed at work sites. The detailed terms and conditions on labour matters are typically given in annexure A, B, C and D of conditions of contract on Safety, Health and Environment (SHE), Version 1.2 of civil tender document of DMRC. For DMRC tenders see, [www.delhimetrorail.com/tender](http://www.delhimetrorail.com/tender).

stick to the official stance that the DMRC follows zero-tolerance on labour matters. A few questioned the very presence of CB in an 'essential public facility' like DMRC which they said may only breed disruption and strife, though a good number of other DMRC officials acknowledged the need of CB for ensuring genuine dues of insecure workers like contract workers. One of the officials with a background of working in the Indian Railways felt that the apprehension against CB is ill-founded as the Indian Railways which has one of the strongest unions in India has had no major strike since 1974.<sup>69</sup>

**State of Labour:** In between interviewing the officers at the Metro *Bhawan*, during lunch hours and free time the author tried to interact with some of the contract workers engaged in the premises in sanitation and canteen related work. While initially adopting a policy of confidence building with the contract workers by meeting them in the bathrooms, pantry and corridors and informing them the intent of the work, the author did manage to talk to some workers during lunch hours and took their interviews. Most contract workers were too scared to speak. After pursuing them for several days, some of the workers quietly voiced their dissatisfaction with the contractor in payment of their dues, though one or two workers among them did praise the contractor. One worker said that his earlier income which came from the sale of waste paper was stopped by the new contractor. On being questioned on their EPF/ESI deposits, the workers stated that most of them were not provided with any EPF/ESI details. None of the workers acknowledged getting minimum wages for their work.<sup>70</sup> The workers cited different reasons for sticking to their jobs like some petty income from the sale of waste, central location of Metro *bhawan* or/and favourable attitude of DMRC regular staff. The majority of workers interviewed said that they were new and had little idea of the contract system at Metro *Bhawan*. After a few days of initial interaction when during lunch time, the author again tried to speak to the workers, a worker informed the contractor (representative) who took the author to the DMRC labour supervisor. The DMRC man (a regular employee of assistant manager level) from the army background politely refused to grant permission to speak to the workers without written permission from the concerned principal employer. Attempts were made to meet the PE for the necessary permission but after several attempts, it was clear that this was a futile exercise. Later, when the author contacted some of the contract workers on their mobile numbers provided in their responses, they informed the author that the contractor was furious with the fact that they had participated in an interview and had even threatened them with expulsion.

After interacting with DMRC officials and workers at the Metro *Bhawan* for few days, the author was taken to some of DMRC metro stations and construction sites by the labour inspector of DMRC. The construction sites visited were large hubs

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<sup>69</sup>The last major strike in the Indian Railways which employs the largest number of workers in India was led in 1974 by Late George Fernandez, the renowned socialist leader.

<sup>70</sup>As per DMRC notification issued vide November 2013 issue of Metro news (based on Delhi government rates) the monthly minimum wage rate of unskilled worker was Rs. 8086 (\$121); however most workers told that they were getting around Rs. 6000 (\$90) per month.

engaged in construction of stations and tunnels and were employing hundreds of workers. As the author was accompanied by the DMRC labour inspector, the officials at the construction contractor were cautious in their demeanour. There was a site office consisting of temporary structures for officials, while the workers were employed in construction sites located at different premises, some far away from the office. Each construction company had a labour welfare officer (LWO) with a formal degree in labour affairs who watched over the labour supervisors present at different construction sites. One of the construction companies was found to be having collaboration with an Iranian firm. The labour welfare officers were skilled professionals who maintained labour records in an auditable format. The muster rolls of workers were duly authenticated by them at each page. The LWO said that the DMRC was very strict in compliance with labour laws and that all conditions were being met by them. The main contractor company had sub-contracted their work to petty contractors some of which were on work basis while others were on manpower basis. As per the DMRC tender clause, wherever the work is sub-contracted the main contractor was required to maintain all labour records and ensure the compliance with labour regulations. On being asked, the LWOs produced documents pertaining to labour compliance however informally they admitted that the primary concern of the construction company (and the DMRC) was timely completion of construction project whereas all other matter including labour welfare remains secondary. Other officials interviewed on the premises of the construction contractor largely expressed concern on, strict or impracticable laws, poor skill set of the works, etc. The labour sub-contractors interviewed on the premises of the construction company spoke in tune with the officials of the company and stated that all dues of the workers are paid as per DMRC norms. Apparently, the sub-contractors did not wish to differ on any point from the officials of the main contractors. The author was then taken to the construction site near the company office by one of the labour supervisors. It was seen that during all such visits the supervisor was suitably instructed by the LWO of the respective contractor company beforehand to go through a routine. The supervisor first showed the labour rest room, canteen, first-aid kit, safety instructions, etc. On the author's insistence on speaking with the workers—the supervisor assembled some of the pre-identified workers who spoke on the lines dictated by the construction company. In this context, different construction sites were shown where the workers were found to be engaged in trenching, mixing, iron binding and similar other activities. The author could not visit an underground tunnelling site as this required special permission. The supervisor followed the author everywhere and on seeing him the workers were found reluctant to speak to the author—the lingering impression was that they replied to most questions in the affirmative without much thinking. On one or two occasions after 5 pm when the supervisor had left and asked all outsiders to leave, the author managed to visit the construction sites so as to interact with the workers freely. Almost all the workers were found to be from outside Delhi and were brought by labour contractors after negotiation on fixed or piece-rated wages. Among the workers, there were independent groups specializing in iron binding, electric welding and similar work who took part-contract on

piece-rate basis from the contractor. Most workers interviewed said that they were not provided with EPF or ESI or BOWCESS numbers/cards by the contractor. On questions with respect to the main contractor, the workers said that they were largely concerned with their sub-contractors and labour supervisor and had no dealings with others. Some workers however did say that they have been provided with EPF/ESI numbers by the contractor. Only one or two workers had BOWCESS card issued. Some workers also said that they were not interested in social security benefits due to their mobile nature of work and instead preferred no-frill payment on work basis. It needs to be noted that as the workers were found to be less educated, temporary, insecure and migrant and hence were reluctant to indulge themselves in uncertain futuristic ventures like social security. Most replied that '*kaun sarkari daftar ke chakkar katega*' (Who would go again and again to government offices) for claiming benefits and viewed that it was better to take what the contractor gives in hand rather than getting into this '*jhanjhat*' (trouble). On being questioned on the need of old-age, illness and family requirements, the workers recounted numerous instances (sometimes of past jobs) of ill-treatment by contractors and sought better policies in which direct benefit could be granted by the government. Among the workers, the workers doing skilled jobs or working in groups seemed better placed than their fellow workers doing similar jobs individually. There were no women workers seen on site. No construction worker said that he was associated with any union within DMRC. A visit to a construction site generally continued late in the evening. The responses of the workers were similar wherever the author went through some sites seemed to be better managed than others. In between while travelling to different locations in the Delhi Metro the author also interacted with some of the sanitation workers, security guards and TOM operators<sup>71</sup> working on contract basis at different metro stations. It was observed that the Delhi Metro has hired multiple contractors for employing these workers. Most of the workers were young—in the age group of 20–30 years, and these workers seemed to work under strict supervision and were rarely found resting. While story of the sanitation workers and security guards were similar to the workers at the Metro *Bhawan*, the TOM operators were found to be a better-organized group. Most TOM operators interviewed acknowledged getting EPF/ESI benefits but decied their continuous engagement on contract basis. Some operators were however satisfied with their nature of work and said that they were sometimes even recognized by the DMRC for exceptional work.

**Union View:** The union leaders of contract workers at DMRC with whom the author interacted were more of full-time professionals from outside.<sup>72</sup> Being well

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<sup>71</sup>TOM operators or Ticket office machine operators man the token windows of the DMRC at different stations.

<sup>72</sup>Though one union member told that he was a former contract worker of DMRC.



educated, articulate and aware of the rights of the workers, these union leaders were found to be actively professing the cause of the workers at all levels. The union has a *facebook* page and actively engages in collective bargaining with the DMRC.<sup>73</sup> The DMRC response and the responses of the labour department along with details on union activities are updated on this page. The union holds regular agitations at central places in Delhi to press their demands which receives wide media coverage. The union leaders cited several hindrances created by the DMRC management in CB. They pointed it out that the DMRC engages several contractors to split workers under different employers and even ensure that no workers of the same contractor are engaged in adjoining stations. They narrated the problems faced with the Delhi Government Labour Department in getting their union registered. Initially, they had to deal with the problem of jurisdiction as ambiguity prevailed among the Union Labour Department and Delhi labour officials as both Central Government and the Delhi Government have equal stakes in the DMRC. When they approached the respective office of one government they were asked to approach the other. Secondly, they faced resistance on the part of labour officials with respect to the name of their union, employment relationship with DMRC and nature of employment.<sup>74</sup> The objections raised in the name and affiliation of their union by labour department were eventually sorted out however they cited inhibitions on the part of the labour department in registering contract workers working under different contractors against the DMRC (which is the principal employee). The unhelpful attitude of national trade unions affiliated to different political parties in espousing the cause of the contract worker of DMRC was also pointed out by the union leaders. One of the women union leaders narrated how during the short reign of *Aam Admi Party* in Delhi<sup>75</sup> they were assured of regularization by its leaders however all the hopes of the contract workers gradually faded away when the party on coming to power avoided their cause. The union of contract workers named the Delhi Metro Rail Contract Workers Union (DMRCWU) finally managed to get registered with the Delhi Labour Department after a prolonged struggle on 28 June 2016.<sup>76</sup>

The union leaders were found raising the cause mostly of the TOM operators, and also of the security guards, technicians and sanitation workers who were on

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<sup>73</sup>The unregistered union of contract workers named Delhi Metro Rail Kamgar Union (DMRKU) which existed during the fieldwork of the author got finally registered in June, 2016 as Delhi Metro Rail Contract Workers Union. See DMRCWU facebook page at, <https://www.facebook.com/dmrcwu> and also DMRCWU blog at <http://dmrcwu.blogspot.in> (all accessed on 15.04.2018).

<sup>74</sup>As gathered from discussions and the talk delivered by DMRC union leaders in the one-day CSLG conference on 'Contract labour in India: Issues in law and public policy', held on 21 April 2014 at Convention centre, JNU, New Delhi.

<sup>75</sup>The Aam Admi party (AAP) led by its popular leader Arvind Kejriwal enjoyed power with outside support of the Indian National Congress (INC) for a brief period of 49 days in December 2013–February 2014.

<sup>76</sup>For details on struggle for union recognition, see the face book post of the union at <https://www.facebook.com/dmrcwu/photos/a.1059285894098299.1073741828.1058402290853326/1375292685830950/?type=3&theater> (accessed on 15.04.2018).

perennial engagement at the Delhi Metro, though they were found oblivious of the condition of migrant constructions workers who constituted the majority of the contract workers in DMRC.<sup>77</sup>

**Official View:** The labour enforcement officials with whom the author spoke, in general, praised the efforts of the DMRC to enforce labour regulations. Though there seemed to be some confusion in the minds of DMRC officials and union leaders with respect to the jurisdiction of Central or Delhi State Labour Department<sup>78</sup>; however, in actual practice both the central and state labour officials viewed themselves competent to deal with labour matters at DMRC. It was said that for BOWCESS, union registration, welfare board registration, workmen compensation and other related matters, the Delhi Labour Department took prominence, while for other matters the Central Labour Department is the inspecting agency. The DMRC principal employers are registered with the Central Labour Department. On wage implementation, the DMRC has to follow either the central minimum wages or Delhi state minimum wages whichever is higher.<sup>79</sup> The labour department officials of the Delhi Government when confronted with the question on the resistance faced by the Delhi Metro contract workers' union in getting registration, on their part expressed their readiness to register any workers' group be it regular on contractual as long as they fulfil all the required conditions as per the Trade Union Act, 1926. The labour officials highlighted the legal point that the Act does not differentiate between the type of workers and that the objections raised by the department were required to fulfil the provisions of registration. It was seen that the recent implementation of BOWCESS Act and the broad nature of the welfare measures<sup>80</sup> for construction worker contained in it has led the Delhi Labour Department to organize camps along with DMRC to distribute enrolment cards to workers. The effect of these cards on the construction workers is yet to be seen.

**Labour Standards at DMRC:** As per discussions with the officials, workers, contractors and the union leaders and as per assessment made on the basis of the labour profile, it can be fairly surmised that the minimum wages, ESI/EPF of TOM operators are being met.<sup>81</sup> Though there are some disputes with regard to method of

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<sup>77</sup>The DMRC collective bargaining efforts rarely mentions the numerous migrant workers employed at construction sites, though the DMRCWU FB posts do briefly mention on this dark side. With all other precarious workers covered in CB efforts, the exclusion of construction workers who form the majority of the working population at DMRC is a matter of concern.

<sup>78</sup>As DMRC being an equal equity joint venture company of Government of India and the Delhi Government.

<sup>79</sup>It was told that as done in other departments, based on minimum wages notification being issued by the Central and State labour ministry twice in a year (April and October), the DMRC issues its own notification fixing wages at rates which is higher among the two.

<sup>80</sup>For details on BOWCESS act see, <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/india-construction.aspx> (accessed on 15.04.18).

<sup>81</sup>The assessment is based on reasoned facts presented during the period of field work, though there are many complains of irregularities reported in the past as one made by a TOM operator which found coverage in national newspapers [see, <http://www.thehindu.com/todays-paper/delhi-metro-workers-losing-crores-in-wages/article4024391.ece> (accessed on 1.12.14)].

calculation, security deposits,<sup>82</sup> overtime rates, etc., however the TOM operators in general seem to get their dues as per existing legal provisions. The working hours and working conditions of these operators were also found to be in order. Being posted at different metro stations and handling monetary transactions, these workers work in air-conditioned environment with same facilities as available to regular DMRC workers. Most commuters perceive these operators as regular DMRC employees only. Similarly, the skilled construction workers engaged in time bound work at construction sites and those engaged on piece-rate basis and working in groups were found to be getting more than minimum wages in most instances however their EPF/ESI/BOWCESS entitlements seemed doubtful. Moreover as most construction workers are migrant workers, they should have got enhanced wages, transport allowance, etc., under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 however none of the workers seemed to get these benefits.<sup>83</sup> The working conditions of the DMRC sites were found to be reasonably good as the construction companies were found to be maintaining required facilities like restrooms, canteens more so regular monitoring by DMRC officials ensure that these welfare measures are kept in proper order. However, the working hours of these categories of workers were found to be unregulated. Also, as these workers work on a piece-rate basis, they voluntarily tax themselves to their physical limits to raise their earnings. The third category of unskilled workers present as sweepers, cleaners, guards, helpers, loaders, trenchers, etc., working at metro offices, station and construction sites were found to be in poor state in term of monetary compensation. Being easily replaceable with no tenural security in hand, these construction workers work for long working hours for minimum wages. The ESI/EPF/BOWCESS benefits of these workers seem irregular (though some workers and security ground did acknowledge the receipt of these benefits). Working conditions of these workers however are reasonably good as they share the same facilities at the metro station, offices and construction sites, as those enjoyed by the regular/other fellow workers. The security and safety measures for the workers at the DMRC sites were found to be good. Women workers working as TOM operators were found to be getting equal remunerations and other facilities. No women sanitation or construction workers were seen and no child worker was found. For details on labour standards at DMRC, see Table 5.4.

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<sup>82</sup>It was generally conveyed by the TOM operators that the contractors took hefty security deposit with no proper receipt during initial recruitment, citing security and financial reasons.

<sup>83</sup>In fact due to the provision contained under Section. 2(e) vide which a workman has been defined as inter-state migrant workman only when he is 'recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state', and Section 12—w.r.t. licensing of contractors for grant of benefits under the Inter-State Migrant Workmen Act, which makes the Act self-restrictive (destructive to be blatant).

**Table 5.4** Labour standards in DMRC

	TOM operators	Skilled workers (construction)	Unskilled workers (sanitation, helpers, security, construction)
Minimum wages <sup>a</sup>	√	√	X
Working hours	√	X	X
Social security (EPF/ ESI/ BOWCESS)	√	X	+
Working conditions <sup>b</sup>	√	√	√
Security of tenure <sup>c</sup>	√	√	X
Equal pay for equal work <sup>d</sup>	X	+	X
Equal remuneration to men and women	√	+	+
Special benefits under Inter-state migrant workers' act, Maternity act, etc.	X	X	X
Incentive/recognition/award for good performance	√	X	X
Child labour	X	X	X
Collective bargaining	√	X	X

<sup>a</sup>Minimum wages as notified by the Central or Delhi State Government, whichever is higher, for the specified hours of work

<sup>b</sup>Working conditions as specified in the Contract Labour (R&A) Act and Factories Act

<sup>c</sup>'Security of tenure' in the case of contract workers can be termed as ensuring continuity in the case of change of contractor

<sup>d</sup>With regular workers as for performing same type of work as per Contract Labour (R&A) Rules (chapter III, rule 25 (2) (v) (a))

+ Cannot be established

**Collective Bargaining:** The DMRC has not officially recognized unions of either regular or contract workers. Though both the regular workers<sup>84</sup> and the contract workers have got their union registered with the Delhi Labour Department; however, the DMRC refuses to enter into collective bargaining negotiation with either of them citing different reasons. Whereas in the case of regular workers, the DMRC recognizes the staff council and not the DMRCEU as the authorized bargaining agent, in the case of DMRCWU it refuses to acknowledge employer-employee *de-jure* relationship with the contract workers to negotiate with them. However, union activities regularly take place in and around the Delhi Metro premises in which outside union leaders, NGOs, activists, political groups, etc., participate in large number. The DMRC reputation and being in the national capital

<sup>84</sup>The regular workers of the DMRC got their union named Delhi Metro Rail Corporation Employee Union (DMRCEU) registered with the Delhi labour department way back in the year 2007. For details on the union activities, see their face book page at, <https://www.facebook.com/dmrceu.org> (accessed on 16.04.18).

provides ample leverage to any CB efforts at Delhi Metro. The DMRC contract workers' union movement remains one of the most covered media features among CB efforts in Delhi. The TOM operators being young, vociferous and educated spearhead the CB effort on behalf of all the perennial contract workers of DMRC. The able leadership provided by some of the outside union leaders who are not connected to any political party has helped in the collective bargaining process. Thus, the TOM operators within DMRC were found to benefit the most from CB efforts. The security of tenure,<sup>85</sup> reasonable wages and social security (ESI/EPF) of the TOM operator was found to be secured through regular CB efforts. In fact, the TOM operators have been regularly representing DMRC and the labour departments for regularization and for 'equal pay for equal work' with the DMRC Station Controllers<sup>86</sup> who are on the regular pay roll of the company.<sup>87</sup> Besides representing the normal channels, the TOM operator were found to be actively engaged in filing petitions before labour forum, tribunals and courts to press their demands for equal wages, regularization and even abolition of contract labour. The consistent efforts on the part of the TOM operators found ground when the Union Labour Ministry acknowledged the need for abolition of contract labour system from token vending work of DMRC.<sup>88</sup> Unlike the TOM operators, the sanitation workers, security guards and office helpers were found to be less active in CB efforts and thus seem to benefit the least in their service conditions. It was seen that whatever CB existed for these unskilled categories—it was more due to the combined efforts by the TOM operators on their behalf as very few workers in other categories were themselves active in CB. Though the DMRCWU leadership projected improvement in their service conditions due to collective efforts however CB seemed to matter little on their wages and social security benefits. The construction workers on the other hand were found to be completely untouched by mainstream CB within the DMRC. Whatever CB was found among these workers was due to their traditional groupings of caste, village or region. Those workers in groups, who were found to be engaged in CB with their sub-contractors for increase in piece rate, leave

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<sup>85</sup>As per law, on change of contractor his contract workers like TOM operators also shall get replaced by workers of the new contractor. However, in most places the old workers continue with the new contractor may be at revised terms. Attempts to change the TOM operators were faced with vociferous protests through the DMRCWU.

<sup>86</sup>The DMRC station controllers are the officials sitting in circular glass chambers at metro stations and issuing/ recharging the metro smart cards.

<sup>87</sup>The DMRC HR officials when questioned in this regard argue that the station controllers posted at metro stations are selected after a rigorous selection process and their IQ level is much higher than the those of the TOM operators provided by the contractor; moreover, the job assigned to the Station Controllers are much wider than the TOM operators who only do token vending.

<sup>88</sup>For labour ministry recommendations see, <http://www.dailypioneer.com/city/end-contract-labour-system-in-delhi-metro-labour-ministry.html> (accessed on 16.04.18). However, it was conveyed during discussion with some of the union leaders that in view of the prevailing ambiguity on 'absorption after abolition' clause, they were not actively pursuing for abolition of the token vending work under the provisions of Contract Labour (R&A) act, 1970 (Section 10); which otherwise was possible due to the regular nature of job of TOM operators.

entitlement, etc., and their terms of engagement appeared to be better than unattached workers. Also, such groups stood against arbitrary ‘hire and fire’ of individual workers from the group and were thus able to raise their voice against ill-treatment of one of them.

### **DMRC Fieldwork Conclusion**

As detailed in Table 5.4 on labour standards prevailing in DMRC among different categories of workers, the presence of CB has mostly benefitted the TOM operators who are also the most educated and aware among the three categories of the workers. The better wages and security of tenure availed by the skilled construction workers are primarily due to the demand of their work in such sectors. It was in the employer interest to retain such workers without whom the work was likely to suffer. Still ‘equal pay for equal work’ and ‘special benefits remain’ elusive for all category of workers. The labour standard of unskilled workers prevailing at the capital city that too in the prestigious Delhi Metro was found no different if not worse than similarly placed workers in other parts of the country. Delhi being crowded with unskilled workers, labour standards was expected to be low but the levels observed were quite unanticipated. Residing in a metro city far away from their homes, these unskilled workers were obviously more hard pressed than their counterparts who were working in smaller cities or areas close to their villages. All claims of the DMRC authorities of regulating labour conditions were found floundering in the case of these lowest categories of workers. While monitoring did promote the outward appearance as seen from the working conditions as available at the working sites, but in terms of payment, social security, etc. the unskilled workers faced bad circumstances. The DMRC needs to revisit its strategies for securing the entitlements of these workers; meanwhile, the only hope for these unskilled workers is to upgrade their skills in the city so that they may possibly climb up the demand chain.

## **5.4 Fieldwork at Brick Kilns of Danapur Region, Bihar**

*Danapur/diara region in Bihar represents one of the most backward regions of India. Brick kiln industry is one of the oldest industries with a contract labour system in practice traditionally.*

Initial field visits to the Danapur region of Bihar state were made in May 2014, during which some of the brick kilns were visited by the author. During this preliminary research trip, it was observed that there was much reluctance on the part of brick kiln owners to part with information to perceived intruders who were generally treated as encroachers in their exclusive domains. Their reluctance got even stronger when the author intended to interact with the workers. The way out seemed to be to obtain some kind of official permission before a regular field study

could be conducted. Also, some well-wishers advised against walking directly into the ‘*bhatta*<sup>89</sup> territory’ without any accomplice or permission—accordingly the author approached the Labour Commissioner, Bihar, at Patna the state capital and requested him to grant permission with a written application. The Labour Commissioner most kindly asked the author to approach the office of Chief Inspector of Factories (CIF) to follow-up for permission.<sup>90</sup> After some persuasion finally, the required permission for doing fieldwork was obtained in late June 2014. As the brick kiln work is seasonal and is not done during the monsoons, it was advised to proceed to Bihar only after monsoons when the water of the Ganges has receded. In between, the author kept on inquiring about the status of Ganges water and the brick kilns so that field study could be initiated. There was some information that in few *bhattas* brick-moulding (*pathai*) work had started and labour has started to settle at the *bhatta* premises.<sup>91</sup> However, later it was learnt that brick kiln work in Bihar generally gains momentum only after the *Chatt* festival, i.e. after the paddy season when the labourers are finally free to take up long-term employment at brick kilns where they stay up till the summer of the next year, in other word, before the start of rice cultivation. Accordingly, the author proceeded to Danapur for the study in November on getting confirmation that migrant labour from different regions had finally settled down at the *bhatta* territories near the Ganges River for the whole brick making season.

**About Danapur Region:** Danapur is located in the Patna District towards the west side on the confluence of river Sone and Ganga (see Map 5.2). The proximity to the state capital, Patna, and being located on the Mugalsarai–Howrah main railway/road line, connecting it to major cities of U.P., Jharkhand and West Bengal; Danapur has immense potential to develop as a satellite city besides being a major centre for trade and commerce. The comparatively lower cost of land and living at Danapur than Patna makes it an ideal place to set up labour-intensive industries like brick kilns. Also, since the Danapur region is located on the banks of two major rivers of Bihar, there is ample flood-land<sup>92</sup> and alluvial soil required for the brick kiln industry. Consequently, around 200<sup>93</sup> registered and unregistered brick kilns

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<sup>89</sup>As the brick kilns are locally called in Bihar.

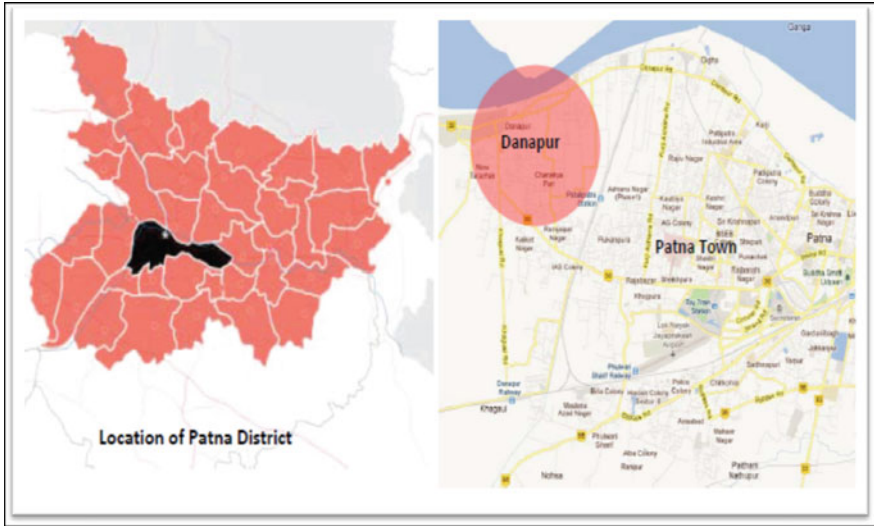
<sup>90</sup>In fact the Labour Commissioner, a senior IAS officer, was very much interested on the idea of research on Brick Kilns in Bihar. He shared some of the finding of an ILO study which could not be completed. His inputs on contract labour matters were found very useful.

<sup>91</sup>After the monsoons the author got reservation in train first in September and then again in October; however; due to late monsoon the trip was twice postponed.

<sup>92</sup>The flood plains which remains submerged (or threatened) during monsoons provide ideal conditions for brick industry as suitable soil, water and open space for making bricks and accommodating workers are available in plenty. While the chimneys were found to be located at high ground, brick-moulding and drying work which requires much open space was spread over all available space. Also being near the river and often cut-off from the main land, the territory mostly inhabited by migrant workers largely remain out of bounds of the district administration.

<sup>93</sup>As conveyed by the factory inspector, Danapur region. Also, a list of 123 registered brick kilns (under factories act) around Danapur region was obtained from his office.





**Map 5.2** Map of Danapur region in Patna district, Bihar. *Source* Urban development and housing department, Govt. Of Bihar, <http://urban.bih.nic.in/Docs/CDP/CDP-Danapur.pdf>

dot the skyline as one approach Danapur from the cantonment area towards Maner.<sup>94</sup>

**Field Visit to Brick Kilns:** On reaching Danapur in the second week of November, the author first visited the offices of different labour departments of Bihar government to get the official version of brick kiln working and the labour conditions there.<sup>95</sup> Fortunately, most of the labour department offices were found located in adjoining buildings which were originally meant for residences of government officers. The initial information gathered for undertaking research on brick kilns was not good.<sup>96</sup> For the first visit to the brick kilns, the author persuaded the

<sup>94</sup>Maner is famous for mausoleums of Sufi saints, and also for maneri *laddus* which is a sweet delicacy of Bihar.

<sup>95</sup>The very first meeting was disappointing as the factory inspector of Danapur refused to cooperate in any research endeavour citing numerous reasons. He was a man of bureaucratic temperament and made the author sit at his table up till evening since morning before finally relenting to help only if he could get time. During the whole day sitting with him, the author learnt that this was a new posting for him; his two staff (a clerk & a women messenger) were not cooperating with him; he was also holding the additional charge of deputy CIF of Muzaffarpur region; he was not provided with any office conveyance; and that he had not visited any brick kiln in the region or was neither interested to visit them in the near future.

<sup>96</sup>Some well-wishers in offices narrated stories of ill fate or mis-happenings met with some researchers who happened to visit the brick kilns in the past. It was told that the brick kiln owners or '*bhattyaras*' as they are locally called are nasty people and often criminals who are known for, throwing people in the heating chimneys or the river, or, for shooting and Kidnapping.



factory inspector to come along.<sup>97</sup> On crossing the cantonment area while approaching the Danapur town, the author stopped at the very first kilns which were located on a side road near the Ganges River. On reaching a *bhatta* while the inspector becomes busy looking at the official papers, the author expressed his intent to the *bhatta* owner (on phone as he was not present) explaining nature of the research interest. As a result, one person (*bhatta* owner, his son, *munshi* or labour contractor) accompanied the author during his data collected work at the *bhattas*. Some *bhatta* owners offered tea and showed their licenses on the first visit.<sup>98</sup> Subsequent visits without the inspector proved to be more fruitful as both the *bhatta* owners and workers interacted more openly.

Most *bhattas* were found to be located on stretch of land adjoining the Ganges River. Sometimes one had to cross a rivulet on a narrow bamboo bridge to reach a *bhatta*. A normal size *bhatta* employed anywhere from 100 to 200 workers at a given time. On entering a *bhatta*, it feels like going back to an ancient world (see pre-page, Photo 5.8). Mud clad men and woman covered with basic clothing seemed to be in a state of urgency while doing their work. It was said that earlier shifting-base chimneys made of steel were used which were replaced with high rise permanent ones about two decades back. Normally a family or a family group consisting of parents, grandparents, children<sup>99</sup> (see Photo 5.9) were seen working together. Brick making consists of a combination of different processes before the final product reaches the market. To start a brick kiln, land with required soil qualities<sup>100</sup> is selected on which a chimney<sup>101</sup> is built by expert *mistries* (skilled artisans) from West Bengal state. The *pathai* work (moulding) starts early after monsoon on arrival of workers from Gaya, Nalanda and other regions of Bihar. The *Jhokai* work (loading raw (*Kucha*) bricks into furnace) is done on cycles, mules and hand-held carriages led by labour from all regions. The *mistry* who arranges the 'Kucha' brick in the furnace (*bozhai*) are normally from Allahabad region of Uttar Pradesh state and are engaged on monthly basis. The arrangement of bricks is made in such a way that gaps are left between them so that when coal is infused from the top it reaches the bricks at the bottom for equal heating. It was seen that the worker who evacuate or took out (*Nikasi*) burnt bricks from the furnace were mostly tribal

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<sup>97</sup>Due to apprehensions, the author finally pursued the Danapur factory inspector who kindly consented to spare three hours for the visit. In spite of picking (and dropping) him up and driving him in fully AC on (on his insistence) car, he refused to grant any extra time for further queries or side visit to *Maner sharif durgah* or *maneri laddoshops* which fell on the way.

<sup>98</sup>During the visit with the inspector, the brick kiln owners were cautious against disclosing information, more so due to insistence of the inspector only 4-5 *bhattas* in one locality could be visited.

<sup>99</sup>At most *bhattas* one can see children working alongside other family members.

<sup>100</sup>An ideal soil type on being mixed with water becomes ductile enough to be moulded into different shapes without breaking. Brick making involves mixing soil with water, sand and hay and hand putting into moulds. Earlier mixing work was done by foot but now everywhere mixture machines are used.

<sup>101</sup>At present 'fixed chimney bull's trench' type of Kiln are used in the region.



**Photo 5.8** A river side brick kiln at Danapur



**Photo 5.9** Family working together at a brick kiln at Danapur

**Table 5.5** Regional background and caste of brick kiln workers of Danapur, Bihar

Name of the worker	Region from which migrated	Caste
Moulder ( <i>pathera</i> )	Gaya and Nalanda districts	Musahar, Bhuiya (SC)
Loader to furnace ( <i>bozhwa</i> )	Nalanda, Lohardaga, Gumla	Adivasi (ST)
Unloading from furnace ( <i>jhulias</i> )	Lohardaga, Gumla, Ranchi, Palamu, Hazaribag	Adivasi (ST)
Coal artisan ( <i>jhokai mistri</i> )	Allahabad region	Musahar, Pasi (SC)
Dust sprinkling ( <i>rabishman</i> )	Lohardaga, Gumla	Adivasi (ST)
Coal carriers ( <i>koylaha</i> )	Lohardaga, Gumla, khunti	Adivasi (ST)
Tractor/JCB driver, <i>Munshi</i>	Local	Yadav, Kurmi (OBC)
Chimney artisan	West Bengal	Not known

Source As disclosed by the workers themselves

SC scheduled castes; ST scheduled tribes and OBC other backward castes as classified by the Indian constitution

workers from Jharkhand. Women participated in equal numbers alongside the men in the heavy physical work. *Bhatta* owners were generally found to be belonging to upper castes (Rajput and Yadav), while *sirdards* (contractors), *munshis* (accountants) and drivers of tractors and mixer machines were of mixed castes. The *misteris* and workers were SCs or backward castes while migrant workers from Jharkhand were *adivasis*<sup>102</sup> (tribal people). Details on regional background and caste of workers as found during field study are compiled in Table 5.5.

The hutments of the workers were found to be located adjoining the *bhattas*. It was learnt that the huts along with burning wood, medicines and water was provided free of cost by the *bhatta* owners. No electricity, toilet, bathing area, dispensary or school was found on the *bhatta* premises. Children of all ages were seen loitering around sometimes assisting their elders in their work. The brick kilns were still using the traditional accounting system where markers (see Photo 5.10) are given to the workers as a token for performing a piece-rated work. Markers of different shapes, sizes, and colours were found at different *bhattas*. It was said that each worker at the end of the day work gets the number of tokens received entered in their individual diary by the *munshi*. On the day of weekly holiday, a worker takes his *khuraki*<sup>103</sup> and gets his account checked and re-entered in his/her own diary. At the end of the working season advance paid towards *khuraki* and other expenses are deducted and final payment is made to the worker. In spite of profits ranging from 3 to 5 million rupees (\$46000–76000) (see calculation at Table 5.7) that are made by *bhatta* owners on account of low labour wages, no registers on muster rolls were found being maintained at the *bhattas* visited by the author.

<sup>102</sup>Adivasi workers were called as '*jhulais*' as other co-workers, may be because these workers carried hand-held carriages or *jhulas*.

<sup>103</sup>Cost for weekly ration which ranges from Rs. 250 (\$3.78) to Rs. 300 (\$4.53).



**Photo 5.10** Markers used in tradition accounting system at brick kilns of Danapur

**State of Labour:** The workers interviewed on the premises were too busy with their work and were reluctant to speak much (see Photo 5.11). Some workers who were found to be waiting for employment around the premises were more forthcoming in the interviews. Women were seen tending to household chores, children, besides working.<sup>104</sup> The state of workers at the first glance seemed pathetic. Workers were seen resting and eating at the same workplace along with their small children lying in the open. Most workers seemed to be poor and wretched. However, on close look it was found that the workers worked as per their capacities as they were employed on piece-rate basis. There is a weekly day off in each *bhatta*, and it is said that the whole area bears a festive look on that day. On being interviewed some of the workers complained of strenuous work but avoided any direct reference to the brick kiln owner or their contractor. When especially asked on the rate given for their work and the attitude of the kiln owner at the end of the season during settlement of their dues, most respondents said that they had no other option. The *adivasi* workers from Jharkhand cited poor quality of land and irrigation back home for migrating to the brick kiln. Some workers stated that in their region only one summer crop is cultivated thus after harvesting no work remains for them in the winter up till next season; hence, they preferred to migrate to brick kilns where they get ready job instead of lying idle at their villages. On taking an advance

<sup>104</sup>It was difficult to talk to the ladies due to social inhibitions.



**Photo 5.11** Women with children at a brick kiln of Danapur

payment before coming for the job, the workers again stated that they had no other option. Turning to issues regarding their children—they stated that they would prefer to send their children to school if the school was located at the *bhatta* premises, as they were unable to take leave from the work and carry their children to schools which are located far away. Most workers said that they were free to move at their will and there were no restrictions on their movement. The author also tried to get responses from the workers on their working conditions, working hours, social security and collective bargaining efforts; however, the responses were too incoherent for a conclusive account. The workers from Bihar/UP and Jharkhand were found to be working in separate groups. Also, the UP/Bihar worker considered the evacuation work too heavy and dirty which they said is only fit for the *adivasi* worker.<sup>105</sup> Due to the limitation of interacting with workers under the watchful eyes

<sup>105</sup>The workers from Jharkhand seemed to be at the lowest strata of the caste and work hierarchy at the brick kilns. Being migrant workers from a different state and with advances pending, they were apparently most liable to have restricted movement.



of the employers/munshis,<sup>106</sup> the author was unable to get accurate responses from the workers.

**Bhatta Owners' View:** The brick kiln owners (or their sons looking after the business) were found to be local persons engaged in family business.<sup>107</sup> The owners in their interviews denied any exploitation of the workers at their *bhattas*, but admitted that in old days bonded labour system<sup>108</sup> did prevail in some of the *bhattas*.<sup>109</sup> They argued that brick manufacturing is an ongoing work and their reputation gets carried to the workers when they make a decision to work at a particular *bhatta* in a season. Most owners said that managing workers was a difficult task and keeping the group together was their primary mission. One of the owners recounted how he had to spend sleepless nights when the *nikasi* workers did not arrive from Jharkhand for a full season and he had to get the work done from available labour at three times the normal rates. One erstwhile *bhatta* owner showed the site at which his *bhatta* chimney stood and was washed away by the river last year, after which he has been endlessly waiting for some compensation from the government. Some others, whose brick kilns falls within the area acquired for the purpose of building an upcoming rail bridge, lament the lack-lustre attitude of the government in allotting an alternate site. Most owners however seemed comfortable with the *sirdars* who manage their labour and the business of brick kiln. On legal issues, the owners assume that having a factory license completes all their legal requirements. No payment records were produced by the owners instead they informed the author that the workers themselves maintained a record of work done duly countersigned by the *munshi*. The owners decry the alcohol drinking habits of workers and attribute their poor conditions to these habits. Otherwise, they say each worker earns enough for himself and his family in a season which can support them throughout the year. Few brick owners acknowledged that they have an association in which they jointly decide on piece rate of different jobs on starts of a season,<sup>110</sup> others said that rates were decided on the basis of rates declared by the biggest *bhatta* of the area.

Overall, the *bhatta* owners appeared to be men with muscle and power<sup>111</sup> who could manage many affairs single handed. Their capacity to dole out advances

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<sup>106</sup>There was no other option as the workers reside with their families in the *bhatta* premises only and rarely ventured outside.

<sup>107</sup>No *bhatta* owner was found to be a new entrepreneur.

<sup>108</sup>As per the Bonded Labour System (Abolition) Act, 1976, an advance payment in cash or kind in lieu of forced labour is considered 'bonded labour' and is abolished. See the full act at, [http://www.labour.nic.in/upload/uploadfiles/files/ActsandRules/SectionoftheSociety/TheBondedLabourSystem\(Abolition\)Act1976.pdf](http://www.labour.nic.in/upload/uploadfiles/files/ActsandRules/SectionoftheSociety/TheBondedLabourSystem(Abolition)Act1976.pdf) (accessed on 8.12.14).

<sup>109</sup>Few owners and their *munshis* in their interviews did inform of bonded labour still being practiced in one of the neighbouring (may be rival) *bhatta* and asked the author to check himself and write a report about the ill-doing there.

<sup>110</sup>Though the veracity of association could not be independently established.

<sup>111</sup>No doubt during field work. It was seen that most people identified brick kilns by the names of the owners (and not by the company name) who were often politicians.

(through labour contractors) in thousands of rupees to perspective workers at their homes, exemplified their risk-taking abilities.

**Contractor View:** Unlike the contractors seen in industries, the contractor or ‘*sirdar*’ (as called locally) at the brick kilns was found to be an informal customary manpower supplier of the *bhattas*. Most contractors cited family ties at locations from where they brought their labour. One contractor who brought labour from Lohardaga, Gumla, Shishaiand Khunti (in eastern Jharkhand) said that he is married in Ghadvali village of Lohardaga though he belongs to Danapur. It was described that the contractors visit their respective regions during July–August around ‘*Karma*’ and ‘*Jitiya*’<sup>112</sup> festivals and hand over advances to the perspective families who were needy enough to commit themselves to relocate for the whole forthcoming season. The contractors followed up with these families again during *Dussehra* and *Diwali* festivals and handed over some cash if required, before fetching them personally after the *Chatt* festival. In their interviews, the *sirdars* said that it were they who were real risk takers as they travelled to ‘foreign’ lands to fetch workers all by themselves; hence, where *bhatta* owners or *munshis* were unscrupulous enough to cheat the workers in the previous season, they were the persons who were directly affected. A few contractors recounted stories of kidnapping and the public beating of some of their counterparts who had visited remote villages with money to fetch labour. The contractors also said that they were duly compensated by way of percentage of every earning of the worker they had brought—the owner paid a fixed amount per worker for the act of bringing him in besides the cost. Some contractors were even found to be doubling as workers to add to their earning. None of the contractor were particularly educated or had knowledge of labour laws.

**Official View:** Most of the officials of the Bihar Government Labour Department were cooperative and forthcoming in their responses. One of the inspectors of the office of the Chief Inspector of Factories even gave the author some contacts in Danapur brick kilns in case of any emergency. It was learnt that the brick kilns fell into the administrative jurisdiction of the mining and labour inspectors, besides the factories inspector and that the brick kiln owners had to seek registration from all these departments<sup>113</sup> after getting ‘NOC’ from the environment ministry. The officials of the factory department in their interviews stated that their work was only to look at the welfare and safety measures prevailing at the *bhatta* premises as provided in the Factories Act, and the rest of the matter fell in the jurisdiction of other departments. On approaching the labour department, it came out that the Bihar Labour Department at the lower level is bifurcated into an agricultural wing and a general wing. For organizational setup of Bihar Labour Department, see Fig. 5.1.

<sup>112</sup>*Karma* festival is celebrated by the Oraon and Santhal tribes of Jharkhand in which the karma tree is worshipped. It is also celebrated by unmarried sisters for the well-being of their brothers. *Jitiya* is observed as *jhurr-puja* in which traditional instruments are played with tribal dance. It is also celebrated for the well-being of the children. For details see, <http://www.daltrijournals.org/JTICI/I3A5.html> (accessed on 9.12.14).

<sup>113</sup>During field visit only license under the factories act was produced by the owners. The factory license has the number of workers stated on it.

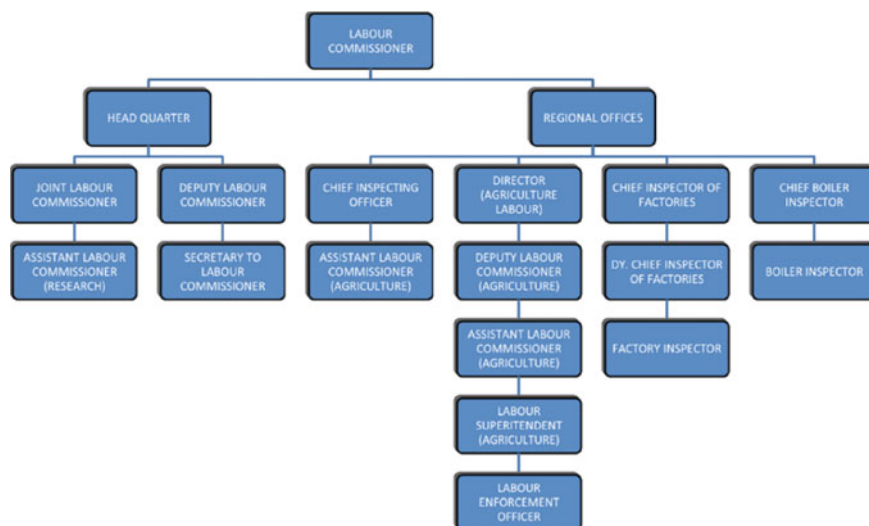


Fig. 5.1 Organogram of Bihar state labour department. Source <http://www.labour.bih.nic.in/>

In the general labour department, the author met a few officers but none seemed to be having any first-hand information on brick kilns. The officials did speak of bonded labour, sexual harassment and exploitation of workers at the brick kilns; however, none of this could be substantiated. A young officer having good knowledge of labour laws was enthusiastic about improving the lot of brick kiln workers by proper monitoring. The officers of the agriculture department (labour) appeared to be better ordained and seemed to have some first-hand idea of the state of affairs at the brick kilns. They differed with the general department officials on exploitation and took the view that though the workers took advances before coming to work at the brick kilns; however, they work by choice and were free to move elsewhere. The officials accepted that due to the very nature of work which continues for more than six months, workers took advance before temporarily shifting with their families to the working sites and that the working conditions were filthy; however, they argued that the rates paid to the workers were much higher than the minimum wages<sup>114</sup> fixed by the Bihar government. A senior officer of the Agriculture Department (labour) in her interview went to the extent to say that at the end of the season while returning back from work the workers were often given new clothes and sweets by the brick kiln owners as they want their prized commodity (labour) back in the next season. Another officer of the Agriculture Labour Department however differed with his colleagues and took the view that

<sup>114</sup>The minimum wages fixed by the Bihar government has separate section for brick making industry in which both daily wage rates and piece-rated rates for different categories of work are fixed. For current minimum wages notification of state government of Bihar, see <http://labour.bih.nic.in/>—notifications.



exploitation did occur at the brick kilns though the workers were too fearful to complain against the employers. As per rule, the brick kilns should be registered under Contract Labour (R&A) Act, as the industry operated invariably for more than six months in a year and also engages large number of workers<sup>115</sup>; however, none of the *bhattas* are registered under the act or do the owners care to follow the law. On being asked on the action being taken by his department, the official expressed his helplessness as such attempts to implement laws in the past were projected as obstruction of work by the *bhatta* owners followed by manhandling of labour officials and even blockage of roads jointly by brick kiln owners for several days. The official stated that all workers were in the grip of the employers and even taking a statement from a worker proved to be an uphill task due to which he has lost many cases in the past.

**Collective Bargaining:** The author interviewed two union leaders<sup>116</sup> in Patna to learn about any union involvement with workers in brick kilns; however, no unions seemed to be actually working in the brick kiln region. The union leaders cited lack of awareness among workers, remoteness, resistance from brick kiln owners, besides the seasonal nature of brick industry as the reason behind poor state of collective bargaining in the industry. No NGO was found working for the brick kiln workers though it was learnt that some NGO did do some work on child labour in the area.<sup>117</sup>

No collective bargaining efforts were noticed at the *bhattas* visited. Also, neither the labour officials interviewed nor the workers themselves reported of collective bargaining practices at the brick kilns.

Some of the *bhatta* owners did acknowledge their own association but the same could not be established conclusively.

**Labour Standards:** As per the discussion held with the workers, labour officials, owners and contractors; and as assessed based on *labour profile* of the region, the minimum wages are being paid<sup>118</sup> to *mistris* (skilled) and *patheras* (semi-skilled). However, the payment of minimum wages to 'Nikasi' workers and 'Bozai' workers from Jharkhand could not be established and seemed doubtful. Equal remuneration of men and women for the same hours of work was also not existent with men being better paid. Working hours are long and self-driven and no

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<sup>115</sup>Contract Labour (R&A) Act, applies to every establishment employing more than 20 workmen and in operation for more than 60 days in a year even though having seasonal character (Section 1 (5)).

<sup>116</sup>One was a senior executive member of AITUC.

<sup>117</sup>As confirmed by a former official of ILO working in the Bihar region; however, the same could not be substantiated during the field visit.

<sup>118</sup>As per minimum wages as fixed by the Bihar Government for piece rated work at brick kilns. In fact the rates fixed for moulding work (*pathai*) @ Rs. 230 (\$2.5) per thousand bricks, by the Bihar Government vide notification dtd. 1.4.14 was found to be much lower than the prevailing rates of around Rs 430 (\$ 6.5) per thousand, prevailing in the region.

social security (ESI/EPF) or BOWCESS<sup>119</sup> benefits are available to workers. Unpaid weekly off is however given at almost all *bhattas*. The migrant workers from Jharkhand are not granted the benefits of the Inter-State Migrant Workers Act. Working conditions are very poor with no toilets canteens restrooms, crèches, and first-aid facility seen at work site. Furthermore, no safety features were noticed. Not only was child labour unchecked, but no separate facility for women and children were noticed. As pointed out earlier, sexual exploitation though not seen during field visit but was said<sup>120</sup> to be endemic.

### Danapur Brick Kilns Fieldwork Conclusion

The brick kilns of Danapur region are like isles of independent territories with its own rules and regulations in which the reign of *bhatta* owners is supreme. In spite of falling within the district administration and required to be registered under the Factories Act, Mining Department and the Pollution Board, while entering into these *bhatta* territories one gets the feeling of ‘absence of law’. The non-existence of collective bargaining in the kiln territories helps the de facto rulers to maintain their control. With negligible government labour enforcement machinery present over this vast territory, and more so the compartmentalization and confusion prevailing with respect to respective jurisdictions, ensures that the will of the brick kiln employers face no challenge. No doubt in such a scenario, the workers have none to fall upon and have no voice in the system. With abundance of precarious migrant workers, labour standards of the unskilled works are bound to touch the bottom as mapped during the field visit in Table 5.6.

The table on labour standards shows that the unskilled workers are getting absolutely no benefit from the regulatory mechanisms of the formal industrial sector. The working conditions of the workers at these brick kilns were found to be worse than all others reported in the field study. Besides, child labour was also seen to be widespread in the industry. The provision of advance and residence besides the work premises ensures complete flexibility to the employers over the ‘labour power’ of the workers. The norm of making final payment to the workers at the end of season strengthens the control of the employers over the lives of the workers. Though the workers themselves did not express their anguish during interviewees due to workplace limitations; however, their state and expressions explained their precarious existence in an informal set-up where they had themselves handed over the control of their lives to the employers.

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<sup>119</sup>Though some confusion prevailed earlier, but it has been generally accepted by the government to grant benefit under the BOWCESS act to brick kiln workers by registering them either at their work place or native place. See, 44th report of the Standing committee on labour, Lok Sabha (Chap. 2) at <http://www.prsindia.org/uploads/media/Construction%20workers/SCR-%20Building%20and%20Other%20Construction%20%20Laws.pdf> (accessed on 10.12.14).

<sup>120</sup>As mostly reported by the enforcement officials in their interviews.

**Table 5.6** Labour standards at brick kilns, Danapur (Bihar)

	Skilled/semi-skilled workers ( <i>mistiri/pathera</i> )	Unskilled workers ( <i>bozhawa, jhuliya, koylaha, etc.</i> )
Minimum wages <sup>a</sup>	√	X
Working hours	X	XX
Social security (EPF/ESI/BOWCESS)	X	X
Working conditions <sup>b</sup>	X	XX
Security of tenure <sup>c</sup>	√	X
Equal remuneration to men and women	X	X
Special benefits under inter-state migrant workers' act, maternity act, etc.	X	X
Incentive/recognition/award for good performance	X	X
Child labour	√	√
Collective bargaining	X	X

<sup>a</sup>Minimum wages as notified by the Bihar Government for Brick kiln workers

<sup>b</sup>Working conditions as specified in the factories act

<sup>c</sup>'Security of tenure' in the case of brick kiln workers is the surety of getting job in next season

XX Extremely poor

The actual payment of piece-rate wages for some work at almost double the minimum rates fixed by notifications of government of Bihar shows the callousness of government machinery in comprehending the labour market situation of the industry. The continuance of the practice of recruiting workers through traditional contractors from poor regions,<sup>121</sup> the virtual absence of all labour standards at the brick kilns, and the proliferation of brick industry in the region, intrigued the author enough to inquire after the profit margins of brick kiln industry. The government officials in their interactions denied having any clue on profit margins of the brick kilns and gave varied responses. In their interviews, the brick kiln owners avoided a direct response and instead cited problems of doing business in the field. The *sirdars* and the workers had little clue and interest to look at the margins of the employer and were more concerned in their own income. It was some old *munshis* who were working in the industry continuously for years, who after informal interactions pointed towards the huge profit margins in brick kiln business. They acknowledged transactions in millions in a season of which only part was shown on paper while the rest was managed informally to evade taxes. The *munshis* stated that it was due to the very informal nature of recruitment and payment of which no account was maintained either by the employer or the workers, that the employers reaped huge profits without getting noticed. It took several sittings and cross

<sup>121</sup>For qualitative study on details on methods of labour recruitment in brick kilns of Bihar, see Devi (1981).

**Table 5.7** Cost-calculation per 1000 bricks in an average-size brick kiln\*, +

A. Recurring cost				
a) Labour charges (in Rupees)				
Name of the work	Rate- basis	Labour-rate per 1000	Commission of Sirdar (labour contractor)	Total cost/ 1000 bricks
Brick moulding (pathai work)	Piece-rated per thousand	430	70	500
Loading to furnace (bozai work)	Piece-rated per thousand	175	25	200
Arranging bricks in furnace (bozai mistri)	Monthly @ 7,000 mistri-6	105 <i>(total cost 42,000 per month, divided by 4 lakhs bricks produced. For 1000 bricks)</i>		105
Blasting coal in furnace (jhokai mistri)	Monthly @ 10,000 mistri-4 sirdar-1	100 <i>(total cost 40,000 per month, divided by 4 lakhs bricks produced. For 1000 bricks)</i>	25 <i>(total cost 10,000 per month, divided by 4 lakhs bricks produced. For 1000 bricks)</i>	125
Putting dust plasters in furnace (rabishman)	Monthly @ 4,000 workers-3 sirdar-1	30	10	40
Loading coal furnace (koylaha)	Monthly @ 4,000 workers-2 sirdar-1	20	10	30
Unloading from furnace (nikasi)	Piece-rate per thousand	130	20	150
Mud plastering	Monthly @ 4,000 workers-2	20		20
Tractor/ JCB driver	Monthly @ 8,000 workers-6	120		120
<b>Total labour cost (a):</b>				<b>1290</b>
(b) Cost of coal (per thousand bricks)✦: (160 kgs. (4 man) required for 1000 bricks (for Rs 6/kg.))				960

(continued)

**Table 5.7** (continued)

(c) Cost of Diesel for tractor/ JCB (per thousand bricks) (500 liters required per month for producing 4 lakh bricks@ Rs 60/liter)	75
Total recurring cost      (a+b+c)	2325
<b>B. Non-recurring cost</b>	
(a) Chimney cost (per thousand bricks): (one chimney costing 3 lakhs estimated operational for 10 years producing 280 lakh bricks)	11
(b) Land cost (per thousand bricks): (land estimated for Rs 3 crores for 100 year producing 2800 lakh bricks)	107
<b>C. Miscellaneous cost</b> (per thousand bricks): (office building, workers' hutments, water supply, firewood, license, etc)	400
<b>Total manufacturing cost per thousand bricks (A+B+C)</b>	<b>2843</b>
Selling price of good quality bricks/ 1000	8000
Profit/ 1000 bricks (8000-2843)	5157
Monthly profit (on the sale of 4 lakh bricks)	Rs. 20,62,800
<b>Annual profit (on the sale of 28 lakh bricks)</b>	<b>Rs. 1,44,39,600* or \$ 2,19,843</b>
<i>*Compiled later based on realistic estimate provided informally by munshis (accountants) of the brick kilns visited during field work. May vary from kiln to kiln.</i>	
<i>+ An average bhatta produces about 35 lakh bricks in a season. A season normally starts late October and ends in June for tentatively 8 months but an average worker labours at the bhatta for about seven months. Taking out 20% as wastage (though all are sold at the end) due to breakage, poor quality (B &amp; C) of bricks, over-heating, etc., about 28 lakh good quality bricks are sold. In a working month (out of 7) about 4 lakh good quality bricks are produced.</i>	
<i>♣ The estimate on cost of coal differed greatly as per respondents; hence an average figure has been taken.</i>	
<i>♠ It was told that a brick kiln owner pays taxes around Rs 4 lakhs (\$ 6090) per annum.</i>	

verifications to calculate the cost and profit margin in the brick kiln business as compiled in Table 5.7.<sup>122</sup>

It can be seen that one-time capital investment in the brick kilns is negligible, and it is the recurring cost which involves the major expenditure on the part of the employer. As the cost of material inputs like coal, diesel is same for all the brick kilns operators and can be compensated jointly (on rise of cost) by increasing the selling price of the bricks; it is essentially the labour cost which determines the profit margin of the employers. With no one to answer to, the brick kiln operators maximize surplus extraction from labour by various means and keep labour standards down. While the selling price of the bricks is being maintained based on prevailing market rates including all components of labour cost, the brick kiln owner increases their profit margins by saving on labour cost. A similar exercise of cost calculation with labour cost-adding the cost of minimal labour standards will see the profit margins dwindle.

The ability of the brick kiln owners in evading the laws by dubious methods, keeping collective bargaining at bay and in keeping the employment relations informal, has helped him/her in keeping the profit margins exorbitantly high in spite

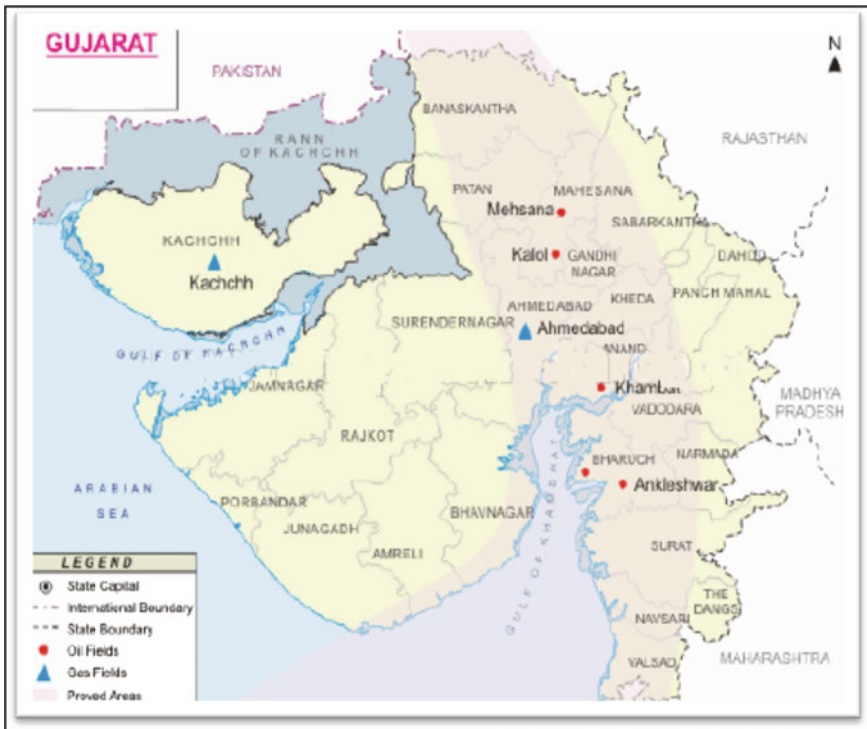
<sup>122</sup>The cost calculation is purely based on accounts as provided by some *munshis*, and lacks inputs from other stakeholders.

of many concurrent downward pressures. The failure on the part of the enforcement agencies in regulating the *bhattas* and on the part of unions in organizing the workers is jointly responsible for the state of affairs at the brick kilns of Danapur.

### 5.5 Fieldwork in Gujarat State

*Dahej SEZ represents modern export oriented industry clusters in India. Moreover Gujarat is one among the most developed states in India. The SEZ being the prime focus of the government for attracting FDI, labour has to be hired keeping in mind the need to maintain both labour skill and flexibility.*

In the last leg of fieldwork in India, during November–December 2014, the author visited Dahej Special Economic Zone located in Gujarat at about 50 km. From Bharuch on the east coast at the confluence of Narmada River with the Gulf of Khambat (see arrow in Map 5.3). Bharuch falls on the Delhi–Mumbai main route



Map 5.3 Map of Gujarat state indicating Dahej SEZ in Bharuch

and thus is well connected by train and road (NH-8). Moreover, being located on the Arabian Sea coast and Narmada River makes it a perfect sea and inland trade destination. Travelling to Dahej from Bharuch on six-lane metalled road was a pleasant 1-h drive through vast stretch of open land. One can see big factories from a distance while approaching the SEZ. In fact, many industries were found to be located at the periphery of the SEZ.<sup>123</sup> To enter the SEZ area, one has to cross through a large gate which regulates entry and exit to the area.<sup>124</sup> To get to know the state of affairs in one of the most developed states of India, on return from Dahej via Vadodara the author also visited some of the industries located at the Makarpura area of Vadodara which is part of one of the earliest industrial estate developed by the Gujarat Industrial Development Corporation (GIDC).

### 5.5.1 *Dahej Special Economic Zone*

India entered the bandwagon of export-promoting nations as early as 1965, when an export processing zone (EPZ) was established in Kandla on Gujarat coast. The idea of setting an SEZ is to provide ambient industrial environment like single window clearances, infrastructural set-up, fiscal sops, flexible labour at a single location for attracting foreign direct investments, which otherwise faces many hurdles on the main land. An SEZ when fully functional is expected to earn substantial foreign exchange through export-earnings and create employment opportunities through additional economic activities.<sup>125</sup> Accordingly in India, the SEZ policy was announced in April 2000 and the SEZ Act was passed in 2005. Dahej multipurpose SEZ which is one of the latest entries in the arena is also one of the largest and most modern among the SEZs in India.<sup>126</sup> Being jointly developed by the GIDC and the Oil and Natural Gas Corporation (ONGC) in an area of 1732 hectares, the SEZ ranks among the top SEZs of the world.<sup>127</sup> Mostly populated by petrochemical and chemical industries, the SEZ acts as a production hub for user industries both in India and abroad. In spite of being a new SEZ still in its construction phase,

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<sup>123</sup>The Dahej area has both the GIDC zone and the SEZ.

<sup>124</sup>An SEZ is treated like a foreign territory in the matter of movement of goods in-out of the area. All entry of goods are treated like import, while the exit of goods is treated like export and monitored by custom officials. Even entry of Indians within the SEZ area requires permission from the office of the Development Commissioner. (The fiscal advantages and scheme of things at a SEZ is planned for export oriented units (EOU) and not for Indian markets which would otherwise cause tax-losses to the government).

<sup>125</sup>For details on SEZ policy see, <http://www.sezindia.nic.in>.

<sup>126</sup>For details on Dahej SEZ see, [http://www.dahejsez.com/dahej\\_sez\\_profile.html](http://www.dahejsez.com/dahej_sez_profile.html).

<sup>127</sup>As declared in 2011 and 2012, see; <http://timesofindia.indiatimes.com/business/india-business/Dahej-SEZ-makes-it-to-worlds-top-50-free-zones/articleshow/15614427.cms> (accessed on 11.12.14). Also see <http://www.dahejsez.com/news/Global-Free-Zones-of-the-Future.pdf> (accessed on 12.12.14).

Dahej SEZ has started to earn considerable foreign exchange for the country.<sup>128</sup> Like all free-trade zones (FTZs), the production system and labour market at the Dahej SEZ is totally dependent on the global production network. The Dahej SEZ faces competition from SEZs of China and East-Asian countries which endeavour to provide cheap flexible labour and better industrial climate for the investors.

**State of Things at Dahej SEZ:** The SEZ was found to be located at a remote stretch of vast open land with industries spread across a wide area. Though all the industries seemed to be well connected by good quality roads however the physical distance among them made field visit difficult. Besides the few industry visits arranged by the office of the Development Commissioner, the author interacted with workers at tea points and on the vehicle stops on main road. Workers from Maharashtra, Madhya Pradesh and the eastern states of the country, besides local workers were found working at the Dahej SEZ. It was learnt that while the managerial staff was directly engaged by the companies, majority of the labour force at the SEZ were engaged through third-party contractors. Most of the contract workers interviewed admitted to getting their legitimate dues on time at the industries they work in. Social security benefits like ESI and EPF were also being provided to them, some even spoke of additional accidental insurance coverage provided by their companies. However, some workers who had just started their jobs at the SEZ were found to be apprehensive about their payment and even complained that they have not been provided of EPF number by the contractor. Most workers said that they were residing in company provided accommodation or at accommodation provided in adjoining residential areas by their labour contractors. Among the local workers, it seemed that the feeling of ‘son of soil’ was very much prevalent. Workers from the neighbouring regions of Gujarat in their interviews lamented the tendency of the industries to employ outside labour who worked more for less pay whereas local persons were denied their rightful employment. In fact in every allotment letter for setting up an unit at Dahej SEZ there is an express provision that ‘the allottee shall engage local persons to the maximum extent possible’ (Section 10(s) of the allotment letter),<sup>129</sup> where a local person has been defined as, ‘a person domiciled in Gujarat State for a minimum period of 15 years’ (ibid). Some interviewed also conveyed that while well-paid jobs are given to outsiders, only lowly jobs are being offered to locals. While moving around the SEZ, the author met some labour contractors who were engaged in supplying informal labour for construction activities at different units of the SEZ. One such labour contractor when interviewed said that the workers were being brought by him from Madhya Pradesh and were meant for work of a short duration. Being a small-time contractor, he was mainly engaged in maintenance of water supply lines in the SEZ and labour supply was only a part of his own work. The workers were mostly young tribal girls accompanied by male accomplices. The author tried to speak to some of the

<sup>128</sup>As stated on the website (accessed on 12.12.14), ‘export of Dahej SEZ was Rs. 2069 crores (\$31.5 million) during 2013–14 and Rs. 1452 crores (\$22.1 million) during 2014–15 (updated up till November 2014)’, see, [http://www.dahejsez.com/dahej\\_sez\\_profile.html](http://www.dahejsez.com/dahej_sez_profile.html).

<sup>129</sup>See sample allotment letter at <http://www.dahejsez.com/forms/specimen-copy-of-offer-cum-allotment-letters.pdf> (accessed on 12.12.14).



workers but could only understand that they moved in groups as per availability of work. After interacting with the contractors and workers of the informal sector, some of the industries located in the SEZ were also visited. The contractors working in the SEZ regions were mostly large firms with many other offices besides in SEZ. Most contract agencies were operating on work basis and had sub-contracted parts of the work to different agencies for completion. In a large petrochemical factory, the contractor interviewed was engaged in construction activity; he conveyed that he was employing workers temporarily till the completion of the project and all social security benefits were being extended to the workers. He even produced a pamphlet (in Gujarati) for educating the workers on the benefits of BOWCESS Act. The contractor conveyed the view that as there is a general scarcity of skilled workers in the region, and that he paid full minimum wages and sometimes even higher wages to retain his workforce. On being questioned on payment of enhanced allowances to migrant workers as per law, he stated that as the workers came on their own there was no such requirement. Similar views were expressed by other contractors who participated in the discussion. The employers' representatives interviewed were HR professional managing the labour matters of their firms on behalf of their employers. Over their conversation they repetitively invoked the SEZs of China especially Shenzhen and Guangzhou SEZs with whom India has the largest trade share. The HR professionals wanted such law and public policy which may help their companies to compete with the companies based in Chinese SEZs. They informally cited numerous counts of flexible labour relations in China with crystal clear policies and also spoke of a Chinese steel company gaining foothold at Dahej SEZ.<sup>130</sup> On being questioned on 'son of soil issue', they conveyed that there was a lack of sufficient numbers of skilled workers locally and the industries were dependent on migrant workers who were dependable. The HR officials further informed that all dues of the workers were ensured to them on time and they monitored the working of the contractors.

**Labour Law Puzzle at Dahej SEZ:** The intent of the government behind the announcement of SEZ policy in the year 2000 was to adopt the 'Chinese model'<sup>131</sup> of labour market flexibility at the SEZs in India. However, due to pressure from the labour unions and simultaneous push from industry, the government flip-flopped several times in its labour policy on SEZs. Finally, when the act was promulgated in June 2005, it contained no such provision which could modify central acts and schemes on 'matters relating to trade unions, industrial and labour disputes, welfare of labour including conditions of work, provident funds, employers' liability,

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<sup>130</sup>The account given by the HR professionals on labour relations and policy in China could not be independently verified. As for the steel company, a Taiwanese owned company named China Steel Corporation India Pvt. Ltd. is operating in the GIDC area, Dahej-II, in Bharuch.

<sup>131</sup>The success of Chinese model of SEZ was due to its' large size, careful planning, stable policies, and flexible labour laws. However, unlike India which has approved 200 SEZs of all dimensions, China has restricted itself to six large size SEZs. For details see, [http://articles.economicstimes.indiatimes.com/2006-11-14/news/27449595\\_1\\_sez-policy-chinese-sezs-sez-act](http://articles.economicstimes.indiatimes.com/2006-11-14/news/27449595_1_sez-policy-chinese-sezs-sez-act) (accessed on 12.12.14), also see, <http://www.impactjournals.us/download.php?fname=-1392913454-7.%20Humanities-A%20Comparative%20Study%20on%20Indo-Chinese%20SEZs-K.G.Mallikarjuna.pdf>.

workmen's compensation, invalidity and old-age pensions and maternity benefits applicable in any Special Economic Zones' (Section 49).<sup>132</sup> Thus, as per the Central SEZ law, legally all the labour laws are equally applicable at the SEZs as are applicable in other non-SEZ areas.

The labour laws at the SEZ however are in a state of flux due to variety of factors. Firstly, there are many enabling clauses within the act itself, as explained later in this section, which provides for exemptions from Section 49 of the act. Secondly, 'labour' and 'industry' being a 'concurrent/state' subject also falls within the jurisdiction of states to legislate upon, thus many states have enacted its own SEZ Act and labour policy adding to the puzzle. Lastly, due to utter confusion prevailing on the applicability of labour laws in the SEZ area, diverse practices are being adopted on the ground sometimes to the detriment of the workers. The field visit to the region brought forth the ambiguity on labour matters prevailing in the region as pointed below:

Development Commissioner as Labour Commissioner: As per Section 17(1) of the Gujarat SEZ Act, 2004,<sup>133</sup> the Development Commissioner has been vested with the powers of Labour Commissioner for a SEZ.<sup>134</sup> This enabling clause makes the Development Commissioner, the *de-jure* authority for all labour matters. However, during the field visit it was found that this provision under the act was neither in the knowledge of the officials from the side of the developers side or the side of the Commissioner.<sup>135</sup> On the follow-up visit to some of the industrial units of the SEZ, it was found that even none of the contractors/employers interviewed were aware of such a provision. In fact, officials from the regular Labour Commissioner Department inspect these sites and even the notice board contains the names of the officials associated with the regular Labour Commissioner as inspecting officials, and not the Development Commissioner (see Photo 5.12). Even the labour license granted to a labour contractor for working at the Dahej SEZ area was found to be issued by the office of the regular Labour Commissioner and not the Development Commissioner office.

Filing of Yearly Returns: As per the enabling clause contained under Section 39 (2) of the SEZ Act, 2005, and per Section 9 of the Gujarat SEZ Act, 2004, the performa contained with the Gujarat SEZ rules, 2005, a single return for previous

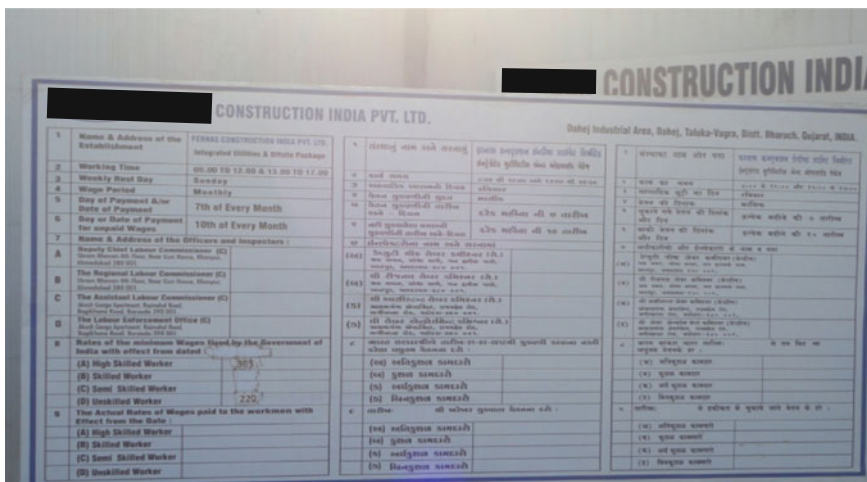
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<sup>132</sup>See, SEZ Act, 2005 at; <http://www.sezindia.nic.in/writereaddata/pdf/SEZ%20Act.%202005.pdf> (accessed on 11.12.14).

<sup>133</sup>See Gujarat SEZ Act, 2004 and other acts of the government of Gujarat state related to SEZs see, <https://ic.gujarat.gov.in/sez-government-of-gujarat.aspx> (accessed on 08.05.18).

<sup>134</sup>Also as contained in the Central SEZ Act, 2005, 'every Development Commissioner shall discharge such functions and exercise such powers as may be delegated to him by a general or special order by the Central Government or the State Government concerned, as the case may be' (Section 12(4)).

<sup>135</sup>During field visit to the SEZ, while one official from the office of Chief executive officer (developer side) was interviewed, almost five officials from the office of the Development Commissioner side were interviewed. The development Commissioner sits at his office at Ahmedabad.



**Photo 5.12** Information board on jurisdiction of labour department at Dahej SEZ

financial year is to be filed. The performa also has a self-certification enabling clause. However, during a visit to the SEZ region it was found that none of the government officials of the SEZ were aware of such a clause—in practice as reported by some of the respondents from units; multiple returns are filed as per regular labour laws.<sup>136</sup>

Applicability of Building and Other Construction Workers Welfare Cess Act (BOWCESS), 1996: As per an enabling clause under Section 7 of the SEZ Act, 2005, all taxes, duties and cess are exempted from goods and services (under schedule 1<sup>137</sup>) for the SEZ. However, there seems no clarity on the matter in the Dahej SEZ where construction is in full swing. Though no BOWCESS card was produced by the respondents; however, a pamphlet (in Gujarati) circulated by the Gujarat Labour Department was shown to the author along with an application format

Applicability of Industrial Dispute Act<sup>138</sup>: As per the information brochure of Dahej SEZ, ‘in Gujarat, SEZ units have special advantage in labour matters as the Industrial Disputes Act, 1947, has been amended (the only state to have done this) providing for termination, layoff and even closure of unit in SEZs, subject to

<sup>136</sup>W.e.f. 24.04.2015, the government has introduced online filing of return though an unified portal, viz. <https://shramsavidha.gov.in/home>.

<sup>137</sup>Though the BOWCESS act was enacted in 2006 and is not contained in schedule 1, but as per the enabling provision of the 2005 act, ‘the Central Government may, having regard to the objects of this act, and if it considers necessary or expedient so to do, by notification add to, or as the case may be, omit from the First Schedule any enactment specified therein” (Section 54(1)).

<sup>138</sup>See notification no. GRH-2007-30-IDA-2006-231-M.4 dated. 13.4.2007 at [http://ic.gujarat.gov.in/wp-content/uploads/2011/03/SEZ\\_related\\_circulars.pdf](http://ic.gujarat.gov.in/wp-content/uploads/2011/03/SEZ_related_circulars.pdf); also one can see related references made at [http://ic.gujarat.gov.in/?page\\_id=521&http://ic.gujarat.gov.in/?page\\_id=3090](http://ic.gujarat.gov.in/?page_id=521&http://ic.gujarat.gov.in/?page_id=3090) (all accessed on 12.12.14).

payment of applicable compensation to workmen', similarly the Dahej SEZ website announces the amendment to the industrial dispute act 1947, for providing flexible labour employment in special economic zones.<sup>139</sup> This seems to be enabled by powers delegated vide the Industrial Disputes Gujarat (Amendment) Act, 2007, which has been promulgated by the government of Gujarat for providing separate provisions dealing with termination of an employee and closure of an industry within SEZ region. This is contrary to limitations imposed by Section 49 of the 2005 Central Act.

**Collective Bargaining:** Though no specific information on Collective bargaining exists at Dahez SEZ website or information brochure however as per information provided on the website of Kandla SEZ on Gujarat SEZ 2002 policy,<sup>140</sup> SEZs have been declared as 'public utility services' under the provision of the Industrial Disputes Act, 1947 (under Chapter 5, Section 22). The implication of such a provision is that a prior 14-days notice is to be served before any strike and the state can ban any strike or lock-out. However, during the field visit it was found that there was a general understanding that no union activity is permitted within SEZs of Gujarat. Though some workers agitations were talked about but these pertained to grievances of local workers against employers hiring outside workers.

The ambiguity found on the application of labour laws was discussed with the officials of SEZ and the officials of the labour department. The official interviewed from the Dahej SEZ Ltd. conveyed that he belonged to the developer side and was only concerned with the allocation of land after completion of all necessary formalities. He provided details on the procedure on allocation of land in the SEZ and said that all the plots at phase-I and -II are already booked and there is a huge rush from investor side for plot allocation at the SEZ.<sup>141</sup> The other officials sitting in the Dahej SEZ office were from the office of Development Commissioner and were from customs and excise background. These officials designated as appraisal officials and preventive officials were largely concerned with entry and exit of persons and goods from the SEZ region and were found to have little information on labour laws. The Assistant Development Commissioner, Dahej (sitting in Ahmadabad), when contacted stated that the office of the Development Commissioner belonged to the central government; hence, they were unaware of any changes in labour laws brought out by the Gujarat government however he promised to look at the issue. The Assistant Labour Commissioner (State) when contacted at Bharuch was surprisingly also found to be unaware of any such special provision for SEZ area and stated that no differentiation is made in the application of labour laws in SEZ and non-SEZ area by his office.

<sup>139</sup>See, <http://www.dahejsez.com/Content/sezs-in-gujarat-46> (accessed on 8.05.17).

<sup>140</sup>See <http://www.kasez.com/gujarat.htm> and also [http://articles.economictimes.indiatimes.com/2002-07-27/news/27342269\\_1\\_sez-units-sez-goods-sales-tax](http://articles.economictimes.indiatimes.com/2002-07-27/news/27342269_1_sez-units-sez-goods-sales-tax) (all accessed on 12.12.14).

<sup>141</sup>The official interviewed from the office of CEO, SEZ Dahej, seemed to be the only regular official while all other were either holding additional charges from distant locations or travelling long distances to reach the venue.

### 5.5.2 *Makarpura Industrial Area*

Gujarat Industrial Development Corporation (GIDC)<sup>142</sup> industrial estate was established in Makarpura, Vadodara in the year 1969. Starting with less than ten industries the number gradually added up many-folds with well-known international names like Siemens, ABB and Alstrom.

**State of Things at Makarpura Industrial Area:** Makarpura industrial area falls within the Vadodara town municipal area and lies adjoining to Maneja village. However, unlike what was seen in other parts of the country, no rush of labour was seen at the company gates of industries located in the region. In the first company visited, the author shared the food at the mess along with the contract workers so as to informally chat on the state of labour prevailing in the factory and the Makarpura area in general. It was stated by the workers that their contractor provided all dues as prescribed and in the case of any dispute they were free to approach the management of the company for redressal of their grievances. The workers informed the author that they were being provided with uniform, preventive shoes, mess, and other facilities at par with the regular staff of the company. On being specifically questioned on their wages, bonus, ESI/EPF, overtime and duty hours, it was conveyed that their duty was for 8 h beyond which they got overtime besides other listed benefits. On the rates of overtime paid, the workers informed payment at same rates and not double the rates as prescribed under law. Also, on wages, the workers complained about getting far less wages and bonus than the regular workers and stated that they were forced to take compulsory one month break after completion of six-month services. On collective bargaining, the workers denied of any linkage to any union or workers' committee. After meeting the workers, the author enquired from the HR officials on the contract labour scenario prevailing in the company. The HR official interviewed said in his company only a small fraction of workers was on regular payroll while the rest were on contract. On service conditions of contract workers, he said that it was a policy of the company to give six-monthly breaks to the workers to quell chances of any demand for regularization; otherwise, all contract workers were provided similar facilities as regular workers. The visit to other factories produced similar responses.

**Medium Scale Auto and Engineering Industry:** ABB<sup>143</sup> at Makarpura employs about 650 regular workmen and 250 contract workers. What enthused the author in visiting the company, was the information that the ABB has a strong union at Vadodara which has incorporated the contract workers into its fold. The company at Vadodara had a strict policy to dissuade researchers and thus gaining access to the ABB premises was difficult. It was only after establishing contacts through some union workers that entry was allowed within the factory gate. The union leaders conveyed the view that the regular workers' union collectively

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<sup>142</sup>For details on GIDC see, <http://gidc.gov.in/>.

<sup>143</sup>Based in Zurich, Switzerland, ABB is the global leader in power and automation technologies. For details see <http://new.abb.com/about/abb-in-brief> (accessed on 15.12.14).

bargains for the contract workers and all the workers get the same facility from the company. It was said that pay and allowances of contract workers have been bargained through an agreement with the company. However, even after repeated persuasion neither the agreement copy was provided nor interviews with contract workers were arranged for getting the statements confirmed.<sup>144</sup> The HR official interviewed acknowledged the presence of a union in the company but refused to provide details with respect to the contract workers. He instead preferred to reinstate the legal policy of the ABB with respect to contract workers which was in consonance with government policies. The HR official complained of skill shortage among contract workers and the need to devise a system for upgrading the skills of the workers. At some point, some of the contract workers were contacted by the author outside the company gate and from whatever information gained from the contract workers it was assessed that the regular workers union did take up some issues of contract workers though for all practical purposes the union belonged to the regular workers and not the contract workers. Some of the contract workers informed the author about some workers in sweeping and loading–unloading job that had been earlier provided job security besides many other benefits due to prolonged CB negotiations, but the agreement was kept as a confidential document by the company and none of them have seen the same. It was conveyed to the author that all facilities for regular workers including the facility of health care, paid leave, were also available to the contract workers in ABB. However, following the practice of other units in the Makarpura area, workers were given a break after six months<sup>145</sup> and were not paid wages at par with regular workers for same job. In the evening, the author spoke to one of the contractors supplying labour to some of the industries in the region, at his residence. The contractor spoke of company pressure on fulfilling all legal requirements of the workers, but admitted to some adjustments being made on overtime payment, uniform, etc. He informed the author of the general shortage of workers in the region due to which they had to bring workers from outside states like Madhya Pradesh, Rajasthan and east-Indian states to fulfil the demand. He was aware of the CB activities at ABB and said that the contractors were in general apprehensive of taking up work at the ABB as their profit margin would be hit. On the state of contract workers at ABB, he viewed that their condition was better than other factories located in the region.

**Collective Bargaining at Dahej SEZ, and GIDC Makarpura, Gujarat:** The contract workers at Dahej SEZ were found to be unorganized though some unions do exist of regular workers in the region.<sup>146</sup> There were no CB efforts that covered the entire SEZ. As we have noted, confusion on rights related to collective

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<sup>144</sup>It was informed by the union workers that all information is available only with one Mr. Pillai who was their leader and the man behind all CB efforts at the unit, however all attempts to contact him failed as he seemed to be also looking after the CB affairs of many other companies. No other union person seemed to possess substantial information on the whole aspect.

<sup>145</sup>Some sanitation workers interviewed spoke of three monthly breaks.

<sup>146</sup>Regular workers were found to be unionized in some factories located in the SEZ which are branches of nation-wide large manufacturing industry having national unions.

bargaining prevailed in the SEZ area due to lack of concerted effort made by any of the stakeholder to spread awareness on this contentious issue. In Makarpura industrial area also in most industries contract labour was not covered under CB. In ABB, even though there is some hint of coverage of contract workers within the CB practiced by regular workers, it was the case that the whole exercise was kept under shrouds. Thus, though it could be assumed CB did benefit the contract workers at ABB however, the *modus operandi*, the effects on production and the point of view of management could not be conclusively established in the field visit.

**Labour Standards at Dahej SEZ, and GIDC Makarpura, Gujarat:** The labour standards for contract workers prevailing in the areas covered by the fieldwork in Gujarat were found to be unexpectedly on higher side to those prevailing in similarly placed regions/industries studied in other parts of the country. Most interviewees said that they were getting comparable facilities as that of regular workmen in spite of not being involved in CB efforts. Where some CB efforts were seen (in ABB), the standards were even higher. Minimum wages and social security benefits were found to be disbursed on time and as per rates prescribed in law. Mess facility, transport (in Dahej SEZ), restrooms, toilets, etc., were seen to be available for the contract workers. However, 'equal wages for equal work' as prescribed under the Contract Labour (R&A) Rules was not seen to be present. The remuneration of contract workers was found to be much lower than the regular workers and the bonus and overtime were also paid at lower than prescribed rates. Also, as found in other regions of the country, the migrant workers in spite of constituting the majority of the labour force are denied benefits under the Inter-state Migration Act. No case of denial of Equal Remuneration Act or child labour was seen during fieldwork at Gujarat. The provision of forced breaks in service apparently unique to the Makarpura region shows that the employers here are very particular in avoiding any kind of industrial dispute.<sup>147</sup>

### Gujarat Fieldwork Conclusion

Gujarat is one of the most industrialized states in the country and accounts for substantial chunk of foreign investment<sup>148</sup> coming to India. Many SEZs like Dahej and Industrial estates like Makarpura have come up in the whole region catering to production demands nationally and internationally. However, the ambiguity in labour laws prevailing in the SEZ region may prove to be hazardous for the long-term sustainability of industrial climate in the zones. The divergence within central laws and state laws and the respective departments need to be resolved at the earliest. Secondly, the prevalence of better labour standards (see Table 5.8) at both

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<sup>147</sup>Under the Industrial Disputes Act, any worker who has completed 240 days on job can raise an industrial dispute.

<sup>148</sup>Though there is lot of contradicting statistics on the economic status of Gujarat however there is a general agreement that the state has successfully risen as an industrial power in the recent times. See, Mukherjee (2011); also see, <http://businessstoday.intoday.in/story/vibrant-gujarat-summit-discordant-notes/1/191971.html>; and <http://timesofindia.indiatimes.com/edit-page/Gujarat-Myth-and-reality/articleshow/14032015.cms> (all accessed on 15.12.14).



**Table 5.8** Labour standards for contract workers at Dahej SEZ and GIDC Makarpura, Gujarat

Minimum wages <sup>a</sup>	√
Working hours	√
Social security (EPF/ESI/BOWCESS)	√
Working conditions <sup>b</sup>	√
Security of tenure <sup>c</sup>	√
Equal pay for equal work <sup>d</sup>	X
Equal remuneration to men and women	+
Special benefits under inter-state migrant workers' act, maternity act, etc.	X
Incentive/recognition/award for good performance	+
Child labour	X
Collective bargaining	X

<sup>a</sup>Minimum wages as notified by the Central or Gujarat State Government, whichever is higher, as per the specified hours of work

<sup>b</sup>Working conditions as specified in the contract labour (R&A) and factories act

<sup>c</sup>'Security of tenure' in the case of contract workers can be termed as ensuring continuity in the case of change of contractor. In this case it is also continuity after forced six-monthly break

<sup>d</sup>With regular workers as for performing same type of work as per Contract Labour (R&A) Rules (Chapter III, rule 25 (2) (v) (a))

+ Cannot be established

Dahej SEZ and Makarpura GIDC area is a positive aspect of the region which need to be pushed yet further. There can be variety of reasons<sup>149</sup> behind high labour standards in the region. The most likely reason seems to be a general labour scarcity as also was pointed by some contractors and employers during their interviews. As was stated by many, the rapid industrialization in the state is not matched with the supply of skilled labour leading to labour shortages and wage-rise.<sup>150</sup> High labour standards are thus projected to attract migrant labour from those regions where the standards are poor. However, the 'son of the soil' feeling might be a discouraging factor for large quantum of labour migration (as seen in DMRC) from poorer states to the region which could had lowered the labour standards in the long run. Another factor which can be accounted is the preponderance of skilled and semi-skilled jobs over unskilled category of jobs in the area. The skilled workmen are seen to have still better pay and social security as also found during the study in DMRC and at brick kilns. However, like other regions of the country, standards like 'equal pay for equal pay', 'incentive for good work' and 'special benefits for migrant/women workers', which are essential for improving conditions of contract workers are missing in Gujarat.

<sup>149</sup>When some employers, contractors and experts with pan India experience were questioned on this aspect; some pointed towards better monitoring, historical reasons, job-availability, or/and Gujarati value and ethics.

<sup>150</sup>See, <http://timesofindia.indiatimes.com/city/ahmedabad/Huge-shortage-of-skilled-manpower-in-Gujarat/articleshow/15625638.cms> and, <http://archive.financialexpress.com/news/over-30000-mandays-lost-in-2012-due-to-strikes/1078021> (all accessed on 15.12.14).



## 5.6 Fieldwork Insights from Guangzhou and Shenzhen Industrial Zone, China

*Shenzhen is the first SEZ of China and is the forerunner of SEZs of the world. Guangzhou also was one of the first regions to open up with liberalization of China. Both Shenzhen and Guangzhou located in south China has the largest share of Indo-China trade.*

Undertaking field study to the industrial regions of China was never thought to be an easy task by the author however with sustained interest from the School of Government, Sun-Yat Sen University, China and funding support from the Indian Council for Social Science Research (ICSSR), a first-hand field study of the Shenzhen and Guangzhou industrial zone was made possible in February 2015. The author crossed over to Shenzhen from Hong Kong via land route by travelling up to Lo wu (Luohu) by Hong Kong Metro and after doing some first-hand research at Shenzhen proceeded further to Guangzhou wide high-speed railway (see, Map 5.4). The absence of English signage makes one start getting the feel of being in China, even in public utilities like railway and metro stations English is rarely used in any form. The smart phone with translation apps proved to be of great help over the Chinese sojourn. Both Shenzhen and Guangzhou cities have wide metro network which was used by the author for moving around during the fieldwork. In Shenzhen, some pre-arranged contacts arranged by an Indian industrialist enabled the author to start with the fieldwork. In Guangzhou however it was the University and its helpful faculty, students and staff who helped through the fieldwork.

**About Guangzhou and Shenzhen:** Guangzhou and Shenzhen are both in the Guangdong Province of south China. Whereas Shenzhen borders Hong Kong and is situated at the mouth of the Pearl River in the South China Sea, Guangzhou is the third-largest city of China located about 120 km north-west of Hong Kong, on the upper banks of the Pearl River. Guangzhou is also the capital of Guangdong Province of China and comprises of ten districts. The province since ancient times was part of the maritime silk route and remained an active trading centre in the modern times. Popularly known as Canton and the inhabitants speaking Cantonese, Guangdong was one of the first regions to open up with the liberalization of China. The region came to prominence when in 1980 three among the four SEZs, namely Shenzhen, Zhuhai, and Shantou was set up in the province. The fourth zone at Xiamen was opened in the neighbouring Fujian Province. Within years, these SEZs grew into production clusters and led China towards becoming a world manufacturing hub (see, Map 5.5). Shenzhen which has been called a miracle among the SEZs continues to be one of the fastest growing cities in the world. From a small fishing village located in river Pearl delta region of south China near Hong Kong some thirty years back; in 2014, Shenzhen's GDP totalled \$260.48 billion and per



**Map 5.4** Land/train route from Hong Kong to Guangzhou via Shenzhen

capita GDP was ¥149,500 (\$24,336).<sup>151</sup> The magnificent success of Shenzhen economic zone saw the proliferation of zones across the world including the setting up of Guangzhou Technological and Economic Development Zone in 1984. Guangzhou since has been a success story with a GDP of \$143 billion and a per capita income of \$13,111. The city has been posting new heights in terms of foreign investments due to its magnificent infrastructure and labour potential. As a manufacturing destination, Guangzhou seems to have no bounds. About 34 of the 40 major industries in China have their bases in Guangzhou and 174 of the Fortune 500 companies are operational in the city (2010 figures).<sup>152</sup> The Guangdong Province is now a major manufacturing and trade centre of the world with almost all

<sup>151</sup>See for details, <http://www.chinadaily.com.cn/bizchina/shenzhen30years/sz.html> accessed on 7-05-17.

<sup>152</sup>For details see, Chaudhuri (2011).



**Map 5.5** Manufacturing hubs in Guangdong province, China. *Source* South China Morning Post <http://www.scmp.com/news/china/article/1585431/plan-extend-pearl-river-delta-city-clusters-aimed-boosting-poorer-parts> (accessed on 21.05.2018)

the Fortune 500 companies operating in the EPZs and FTZs of the province specializing in automobiles, computers, electronics, biotechnology and other heavy industries. In the Guangdong Province, over one-third of the population is of migrant workers with rural *hukou* from the surrounding peripheries who fulfil the labour requirements of the industries in the region. More so, in the industrial regions of the Pearl River Delta Economic Zone which includes Guangzhou and Shenzhen the workers with rural *hukou* far exceeds those with urban *hukou*.<sup>153</sup> It is these migrant workers providing cheap flexible labour in low paid and dispatch jobs, which fuels the gigantic industrial growth of the region.

Guangdong Province enjoys special trade and cultural relations with India since ancient times. The ancient south silk route remained the major trading route between south China and India for more than 2000 years. Many Buddhist preachers and scholars travelled on this road between the two countries. There are several ancient Buddhist temples in Guangzhou giving out an echo of Indian connections. Both Guangzhou and Shenzhen has a thriving Indian community which caters to the business among both the nations. At \$10.07 billion (2013), the Guangdong

<sup>153</sup>For example, out of 15 million population of Shenzhen only 2.7 million have urban residency rights. For details see, <http://www.clb.org.hk/en/content/latest-population-statistics-show-migrants-still-margins-guangdong> (accessed on 21.04.18).

Province still continues to have the major chunk of trade relations between India and China.<sup>154</sup>

**State of Things in Shenzhen and Guangzhou Industrial Zone, China<sup>155</sup>:** Guangdong Province predominantly has non-state or private industries, while only about 10% are state-owned enterprises (SOEs) mostly in the energy sector.<sup>156</sup> It was also learnt that in the province about 70% employees are direct workers on fixed-term contract, while 20% are third-party (agency) workers, rest were either permanent workers (with unlimited contract) or with other form of service engagement. The first impression on a factory visit in the region demonstrated that the workers are in control of the state of affairs at the workplace, as it was the enterprise unions which control the entry and exit of visitors within the factory premises.<sup>157</sup> Once entry was granted, the author was generally taken to the designated room identified for visitors within the administrative part of the factory where union leaders joined in for discussion. Sometimes a short visit to factory lines was also arranged with proper briefing beforehand. Many a times after meeting, the union leaders, on return, few workers were interviewed at the factory gate or in the mess area. Surprisingly for the author, there seemed general enthusiasm among the workers to know more about workers and working conditions in India. In spite of the language constrain and the limitation of communicating through an interpreter, the author could perceive the concern among the workers and the union leaders on the competition posed by India. Many workers said that they were residing with family in accommodation provided by the company. Over-detailed discussion, it was found that in general the workers were divided into three different categories as per their service conditions. Majority of the workers were having direct written

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<sup>154</sup>For details on trade and cultural relations between India and South China, see, [https://www.cgiguangzhou.gov.in/cgi.php?id=South\\_China](https://www.cgiguangzhou.gov.in/cgi.php?id=South_China) (accessed on 21.04.18).

<sup>155</sup>It were the faculty from the Sun-Yat Sen University, who hosted the author and introduced him on the prevailing state of affairs at the industrial zone of Guangzhou and Shenzhen. One of the professors who was himself a well-known labour expert took the author to different industries in the Guangzhou zone and personally interpreted his interviews with different workers, union leaders, and employers. In view of the same and the inherent limitations some perceptions included in the work might be preconceived, though all attempt has been made by the author for an unprejudiced reporting of the fieldwork.

<sup>156</sup>The Guangdong provincial government has further set an ambitious target to include some sort of private ownership in 70% of SOEs by 1970 which would be extended to all SOEs by 2020. For details see, <http://www.scmp.com/business/economy/article/1603492/guangdong-eyes-soe-reform> (accessed on 21.04.18).

<sup>157</sup>As perceived during most field visits to industries in both Guangzhou and Shenzhen, the union representatives were competent to grant access for visitors (like the author) within the industrial premises. The same happened with the author only at ABB factory in Vadodara in India.

contract with the employers with 60–70% basic pay and about 40–30% variable pay dependent on performance. The agency (dispatch) workers comprised of the second largest group with more of variable pay. Permanent workers were mostly highly paid skilled technicians and were considered as employers' representatives and were few in number. The basic wage of both direct contractual workers and agency workers was said to be the same except that the agency workers had a lower type of insurance provided by the company. Also, it was learnt both in Shenzhen and Guangzhou that predominantly (about 60–80%) the workers belonged to the rural *hukou*. When questioned, most of these workers stated to be having no difference in workplace entitlements due to *hukou*, instead it was explained that *hukou* meant difference in access to public facilities like schools, hospitals. The wage rate of an average worker ranged from 3000 to 4000 RMB (about Rs. 30,000 (\$453) to Rs. 40,000 (\$604)) without overtime and workers opting out of company dormitory got an additional housing allowance of 350 RMB (about Rs. 3500 (\$53)). Promotion avenues available were said to be moderate. It was explained that in China vocational education was the mainstay of the school curriculum, besides all companies provided free training before induction into job. There seemed no differentiation made between male and women workers in workplace relations. Women workers performed night-shift duties and were paid equal wages besides being paid maternity leave. In one of the Japanese electronic automobile component factory visited by the author in Guangzhou, about 70% workers were women and two of the three union representatives with whom the author had a meeting were women.

In some of the enterprise, the agency (dispatch) workers were found wearing a different outfit than the rest of the workers. It was pointed out that these workers were largely freshers on probation who were inducted on completion of their formal training and thus were open to 'hire and fire'. On detailed inquiry it was found that though equivalence in basic pay was maintained, but the 'variable pay' component of the agency workers was very high and they performed tougher duties. Almost all agency workers interviewed belonged to the rural *hukou*. On the need of agency workers in such a scenario, the union leaders interviewed told that the government is itself working on the issue and showed the author an internal directive from the local government asking for reduction in the number of agency workers to less than 10%. Also, it was said that there are directives from the government to completely do away with the engagement of agency workers in a time frame of five years hence industries are increasingly discouraging the engagement of agency workers in a big way.

**Collective Bargaining:** In all the industries visited in the Shenzhen and Guangzhou industrial zone, collective bargaining was found to be well entrenched in the employment relations of each factory. Formal bargaining was a well-established procedure in the workplace with either one or two bargaining

sessions taking place annually between the employer and the workers' representatives. It was said that unions functioned in China at three levels—at the national level, the ACFTU controlled the affairs, followed by the regional level consisting of the provincial unions, municipality unions and the district unions; the lowest level comprises of small town, street and factory unions. Whereas democratic elections were the norm at lower levels, as one moved above, unions were much controlled by the central party. There were no outside members in the factory union; however, when things were not resolved at lower levels, leaders of the higher-level unions were called to negotiate and resolve things. In some of the factories visited by the author, it was conveyed that formal bargaining takes place twice in a year one for wage increase in spring (April) and other in December for the fixation of bonus. It was found that workers could gain 12–15% annually as wage increase due to wage bargaining. The workers interviewed expressed satisfaction with the bargaining process and the role played by the enterprise-level unions; however, there was some reservation on the role played by some full-time provincial union officials. The workers decried the hefty payment deducted from their salary for maintaining the union paraphernalia and enquired on the union system prevailing in India. It was learnt during visit to one Korean automobile company in Guangzhou that a strike there had lasted for 17 days. On the reasons behind the strike, the workers said that the work pressure was very high and painful without apposite compensation provided even after several collective bargaining agreements. There seemed a general dissatisfaction among the workers with the agreements.<sup>158</sup> A 'wild cat strike' was initially organized for few hours daily as a warning message to the management. However, when the management did not relent, the workers held up all work of the enterprise. Interestingly, it appears that the factory union was itself taken by surprise by the strike and it continues to persuade the workers to join work. Earlier similar information of a strike in a Korean cosmetic manufacturing plant at Shenzhen had come to the knowledge of the author while undergoing fieldwork there; however, in spite of reaching the site and meeting the workers no conclusive research could be done due to limitations of language.

During detailed offsite interviews conducted with some of the senior union leaders of the Guangdong sub-province and other experts, it was conveyed that the unions played a much wider role in the lives of the workers in China. The social, cultural and supportive platform provided by the unions help the workers to mingle both in the workplace and the society. The unified singular union was considered by

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<sup>158</sup>The interviews were held from outside the factory gate as no one was allowed inside. There seemed to be two groups among workers one supporting and other opposing the strike. There seemed general discontent among many workers on the collective bargaining agreement which some said had provoked the agitation. The discontent and strike casts doubt on the process of the CB negotiation process.

the experts as the binding factor and strength of the Chinese labour relations. On democracy, the leaders were of the view that the Chinese system believed in grass root democracy as all union members at the lower level were elected in well-contested elections however at the provincial and national level only party nominated candidates could be elected. In China, all working individuals who earned wages from the lower to the top level were covered under unions.<sup>159</sup> Union recognition was compulsory for all establishments. Union contribution which amounted to about 2% of basic wages of all working member was uniformly deducted by the government and deposited in the union account. It was pointed out that in China the number of full-time paid union employees was highest in the world.<sup>160</sup> These employees look after the affairs of the union and also help in monitoring labour welfare and other measures in the industry. For example, unions ensured dictums such as those government safety instructions which seek that dormitory, storage and workplace should be at separate premises are strictly followed. Besides the unions, the workers themselves report any non-compliance by a company. The leaders put out the view that due to the active involvement of the union and the workers in industrial matters, industrial accidents like the one that took place in Bangladesh<sup>161</sup> were unheard of in China. On being questioned on the production concerns of the employers during wage bargaining, the union leaders and experts said that though it was the primary duty of the unions to work for the welfare of the workers however at the same time the union in general did not go against the company and expected the company to perform well. Also sometimes when the factory unions raised unrealistic demands which could not be complied by the employers, the provincial union prevail upon both the parties to tone down so as to reach a compromise. The unified structure of unions and central control ensures that everybody behave responsibly. It was also said that in China there is no provision for strike. Though wildcat strike of workers does take place occasionally however the unions in general do not take part in them as these have no legal sanction.

With respect to the author's questions on agency workers, it was pointed out that separate unions of agency workers existed in all enterprises which took care of the needs of these workers.<sup>162</sup> The experts viewed that Chinese industries in general were increasingly facing labour shortage. One expert referred to a study conducted in ten cities of China which reported that the working age population of China was

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<sup>159</sup>In this way the experts viewed that China has stronger tradition on collective bargaining than those prescribed under ILO conventions 87 and 98.

<sup>160</sup>It was told that in Guangdong province alone the ACFTU has thousands of full-time paid employees.

<sup>161</sup>There has been series of industrial accidents in Bangladesh in the recent past, the most serious was of April, 2013 when about 1100 workers were reported killed due to building collapse. For details see, <http://www.cbc.ca/news2/interactives/timeline-bangladesh/>.

<sup>162</sup>It was learnt that as the union of agency workers were different to regular factory union the contribution of agency workers went to the other union; hence, the factory union oppose increase in the number of agency workers.



actually decreasing.<sup>163</sup> In such a scenario, the wage was bound to rise and also workers would get better terms of service, thus the number of agency workers had automatically reduced in China. Labour unions in general oppose agencification and watch the industry for violations. Also the government with the enactment of new labour laws in 2008 seems to be determined to phase out agency system of employment. The experts conveyed that agency labour system was now no more a major issue in China though some companies still hide exact numbers of agency workers. On the question on continued labour unrest in spite of a well-entrenched arrangement of collective bargaining in Guangdong Province, the union leaders cited improving lifestyle and increased cost of living as the primary reason for labour unrest. It was viewed that though such unrest causes initial loss to the enterprise, but unlike other countries, in China such unrest is momentary and the system ensures that peace at the workplace is restored at the earliest. Further on India replacing China in near future as a manufacturing destination—one of the senior members responded that till India has poor skill level, poor work discipline and no CB mechanism for quelling industrial unrest, it was highly unlikely that manufacturers would choose India in place of China. He cited his interaction with German officials of Volkswagen who preferred Guangzhou over Chennai for setting up a car manufacturing plant, as per his calculations one could produce double the number of cars in Guangzhou with same amount of investment and with less uncertainties.<sup>164</sup>

### **Labour Standards at Guangzhou and Shenzhen**

From the field study conducted at Guangzhou and Shenzhen, it could be surmised that labour standards for all workers especially the agency (dispatch) workers were much better in China than in India. Wage rates of the workers were high due to annual collective bargaining. During the field visit, safety norms were found to be strictly followed at the industries. Accommodations provided by the companies were decent. Men and women enjoy similar benefits. Though agency workers did not have security of tenure and had lower social security and separate unions however due to the prevalence of collective bargaining and unified union, these workers enjoyed almost similar labour standards as to other workers in China. For uniformity, the labour standards found among agency workers at Guangzhou had been presented in Table 5.9.

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<sup>163</sup>The study as he said matched the percentage of decrease in elementary students in China with the percentage of decrease in population.

<sup>164</sup>Later, on gathering facts it was learnt that Volkswagen had setup a manufacturing plant in Chakkan, Pune (India) in 2009 and added a diesel engine assembling plant in the same factory in February 2015. Volkswagen did earlier had plans to set up a manufacturing line in Chennai. For details, see <http://www.rediff.com/money/2003/mar/12plant.htm>; <http://www.rediff.com/money/2003/mar/12plant.htm>; [http://www.business-standard.com/article/companies/volkswagen-starts-diesel-engine-assembly-plant-in-india-115012700991\\_1.html](http://www.business-standard.com/article/companies/volkswagen-starts-diesel-engine-assembly-plant-in-india-115012700991_1.html); (all accessed on 22.04.2018).



**Table 5.9** Labour standards at Guangzhou Industrial Zone, China

Minimum wages <sup>a</sup>	√√
Working hours	√
Social security	√
Working conditions	√
Security of tenure	X
Equal pay for equal work <sup>b</sup>	√
Equal remuneration to men and women	√
Special benefits for migrant workers, maternity benefits, etc.	+
Incentive/recognition/award for good performance	√
Child labour	X
Collective bargaining	√√

<sup>a</sup>As stated due to regular bargaining, wages are even higher

<sup>b</sup>With regular workers as for performing same type of work

+ Could not be conclusively established

### China Fieldwork Conclusion

The socialist past, unified control and the prevalence of collective bargaining in China seem to have contributed in maintaining high labour standards in the industrial zone. Moreover, the shortage of labour reported in the region due to a general decline of working age population has further augmented labour standards. However at the same time, regular collective bargaining negotiations have augmented wages and labour standards to such levels which may make the Chinese labour market less attractive in the long-term. The 2008 labour laws have further lessened its sheen by reducing flexibility for which it was much sought by the employers. Moreover, the recent spate of labour unrest is a major cause of concern.

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## Chapter 6

# Fieldwork Observations and Analysis



This book started with an overview of law and public policy relating to contract labour, and then went on to look at the debate on labour market flexibility, labour standards and collective bargaining. This was followed by a chapter that put out a fieldwork-based ethnography centred on the use of contract labour in India and China. It is pertinent now to turn to a reflection on the empirical observations made during the course of research and analyze these observations with reference to focusing on the questions raised at the beginning of the book. With the rich data gathered from the field in India and China on a wide spectrum of issues concerning the working of the 'contract labour system', the authors hope to provide some policy recommendations drawn from the analysis in the next concluding chapter that could influence future planning and study of legal and policy aspects pertaining to contract labour in India and the developing world. However, before going in this direction, it would be better to review and consolidate the observations and analysis that flow from the field study of different regions/industry as encompassed in the previous chapter.

### **Rudrapur Industrial Area**

The first overall finding that needs to be highlighted is that in-general irrespective of the type of industry, labour standards were very poor in the whole Rudrapur region. It was seen that hopeful workers travel from far-flung regions to Rudrapur, find jobs after long parleys and try to settle their lives. Initially, they find the job very strenuous and low paid, change to a couple of jobs more and find the same everywhere and eventually return back with their hopes shattered with unpaid dues still remaining with the contractors. Most workers in their interviews repeated this same story, only that they were at different stages of the journey. The employers on their part were seen struggling to cope with number of laws they need to cater to and often complained of shortage of quality labour. Some entrepreneurs prefer to

remain on the borderline while managing with informal labour mechanisms. The employers in general complain of indiscipline, absenteeism, indifference and poor workmanship of the contract workers. The labour officials being understaffed were found oblivious of state of things while the contractors being profit-seeking agent adapt themselves to the needs of the industry and get their cut both from the employees and the employer. While the cut from the employer side remained static and even got reduced due to competition, the contractors exercise all means to increase the cut from the employees depending upon the *labour profile*.<sup>1</sup> In small enterprises, it was found that some of the employers prop up a shadow contractor and increase their profit margin by doubling as a contractor. Any collective bargaining efforts of the workers against these malpractices were effectively curbed by the employers, in some incidents the management backed by the contractors and government officials exercised all means to break workers' unity. In such a scenario while the same set of contractors, employers and labour officials continue at the Rudrapur industrial area, the workers keep on getting replaced by a set of fresh workers<sup>2</sup> with very few among them finding it apt to continue for long. Also, it could be gathered during face-to-face interviews with contract workers that most respondents were from a farming background and had some agriculture income to support them but were finding it difficult to survive with the meagre farm income. More so as agriculture is a seasonal occupation, the workers were lured to look for a better option during lean season. Some workers had their land mortgaged under debt and had to share the little produce with the lender. Yet other workers with better education saw no future in agriculture. When informally asked about MGNAREGA<sup>3</sup> or BPL ration card,<sup>4</sup> most workers blamed poor targeting by the government as these schemes they said were benefitting the rich in their villages while the poor were either left out or could only avail them on payment of hefty

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<sup>1</sup>As assessed from most responses, the workers were engaged by the contractors on fixed monthly wage for 12 h duty and paid wages for 8 h. In most cases, all EPF, ESI and bonus besides the 4 h difference of wages was pocketed by the contractor. Also, though it could not be established in the fieldwork, it cannot be altogether denied that the contractor is sharing this booty with the employers and other stakeholders.

<sup>2</sup>As projected in the data, almost 75% of the contract workers were new to Rudrapur and had started work in the region only within 6 months.

<sup>3</sup>Mahatama Gandhi National Rural Employment Guarantee Act is a flagship programme of the Government of India guaranteeing 100 days of employment to each rural household within the country. For details see, <http://www.nrega.nic.in/>.

<sup>4</sup>The below poverty level ration card issued under the targeted public distribution system (TPDS) has been replaced by priority households and Antody Aann Yojana (AAY) under the National Food Security Act (NFSA), 2013, vide which food grains are made available to target households at very subsidized rates (at Rs. 1 (\$0.015), Rs. 2 (\$0.030) and Rs. 3 (\$0.045) per kg). For details see, <http://dfpd.nic.in/?q=node/999> (accessed on 30.12.14).

inclusion fee.<sup>5</sup> Thus, there are two contradictory factors simultaneously existing in the labour market at Rudrapur in general—jobs are available in abundance at the industries of Rudrapur but most workers find it difficult to fit into the jobs; likewise, labour is available in abundance, but the employers face a shortage of skilled manpower.

Now applying the principles of market economics, in Rudrapur, the supply of unskilled labour is much more than demand; hence, the wages are unlikely to rise above the subsistence level. Instead due to some support from agricultural income, the subsistence wages of the workers are rather likely to be reduced in the ensuing race for employment. Moreover, as we know the labour market is not perfectly competitive and as the workers have no collective voice and are subject to ‘hire and fire’ mechanisms, the employers and the contractors manage ‘to increase their surplus by unscrupulous means by aggregating surplus value through exploitation of labour power by all means’.<sup>6</sup> But simultaneously as the workers are free to move around, they often opt to shift to other industries in Rudrapur or some other regions where they hope to get better terms of employment, or else they are always free to move back to their farmland. Also, with no status at workplace and being kept disjointed from production on account of mediation by the third-party contractor, workers have little motivation to work. Thus, the employers of Rudrapur get mere ‘manpower’ in contract workers and not a set of ‘willing workers’ who can be considered good for production. The net result of labour precariousness at Rudrapur is that nobody wishes to invest in skill development. While the employers consider investment on training of contract workers who are mostly irregular as an irrecoverable loss, the workers with no security of tenure have other priority areas to invest upon. The contractors on their part have been provided no incentive in the contract labour system to train their workers. Consequently, in spite of having an abundance of labour, the Rudrapur industrial region faces a severe shortage of skilled labour force.<sup>7</sup>

However, the condition of contract workers at the Mahindra plant is in sharp contrast from the state of things prevalent in most other industries at Rudrapur. The prevalence of collective bargaining at Mahindra tractors has helped raise labour standards of the workers while fulfilling the flexibility needs and production

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<sup>5</sup>The inclusion cost, as conveyed, amounted to anywhere between 10 and 90% of accrued benefit, depending upon the status of applicant. Most workers requested the author to convey to the concerned authorities on the matter and said that their life at the villages would not had been miserable if the benefit of these schemes was made available to them.

<sup>6</sup>The term, ‘surplus’, ‘surplus value of labour’ and ‘labour power’ are terms used by Marxian economists to explain exploitative nature of capitalistic mode of product. Marx (1849) distinguishes ‘necessary labour’ which is the amount of labour required for the worker to sustain himself and his family, from ‘labour power’ which is the total labour entrapped in the body of the worker. It is the ‘labour power’ that is purchased by the capitalist which allows him to extract more value from the workers than is paid for as wages. This ‘surplus value’ that is generated from unpaid labour is the profit of the capitalist.

<sup>7</sup>It was conveyed by most of the employers interviewed that though there is a huge rush of job seekers with university and college degrees in Rudrapur, very few skilled manpower is available.

requirements of the employers. The security of tenure, wage rise, perks and privileges attained by the workers through collective bargaining has given them motivation to work for the company. The management on its part is assured of the production targets fixed as per the CB agreement. In such a labour market scenario, the contract workers of the factory are interested in skill upgradation, as is their employer. In spite of the fact that the CB exercise has not been given recognition by the local labour officials and may be considered illegal on the face of law—the benefit it has granted to all the stakeholders including the management who are generally averse of CB efforts of its employees has given new hopes for the contract labour system as a whole.

### **Delhi Metro Rail Corporation**

The technique of the management to offload the work of construction, sanitation and security<sup>8</sup> to manpower contractors is in tandem with the global trend in labour management so as to concentrate on the core area of operation. However, the intent of the DMRC towards engaging contractual manpower in perennial services (like token vending, sanitation) also seems to be guided primarily by cost factors. DMRC being a profit-making public venture should not be lowering manpower cost by adopting the contract labour system, which is one of the major motivations for the private sector to adopt the system, as seen in the case study of Rudrapur manufacturing industries. Additionally, being a government-run body, the DMRC is expected to fulfil all its labour obligations as provided in the laws of the country. By keeping the TOM operators on contract basis and on minimum wages, while providing central pay and allowances to the station controllers for similar work at the same stations is in violation of the provision of ‘equal pay for equal work’ as provided both in the Factory Act and the Contract Labour (R&A) Rules.<sup>9</sup> The invented distinction of station controllers vis-a-vis TOM operators is against the stand of the law, and given the fact that the metro runs 365 days in a year, the perennial nature of work cannot be denied. Turning to the case of sanitation workers, peons and security guards, keeping workers on contract for these perennial jobs also seem to be not justified. The construction sector which is a time bound short-term activity is however a major grey area where the DMRC uses a lot of contract labours. Even if the contract labour system cannot be dispensed in construction activities, DMRC should encourage good labour practices in the sector to fulfil its ‘people’s first policy’. For example, an attempt could be made to list out all

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<sup>8</sup>Only part of the security in Delhi Metro is outsourced.

<sup>9</sup>It was learnt that the Central Government Contract Labour Advisory Board has also recommended for regularization in ticketing jobs in the DMRC. For details see, <http://indianexpress.com/article/cities/delhi/delhi-metro-contract-labour-system-2777161/> and <https://www.metrorailnews.in/delhi-metro-advisory-board-says-stop-contract-labour-system-in-dmrc-for-ticketing-jobs/> (all accessed on 23.04.2018).

piece-rated jobs being practiced at DMRC construction sites and fix minimum rates which can form part of a commercial agreement with its contractors. Also, DMRC should ensure that all social security measures specially the BOWCESS benefits are extended to the contract workers on their first entry. The DMRC being state-run monopoly has no compulsion to follow competitive cost-cutting measures in the case of labour;<sup>10</sup> however, at the same time, it cannot compromise on quality and on effectiveness of its services. Separate labour policies which individually meet its services, security and construction requirements need to be devised by DMRC that can also comply with its legal and social obligations. A well paid, socially secure and healthy labour force can only ensure a harmonious and dedicated working relationship which is essential for an agile service organization like Delhi metro. Workers can either be its strength or weakness, which can only be ensured through the labour policies of the DMRC.

The DMRC being a state-controlled corporation, it is not the typical case of a free-market enterprise propounded by liberal economists where demand and supply regulate both inputs and outputs. It is in pursuance to labour policies mimicking the private sector that DMRC has ended up introducing labour market flexibility to offload part of the jobs it has created to third-party contractors. As seen from the case study, aggressive conditioning and monitoring has not helped the cause of unskilled/construction workers of DMRC—being in the national capital has also not provided any added advantage to the DMRC workers as against the workers toiling in far-flung region like Rudrapur. The only difference between the private sector contract labour system flourishing in Rudrapur and the state-led DMRC is that, whereas, in the former both the employer and the contractor are profit-seeking agents, in the latter it is only the contractor. Though the reduction of one agent should have benefitted the workers of DMRC, but on the ground level no major difference is noticeable. The labour market scenario at DMRC reinforces the view that if left to the market, labour is like a commodity the price of which is essentially determined by demand and supply. As noted in DMRC, even when multifarious control is exercised through regulations and monitoring by the state enterprise, labour standards are essentially determined by the market when labour is subjected to the competitive process. The labour market scenario at DMRC belies regulation enthusiasts who put trust on the law and enforcement mechanisms to uplift labour standards.

The TOM operators among the DMRC workers on the other hand are better ordained due to their own merits and collective bargaining in the same labour market where their fellow workers are denied all benefits. However, unlike the Mahindra workers whose CB efforts are recognized by the employers (though not by law), the DMRC refuses to acknowledge the CB of TOM operators whose efforts largely remain in the popular domain which is also reflected in their labour

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<sup>10</sup>As per ILO convents, C. 94 and R. 84 on Labour Clauses (Public Contracts), labour costs should not be made an element of competition among bidders to ensure that public contracts do not exert a downward pressure on wages and working conditions.

standards.<sup>11</sup> The essential difference among the CB at Mahindra tractors and DMRC is that, whereas, in the former the operational concerns of the management are shared by the workers and their union, but in the latter no such arrangement is seen. The general apprehension of the DMRC management towards unions has not been mitigated as seen in its approach towards recognition of the DMRCWU. The concerns of the DMRC management to ensure unhindered time bound and world-class transit facility to lakhs of daily commuters of Delhi need to be supported through effective legal and policy measures.

### **Brick Kilns of Danapur, Bihar**

Brick Kilns in spite of being registered under the Factories Act and the Mining Act and engaging more than hundreds of workers during most part of a year, remain in the informal labour sector. No registration of contractors or *bhatta* owners was seen under the Contract Labour (R&A) Act, though no exemption is provided under the law for the industry. The lack of social security provisions (ESI, EPF, Workmen's compensation) reinforces the informal nature of the sector. No trace of even the BOWCESS Act<sup>12</sup> was found which is meant to cover informal sector construction workers—this exemplifies the negligence of government and civil society<sup>13</sup> agencies towards these hapless workers. The absence of safety and welfare measures in spite of the presence of large number of women and children in the kilns and the sheer depravity of these workers is like a blot on the face of the present generation of governance. The depravity of the workers of the brick kilns is the reflection of their poverty and the refusal of the employers to share the huge profits generated from their labour. To give voice to these workers, the first step would require bringing the workers within the folds of the Contract Labour (R&A) Act which would automatically entitle them to the same benefits, at least on paper, as are available to formal sector workers. The implementation of welfare measures provided under the Factories Act and the Contract Labour (R&A) Act would somewhat raise labour standards at the brick kilns. The registration of contractors would entitle the workers to social security benefits. Simultaneously, without collective bargaining and no support from outside is unlikely that the lot of these workers will improve unilaterally. With little chance of a labour movement emerging from within, given the precarious state of these workers, proper incentives need to be devised for the national trade union federations, civil society groups and

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<sup>11</sup>It can be seen that the wages and 'job security' of Mahindra tractors contract workers are of much higher standards than the DMRC TOM operators (see in chap. 5, Fig. 5.3 and 5.4).

<sup>12</sup>Though the labour enforcement officer (Agriculture) conveyed in his interview that he has registered some brick kiln workers but no case was produced or found during field study.

<sup>13</sup>Trade unions have been identified as one of the agencies responsible for facilitating registration under BOWCESS act.



non-government organizations to spread awareness among the brick kiln workers to help them realize their rightful entitlements.

The labour market scenario prevailing at brick kilns of Danapur seems to be that of an unfettered free market—in fact to the extent that demand and supply of labour in Bihar and the neighbouring state of Jharkhand determine the availability of workers at these brick kilns in every season. However, unlike workers at Rudrapur and DMRC, the brick kiln workers are bound by advances and pending payments which limit ‘exit’ options for them and stall their free movement. Applying the principles of market economics, in such a setting with large supply of workers ensures an abundant supply of labour where wages are bound to even go below subsistence level. However, as subsistence wages are essential for the survival and reproduction of labour, the workers are made to slog extra hours in captive conditions to earn a subsistence wage. In the given labour market scenario as shown in the detailed calculation evident in Fig. 5.7 in the previous chapter, surplus value of labour (profit) pocketed by the owners is enormous. The nearly bonded condition of workers and the piece-rated system of work only facilitate the exploitation of ‘labour power’ by brick kiln owners.<sup>14</sup> The poor job market scenario, unskilled nature of work and the availability of workers from Jharkhand with no farm income to fall upon, ensures the disposal of their ‘labour power’ in the hands of the owners. The complete absence of labour standards at these brick kilns reflects the defunct regulatory mechanism which otherwise had some visibility in Rudrapur and DMRC. Another aspect to think about is the presence of a single profit-seeking agent, i.e. the owner of the brick kilns, as the contractor is an employee engaged to fetch labour on behalf of the employer. Thus, the impulse to pass on the blame for low labour standards on small-time contractors does not hold in this case. The liberal assumption that ‘with every increase in its capital, the market wages of labour will rise’ (Ricardo 1817; Sect. 5.1) is not reflected in the ground scenario at the brick kilns of Danapur, but instead, it is seen that in spite of bumper profit margins, the scenario invokes the classic Marxian concern of the ‘state of labour’ where workers hire out or sells his/his ‘labour-power’ for a certain payment to the capitalist and then virtually ceases to be the owner of his own labour. In the brick kilns of Danapur, the workers are no longer owner of their own labour but are like instruments in the hands of their employer. As the workers have no voice of their own to raise their concern on labour standards and as there is little support anticipated from outside unions to strengthen their voice, the state regulatory mechanism is the only hope which needs to first work upon to build minimum standards upon which some initial progress can be made.

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<sup>14</sup>Marx differentiates ‘wage labour’ or free labour in which a worker is free to work as per his capacity, to capitalists purchasing labour power in which workers have mortgaged their whole potential labour (labour power) to the capitalist for a price. This can be ‘for a certain time (in case of time-wages), or for the performance of a certain task (in case of piece-wages)’ (Frederick Engels, in, Introduction to Marx (1849), p. 8).

### **Dahej SEZ, and GIDC Makarpura, Gujarat**

The success of the liberal development model in Gujarat is said to depend on providing ideal conditions for industries which includes availability of cheap flexible labour. The Dahej SEZ is such a free-trading zone providing ambient industrial conditions for which several labour law reforms have been enacted by the Gujarat government. However, as seen during the field study, confusion prevails on the ground application of these laws. Moreover, the rapid industrialization in the state is not matched with the supply of abundant labour leading to labour shortages and rise in wages.<sup>15</sup> Faced with a situation of less supply and more demand,<sup>16</sup> the labour standards in Gujarat seem to be comparatively better placed, in spite of the absence of collective bargaining at most places. Also, it appears that in such a situation the industries aim to be cautious in maintaining high standards to attract labour while at the same time retaining the flexibility aspect of the contract labour. The provision of forced breaks unique to the Makarpura region visited in Gujarat is illustrative of this proposition. The other factor seen in the Gujarat field study is the rising demand of skilled manpower for upcoming modern industrial hubs like Dahej and Makarpura GIDC. There are other tensions present in the case of Gujarat as is evident from the 'son of the soil' phenomenon observed during the field visit.

The labour market in Dahej SEZ and Makarpura GIDC does not exhibit the presence of an unlimited supply of labour as seen in other study areas. Instead, the supply is bolstered by maintaining labour standards higher than the neighbouring states. Accordingly, the market wages prevailing in Dahej SEZ and Makarpura GIDC are higher than subsistence wages. However, as the industries of the regions are catering to world markets, they need to ensure required skill while competing on labour cost. The lower wages of contract workers in-comparison to regular workers of the same category is unlikely to attract skilled workers but instead may draw unskilled workers who are placed at a disadvantage elsewhere. Whereas cheap labour is definitely of value, but in specialized industries without the required skills, production targets may become a mirage and investments will relocate to those regions in the world where labour with better skills are available. The competition in this regard provided by other SEZs like in China, as covered in the case study, requires the government to realign its skilling strategies. The lack of incentive available in the contract labour system for skilling contract workers who constitute the bulk of the workforce is an area requiring immediate attention. Secondly, the confusion regarding labour laws will hurt the SEZ in the long run when other competitors with clearer and attractive policies line up for investment. As industrial investment is a long-term relationship, short-term euphoria may not

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<sup>15</sup>See, <http://timesofindia.indiatimes.com/city/ahmedabad/Huge-shortage-of-skilled-manpower-in-Gujarat/articleshow/15625638.cms> and <http://archive.financialexpress.com/news/over-30000-mandays-lost-in-2012-due-to-strikes/1078021> (all accessed on 15.12.14).

<sup>16</sup>See, <http://timesofindia.indiatimes.com/city/ahmedabad/Huge-shortage-of-skilled-manpower-in-Gujarat/articleshow/15625638.cms> (accessed on 15.12.14).

hold investments for long and a non-comprehensible labour policy may give bad publicity for the SEZ which can also persuade migrant workers to opt for other regions for work. Thus, a clear labour policy protecting the interest of both the employers and the employees needs to be put in place at the SEZ at the earliest. Lastly, the 'son of the soil' phenomenon will keep cropping up when outsiders come into a region. The influx of migrant workers inevitably give rise to vexatious sociopolitical issues as seen in Dahej where more than 30,000 workers have migrated within few years and the number is still rising.<sup>17</sup> Also, to be noted is the point that the continued inflow of migrant precarious workers and the absence of collective bargaining mechanism may lower the labour standards prevailing in the region in the long run.

### **Guangzhou and Shenzhen Industrial Zone, China**

Shenzhen and Guangzhou manufacturing zones of China are envied throughout the world for their achievements within a short span of time. The communist government at the centre has steered development in the regions with a mix of law and policy which varies as per time and requirement. While the government has adopted capitalism in the economic domain, central command of the communist party and the ACFTU make sure that both the employers and the workers tread the chartered path. Overall, the field study has shown that the existent blend of law and policy has helped mitigate production concerns of the employers while ensuring a voice (albeit limited) to the workers in the production process. However off late, labour shortages and increasing industrial unrest outside the domain of collective bargaining set-up are causing nationwide concerns.

The state of labour in the vast industrial zones of Shenzhen and Guangzhou combines the attributes of state of labour as seen in Mahindra and Gujarat case studies in India. Recognition of separate unions of dispatch workers in China within the unified union set-up is way ahead of what the Mahindra workers could achieve after a prolonged struggle. Similarly, the abundance of jobs in Shenzhen and Guangzhou zones reflects the 'higher' labour standards in Gujarat propped up due to consistent demand of skilled labour in its industries. The provision of 'written contracts', 'open-ended contracts after certain period' and collective bargaining has reduced precariousness among dispatch workers in China, and as seen among contract workers in Indian case studies. The focus on 'skilling' in Chinese law and public policy has helped the workers climb up the social ladder and has attracted investments from specialized industries from all over the world to Shenzhen and Guangzhou. But at the same time, regular collective bargaining and labour shortages have propped the labour wages to levels which may not be sustainable in the

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<sup>17</sup>See, <http://www.lifestyle.merineews.com/article/dahej-sez-a-modis-economic-success/15892793.shtml> (accessed on 15.12.14).

long run. Rising living standards and consequently cost of living is compounding to the problem. With competition from India and other countries with sizable infrastructural hubs like Rudrapur SIDCUL and Dahej SEZ eyeing for foreign investments, China may also need to realign its law and public policy over the long term.

### **Comparing India and China**

The high rate of productivity in manufacturing in China when compared to India is an important factor behind rush of capital to the country. The fact that wage rate in China is almost three times to the Indian workers and still the return on investment is higher in China than in India is a point to note. During the author's interactions with Indian businessmen with business concern in South China, they cited variety of reasons for higher productivity or return on investment in China. Some of these businessmen interviewed have manufacturing plants both in India and South China.<sup>18</sup> Interestingly, Chinese experts were found to be quite aware of the productivity gap between competing industries of China and India. It can be said that one of the reasons for the success of productivity is the 'terms of engagement at workplace'. It was found that most workers engaged in China had direct written contract with the employers. The contracts vary as per the validity of term. While few workers had open-ended contracts others had fixed-term contracts ranging mostly from 1 to 3 years.<sup>19</sup> These contracts enforceable by law has all essential provisions related to the workers including clause for, compensation, overtime, social insurance, collective bargaining, etc. The contracts provide a sense of job security for the workers and also some stability for the employers. With most workers engaged on written direct contracts, the industry finds it worthwhile to invest in the training of workers before engagement (unlike as seen in the case of contract workers in Rudrapur and other case studies in India). With tenural job security in hand, proper education, and required skill available, the productivity of the manufacturing sector workers is maintained at high levels. In India, more and more manufacturing is increasingly dependent on contract workers who are insecure and unskilled. Lack of training, precariousness, inefficiency and workplace disruption makes the Indian manufacturing sector comparatively less productive.

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<sup>18</sup>One of the Indian businessmen having manufacturing plant both in Kurali, Punjab (India) and Shenzhen (China) conveyed that in India though profit margins are higher but production remains uncertain; whereas, in China once CB negotiations are materialized, an entrepreneur can be assured of his production targets. Thus, in cases where his supply dates are fixed he prefers his Shenzhen plant over Kurali as he does not want to take chances with his high-end clients in the USA.

<sup>19</sup>As per Article 12 of the 2008 Labour Contract Law, 'Labor contracts consist of fixed-term labor contracts, open-ended labor contracts and labor contracts that expire upon completion of given jobs', where fixed-term contracts are for definitive period and open-ended ones have no period stipulated. Further, the law enforces written contracts in all labour relationship (Article 10).

China has many strengths which are worth recounting here for further comparison.<sup>20</sup> Most significantly, it was found that collective bargaining formed an essential feature of employment relations in all industries in China. Unions enjoy a preeminent position in the workplace and the recognition of unions is legally mandatory in China. The strength of the unions comes from their affiliation to the central union and in turn from the ruling party. Unlike India, unions in China play a conscientious role by sharing the production concerns of the employers while looking after the welfare of the employees.<sup>21</sup> It is this cohesion between the employers and the employees that is provided through the unions that make the Chinese labour market much more organized and easier to deal with for investors.

Secondly, it was noticed that Chinese women play equal part in production activity with men. There are no major gender-related safety concerns, as women were found to be working in night shifts side by side with men. Also, while travelling through Shenzhen and Guangzhou city it was seen by the author that no gender-based seats reservation is made in subway, bus or any other public transport in which the bulk of the city populace travel. Indian women are far behind their Chinese counterpart in labour force participation.<sup>22</sup> Thus, in India, the potential of half of the working population remains untapped to a greater extent for productive purposes.

Thirdly, China has invested heavily on infrastructure which has no equivalent example in India except perhaps in select special economic zones like Dahej. The roads, rail, drainage and other public facilities were found to be very developed in the regions visited in China.

Lastly, as brought out at many places in this book, India lags behind China in the skill development of its precarious workers. As against the Chinese Labour Contract Law, 2008, which specifically entrusts upon the receiving enterprise to first train the dispatch (contract) workers in required skills [Article 62(4)],<sup>23</sup> the Indian laws imposes no obligation on the industry to do so. Moreover, as pointed out, neither the employer, neither contractor nor the contract workers are inclined to invest in skill development due to the temporary nature of relationship. As a result, one of the constant laments of employers noted over the field work was that contract workers had a very poor skill set.

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<sup>20</sup>Also see, <http://businesstoday.intoday.in/story/what-took-china-ahead-of-india-and-what-keeps-it-ahead/1/201565.html> (accessed on 7.03.15).

<sup>21</sup>The Trade Union Law, 1992, provides for sharing the production concerns of the enterprise (Articles 8 and 25).

<sup>22</sup>The World Bank figure shows that while 64% women are engaged in productive employment in China, the labour productivity of Indian women is only 27%. See <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS> (accessed on 7.03.15).

<sup>23</sup>The law in Article 22 also requires the enterprise to include the training component in the contract agreement which can be recovered from the workers as penalty in case of breach.

### **Conclusion: India and China Comparative**

The buoyant state of Indian and Chinese economy is primarily due to the presence of huge mass of cheap flexible labour in these countries which has attracted capital from all over the world to their industrial zones. The story of the liberal capitalist development of both the countries has projected a picture of development and poverty alleviation. However, at the same time, the simultaneous increase in social inequality and marginalization of labour in the two nations cannot be ignored.<sup>24</sup> The capacity of the two nation states in transforming the country from a predominantly rural economy to the manufacturing hub of the world is not contested; however, their performance in terms of addressing inequality and marginalization of the labour in the process is still an open question. The triumph of China and now India as a liberal-economic development model has encouraged many developing countries to follow a similar path. However, off late there has been seen a rising trend of industrial unrest in both Indian and Chinese industry circles blamed due to rising precariousness and discontent among workers. If seen from the human capital front, in China inequality has increased dramatically since economic liberalization. In fact, on closer look, one finds that the end of 'iron rice bowl' age, opening up of labour market and the onslaught of labour contracting agencies, has led to extreme marginalization of labour force in the Chinese urban and rural peripheries (Yi-Chong 2012). The vast populace in the rural peripheries of China who were earlier covered under various welfare schemes of the communist government are now exposed to market vagaries more than ever. In the meantime, an influential, powerful super-rich class similar to the consumerist class in the west has grown in China. On the social front, 'the separation of production and social reproduction of (rural) migrant workers has led to emptying out of rural China, with only married women, with young children, older men and women and children remaining' (ibid, p. 158, op.cit). Consequently, off late there have been reports of rising violence and shutdown in Chinese industry circles, though a weak media and state controls have managed to keep the issue within closed doors. The Chinese state responded by enacting three labour laws in 2008 making the Chinese labour market less flexible and more labour centric. Now with these new labour laws and with a well-entrenched collective bargaining system in place, the Chinese labour market appears as regulated as any other market of the western world. Likewise, in India, the growing informalization and contractualization of labour is a social threat. Over the liberalization phase in India, one reaction can be seen in the proliferation of rights regimes for the poor—a number of rights granting legislations, like the right to work, right to education, right to information and right to food, have been promulgated but the results in containing inequality remain to be seen.

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<sup>24</sup>The gini coefficient of India which is 39.4 (2010), is below those of China's 42.1 but this does not explain the large income variations within Indian states and among states, and other inequalities present in the society. For details see World Bank website, <http://data.worldbank.org/indicator/SI.POV.GINI> (accessed on 7.03.15).

The nature of the capital does not mitigate the future flight of capital to other regions which may discover still cheaper variants in the future. The fieldwork at the Guangzhou and Shenzhen industrial zone brought forward the increasing threat being faced by the regions due to rising wages and labour shortages.<sup>25</sup> If projected, the Guangzhou labour market with well-entrenched collective bargaining practices and high wages will somewhat look like the labour markets of west though at an incumbent stage.<sup>26</sup> The Indian labour market with its competitive environment (as in Dahej SEZ) and attractive labour market (as in Rudrapur industrial area) is set to gain in the process. The Chinese liberal development path has many important lessons for India.

### Reflecting on the Research Questions

In the globalized world, all nations face the triple challenge of maintaining, high labour standards, high labour productivity, while retaining the flexibility aspect of the labour market. In countries like China and India with abundant supply of labour the task of maintaining, all these three facets with industrial development are an uphill task. The Chinese growth story so far has been successful in putting together all these three challenges of growth. The strength of the Chinese system and continuity with its socialist past has helped in the process. India's tale however is still nascent and built upon an altogether different premise. The fieldwork in India has shown that due to regional variations, high labour standards being maintained at one place is always at threat from other regions with lower standards. While these low labour standards are as per labour market dynamics prevailing in that region, however at the same time these are being perpetuated by the employers and labour contractors to raise their profits and to cater to flexibility needs of competitive markets. The field research has brought home the fact of the sheer inability of labour regulations and labour enforcement agencies to raise labour standards on their own—rather it has been shown that collective bargaining efforts may lead to better labour standards. One policy alternative is to go backward to a closed economy with a strong regulatory framework and full control over labour market. But, such an economic model has long been found to be inefficient for thwarting growth as well as generating an inequitable income distribution and is blamed for the growth of the large informal sector. The experience of Indian policy *pundits*

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<sup>25</sup>Overall, the GDP growth rate in China has come down steadily from a whopping 10.6% during 2002–12 to 7.3% in 2014. It was for the first time in 2014 that China missed the growth target of 7.5% fixed by the ruling party. For details, see <http://internationalbanker.com/brokerage/the-impact-of-chinas-economic-slowdown-on-commodities-markets/> (accessed in 7.03.2015).

<sup>26</sup>On a subsequent visit to Detroit, the erstwhile automobile hub of USA, it was apparent that the western production centres can still boast of first-rate infrastructure and facilities; however, it is due to high wage rates propped by collective bargaining and living cost that these infrastructural hubs are losing out in manufacturing to the much cheaper substitutes of the east.

with the regulated economy since independence has not been very encouraging in raising labour standards.

Applying the liberal economic model of development with unregulated labour supply to raise the real wages above 'subsistence' (natural) level would require huge accumulation of capital to raise the demand more than the supply of labour. As per Smith 'in a country fully peopled in proportion to what either its territory could maintain, or its stock employ, the competition for employment would necessarily be so great as to reduce the wages of labour to what was barely sufficient to keep up the number of labourers' (Smith 1776, p. 83). He further states that it was only through rapid and sustained development where job market outpaced the supply of labour that labour conditions can rise above subsistence level, and that 'it is not the actual greatness of national wealth, but its continual increase, which occasions a rise in the wages of labour. It is not, accordingly, in the richest countries, but in the most thriving, or in those which are growing rich the fastest, that the wages of labour are highest' (ibid, p. 62). The liberal perspective is that when development in a nation takes place, an increase in labour wages will follow the demand. The field visit to Rudrapur and DMRC, however, belies this liberal notion and instead points towards the fallacies of this model as seen in brick kilns when labour market is left totally unregulated. Even in Gujarat where the pace of industrialization is said to somewhat surpass the job demand, not much improvement is seen in terms of labour wages. Moreover, to duplicate Gujarat SEZs or Rudrapur industries nationally to a level which outnumbers the supply of labour would require massive investment efforts, also even then the possibility of the flight of capital to other cheaper locations outside India cannot be discounted. The Chinese case though at a much advanced stage can be cited to explain the fallacies of the liberal model of development. After growing at a pace of more than 10% continuously for more than quarter of a century, the Chinese policy makers were obliged to adopt a highly regulated labour regime<sup>27</sup> to stall growing inequality and deterioration of labour standards.

A depressed state of agriculture, rural indebtedness and poverty in neighbouring regions, as seen in Rudrapur and other cases, is bound to force rural unemployed to take up precarious jobs at urban centres on subsistence wages. It is only through rural empowerment programs like MGNAREGA and food security programs that desperate migration to urban centres can be forestalled. The mad rush for foreign capital among the Third-World nations may not benefit the poor workers as 'capital-importing countries with surplus labour do not gain an increase in real wages from having foreign capital invested in them, unless that capital results in increased productivity in the commodities they produce for their own consumption' (Lewis 1954, p. 448). It is not that capital accumulation does not reap any benefit to the economy—the country does see some gains due to additional employment generation and taxation income. However, as Lewis points out is that while the investor gathers the entire surplus earned due to labour market flexibility and

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<sup>27</sup>With the promulgation of 2008 labour laws.



favourable supply of labour, what is left for the workers are petty jobs and poor working conditions. The scenario can be best explained as seen in the ‘state of labour’ in Rudrapur industrial area—while jobs are available in plenty at Rudrapur, however the nature of jobs are such that workers find it too arduous to fit in, where workers do manage to fit in somehow, most do not continue for long. In other case studies of DMRC and Dahej SEZ also, while labour market flexibility has provided ample leverage to the employers to excel in their respective fields, but the contract workers who toil in their success have not benefitted from the process.

Thus, to answer the first research question raised in the introductory chapter that *whether the drive towards labour market flexibility has helped the production process, industry and workers of India, in the liberalization phase?* Labour market flexibility has somewhat helped the industries and the production process to cut down their cost and cater to their varied needs, but at the same time, precariousness at work has resulted into problems of insecurity, absenteeism and indiscipline. The lack of the required incentive for skill development in a flexible work setting is proving to be an impediment in the production process. Above all, in the drive towards labour market flexibility, it is the emergent class of precarious workers like the contract workers who are the worst sufferers of a system which have little hope for their present and future.

Turning to the next question that follows—*Are present Indian laws and public policy on contract labour, collective bargaining, social security, skill development, etc. good enough for inclusive development or some alterations need to be made?* As we go back to our discussion on contract labour and labour laws and public policy contained in the second chapter, it may be recalled that most Indian laws granting welfare and social security entitlements to the contract workers suffer from structural deficiencies which make them defunct even before they could be viewed from the ground. As was seen over the field work very few instances of legal awareness were seen—combined with the fact that judicial interventions have made the subject so complicated that even legal professionals fail to definitively answer questions on contract labour issues. This dilemma in legal circles is reflected in varied practices in the working of the contract labour system in different establishments and regions. Most employers interviewed in the field work considered ‘law and policy on contract labour’ a complicated subject. It is due to such ambiguities that employers prefer to evade labour laws wherever possible and try to purloin the system to maximize the flexibility dimension. The workers for whom these laws are designed find little solace in its folds due to the cumbersome claim processes. There are many loopholes which enable the employers to evade welfare-related measures under different laws and save costs. Where the employers themselves do not extract the surplus, the contractor exercises his/her authority to corner it. Another factor which keeps workers at bay is the cost factor and time in getting relief from the judicial process. Unlike the 2008 Chinese contract labour law which provides for open-ended contract after second renewal, the biggest flaw in the Indian labour laws is that none of laws say anything on wage rise, promotion avenues or regularization entitlements of contract workers even after elongated

period of continued service.<sup>28</sup> Further, the change in judicial stands and the silence of Indian law on ‘absorption after abolition’ of contract work has left the contract workers in a hopeless situation. Even the fixed-term employment notification issued by the Government of India on January 8, 2018, through amendment to the Industrial Employment (standing order) Act, 1946 (XX of 1946), does not have such provision. In this context, the direct written contracts provided in the 2008 Chinese Contract labour law provides better prospects for the workers as was evident from the field study of Guangzhou and Shenzhen industrial zone. The fundamental right to form an association granted by the Constitution of India and uniform entitlements to contract workers to form unions granted in the Trade Union Act fail to provide the required support to contract workers to bargain collectively for their rights at their workplace. Very few instances of collective bargaining among contract workers were found during the field work. Where there was CB (DMRC), the contract workers were finding it difficult to get their union registered. Even in those industries (Mahindra tractors) where agreements were signed due to successful CB efforts, the agreement was being considered illegal and not been acknowledged by the labour department. In the midst of all this—the revisionist approach of the judiciary has further weakened the position of the workers. The Steel Authority of India Limited versus National Union Waterfront Workers judgment (2001 7 SCC 1) followed by the order in the case of State of Karnataka versus Uma Devi (2006 4 SCC 1) has truncated all hopes of contract worker absorption or regularization. The status of contract workers is also obscure in relation to the provisions of Indian Contract Act, 1872. On detailed examination of legal status of the contract workers, one can see that neither the workers are engaged in a state where they are free to consent, nor there is a written agreement in most cases between the contractor and his/her workmen. Also, the mandatory profit sharing provided by the 1872 act is not followed. The present laws and policies thus need to be suitably amended so as to enable the workers find their voice at the workplace. As China has already moved ahead in the same trajectory which India also seems to be following, the insights from China gestured to our study is perhaps of considerable relevance for shaping law and public policy in India.

*Whether collective bargaining is a viable advocacy tool for contract workers? Are there options to collective bargaining in labour interest? What shall be India’s stand on ILO conventions on collective bargaining?*

The field study in India shows the inability of contract workers to bargain for themselves, instead they feel more secure to join in the efforts of the regular

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<sup>28</sup>The Chinese 2008 Contract Labour Law provides for open-ended contract if the worker has successfully worked for two consecutive fixed-term contracts [Article 14(3)] or in any case if the workers has consecutively worked for ten years [14(1)]. The 1998 law also had provision of regularization on completion of 10 years in service (Article 20). In India, none of the laws have provision for regularization of contract labour after elongated period in service. Though the State of Karnataka versus Uma Devi case judgement (2006 4 SCC 1) provides for one-time relaxation in regularization on completion of ten years in service for those contract workers who fulfil the prescribed conditions.

workers. Often enough (e.g. in Parle), the contract workers are the biggest losers when CB attempts of regular workers fail. In the field, it was also learnt that attempts to mobilize precarious workers are effectively thwarted by the employers and often result in the loss of employment for these workers. It was found that the premium on hiring contract workers was largely because employers prefer the fact that they were unorganized and flexible; even the state seems to be averse to the unionization of the contract workforce. The legal proviso provides little support to contract workers in their CB efforts and indeed no ‘recognized-legal’ collective bargaining entity of contract workers was found in the areas/industries visited by the author.<sup>29</sup> More so, most areas (brick kilns, Dahej SEZ) were devoid of CB activities. In the case of Mahindra tractors plant at Rudrapur, though the CB agreement was acceptable to both the employer and the employee, doubts created regarding the legal validity of the document makes duplication difficult. Thus, the field studies point towards the difficulty of collective bargaining as an advocacy tool for contract workers within the existing legal and policy environment. In such a scenario, it is only where labour supply is less than demand (e.g. Dahej SEZ and Makarpura GIDC) that the contract workers may hope to get a better deal. In spite of the grave difficulties in regions with abundant supply of labour, there seems to be no option for collective bargaining privileges for contract workers. With nothing concrete in the laws for contract workers and with the dilution of right to absorption or regularization due to shift in judicial stance, they are left with no alternative except to call for an institutional framework that will give them rights to collective bargaining. It is clear that India could learn from the Chinese experience of development with organized labour and make suitable amendments in the law to make CB mandatory for all establishments and employees.

The ILO convention nos. 87 and 98 on collective bargaining are ‘universalistic’ in nature which is both its merit and demerit. While such a universal right may support collective bargaining to those deprived workers (like in brick kiln) who otherwise have no other means to raise their labour standards, however at the same time these conventions also tend to cover those ‘privileged employees’ (like public servants) who are already said to be widely covered and well organized.<sup>30</sup> The ILOs repeated attempt to cover the underprivileged lot is laudable as there is a growing realization that market by itself is not capable in protecting the interests of these workers. It was established during the field study that in an area with abundant supply of labour (like Rudrapur), only collective bargaining can aid (as in Mahindra tractors) in raising the labour standards. The much-hyped talk of regulation and

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<sup>29</sup>As pointed out in Chap. 5, the Mahindra contractor worker agreement is considered illegal by the labour department, also the DMRC contract worker union though registered is not recognized by the DMRC.

<sup>30</sup>It was learnt that in China all waged employees including government servants and white-collar workers are covered under collective bargaining. Thus, during interview with union leaders of Guangzhou stated that China has a higher CB norm than the ILO conventions nos. 87 and 98; however, some of them lamented on the coverage been granted to those officials in China who are already well protected and stated that such a right should only be available to blue-collar workers.

enforcement (as in DMRC) has little impact on the ground when labour is exposed to the market mechanism. However, at the same time since the convention empowers certain groups such as government servants to be able to organize themselves, the Indian state has been wary about taking these conventions on. The Government of India needs to lay its fears of unrest from government servants aside and work towards ensuring that basic labour rights are uninhibitedly available to its workers—precarious and otherwise.

*How to reorient labour laws and public policies so to ensure required flexibility for the employers while providing voice to the workers in the production process?*

The primary motivation behind this work has been to precisely grapple with the question of as to how can we think of reorienting Indian labour laws and public policy so as to cater to the flexibility needs of the employers while providing avenues to the workers to raise and register their genuine demands. With our field experience gained in places like the Rudrapur industrial area which has seen large-scale investment with liberalization, one can see that the availability of jobs has not helped the cause of labour or raised labour standards without collective bargaining. In DMRC, it was found that labour standards could not be propped up only by putting laws and regulations in place when workers have no voice of their own to claim their rights. Even in Gujarat, there were signs that with increasing migration there might be a downward slide in labour standards. Though, the Chinese case studies do portray a scenario where voice of workers is heard in the production process—seeing that the population of India is expected to bypass the population of China in the next decade<sup>31</sup> and the working age population may cross shortly replicating the Chinese experience (the possibility of large accumulation of capital outpacing the supply of labour) is probably quite hard.<sup>32</sup> Whatever be the case, it is not possible to go along with standard liberal market theory which relies on the progressive accumulation of capital with unregulated labour market for the improvement of labour standards.

The Chinese labour laws of 1994 were restrictive and had many loopholes which ensured much flexibility to the employers at the workplace.<sup>33</sup> It was after many years of liberal development experience that the Chinese introduced three labour laws in 2008 to fill the gaps in the 1994 laws. However, while the full effect of the 2008 laws on the production and the labour market in China is yet to be seen, India

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<sup>31</sup>As per an UN study, at the current rate of growth Indian population is likely to cross the Chinese population by the end of next decade in 2028. See, <http://timesofindia.indiatimes.com/india/India-to-become-worlds-most-populous-nation-around-2028-UN/articleshow/20586377.cms> (accessed on 13.1.2015).

<sup>32</sup>Even if such a possibility was to be explored, for bypassing the Chinese accumulation of capital would require decades for India. Further discounting the population growth rate in India, the progress is likely to be only further delayed.

<sup>33</sup>For details see, Allard and Garot (2010); *also see*, Ngok (2008).

can learn from the Chinese initiative to fill in the gaps in its own system. While some of the provisions in the Indian laws are very progressive, but the structural shortcomings need to be first removed to make them effective. The Trade Union Act, 1926, should make recognition of unions compulsory in all cases where a significant number of workers are employed. The State should look into the possibility of introducing the concept of 'one enterprise one union' so that a sole recognized bargaining agent can represent all the workers including the contract workers within an establishment. Also, by a suitable amendment all workers may be treated as employees of the principal employers for collective bargaining purposes. The Chinese model of mandatory annual collective bargaining process needs to be explored and adapted to Indian conditions. Further none of the court judgments has disputed the provisions of 'equal pay for equal work' [Contract Labour (R&A), Rules, 1970 25(2) (v) (a)]—it is only that these provision need to be made universal as made vide the 2008 Chinese Labour Contract Law for the dispatch workers (Article 63). Lastly, unlike the Chinese law and public policy which lays great emphasis on skill development, Indian regulations have little encouragement of this for contract workers. Specific provision should be made in the Contract Labour (R&A) Act, 1974 and/or some other law supporting the training of contract workers. Suitable incentives devised in terms of increased monetary compensation for trained and experienced workers are vital for both labour and product markets.

This is not merely a case of learning from China—the field study did spot some ray of hope in establishments where collective bargaining was found to be practiced by the contractual staff even in regions with abundant supply of labour. TOM operators within DMRC contractual workers were found to be enjoying better labour standards than their colleagues. Similarly, contractual workers of Mahindra tractors were found to be having higher labour standards than their counterparts from other industries in Rudrapur. Even within Makarpura GIDC region with somewhat limited supply of labour, the contractual staff of ABB Ltd. were found to be (though inconclusively) better placed than their fellows in other factories of the area. The Guangzhou study reinstates the importance of collective bargaining in fetching the rights and benefits of the workers at the workplace. In some cases as in DMRC, SEZ region, and also in Guangzhou, labour standards were also seen to be related with the level of skill and awareness among contractual staff.

Another factor which was a constant all through the fieldwork in India, especially during interaction with employers, namely the widespread apprehension about the nature of unions. This concern of the employers is also reflected in the state policy as seen in the Indian approach towards ILO convention nos. 87 and 98 on collective bargaining. The production-related concerns of the employers who are the major stakeholders in an operational establishment cannot of course be ignored, nor can the concerns of the DMRC management for unhindered services especially in sanitation and construction cannot be overlooked given that lakhs of commuters of Delhi metro who use its services daily. Similarly, the concerns of employers of other industrial regions who have invested their significant time and energy besides capital in their ventures cannot be shrugged off.

But, as seen in China, production concerns of the employers seem to be protected through the unified union structure. The unions in China being directed and controlled by the central party has the capability and thus often intervene in industrial disputes to resolve situations that have hit an impasse. With the provision of compulsory recognition, ample funding and full-time staff, the unions are an indispensable and formidable force in the production process of China. Moreover, the 2008 labour law has further strengthened collective bargaining with an elaborate provision for ‘collective contract’ or agreement (Chapter V, Part I) which needs to be compulsorily signed between the union representing the workers and the employer. As provided in the law this agreement comprises of matters related to, employee compensation, working hours, insurance, etc., and is approved by an employee representative congress or all employees together.

In contrast, as seen during field study in India, the collective bargaining exercise in DMRC has not been recognized by the management nor anything has been committed in writing; thus, whatever little has been achieved by the TOM operators is more of an ongoing convention having no definitive future. The DMRC management on their part was found to be apprehensive of any prospects of union formation as they apprehend disruption in work if collective bargaining was officially allowed. In fact, everywhere during the fieldwork employers were found putting considerable effort in dissuading collective bargaining efforts of the workers and sometimes even openly being coercive against such an exercise. It was gathered that most employers consider unions as a disruptive force hindering production. The anxiety of the employers holds ground as no mechanism (as a unified union structure in China) exists in India to ensure unhindered production,<sup>34</sup> nor in the numerous labour laws and government policies the production concerns of the employers have been incorporated. In the Industrial Disputes Act, there are some provisions of declaring a strike illegal (Article 24) and for penalizing persons involved in illegal strikes; however, there is no responsibility laid upon the trade unions for sharing production concerns of the employers. Another source of worry for the employers is the provision under Trade Union Act (Article 22) allowing outside members who have no production concerns, to act as office bearers in the trade union. While in some places outside members are found to be supportive (as in DMRCWU), however in most places they are blamed for politicization and strife. Unlike the environment seen in most organizations, the collective bargaining efforts of contract workers at Mahindra tractors, Rudrapur has been recognized by the management based on an agreement on sharing the production concerns by all the stakeholders. The outside members in this case are signatories in the production agreement. The role of the contractor has been reduced as a facilitator to maintain the flexibility for the principal employer. With the production concern of the management covered, the employer is willingly sharing output gains with the workers and is found appreciative of the collective bargaining methods. A possibly

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<sup>34</sup>The only legal option for the employers in cases of production impasse is ‘arbitration’ which is a costly and time taking (sometimes never-ending) process.

somewhat similar picture was partly also found at ABB Ltd., Makarpura GIDC. The responsible unions of China are wonderful examples to quote here to cite the cohesion provided by the unions between the employers and the employees. Thus, it could be seen that in an average-sized industry when production concerns of the employers are met through collective bargaining methods, only then *voice of the precarious workers can be realized in the production process* in the long run. However, with the exemplary CB agreement of Mahindra tractors considered illegal as per the present law of the land, the need arises to amend labour laws and public policies which may facilitate such a process rather than being an impediment.

The legal and policy difficulty in accepting such CB agreements as made between the contract workers (through the contractor) and Mahindra tractor management is a matter of concern which needs to be urgently resolved. Though there is an express provision within the Contract Labour (Regulation and Abolition) Act that allows contract workers to enter into agreements for better conditions with the principal employer which is better than those provided in the act [Section 30(2)], the Act prohibits contractual employment in perennial jobs or in core areas [Section 10(2)]. Thus, when employers agree to provide job security and better conditions (as seen in Mahindra tractors), such an agreement contravenes with Section 10(2) of the Act and calls for the abolition of contract work as per law. Moreover, any collective bargaining agreement between the principal employer and the employee makes the position of contractor redundant. Even though tripartite arrangement is continued by the principal employer (as seen in Mahindra) in the name of flexibility and law but for all practical purposes the practice of CB hits at the roots of Contract Labour (R&A) Act which essentially intends to shield the principal employer from the contractor's workmen. With no assurance of absorption or regularization in the new judicial regime, as well as the non-recognition of genuine collective bargaining efforts of contract workers, there is an unambiguous need for the reorientation of existent labour law and public policy.

The Maharashtra Trade Union Recognition and Prevention of Unfair Labour Practices Act, 1971<sup>35</sup> which provides for compulsory recognition of one trade union for each industry employing 50 or more workers [Section 10(1)] is a progressive piece of legislation which can be adopted as a universal law for the country. The compulsion for the recognition of a trade union in their premises may aid employers to accept collective bargaining as a workplace requirement. Such a law may result into formal bargaining and higher settlements (as required for TOM operators) than with the prevalence of informal practices which are neither long-lasting nor favourable for the workers. Another good aspect contained in the Maharashtra Act is the provision of recognition of single trade union in one undertaking [Section 12(4)]. The inclusion of contract workers within the recognized single trade union would solve many problems (as faced by Mahindra tractors contract workers) with respect to formation and functioning of multiple trade unions in same organization. More so as contract workers are engaged through different

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<sup>35</sup>For the act see, <http://mahakamgar.gov.in/MahLabour/images/pdf/the-labour-laws-act-1988.pdf>.

contractors in same organization, such a provision of single trade union may remove the ambiguity (as in DMRC) and help all workers to raise their voice collectively.

Further, it has been assessed during the field study that any amount of unionization or mobilization without taking into account the production requirements of the establishment has not helped the cause of the workers in the long run. The wide acceptance of unions in China is only because they cater to the requirements of the workers and at the same time share the concerns of the employers. Whereas ‘unified command and union structure’ which is characteristic of Chinese workplace may not be possible in the Indian democratic set-up, instead a collective agreement with an inbuilt clause on ‘sharing production concerns’ (as seen in Mahindra tractors case) can ease concerns of the employers and help in building workplace relations. As gathered from the field, while in the public sector the capability to accommodate is often attuned in larger interest, however in the private sector elasticity of the employer is often limited. The competitive market environment and ease in relocating capital with globalization have necessitated realignment of collective bargaining methods. The inclusion of production concerns of the employers (as seen in Mahindra) within collective bargaining efforts is likely to make CB long lasting. The need is to include a clause on ‘sharing production concerns’ which may be further linked with union recognition by making suitable amendments in both the Trade Union Act and the Industrial Disputes Act. Besides, the provision of compulsory written contract and collective bargaining agreement as contained in the 2008 Chinese labour laws is a good proposition to ponder for the Indian conditions. Fixed-term direct written contract between the principal employer and the employees containing both the labour standards obligatory on the part of the employer and the clause on ‘sharing production concerns’ on the part of the employees, can be entered into within the ambit of the Indian Contract Act, 1872. These fixed-term contract on tenural basis would retain the flexibility aspect and would aid in planning and skilling both for the employers and the employees. Further, the collective bargaining agreement would bind all the stakeholders in a symbiotic relationship. In only such a conducive industrial environment with the management and recognized trade unions jointly looking after both the labour standards and production concerns in tandem with the revised law and public policy then the Indian economy with an abundant supply of labour is likely to outshine others and draw global capital among competitive markets.

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# Chapter 7

## Conclusion: Lessons Learnt for Policy Recommendations



‘It would take more than 800 years for the bottom billion to achieve ten per cent of global income under the current rate of change’, says an UNICEF report based on the figures of income inequalities from 141 countries and suggests that ‘the extreme inequality in the distribution of the world’s income should make us question the current development model, which has accrued mostly to the wealthiest billion’ (UNICEF 2011, p. vii). It is argued that the real picture behind the talk of development in the present world negates the prevalent liberal propaganda—in fact, globalization has increased inequality in the world (Lee and Vivarelli 1996; Sutcliffe 2004; Milanovic 2006). Most studies on inequality at the global-level cite inter-country data to substantiate their findings; however, intra-country figures, if seen, would also lead to similar figures. In India, the disparity between rural peripheries and urban centres are getting starker. ‘In the rural areas of some of the poorest states, there has been virtually no increase in per capita expenditure between 1993–94 and 1999–2000. Meanwhile, the urban populations of most of the better-off states have enjoyed increases of per capita expenditure of 20 to 30 per cent’ (Deaton and Dreze 2002, p. 3729). Besides urban–rural inequality in the countryside, severe regional, inter-state and intra-state differences are noticeable. It can be seen that in spite of considerable flow of capital to India<sup>1</sup> during the liberalization phase, sectoral allocation and the spatial distribution of these investments have encouraged concentration of wealth. A recent IMF study has cited that ‘the net worth of India’s billionaire community has soared 12-fold in 15 years (which is) enough to eliminate absolute

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<sup>1</sup>As per Reserve Bank of India figures, the net capital inflows to India increased from \$7.1 billion in 1990/91 to \$45.8 billion in 2006/07 and further to \$108.0 billion during 2007/08. See [https://www.rbi.org.in/scripts/BS\\_SpeechesView.aspx?Id=406](https://www.rbi.org.in/scripts/BS_SpeechesView.aspx?Id=406) (accessed on 12.01.15).

poverty twice over in the country'.<sup>2</sup> A similar picture has emerged in China after 25 years of liberal development. The numbers of billionaires in China are more than those in the USA.<sup>3</sup> The inequality index of China<sup>4</sup> has grown to be as high as some of the strife-ridden countries of Africa. Development with globalization founded on the principles of, free-market, competition, and labour market flexibility has been blamed for increasing precariousness at work and pushing millions to the margins. 'Development of capitalism everywhere means developing regional inequalities. Thus each developed country has created within itself its own underdeveloped country' (Amin 1976, p. 362). Moore and White (2003) see the rising intra-national inequality as an inherent tendency of economic globalization resulting due to 'the shift of bargaining power away from both governments and organized labour, toward increasingly mobile capital' (op.cit Kohli et al. 2003, p. 79). The drive towards flexibility and precariousness of labour in the present era of globalization is capitals' 'unfinished business' (Standing 2011, p. 31). The capitalist market mechanism ensures that wherever production is linked to the global supply chain, euphoria is created so that gradually the voices of the workers are lost in its pursuit towards labour market 'flexigulation'.<sup>5</sup> The rise of the global 'precarariat' consisting of millions of insecure workers around the world without any anchor of security is a cause of grave concern. The matter of alarm is the mounting instability rising world over is seen as a consequence of the vagaries of the market-led development with no alternatives. Standing calls the 'precarariat' class a dangerous class which is the 'child of globalization' (ibid, p. 4)—what he considers more troubling is the fact that the marginalized workers who are leading unrests everywhere is only the tip of the iceberg, as there is a much larger number who are living in fear and insecurity. In India, the recurrent incidents of industrial violence led by contract workers as seen in Graziano Noida plant,<sup>6</sup> Regency Ceramics Yanam factory,<sup>7</sup> Maruti

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<sup>2</sup>The Times of India: India Business (04 February 2014). <http://timesofindia.indiatimes.com/business/india-business/Income-inequality-on-the-rise-in-countries-like-India-IMF/articleshow/29857803.cms> (accessed on 12 January 2015).

<sup>3</sup>For details, see <https://www.forbes.com/sites/sarahsu/2016/11/18/high-income-inequality-still-festering-in-china/#46cd98051e50> (accessed on 27 April 2018).

<sup>4</sup>While some economists estimate that wealth inequalities in China have risen as high as 73 in 2010, whereas the government estimates a minor reduction of *gini* index from 49 in 2010 to 46 in 2015. Still, even going by the conservative estimate inequalities in China have reached an alarming position. For details, see ibid.

<sup>5</sup>A term used by the author for deregulation and increased labour flexibility.

<sup>6</sup>On 21 September 2008, the CEO of Graziano Trasmissioni India was killed at the Greater Noida, plant by a mob of around 200 workers who also vandalized the property. See <http://www.ft.com/cms/s/0/55e0e210-177b-11de-8c9d-0000779fd2ac.html#axzz30kTcUzBx> (accessed on 12 January 2015).

<sup>7</sup>In a major outbreak of industrial violence following the death of a trade union leader, a top official of Regency ceramic company in Yanam, a small enclave of Puducherry in Andhra Pradesh state, was killed by contract workers at his residence on 27 January 2012, besides destroying property worth millions of the company. <http://www.thehindu.com/news/national/andhra-pradesh/violence-erupts-in-yanam-as-workers-go-on-the-rampage/article2836717.ece> (accessed on 12 January 2015).

Manesar plant<sup>8</sup> are early warning of things to come if such a developmental path is not seized or altered. While China has a well-entrenched system of collective bargaining and has taken conscientious steps to curb precariousness by enacting the three labour laws in 2008, even then the growing instances of labour unrest in the country underscore that more needs to be done to arrest rising social disparity.

Our study has shown that the presence of the contractor or agency, who is the official middleman and a profit-seeking agent, makes the contract labour system by its very nature prone to manipulation. Such contractors manoeuvre the compensation due to workers—the disjoint between the employer and employee in the form of ‘contractor’ ensures that the workers remain marginalized. As the contractor is the *de jure* employer of the workers, any attempt to provide support to his/her workers by the principal employer or any other body is considered as undue interference. Thus, most policy initiatives for the benefit of the contract workers are thwarted by the contractor or passed on to the workers only after extracting significant rent. The futility of a third-party contract labour system in meeting the employer and employee expectations is increasingly being felt.<sup>9</sup> A written direct contract (WDC) as practised in China between the employer and the employee minus the agency and comprising of a collective bargaining agreement (as made mandatory by the 2008 Chinese Labour Law (Chapter V, Part I)) can be a much better system which can provide both flexibility to the employers and recognition to the workers. With the judgement in the State of Karnataka versus Uma Devi case (AIR 2006 SC 1806),<sup>10</sup> a WDC agreement would carry limited liability for the employers and at the same would provide tenurial job security to the workers. Though such a direct engagement may create some problem in the supervision of workers and may also increase wage cost—however, the experience with irregular contract workers, the vexatious problems of indiscipline and lack of skill shows that the WDC system can prove to be a pragmatic alternative. Moreover, directly engaged workers can be made responsible, and also the problems and cost of hiring

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<sup>8</sup>In the leading Japanese car making company, Maruti, strife (July 2012) scores of employees got injured and a senior manager was killed. See Workers Autonomy Strikes in India: Maruti Suzuki Strike at Manesar, Haryana state (June, September, October 2011), Mouvement Communiste, May, 2012; p. 18. [http://mouvement-communiste.com/documents/MC/Booklets/BR5\\_India\\_EN\\_vF\\_complet.pdf](http://mouvement-communiste.com/documents/MC/Booklets/BR5_India_EN_vF_complet.pdf) (accessed on 12 January 2015).

<sup>9</sup>It is after considerable rethinking that Maruti management has declared to dispense with the third-party contract labour system, though the actual implementation is yet to be seen. For details, see [http://www.moneycontrol.com/news/business/maruti-chief-to-improve-communication-end-contract-labour\\_747405.html](http://www.moneycontrol.com/news/business/maruti-chief-to-improve-communication-end-contract-labour_747405.html), also see Punjab state government initiative to end contract labour. [http://articles.economictimes.indiatimes.com/2002-08-27/news/27333378\\_1\\_contract-labour-fci-workers-food-corporation](http://articles.economictimes.indiatimes.com/2002-08-27/news/27333378_1_contract-labour-fci-workers-food-corporation) (all accessed on 16 January 2015).

<sup>10</sup>It is contended that the primary reason for engagement of contract labour by the employers is to evade long-term employment liabilities as required for regular workers. By striking down the possibility of ‘absorption’ or ‘regularization’ of contract workers even after an elongated period of engagement, the judgement has ended this concern of the employers and opened up the possibility of direct engagement like through written direct contract.

a contractor can be saved by adopting this methodology. The lessons learnt from field insights from China can be listed as follows:

*Lesson learnt:* Presence of intermediary or contractor who is a profit-seeking agent allows third-party manipulation of dues to be paid to workers and increases surplus extraction.

*Policy recommendations:* Public policy should be reoriented to eliminate indirect contract labour system and adopt direct written contract labour system on the pattern of the Chinese labour market. Wherever possible, the intermediary should be expelled and instead a written direct contract (WDC) between the employer and the employee may be formalized by strengthening the Indian Contract Act. In such a changed regime, law and public policy should be amended to safeguard the interest of workers by making definitive provisions for, collective bargaining, promotion, award, compensation, social security, workplace safety, besides, regularization after a certain period.<sup>11</sup>

Our work has further pointed that though intermediaries are a liability and is parasitic agents in a workplace, in some areas like construction and off-site short-term work (DMRC), their role becomes essential to lower the transaction cost<sup>12</sup> or otherwise the transaction cost involved would make the overall venture uneconomical. Thus, in these places, third-party practice of engaging workers through contractor/agency could be continued, however, to safeguard the interest of the workers a written contract with collective bargaining agreement (as, Mahindra case) should be made mandatory before initiation of any work. The provisions of ILO convention no. 181 on Private employment agencies (1997) should be the guiding principle for running such third-party contracts. As the finalization of such contracts involves competitive bidding, it should be ensured by the principal employer that the tendering process should be such that the cost of labour does not end up as an important element of competition. As also enshrined in ILO convention no. 94 (1949) and Recommendation no. 84, labour laws in India should incorporate suitable provisions ensuring that public contracts do not exert downward pressure on labour wages and working conditions. All contract documents should have cost provision for providing labour standards based on the number of workers involved which should not be open for bidding. The lesson learnt in the study and policy recommendations are as follows:

*Lesson learnt:* The contractor being a profit-seeking agent competes for public contracts by lowering prices and once he has the tender in hand, uses all means to exploit the ‘labour power’ of the workers to complete the task while maintaining a profit margin for himself.

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<sup>11</sup>As already enumerated, the fixed-term contract as introduced by the Ministry of Labour and Employment, Govt. of India, vide gazette notification dated 16 March 2018.

<sup>12</sup>‘Transaction cost’ as used in new institutional economics is the cost of economic exchange like the cost involved in getting information, arrangements, bargaining, etc., for conducting a task.

*Policy recommendations:* Labour wages and standards should not be made the element for competition in tenders and a suitable provision should be made under all labour laws to this effect.

*Lesson learnt:* It is seen that in many areas especially in construction work and short-term work being executed in remote premises, the supervision of work may be a problem and getting work executed through intermediary contractor may be helpful.

*Policy recommendation:* For those work at third-party premises (outsourcing) or in construction work wherever intermediary or contractor is essentially required for job execution and supervision, a tripartite collective bargaining agreement should be made mandatorily by law (as in Chinese Labour Contract Law, 2008) to be signed between the recognized trade union/workers committee, contractor and principal employer encompassing labour standards obligatory on the part of employer/contractor and production concerns to be complied by the workers. Only contractors who produce a tripartite agreement before the start of work may be allowed to execute the job assigned.

In an open economy with surplus labour, the downward pressure on labour standards is bound to be high. China has realized this after about three decades of liberal development and thus enacted the new labour laws in 2008 making written contracts and CB mandatory, and with many other intended benefits for the working class. In a developing economy like India, the perspective of law and public policy should be towards safeguarding the interest of workers from the vagaries of the market. Also, at the same time reasonable working environment needs to be provided to the industries to grow as otherwise the opportunity of fruition in globalization will be lost. As seen in the case study (DMRC), a top-down approach of uplifting labour standards through regulatory and enforcement measures has not worked on the ground. Instead, a collective bargaining mechanism similar to what is practised as seen in the case of Mahindra tractors is more beneficial. The unified CB regime typical to China as seen is even better for labour standards. The following lessons have been learnt in the research study:

*Lesson learnt:* Unwritten and informal workplace relationship as perpetuated in the present contract labour system in India is the source of exploitation and marginalization of workers.

*Policy recommendation:* All employment relationship should be written among parties 'competent' to contract.

*Lesson learnt:* All workplace should compulsorily have one responsible recognized union representing all workers which should take up workers issues and also resolve contentious matters.

*Policy recommendation:* Suitable amendments shall be made in the Trade Union Act and the Industrial Disputes Act for compulsory recognition of 'one trade union in one enterprise' encompassing all workers irrespective of their nature of employment.

*Lesson learnt:* By only giving collective voice to workers without taking into consideration production concerns of the employers will not establish a fruitful and long-lasting workplace relationship in the new global order. With liberalization, employers are free to relocate to those regions/nations where there are less wages to pay, more stability and less industrial unrest.

*Policy recommendation:* Collective bargaining agreements should form a part of employment contracts. Suitable provisions should be made in law for annual collective bargaining agreements incorporating both the concerns of the workers and the employers at the workplace (as seen in Mahindra and China case studies).

It has been seen during the fieldwork in India that due to legal and policy vacuum existing on training matters, skill development has taken a back seat in all areas/establishments where contract labour system is being practiced. Under the existing law and public policy, no incentive has been provided to the contractor, who is the *de jure* employer, for training his/her workers. The principal employer who is the real beneficiary has not been stipulated under law to skill the contract workers; moreover, due to the temporary nature of the engagement, the PE feels disinclined to invest on contract workers. The workers on their part have little resources or interest to partake on this long-term venture. As seen in the Rudrapur case study, the employers complain that while labour is available there is a severe shortage of skilled labour in the market. The shortage of skill as maintained by the contract labour system is hitting at the productivity of the Indian manufacturing sector. In sharp contrast in China, both the 1994 and 2008 laws make specific provisions for vocational training and skill development. The laws entrust upon the enterprise for job-related training of all workers including dispatch workers, before induction in employment.

*Lesson learnt:* Contract workers remain unskilled even after a long duration of employment. The productivity of the whole workforce and consequently the industry remain low due to poor skill development.

*Policy recommendations:* Public policy should incorporate suitable provisions for formal training with certification of contract workers before engagement. Training may be imparted by a third party the cost of which can be shared by all the stakeholders or as provided in the 2008 Labour Contract Law of China, the cost-component of training should be made a part of written employment contract.

The contract labour system kills all motivation and innovation of a workman. The workers are herded into gangs and forced to work in a mechanical way. The system has no mechanism to reward a worker for exemplary performance, neither is there any incentive for commitment or sincerity. Moreover, there is no inbuilt provision in the law for salary upgradation or regularization of a contract worker even after years of devoted service. A contract worker is expected to perform day in and day out like a machine without any human façade for living wages. This was manifested at almost all the Indian case study sites where contract workers complained of lack of any incentive or recognition for their work the youthful vigour of many women and men were seen to be lost and dejected in endless toil.

Management experts point that ‘when men work in gangs, their individual efficiency falls almost invariably down to or below the level of the worst man in the gang; and that they are all pulled down instead of being elevated by being herded together’ (Taylor 1911, p. 25). Motive and ambition play an important role at workplace. Performance depends on incentive as ‘the average workman must be able to measure what he has accomplished and clearly see his reward at the end of each day if he is to do his best’ (ibid, p. 33). In the master–domestic servant relationship, the master can extract relentless work from the servant, but ‘the largest quantity of work will not be done by this curious engine for pay or under pressure. It will be done when the motive force, that is to say, the will or spirit of the creature is brought to its greatest strength by its own proper fuel, namely by affection’ (Gandhi 2007, pp. 8–9). Similarly, in the case of commander and his regiment (ibid, p. 9) or a robber’s gang (ibid, p. 10), no amount of discipline or remuneration can enthruse an individual to lay his life; however, by inculcating a sense of loyalty and affection, such a feat can be accomplished. Gandhi believes that the notion of ‘honour’ or ‘dignity’ needs to be infused in the job of workers for better performance. Polyani (1944) like Gandhi believes in non-contractual obligations like neighbourhood and kinship which are based on trust. The research study has taught:

*Lesson learnt:* Under the contract labour system, a contract worker is treated like manpower and there is no recognition or reward for human enterprise and traits like sincerity, commitment, motivation, affection or loyalty. Consequently, there is problem of disaffection, absenteeism, indiscipline and low productivity of contract workers.

*Policy recommendation:* Provision of time-based upgradation, rewards and performance-linked incentives needs to be created for contract workers by devising suitable contracts and by incorporating clauses in the labour laws.

### **Development for whom?**

All policy discourse concerning industrialization and development of a region should start with the basic question, *Development for whom?* Will the development efforts benefit few industrialists, white-collar workers of the region or couple of investors abroad? Or should it benefit the numerous workers who will find-in jobs, and the area as a whole? As seen in settings like Rudrapur with abundant supply of labour, precarious workers who fit-in get only subsistence wages while the bulk of the profit of production is pocketed by the employers, investors and labour suppliers who split the surplus value generated among themselves. Though jobs are created, these jobs do not provide succour to the holders in the long run. The net result of development is increased precariousness, inequality, industrial unrest and problems like social disharmony and naxalism. Law and public policy revisions based on some of the recommendations made in the research study are needed to make development more inclusive.

Globalization is an irreversible stage of development which has brought civilizations closer than any other time in human history. The integration of the world and the easy flow of men and material have provided immense potential for human



advancement; however, at the same time, the change in lifestyle and enormous increase in consumption<sup>13</sup> has caused rapid urbanization, deforestation and depletion of resources. The alarming level of environment degradation reached by globalization has become unsustainable for the human civilization. Rising inequality, precariousness and labour unrest is threatening the social fabric in almost all nations. At this crossroad of development, Gandhi's reflections on economics and ethics are worth contemplation because Gandhi did not draw any sharp distinction between economics and ethics. 'Economics that hurt the moral well-being of an individual or a nation are immoral and, therefore, sinful' (Gandhi 1947, p. 62). True economics for Gandhi stood for, 'social justice, (and) it promotes the good of all equally including the weakest, and is indispensable for decent life' (Bose 1948, p. 52). If the owner class keeps only that much resources which was necessary for their livelihood, and retains and uses the rest as a trustee for the welfare of the society, many vexatious workplace issues can be genuinely resolved. *Sarvodaya* which implies the enlightenment and welfare of all in the society coupled with *antodaya* which means 'up till the last man especially the weak and the downtrodden' are the tenets of Gandhi's principles of inclusive growth. Unlike the traditional economists who view man wants as unlimited, Gandhi visualizes a society where the wants of man are simple and limited. Gandhi's concept of 'dignity of labour' or *shramyagna* through bread labour evolved from such an understanding of the social order where all could meet their two ends while maintaining harmony in the society.

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<sup>13</sup>See Back to Our Common Future: Sustainable Development in the twenty-first century (SD21) project, Summary for policymakers, United Nations Department of Economic and Social Affairs, Division for Sustainable Development, June 2012. [http://sustainabledevelopment.un.org/content/documents/UN-DESA\\_Back\\_Common\\_Future\\_En.pdf](http://sustainabledevelopment.un.org/content/documents/UN-DESA_Back_Common_Future_En.pdf).

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