CHAPTER - 1

CONTRACT LABOUR SYSTEM IN INDIA

1.1 INTRODUCTION

Contract labour is increasingly becoming a prominent issue in different economic sectors both in developed and developing countries around the world. There is no explicit internationally accepted definition of the term “contract labour”, which is often used to refer to different ways of employing workers otherwise than under a normal employment contract between the workers concerned and the enterprise for which they work. This lack of conceptual clarity regarding contract labour gives rise to contradictory interpretations and inhibits the development of adequate protection for the workers involved.1

The economic, technological and organizational changes currently taking place throughout the world have brought significant transformations in labour markets. Such transformations affect the working patterns originally designed as “master-servant” employment relationship established within the framework of an individual enterprise. New patterns of labour utilization have begun to develop and many of them challenge the traditional model of employment tailored schematically as a “one enterprise - one employer” relationship. They often evolve outside the formal contractual framework, i.e. without the establishment of employment contracts, while retaining a major characteristic of the

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1 Contract Labour in context of globalisation and creating world class organisation seminar Bombay Chamber of Commerce Dec’96 P.1
employment relationship i.e. dependency of the workers thus engaged on those for whom they work\(^1\).

The contract arrangement has become an integral part of present system. The contract labour is prevalent to a great extent in our country. The government sector, public sector, private sector all are adopting contract labour under the guise of economic advantage, higher productivity, greater flexibility in employment etc. The employment pattern in the large number of economic sectors has changed dramatically in recent years worldwide. One consequence of this is of substantial increase in the contract labour in different economic sectors\(^2\).

On one side the contract labour system became an integral part of present business, on other side, contract labour are subjected to exploitation by their employers, paid low wages, inadequate safety provisions, negligible welfare and social security measures, long hours of work, exposure to dangerous and risky operations etc. in comparison to their counterparts in regular cadre.

The government is also concerned towards the plight of contract labour. Number of enquiry commissions were set up to enquire issues relating to contract labour and on the basis of recommendations of these enquiry committees the government have taken several measures to regulate the working conditions of contract labour, the latest being Contract Labour (Regulation & Abolition) Act 1970. Similarly if one goes through the recent

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\(^1\)Extract from Report VI(I) on Contract Labour International Labour Conference 85\(^{th}\) Session 1997 PP. 6

\(^2\) ILO National Seminar on Contract Labour March ’97 Mumbai P.3
judgements one will feel the anguish and anxiety of judiciary to provide justice to the contract labour who have been subjected to exploitation by the employer.

1.2  HISTORY

The contract labour system is in force for many years and if the origin of the system is traced one will notice that in agriculture and manufacturing, the system prevailed in the form of bonded labour under the bond to pay off their outstanding debts. The farm workers used to work and slog for the landlords and it was in the form of contract. With the advent of industrialisation in the country then the system of contract labour gradually crept in and in the initial days of industrial movement especially in the textile industries there used to be jobbers or what is known as mukadam system who could engaged people at the gate and provide them work whenever it was available. The reason behind such system was that there should not be permanent employment and permanent liability.

The supply of contract workers through individual intermediaries is a common practice in certain economic sectors such as construction, agriculture and manufacturing etc. The industries established in India during the second half of the nineteenth century and the early of twentieth century were always faced with problem of labour recruitment and labour discipline. Lack of labour mobility, low social status of factory work, caste and religious taboos etc. were some of the problems with which most British employers and managers were not familiar and who
felt ill-equipped to solve them. The gap was filled by the institution of middlemen who acted as recruiting agents for companies and also controlled labour. The intermediaries were designated as jobbers, labour contractors, Sirdars, mukhaddams and karganis. Most often, the middlemen were kept on the payroll of the companies and periodically they undertook tours to near and far away places, recruited labour and trans-shipped them to factory site at company expenses. This practice was found particularly useful by employers when they needed a large number of workers at short notice to cope with the sudden rush of work. The offer of various attractions for "enticing" workers was not uncommon\(^1\).

The jobbers were not merely responsible for the workers once he has obtained for the work, the workers has generally to approach him to secure job and is nearly always dependent on him for the security of the job as well as for the transfer to better one. Many jobbers follow the workers even further than the factory gate, they may finance him when he is in the debts and he may even dependent on them for his housing.

The contract labourers are the rural migrants who were mostly landless labourers and are on the brink of starvation in the village. They moved to the cities in search of work and were helped to do so by ‘Jamadars and Mistrys’. Majority are employed by construction companies and govt. agencies who undertakes construction or/and repair and maintenance work, it also include the work charged staff retained by various government agencies\(^2\).

\(^1\) Contract Labour in manufacturing Industries by K N Vaid PP. 73
\(^2\) Contract Labour in construction industries by K.V. Vaid & Gurdial Singh Shriram Center of Industrial Relation. P.6
The emergence of contract labour as an important class of workforce engaged in industry today is largely attributable to the accelerated growth of industrial activity in the new economic scenario. When the industrialisation started in the country more contract workers were required in steel plant, mining, engineering, cement, railway, docks, port, manufacturing, public works department etc.

The contract labour as such has become a reckonable force in the industrial relation map of Industrial activity. The economic consideration of outsourcing have further given rise to scope of increase in specialised agencies of contract labour and the present trend of economic liberlisation and globalisation has further compelled the industrial sectors to reduce the permanent manpower or optimise manpower utilisation to compete with national and international organisations\(^1\).

1.3 TREND

The employment pattern in India changed dramatically in recent years. The contract arrangement has become an integral part of the present working system. Various forms of contract labour are being utilised in the government and private organisation. Recently contract system is adopted more widely in the wake of structural adjustment programme, globalisation and flexibility in the employment to reduce the labour cost\(^2\).

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\(^1\) Contract Labour Abolition and Absorption by DVSR Prabhakar Rao PP 52
\(^2\) ILO – Seminar on Contract Labour, Mumbai – March 1997
Contract labour is prevalent to a great extent in our country. The Government, public sector, private sector all are adopting contract labour under the guise of economic advantage, higher productivity, greater flexibility in employment etc. The contract labour goes much beyond the intermittent or seasonal employment.

TREND - IN GOVERNMENT AND PUBLIC UNDERTAKING

Government dept. whether it is central public work dept. police, Indian railways, the post, telegraphs dept. or public sector undertaking, contract labour is employed in one form or the other. In most of the PSU the employment of contract labour has been alarmingly high and it is difficult for them to function without them. It will be embarassing for some of PSUs, if the figure of contract labour is brought-out. In some PSUs contract labours have been working for more than 20-25 years\(^1\). The Supreme Court in recent judgement has condemned\(^2\) the practice of contract labour in public sector companies and stated

"That it is surprising more than 50 years of independent practice of employing contract labour through contractor by big companies including public sector company is still being accepted as a normal feature of labour – employment. There is no security to the workmen and wages are very low in comparison of regular workmen and has disapproved the system of contract labour."

\(^1\) Contract Labour issue – a balanced approach by B D Singh Personnel Today – April-June'99 PP.39
\(^2\) Sanker Mukherjee v/s Union of India 1990(60) FLR 20 (SC)
In another case Supreme Court "dissapproved the system of contract labour and holding it to be archaic, primitive and of benefit nature. The system is nothing but improved version of bonded labour is sort to be abolished."  

Until very recently, public policy in India disfavoured resorting to employment of contract labour except when the nature of work itself required it. In name of introducing greater flexibility in labour market, government has for the past 5 years leaned in favour of non-regular modes of employment rather than job security for workers which used to be public policy in the past.

i) During recent year number of public sector units, manufacturers are induced to employ contract labour since government has placed a moratorium on fresh recruitment even when large number of regular posts are lie vacant.

ii) Fifth pay commission headed by Justice Pandian has recommended the phasing out of class IV staff of the government of India and give out that work to private contractors. (Indian Express Mumbai – January 16, 1997). If the recommendation is accepted by the government and if state government and local bodies follow suit, there will be a vast increase in the number of workers employed contractors.

iii) Pantry cars in long distance train also being handed over to private contractors ----- , Railway is considering handing over maintenance work to private parties ----- hand

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1 Standard Vacumm Refining Company of India v/s Workmen 1960 (I) FLR (98) SC Catering Cleanears of Southern Railways v/s U.O.I. 1987 (54) FLR 476
over maintenance of platforms to outside parties. Both Central Railway and Western Railway are planning to hand over maintenance of lavatories to outsiders. (Times of India, Mumbai – March 21, 1994)

iv) Maharashtra government has decided to recruit on a contractual basis as many as 15000 qualified teacher in state-funded school to overcome the shortage of teachers. (Times of India, Mumbai - December 3, 1999)

v) The Standing Conference Of Public Enterprises (SCOPE), the Apex body of public sector undertaking has sought relaxations in contract labour norms to enable the enterprises to compete in the liberalised business environment. It is further recommended that the government cannot afford to absorb entire contract labour force on its employment rolls.

vi) While constitution of the second labour commission, labour minister expressed his intention of changing the existing labour law and make them flexible and compatible with the liberalised economic regime, government’s intention is to revise core labour legislation like Industrial Disputes Act, the Trade Unions Act, Contract Labour (Regulation & Abolition) Act etc.

vii) It also recommended introduction of concept of flexible employment. Basic objective of initiating the process of economic reform was to lay the foundation of an economic regime characterised by delicensing, deregulation and decontrol besides removing all irritants and stumbling blocks in the production system to make it competitive, it is
imperative to bring about corresponding change in labour laws\(^1\).

**Trend – Private Sector**

There is a long standing practice in many industries to employ contract labour either to give a particular work to the contractors for execution or to employ the required workers through contractors for execution of work. This system is followed because in certain industry, process and operation it is more efficient, economical and convenient to carry out the work through contract labour rather than through directly employed workmen.

The magnitude of the problem is not less in private sectors and multi-national companies who build their competitive capabilities through out-sourcing and networking which is yet another form of contract labour system.

No organisation can afford to have all the assets from start to finish and everyone has to depend on outside resources for components and service. Therefore business society has been resorting to contracting since time immemorial.

**1.4 SIZE**

Proportion of contract labour to regular work force differ from organisation to organisation ranging from 3 to 4\% in BEST to 200\% in Mumbai airport & Jawaharlal Nehru port. In majority organisation however the proportion appears to be

\(^1\) Article offensive ahead on labour right Tapan Sen People Democracy Oct 17, 1999 P.8
between 20% to 40%. In public under taking share of contract labour in total working days which was 3.9% in 1977-78 went to 8% in 1985-86\(^1\). Though current statistics are not available, one can easily estimate it be in double digits. In construction industry itself around 10.7 million are contract labourers. Working population of India, which stood 26.98 crores in 1985 with annual increase of 2.55% increased to 33.6 crores in 1992 and is expected to be 40 crores by the end of the twentieth century, according to the annual report (1992-93) of the ministry of labour and employment govt of India. From above we can estimate number of contract labour will be alarming at the end of twentieth century in organised and un-organised sector.

1.5 NATURE OF WORK

Jobs being done through the contract system are of diverse nature. In different types of industries Contract Labour are engaged in different work. In continuous production flow industries like textile, sugar industry, the majority of contract labour are employed on intermittent, irregular and unskilled work such as loading, unloading, transportation, material handling, packing, bundling, cleaning, gardening, security, maintenance etc. In discontinuous production flow industries like Engineering, Manufacturing, in additional to unskilled, manual labour on intermittent and irregular work, regular jobs are also performed by the contract labour. Skilled labour engaged on work farmed out to the contract labour that involved the manufacturing of spare parts,

\(^1\) ILO National Seminar on Contract Labour Mumbai, March '97 P. 8-10
tools, further processing of partly finished component and intermediate operations.

In almost all units, work done through employment of contract labour includes work which is essential part of the work of unit and is of a perennial nature. Although the relevant law clearly prohibits employment of contract labour on such jobs the practice persist and even grows.

1.6 TRADE UNION

Contract labours are unorganised and their work is temporary and seasonal which hardly permit stabilisation of employer-employee relationship, collective bargaining among them is almost non-exist. Though 50 years have passed trade union have made little headway in organising the contract labour. According to the trade union, generally the contract labour do not join the union due to their migratory nature, seasonal work, scattered location of work site, ignorance and fear of victimisation by contractors. The female labour, unskilled workers are not interested in joining the union. In current climate in India where unions are losing out even in the organised sector, it may appear unrealistic to expect them to take active interest in the informal sector such as the contract labour\(^1\).

The main obstacle in unionisation of contract labour is insecurity of employment and fear of victimisation by contractors. Even then in certain units they are organised either in the principal unions of regular workers or in unions of their own. Wherever

\(^1\) G Ramanujam President INTUC at Silver Jubilee Celeberation of Indian Institution of Workers Education.
they are unionised they have been able to make significant gains in respect of prohibiting the contract labour system on essential, perennial jobs, improving wages, securing a few fringe benefits and of job security.

1.7 IMPACT OF CONTRACT LABOUR SYSTEM ON EMPLOYMENT AND WORKING CONDITIONS

The impact of contract labour system on employment and working conditions are as under:

1. Exploitation of labour – economically as well as socially
   a) Low wages in comparison to permanent workmen doing the same job. The gap between the two varies from organisation to organisation but is rarely less than 40% and may go up to as much as 60 to 70% of the regular employee’s wages.
   b) No job security
   c) No fringe & terminal benefits such as P.F., ESIC, Bonus, Pension etc.
   d) Poor working conditions
   e) More working hours
   f) Less social benefits
   g) No privilege, sick, casual and maternity leave

2. It replaces the regular employees doing permanent and perennial jobs which in turn renders the regular employees unemployed.

3. It reduces the bargaining capacity of working class.

\footnote{ILO National Seminar on Contract Labour Mumbai – March '97 P. 70}
4. It create more insecurity because of non unionisation.
5. In some cases it even has encouraged employment of child labour
6. This system encourage back door entry for privatization and shrinkage in wage bill.
7. It has become an instrument in the hand of the government for escaping from its responsibility of governance.
8. Trade union movements ineffectiveness thwarts the process of improvement of service conditions. In some case it deteriorates the working conditions.
9. It also hampers the collective bargaining on wage structure, service condition etc. of permanent employees.
10. With the event of advent of new economic policy and economic restructuring, privatisation etc. it amounts to denial of basic trade union rights. Intensity of contract labour increases as structural programme start and it also result into lesser and lesser social benefit to the contract workers.
11. It grows like a gland of cancer in the body of organized sector causing disruption in the organized trade union. It also hampers the collective bargaining on the wage structure, service conditions etc. of permanent employees.
1.8 **SOCIO-ECONOMIC EFFECT**

The implication of contract labour on employment, wage and working conditions of the labour are obvious. It has already affected the size of employment in the formal sector without making any visible dent into employment potential of informal sector. The system has affected the wage, job security, fringe and terminal benefits, working conditions of contract labour and has brought adverse impacts on collective bargaining strength of the formal labour force\(^1\).

Further it is evident that exploitation of workers under contract labour practice has attained menacing proportional under the policy of structural adjustment programme and globalisation of market driven economy. The contract labour are subject to exploitation by the employers. They get low wages, inadequate safety provisions, negligible welfare and social security measures, long hours of work, exposure to dangerous and risky operations etc. Their counterpart in the regular cadre, enjoy better wages, more perks, privilege without performing much work. They have their trade unions who support them and labour laws ensure absolute job protection. Therefore, their lot is enviable\(^2\).

Because of utter poverty, low level of education contract labour will accept whatever little wage and amenities provided by the employers/contractor. Contract workmen are conscious of the absence of amenities but become helpless, weak

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1. Labour Economics Principal Problems & Practice by Jiwitish Kumar Singh PP. 9-10
and submissive owing to insecurity of employment, lack of organisation among themselves and help from trade union.

Dr. Blenk - Director ILO New Delhi said that “if we leave anything to market forces, we will only know whether our skills are in demand or not but we cannot talk about the dignity of labour. Any labour market need some kind of regulation. Informal sector has a free labour market and we know what are its conditions. Dignified labour market needs regulation or prohibition of contract labour at national as well as state level”.

Conditions of contract labour is far from satisfactory. No civilised society will allow one of its sectors to be exploited by another one, either in the name of business, imperatives, efficient working or something else. Exploitation is bad, whether it is by the employer or the organised employees and must go. In nutshell the conditions of contract labour system require improvement.

1.9 REASONS FOR GROWTH OF THE CONTRACT LABOUR SYSTEM

The principal reason for the growth of contract labour system –

1. Abundance of labour supply
2. Wages are invariably lower than those of their counter parts in regular employment.
3. Contract labour is largely non-unionised
4. Easy to hire and fire and maintain discipline
5. Easy to extract work

\[1\] ILO National Seminar on Contract Labour March’97 Mumbai P. 16
6. Exemption of the small unit from labour legislation
7. Poor implementation of provision of the labour law
8. Government has placed a moratorium on fresh recruitment in a number of public sector unit
9. Elimination of wastage due to excessive absenteeism, labour troubles of regular workmen.
10. Greater flexibility
11. Greater utilisation of technological change
12. Simple administrative and accounting procedure
13. Intermittent and surplus work could be done economically through contract labour.
14. Contract labour give high production
15. No direct access of contract workmen and unions to the statutory industrial relation machinery to demand abolition of the contract labour system.

1.9.1 ADVANTAGE TO FIRMS ENGAGING CONTRACT LABOUR

The principal attraction of contracting out work and service, engaging contract labour advantageous to the establishments. It is reported that labour and job contracting contributed to their efforts to produce goods and services of a given quality at the lowest possible cost. Economic advantages and management prerogatives were the two major arguments advanced in its favour engaging contract labour¹.

¹ Contract Labour in Manufacturing Industries by K N Vaid PP 21-26
a) **EFFICIENCY**

It is generally held by the firms that workers give higher productivity when employed as contract labour. Payment by results, closer supervision by contractors, prompt penalty for staying below the output norms and high waste and good work as the only basis of employment security, induced workers to produce more. Many time farming out work, process subletting or employing contract labour is answer to production bottlenecks.

b) **COST BENEFIT**

Practice of employing contract labour to cut down cost, contract worker is paid low wages and fringe benefit – ESIC, P.F. Leave, Bonus etc. which are other wise payable to the regular employed workers. The contractor generally did not provide any fringe benefits to farmed out workers. In many cases the cost of fringe benefit provided by larger firms are substantially higher than of the smaller firms to which the work is farmed out. In either case the larger firm gain substantial savings on fringe benefit by not getting work done through regularly employed workers.

c) **OVERHEAD COST**

Employment of contract labour reduce the cost associated with administrative and accounting procedure. With the reduction in the amount of direct manpower employed there will be a simplifying of procedures and economics attached to the functions of both line and staff personnel. Many companies hold that if work could be farmed out the number of supervisors, administrative staff, administrative costs of compliance of labour
laws would come down. In addition substantial savings in labour costs would result due to a lesser number of complaints, grievances and court cases. A very Sr. executive of an engineering company said even if the economic gain of labour or job contracting are not substantial, I shall still go in for it, wherever is possible, because it releases a number of my supervisors and officers from petty procedural matters. This high talent could be usefully employed on development work, he further mentioned that “They preferred job contracting” because it reduced my worries, freed my senior executives, made visits to my factory less attractive to government inspectors and enlarged my sphere of influence in the local market.

d) CAPITAL GAIN

Another economic advantage of the contract labour practice lies in the fact that it saves capital investment of firms and permits its utilisation in other more remunerative direction. This tendency was reported to be more common in engineering industry. Most of the engineering concerns reported that in any expansion plan, one of their primary considerations has been what processes or components can be farmed out? Can we buy some components or services from outside? This strategy saves investment on installing machinery and equipment. A electronics firm which has considerably expanded the existing plants and put up three new plants during last five years, reported that expansion of existing plants had been done only in respect of components that could not be got made outside. The expanding industries sought greater opportunities for job contracting as a measure of import substitution, capital saving and economy.
f) **INTERMITTENT WORK**

The contract labour practices were reported to be partially suited to intermittent work and fluctuating workload. They permit the company to meet peak work loads without having to recruit extra employees who would be on make-work much of the time if retained on payroll.

Engineering industries which worked on order secured from other establishment maintained the workforce necessary for the minimum constant work and employ contract labour on receipt of additional order or rush jobs.

Sugar factories employ extra-contract workmen in crushing season. Most of industry fear extinction if they were forced to maintain those workers on regular basis. The alternative is to pay overtime wages to regular employees. However the overtime is regulated under law is expensive.

Work that is required to be done outside the normal working hours or where its performance time cannot be anticipated can be done only through contract labour e.g transportation of raw material, finished goods, loading/unloading, material handling etc. intermittent work generally handle through contract labour.

g) **MANAGEMENT PREROGATIVE**

One of the most common reason offered by the firms in favour of continuation of contract labour practice was that "labour laws are so rigid, elaborate and unrealistic that most often logical and rational decisions cannot be taken, consequently
enterprise suffer”. A workers once brought on the payroll is going to stay on whether or not he is needed, often it may not be easy to shift him to another job. “Technological changes, rationalisation of workloads and procedures, product market conditions, import restrictions and several other similar contingencies often require rationalisation of workforce.” Companies consider that it is easier to adjust workload, wage rate, employment status etc. of workers who are employed as contract labour. Mechanisation, modernisation of plant can be brought in quickly if they were not restricted by the labour laws.

Problem relating to absenteeism and labour turnover will get reduce, reduction in the size of workforce is less attractive and less remunerative for outside union leader to keep their hold on the union. Individual contract’s workmen will not be in position to much bargain.

1.10 FORMS OF CONTRACT LABOUR

The term “contract labour” referred to all those workmen who were employed by or through, contractor on the work of the establishments. They were distinguished from directly employed workers on the basis of their employment relationship with the establishment and the method of wage payment. The contract labour were recruited by an outside person/agency and were supplied to the establishment or were engaged on its work. The establishment did not bear them on its muster or payroll. Nor were they shown in the establishment records as having been paid wages. If it was “ case of labour supply the supplier/contractor was
shown to have received money on behalf of the group. If it was a job contract, the payment was made in lieu of the job done.

Study revealed a wide diversity of contract labour practices followed in different companies. Considered on the basis of employment relationship between the contract labour and the principal employers and the methods of wage payment to the former, all the practices could be grouped in to three basic forms.

1. Supply of labour by contractor to the principal establishment

Contractors supplied workers to a company against indents and received the stipulated remuneration on the basis of heads supplied per day. Contracts labour were not borne on the payroll of the company as such no employment relationship existed between the company and the contract labour. The contractor reserved the right to hire, discipline and dismiss his workers as well as to fix the rate of wages and the mode of its payment.

In some place they also supervise the work of workers engaged through them. They are paid commission on the basis of the numbers of workmen supplied. In a few cases they are paid total wages earned by the workmen engaged through them and expected to distribute the same to the persons concerned. The principal employers are not concerned about the wage and welfare conditions of the labour supplied by the contractors.

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1 Contract Labour in Manufacturing Industries by K.V. Vaid P. 4-5
2) **Job Contracting**

A job contracting is referred under different nomenclatures

a) **Process subletting:**

Where part of the manufacturing process involving one or more operations are contracted out and is called process subletting. Under this form of contract work assigned to the contractors is such that work is done by workers directly employed in the establishment by the contractor. They determine wage, working hours and working conditions of their employees. They get payment on the basis of work done and in turn paid to their employees either a time rate or a piece rate leaving some margin for themselves. Workers work under contractor’s supervision and guidance. Raw material is supplied by the principal employers.

b) **Service subletting:**

A job contract involving ancillary operation is called service subletting in which contractor is engaged by principal employers to perform ancillary service such as transportation of materials, cleaning of material, premises and maintenance of machine etc. The contractor engage workers for doing such jobs and determine their conditions of employment but remains responsible to the principal employers for work done by those workers. The payment made to contractors by the principal employers in such case is on the basis of service rendered and not according to the number of workers engaged.
Contractor determine remuneration that is to be paid to workers engaged by them. The workers engaged by contractor work either on the premises of the establishment or outside.

c) Farming out:

Whenever contract is given for the manufacturing of component to a contractor either inside the premises or outside, the practice is called forming out. The basis of the payment is the job done. The specification for the component to be produced are given by the principal establishment. The work may be performed by the contract labour either independently or with the assistance of the principal employers – inside or outside the premises.

1.11 CONTRACT LABOUR SYSTEM AND LEGISLATION IN OTHER COUNTRIES

1.11.1 CONTRACT LABOUR SYSTEM

There is no explicit internationally accepted definition of the term “contract labour”, which is often used to refer to different ways of employing workers otherwise than under a normal employment contract between the workers concerned and the enterprise for which they work. This lack of conceptual clarity regarding contract labour gives rise to contradictory interpretations and inhibits the development of adequate protection for the workers involved.
The term “contract labour”, “contracting” and “sub-contracting” are used widely and often interchangeably. Therefore they do not necessarily referred to different patterns of contractual relationship. However, a certain substantive distinction is made between them in some countries in United Kingdom e.g. the term sub-contracting is typically used to describe the provision of skill or services by the third parties in the area such as cleaning, security, catering and maintenance and some white collar function. Whereas “Contracting” is frequently associated with construction and related sectors¹. In many other countries however, the only difference between these two words lies in the sequence of contracting arrangements. When the first contractual arrangement is called “contracting” and all the following arrangements “sub-contracting”

1.11.2 CATEGORIES OF CONTRACT LABOUR

Major categories of contract labour, namely job contracting, labour-only contracting and others which are frequently referred are as under:

a) JOB CONTRACTING

This pattern of contract labour occurs where an enterprise contract with an established firm for the supply of goods or services, and the latter undertakes to carry out this work at its own risk and with its own financial, material and human resources. The workers employed to provide the goods or services remain

under the control and supervision of the second firm (called the contractor or subcontractor), which is also responsible for paying wages and for fulfilling the other obligations of an employer. The user enterprise makes payments to the contractor or subcontractor on the basis of the work performed or services provided and not on the basis of the number of persons employed and hours of work spent. The only concern of the user enterprise is a finished product created by the subcontractor, not how and by whom that product has been generated.

b) LABOUR-ONLY CONTRACTING

This kind of contract labour arrangement takes place where the contractor or subcontractor supply of labour (rather than goods or services) to the user enterprise. For this purpose, the user enterprise may bring the contract workers onto its premises to work alongside its own employees or it may have the work performed elsewhere, should the production process so require. There are a great many variants of the phenomenon, but all are characterised by the absence of a formal direct employment relationship between the user enterprise and the workers concerned.

Under such arrangements the workers engaged are placed under the control and supervision of the user enterprise while at work. Subcontractors are paid by the user enterprises on the basis of the number of persons engaged, not the finished product expected. Wages are normally negotiated and settled directly by the subcontractors with such workers. The power to hire

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and fire in respect of these workers apparently lies with the subcontractors, although the final choice in either case rests with the user enterprises.

c) CONTRACTING IN AND CONTRACTING OUT

Contracting in takes place when the subcontractor undertakes to do work or provide services on the premises of the user enterprise. Contracting out happens when the user enterprise externalises certain work to be performed by an outside subcontractor.

Although in both cases the relationship between the user enterprises and the subcontractors is based on contractual arrangements of a similar nature, i.e. on commercial contacts, the interests of the workers involved might be affected differently. While in contracting-in arrangements problems concerning the employment and collective labour relations status of the contracted-in workers become a priority, in contracting-out arrangements the job security of the regular employees of the user enterprises comes to the forefront.

DIVERSITY OF PATTERNS

Non-standard forms of employments rapidly developing in contemporary labour market world wide namely Home Work, Casual Work, Work through temporary employment agencies, leasing of work etc., some of the arrangements are given below:

A) Triangular arrangement throught intermediaries - Individual intermediaries
The supply of contract workers through individual intermediaries is a long-standing practice in certain economic sectors such as construction, agriculture or manufacturing.

1) In the agricultural sector in Chile, individual labour-supplying agents are called enganchadores\(^1\). They either operate solely as intermediaries, paid by the user enterprises a fixed amount per worker supplied or supply workers for the performance of specific tasks and assume certain management and supervisory responsibilities in relation to the workers engaged, including payment of wages.

2) In a number of French-speaking African countries\(^2\), a specific pattern of labour market activity called tacheronnat has traditionally existed in certain economic sectors, such as construction, agriculture and transport, a tacheron is an individual who contracts with user enterprises to perform work or services for an agreed price. For this purpose, the tacheron recruits the necessary workers and directs them in performing the work.

3) In some Latin American countries like Argentina and Uruguay\(^3\) supply of home workers, is practiced by the talleristas. The talleristas are individual owners of small workshops who undertake to manufacture products for user enterprises and who employ workers to do this job. The contractual status of the tallerista is recognised by Argentina jurisprudence. The talleristas have been unionised in

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\(^{1}\) J. Echenique- Labour Contracting in Chile’s Fruit agriculture ILO Report

\(^{2}\) Labour Law reforms in french-speaking Africa. Shrinking state role and new flexibility in International Labour review Vol 134 No.1 1995 PP 89-90

\(^{3}\) L. Vega Ruiz “Home Work” Towards a new regulatory frame work in international labour review (Geneva ILO) Vol 131 No.2 1992 P. 203
Argentina as home workers. However, they act as employers as regards the remuneration of the workers they engage.

4) Labour supply agencies

Contract workers are employees of labour market agencies, such as temporary work agencies (TWA) or staff leasing agencies. These agencies carry out a labour market "Brokerage" a function which is confined to bringing employers and jobseekers together, leaving both sides free to decide whether or not to establish an employment relationship.

The TWA-type agencies, however, play another role in labour markets. They themselves employ a workforce for the purpose of supplying it to the user enterprise. Normally, but not exclusively, on the temporary basis. The result is a specific triangular relationship whereby workers who are employees of these agencies find themselves under the authority of user enterprise. With whom they have not signed the contract of employment.

B) Arrangement with no third party involvement

1) Individual contracting

This pattern of contract labour occurs when an individual worker enters personally into a formal

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1 Revision of the free – Charging Employment Agencies (Revised) 1949
2 The Role of private employment agencies in the functioning of Labour Market Report (VI) International Labour Conference 81st Session Geneva 1994
commercial contract or informal relationship with a user enterprise to provide the latter with his or her services. Such individual subcontractors may have the status of self-employed persons. The main characteristics of their contractual status are that they (i) have no formally established employment relationship with the user enterprises (ii) may work for more than one user enterprise; (iii) exercise a higher level of discretion and autonomy compared with that of workers under a contract of employment. This allows this kind of contractual arrangement to be placed under the category of job contracting.

2) Group (team) work arrangements

Work in groups has become a long-standing tradition in some economic sectors such as agriculture, construction and transport, in many countries around the world. These groups, often called “gangs”, normally agree to work for user enterprises on a piece-rate basis and are characterised by a certain degree of self-organisation. Their leaders cannot be regarded as intermediaries since they are simply members of the gangs who are in charge of obtaining and negotiating the work and the fee. The workers engaged often do not have any determined employment status in relation to the user enterprises.
3) Mixed arrangements

A specific pattern of contract labour arrangements which combines intermediary activities and self-employment has developed in the construction and meat industries of Australia\(^1\). The operations of this type of agency involve supplying workers to builders and charging the latter for the services provided. When a user enterprise requires additional workers for a day, days or perhaps even months, the agency supplies the workers and then invoices the user enterprise at an hourly rate for the workers attendance at the site. The agency maintains a pool of workers, varying in skill from labourers to site managers, who are available to perform jobs at shortest notice, workers inform the agency daily at the time worked, and are paid weekly though the agency, based on an hourly rate. The user enterprises direct workers to perform whatever work is necessary, but both have the right to refuse to work together.

1.11.3 SPECIFIC LEGISLATION AND REGULATION TO SAFEGUARD THE INTEREST OF THE CONTRACT LABOUR

1) Specific Regulation of Contract Labour

The main objective to be accomplished in regulating different forms of contract labour is twofold to retain the elements of contract labour deemed to be positive and to provide the workers thus employed with the necessary

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\(^{1}\) E. Underhill and D.Kelly “Eliminating traditional Employment : Trouble shooters Available in the building and meat industries” In Journal of Industrial Relation (Industrial Relations Society of Australia) Vol 35 No.3 Sep 1993 – PP 398-423
social protection. Different measures have been taken in this regard by some countries. The regulation of contract labour arrangements is mainly targeted at excluding the possibility of exploitation of the workers concerned and at preventing those who actually employ these workers, that is user enterprises and subcontractors, from evading employer responsibilities under labour and social security laws. Attempts have also been made in certain countries to protect jobs and conditions of work of regular employees of user enterprises from being eroded by contract labour arrangements. They include the following measures:

(I) Statutory prohibition or elimination of certain types of contract labour arrangement,

(II) Authorisation, registration or licensing of certain labour market activities involving contract labour elements.

(III) Administrative control over contract labour arrangements through labour inspection;

(IV) Guarantee of equal treatment between contract workers and employees of the user enterprises;

(V) Requirement that contract between subcontractor and user enterprises state clearly the conditions of work of the workers concerned.

(VI) Assignment of legal responsibility for obligations of the employer regarding wages, working conditions, safety and health, and/or social security to the user enterprises or to the subcontractors, or to both. These measures are provided for either in legislation (both employment and collective
bargaining legislation) or through voluntary arrangements between the parties.

II) Statutory Prohibition Or Restriction

One approach to regulating certain types of contract labour arrangement in a number of countries is prohibition. Such prohibitions refer mainly to labour only contracting. Sometime, however, statutory prohibitions are framed in a more general way, implying their application to both major types of contract labour arrangement, that is to labour-only and certain kinds of job contracting. Such prohibitions are aimed at preventing the workers engaged from being exploited by the subcontractors.

a) French legislation recognised exploitation by labour subcontractors as unfair and abolished it\(^1\).

b) The Italian Act No. 1369 of 23 October 1960, prohibits the contracting out of work of any kind to subcontractors where the capital, machinery or plant used in the work ordered is supplied by the user enterprise, even in cases in which the subcontractors pay the user enterprises for its use. Legitimate subcontractors are those who assume full responsibility for the organisation and supervision of work. Labour-only subcontractors are therefore implicitly prohibited. The act imposes on legitimate subcontractors specific obligations regarding the protection and welfare of the workers thus employed.

Penalties for infringements are imposed on both the user enterprises and the subcontractors; workers found to have been employed in violation of the provisions of this act are deemed to be the employees of those enterprises that actually benefit from their work, i.e. of the user enterprises.

c) The Legislation of Philippines explicitly prohibit labour-only contracting arrangement, the suppliers involved in this kind of labour-only contracting are recognised merely as a agent of the user enterprise, which are considered to be responsible to the workers in the same manner and extent as if the workers were directly employed by them\(^1\).

d) In Malaysia, legislation provides for the right of the minister of human resources to prohibit by order the employment of any person or class of persons to carry out work other than under a contract of service.

e) Significant changes have recently taken place in the regulation of the activities of labour supply agencies. Some countries the activities of such agencies where regarded as labour only contracting and thus prohibited and while some countries these labour market institution have been legally accepted by special legislative provisions, and are subject to certain limitations intended (i) to ensure that only reputed and solvent business are engaged in such arrangements (ii) to provide the workers

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\(^1\) C.I. Torres – Contract Labour : Law and practise in the Philippines, report submitted to ILO research project on Contract Labour, 1995 PP. 13-16, 34-38
concerned with appropriate protection (iii) to protect the employment of regular employees of user enterprises.

f) The Belgium Act of 1987 on temporary work and on supplying workers to the user enterprise prohibits supply workers to the user enterprises.

g) The worker dispatching law of 1985 of Japan lays down two criteria for allowing worker dispatching: (i) activities which require special knowledge, technical skill or experience, or (ii) activities requiring special management of the workers.

h) The act of 1994 on temporary work agencies of Spain, contains a number of provisions defining the relationship between the worker supplied and the user enterprise. Workers are entitled to use the transport and collective facilities of the user enterprise and to submit complaints about their working conditions through the workers representatives in that enterprise.

i) In cases of violation of the regulations, the legislation of a number of countries provides variously for certain consequences, including the following: (i) the contract between the subcontractor and the user enterprise, according to which the employees of the former are provided to the latter, is regarded as null and void, although without affecting the employment contracts of these employees with the subcontractor employing

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1 B. Hepple Flexibility and security of employment Law PP 265-266
them (e.g. Belgium) (ii) the relationship between a worker thus engaged and the user enterprise is regarded as a contract of employment without limit of time which begins with the execution of work; the user enterprise therefore has to assume all responsibilities and obligations provided by labour legislation; such a worker is free to terminate his contract at any time without prior notice and indemnities (e.g. Belgium, Germany and Italy) (iii) joint responsibility of both the subcontractor and the user enterprise (e.g. Belgium) (iv) penalties in the form of fines or imprisonment imposed on both the user enterprise and the subcontractor (e.g. Austria, France, Germany, Italy and Japan).

III) Authorisation Of Contract Labour

A number of legislative enactments have concentrated on organisational measures in order to bring contract labour under the control of the public authorities with a view to protecting the interests of the workers involved. The main instrument used for this purpose is authorisation.

According to the Manpower Provision Act of 1972 of Germany, the licence for the temporary supply of labour as a commercial operation shall not be granted to an applicant who "does not comply with statutory provisions relating to social security, safety and health, or does not fulfill the obligations imposed on him by labour legislation".
The United Kingdom De-regulation and Contracting Act in 1994 provide licencing requirement and statutory minimum standard on the conduct of agencies\(^1\).

The British Columbia Employment Standards Act 1980 (Canada) provides for a compulsory licensing scheme for farm labour subcontractors. A salient feature of which is that a user who knowingly engages the services of an unlicenced subcontractor is affixed with responsibility for any wages and benefits owed by the latter to its employees.

**IV) Labour Inspectorate**

The role of Labour Inspectorate, bear major responsibilities in promoting the absorveence of labour and social security law is of vital importance for the eradication of abusive practices and protection of the contract workers.

**V) Requirement To Inform, Consult Or Negotiate With Workers Representative**

The legislation of number of countries specifically provides that it is the right of the representatives of regular employees of the user enterprises to be informed of or consulted on the possible use of an external workforce by the employer. Swedish\(^2\) government has gone further and empowered the unions with the right to veto, interalia, the employees decisions concerning recourse to an external workforce.

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1. "De-regulation Act eects employment law\(^1\), in Industrial Relations Law bulletin No. 511 Dec 1994, PP.15
2. Employment Protection Act 1982 and Co-Determination Act 1976
V) Guarantee Of Equal Treatment With Regular Employees Of User Enterprise

One of the means of regulating contract labour is application of the principle of equal treatment between contract workers and regular employees of user enterprises. The legislation of a number of European countries (Austria, Belgium, Denmark, France and Portugal) has entitled the workers supplied by TWA-type agencies to equal treatment with regular employees as regards pay and other condition of employment¹.

The labour court of Saudi Arabia makes such equality of treatment conditional on the nature of work carried out by the subcontractor, in terms of whether it is "core" or "peripheral".

The act of Italy, provides that contract workers who carry out work or services, including porterage, cleaning or ordinary maintenance of premises should be guaranteed statutory conditions of work "at least equal to the wages and conditions of work" enjoyed by the regular workforce of the user enterprise².

¹ "Non-standard form of employment in Europe, Part-time work, Fixed Term Contract and Temporary work contract ", in European Industrial Relation, review, report No.3 1990 PP. 45-59
² "Contract worker protected by SDA", in Industrial Law Bullitin No. 511 Dec 1994 PP. 11-12
VI) Requirement That Contracts Between Subcontractors
And User Enterprises State The Conditions of Work of
the Workers Engaged

In Italy, special rules have been established for
contracting out arrangements in the postal services, railways
and state monopolies. These public agencies are obliged to
insert clauses in agreement which guarantee contract
workers the wages and working conditions provided by
collective agreement pertaining to the sector. If more than
one collective agreement exists in the sector, the conditions
most favourable to the workers concerned should apply¹.

VII) Joint And Several Responsibility Regarding Wages and
Working Conditions

In many countries the methods of determining the
wages and other working conditions of contract workers do
not deviate significantly from that established for “standard”
employment. It is left to either to the parties themselves or to
collective, agreements, either negotiated by unionised
contract workers with the enterprises concerned, or
concluded in a particular economic sector and hence
applicable to the employers involved in contract labour
arrangements.

Therefore other wage fixing instruments, such as
legislation or decisions of public authorities, can play an

¹ T.Treu Contract Labour Law in Italy report submitted for the ILO project on Contract
Labour P. 24
important supplementary role in providing contract workers with appropriate protection as far as wages are concerned\(^1\).

The labour code of Saudi Arabia, for example, provides that if the user enterprise entrusts to a natural person or legal entity one of its principal operations or any part thereof, the latter shall give the workers thus engaged all the rights and privileges granted by the user enterprise to its own employees and both shall be jointly and severally responsible for such rights and privileges\(^2\).

The decision as to whether a particular subcontracting arrangement relates to the "normal" ("core", "principal") activities of the user enterprise often falls within the competence of judicial bodies. Some legislation grants user enterprises the right to require the subcontractor to furnish a bond equal to the cost of labour under contract on condition that bond will answer for the wages due to employees should the subcontractor fail to pay the same\(^3\).

VIII) Responsibility Regarding Health And Safety

Protection of workers' health and safety is one of the major problem areas arising out of the growing recourse to contract labour arrangements. Because their employment status is often uncertain, the workers concerned can find themselves outside the protection

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\(^{1}\) Home Work Report V(I) ILO conference 82\(^{nd}\) session 1995 (Geneva 1994) PP.36-38

\(^{2}\) European employment and Industrial relation glossary: U.K. sweet and maywell 1991 P.125

\(^{3}\) A Goldin - Contract Labour in Argentina report submitted to ILO research project on Contract Labour April 1995 52-53
provided by labour laws to "standard" employees. Therefore, in some countries certain measures have been taken, both through legislation and voluntarily by the contracting parties themselves, to ensure adequate protection for the workers concerned.

In Canada\(^1\), employers are required to take reasonable care to safeguard the health and safety of all workers at the worksites. Thus, the act provides that the user enterprises shall be solely responsible for safety, hygiene and health conditions at work of the workers supplied.

In Australia, the safety and health protection of contract workers is achieved in one of the two ways. First, the occupational health and safety legislation imposes general obligations on employers, employees, manufacturers, principal contractors, occupiers and persons in control of workplaces to ensure that safety standards are observed. Second, the coverage provided by legislation regarding workers' compensation for work-related injuries is statutorily extended to contract workers. There is also evidence that appropriate safety measures with regard to contract workers are voluntarily being taken at the enterprise level\(^2\).

\(^{1}\) G. England, op. cit. P. 12
\(^{2}\) L.de Plavitz : Contract Labour in Australia, report submitted for the ILO research project on Contract Labour March 1995 PP 40-41
IX) Responsibility Regarding Social Security Coverage

Lack of social security coverage is also a problem which frequently arises in the course of contract labour arrangements.

In some countries full or partial social security coverage has already been provided to certain categories of contract workers. In other countries, labour legislation clearly indicates those who should be responsible for payment of social security contributions to protect the contract workers concerned. Thus it provides for joint responsibility the user enterprise and the subcontractor for the fulfillment of all the obligations concerning social security legislation.

In some countries the coverage of social security laws has been extended to contract workers by recognising them as “employees”. In Australia, for example, the statutory superannuation scheme commits all employers to providing contributions for all employees.

X) Division Of Responsibility

Responsibilities can also be divided between the user enterprises and the subcontractors, depending upon the degree of control they respectively exert over the workers engaged¹.

Legislation of a number of countries provides that the workers concerned are considered to be employees of TWA and that all employers obligations and responsibilities stipulated in labour and social security legislation remain in force for them. As regards, the user enterprises, they are considered responsible for the application of provisions of labour legislation concerning hours of work and rest, work of women and of young people, night work and health and safety regulations.

1.11.4 COLLECTIVE LABOUR RELATIONS – LEGAL ASPECTS

This has initiated a certain readjustment of collective labour relations rules and practices so that the workers concerned can enjoy these fundamental collective rights of workers. It is developing in two major directions. On the one hand, attempts are being made to expand the scope of applications of the traditional institutional and procedural framework to cover the newly emerging “atypical” patterns of employment. On the other hand, where these traditional instruments prove to be inadequate, new, more flexible forms of organisation and representation are appearing. This process effects both legislation and practice.

The collective arrangement seem to have been useful to increase control of contracting abuses in some areas.
a) Right To Organise

Under ILO standards, all workers, whether employees or not, should have the right to form and join organisations of their own choosing. Under the legislation of several countries, the definition of a “worker” to whom the right to form trade unions is granted seems to go beyond those in an employment relationship\(^1\).

For example, the Trade Unions and Labour Regulations (Consolidation) Act, 1992, of the United Kingdom, which provides for a comprehensive set of regulations covering collective labour relations, defines a “trade union” as an organization consisting “wholly or mainly of workers... whose principal purposes include the regulation of relations” between them and employer (s 1 (a)) The term “worker” includes contract labour also a special guarantee of its application to contracting out arrangements.

According to the Trade Union Law of 1949 of Japan, the right to organise a union is granted to those who are recognised as “workers”, defined as “those who live by their wages, salaries or other remuneration assimilable thereto regardless of the kind of occupation (s. 3). As regards the collective bargaining powers of contract workers supplied by the TWA-type (dispatching) agencies, collective bargaining normally takes place

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between these workers and the agency because the wages and other working conditions are normally determined in the employment contracts concluded between them\(^1\).

Where the workers concerned are individual subcontractors ("self-employed"), they have been entitled in some countries either to join existing unions or to establish their own unions vis-a-vis the user enterprises. In Australia, for example, the Industrial Relations Act 1991 (New South Wales) stipulates that groups of not fewer than 50 owner-drivers or carriers can register as an association in the Industrial Commission\(^2\).

b) Right To Bargain Collectively

Vis-À-Vis The Subcontractor:

Where the relationship between contract workers and subcontractors is an employment relationship, the workers are, in principle, entitled to the whole range of right provided for in industrial relations and collective bargaining legislation, including fundamental workers’ rights such as the right to organise and the right to bargain collectively. For example, in a number of countries (Belgium, Denmark, Finland, Germany and the Netherlands, for instance) the workers

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\(^1\) Y. Mizumachi: Regulations on Contract Labour in Japan report submitted for ILO research project on Contract Labour mar 1995 PP 22-23

\(^2\) L de Plevitz: Contract Labour in Australia, Report submitted for ILO research project on Contract Labour March 95 PP. 57
supplied by the TWA-type agencies negotiate collective agreements with these agencies¹.

c) Vis-À-Vis The User Enterprise

Labour laws do not usually recognise the right of contract workers to negotiate with the user enterprises, if they are not their employers. Sometimes legislation establishes special provisions preventing use enterprises from being forced in the course of subcontracting arrangements to recognise the right of the workers of the subcontractors to bargain with the user enterprises.

In the United Kingdom, for example, the Employment Act, 1982, prohibits conditions in tenders or contracts requiring the employment of union members or recognition of a trade union or negotiation with it (ss. 12 and 13). By virtue of this legislation, any attempt by the client to require specific standards from subcontractors regarding employment policies, industrial relations, training or even health and safety procedures is null and void.

Australia legally recognised right of individual owner-drivers or carriers to unionise. In Australia (New South Wales) collective bargaining an important precondition to get both the user enterprises and individual subcontractors involved in. In the transport industry of New South Wales, the Transport Workers

¹ R. Eklund  Contract Labour in Denmark, Finland, Norway and Sweden report submitted for ILO R. Project on Contract Labour March 1995 PP. 40-43
Union assists in negotiating agreements for owner-drivers\(^1\).

Such a recognition of the right of contract workers to bargain with the user enterprises may also take place by virtue of judicial decisions. For instance, in Japan the workers supplied by TWA-type agencies normally engage in collective bargaining with the agencies, which are recognised by law as their employers and thus responsible for their conditions of work. However, in exceptional cases, where the user enterprise exercises substantial control, i.e. a decisional authority, over the working conditions of the dispatched workers, the judicial bodies have recognised the right of the workers concerned to bargain with the user enterprises\(^2\).

d) Representation Rights

As in the case of union and collective bargaining rights of contract workers, their representation rights, including the right to elect and to be represented by representation bodies such as work councils, can also be regarded from two major perspectives, namely in relation to the subcontractors employing them and in relation to the user enterprises.

In countries where provision is made for workers' enterprise-level representation in bodies such as works councils, these are generally elected by the employees of the enterprise and establishment concerned

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\(^1\) L. de Plevitz Op. Cit P. 56

\(^2\) Y. Mizumachi OP. Cit P. 23
and have a variety of consultation or co-determination rights in respect of those workers. Where contract workers are not formally employees of the enterprises, the question arises whether these workers can take part in the election of these bodies and whether these bodies can represent these workers.

e) Industrial Action

The possible involvement of contract workers in industrial action may be regarded from three major perspectives: i) the right of contract workers to direct action; ii) the extent to which an employer can use contract workers to dilute the impact of direct action taken by its regular employees or in the case of a lockout; iii) the right of the employees of the user enterprises to take direct action to have contract workers removed from their worksite.

The right of contract workers to direct action against subcontractors

The practical implementation of the right of contract workers to industrial action against the subcontractors, where legally recognised, depends on a number of factors, the most important being the level of economic independence of such firms from the user enterprise and the bargaining powers of the workers concerned.
Restriction on the use of contract labour during lawful strikes and lockouts

An employer might seek to dilute the impact of a lawful work stoppage by hiring new contract labour to maintain operations at a plant where workers are on strike or have been locked out or by assigning contract workers who are already engaged at the worksite to perform the work of the striking or locked out employees. The collective bargaining legislation of countries places certain restrictions on such practices. For instance, in some provinces of Canada employers are denied the right to hire any replacement workers during a lawful strike or lockout, save those needed to perform “essential” work. This prohibition includes persons who are individual subcontractors (“self employed”) and employees of a subcontractor whose services are contracted in.

However, if the decision to replace striking or locked out employees by contract workers is justified by cost efficiency factors, there is no illegality, since the employer are not precluded from making otherwise legitimate business decisions just because they happen to coincide with a strike or lockout. In this case, labour arbitration bodies carefully scrutinize the motives of the employer in contracting in an outside workforce to determine whether the decision was motivated by cost efficiency factors or by the desire to penalise the employees participating in the strike; in the latter case
there would be an unfair labour practice as mentioned above\(^1\).

In the United States the Executive Order of 8 March 1995 on permanent strike replacements provides that federal government contracts should not be given to subcontractors that permanently replace lawfully striking workers\(^2\).

Among the TWA-type agencies of the Nordic countries, Denmark, Finland, Norway and Sweden, it is also a widely accepted practice not to let the workers supplied perform work while the user enterprises are subject to industrial action. This kind of restriction is laid down, for example, in the ethical code of the Danish Association of Temporary Work Agencies\(^3\).

### 1.11.5 EUROPEAN UNION LAW

**Normative arrangements**

The European Union (EU) has established no comprehensive legal instrument to regulate contract labour arrangements. However, it has endeavoured to adopt directive to protect the workers engaged in various non-standard ("atypical" or precarious) employment patterns, including temporary work, which might have certain marginal effects on contract labour arrangements.

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\(^1\) G. England: Contract Labour in Canada, report submitted for the ILO research project on Contract Labour spring 1995 PP 36-37

\(^2\) ILO: Labour Law document 1995/2 1995-USA 1 PP 105-106

\(^3\) R. Eklund OP. Cit. P. 47
The first, guaranteeing temporary workers, including those employed by TWAs, health and safety protection equivalent to that provided to permanent employees of the user enterprises, was adopted by the Council in June 1991 as Directive 91/383/EEC and entered into force in December 1992.

The second proposal gives part-time and temporary staff employed for at least eight hours a week equal access to company vocational training and social services, equal treatment with regard to benefits granted under social assistance and non-contributory social security schemes and priority consideration for full-time vacancies.

Under the third proposal, which is presented as a single market measure to prevent distortions of competition between States due to national differences in social protection costs, minimum standards should be applied to the employment of atypical workers working at least eight hours per week.

In view of the deadlock on these last two proposals, the Belgian Eu Presidency produced in 1993 a single integrated text on non-standard employment contracts incorporating many elements of the originally drafted texts. That, however, failed to acquire significantly more support than its predecessors. In July 1994 the German Presidency revised the proposal, presenting it as measure to enhance job creation. The new text aims to
establish equal treatment in employment conditions between part-time and full-time employees, and temporary and permanent staff, except where different treatment is objectively justified. No weekly hours criteria are laid down as far as the applicability of this draft directive is concerned. Social security issues were removed from this text. TWAs and subcontracting arrangements were also excluded from its scope. In the Social Affairs Council in December 1994, this draft directive failed to receive the unanimous support required, as a result of the United Kingdom’s rejection. The issue is now to be pursued via the agreement on social policy (known as the “Social Charter”) which from 1995 encompasses 14 EU States, excluding the United Kingdom but including Austria, Finland and Sweden.

The fourth draft directive put forward in 1991 concerns the temporary posting of workers within the EU. It is aimed at standardizing conflict of law rules used to determine which national labour law regime applies to workers posted temporarily to another EU State. The proposal covers all enterprises which exercise their activities in the framework of the provision of services, irrespective of where they are established. Its obligations apply in three specific circumstances: 1) where the subcontractor performing a contract for services posts a worker on a temporary basis to another Member State:

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1 IDS European Report. No. 395 No’ 1994 PP.9-10
ii) where a TWA type agency places a worker to carry out work on a temporary basis with a user enterprise in another Member State; iii) where an enterprise places a worker on a temporary basis with one of its establishments, or another enterprise, in another Member State. In 1994, the Social Affairs Council failed to approve a “common position” on a revised text, with opposition coming mainly from Greece, Portugal and the United Kingdom, France passed its own legislative enactment on the subject in 1993. Belgium, Denmark and the Netherlands already have broadly similar arrangements in place. Therefore, a growing number of Northen European countries – those with the highest labour costs – are taking measures aimed at ensuring that incoming companies cannot distort competition because of national differences in labour costs. At the Social Affairs Council meeting held in March 1995, the French Presidency submitted a new text of the proposal. It was substantially more rigorous than its predecessors, in that it sought to apply host-country pay and conditions from day one of the posting, rather than stipulating a waiting period of some months. However, this has proven to be an obstacle to agreement among the members of the Council. As a result, further deliberations on the subject have been recognized as necessary.

1 IDS European report Feb 1993 No. 374
2 IDS Employment report Jan 1995 No. 397 PP 18-19
The analysis made above illustrates the major regulatory instruments used to address problems arising from contract labour arrangement. The regulation of labour—only contracting generally seeks to limit this form of contract labour to situation where it is objectively necessary and where works to the advantage of both labour market in general and employer’s & worker’s interest in particular.

Two different normative sources governed conditions of employment of contract labours. 1) Provision of social security legislation 2) The provision specially established for the purpose of regulating condition of employment of “Non-Standard” workers, including contract workers.

The protection of workers engaged is ensured mainly through clear-cut identification of employers responsibilities of both the user enterprise and the contractor with regards to payment of wages, working conditions, safety, health, social-securities coverage and provision of welfare facilites. Administrative Control — registration and/or licience of the user entriprise and contractors, the obligation to inform the competent authority about the contract labour arrangement, posting of notices about condition of such arrangements in workplace etc., is also widely used a means of ensuring that the existing regulations relevant to contract labour are respected and the workers concerned know where to turn for redress in the event of infringement of these regulations.
1.12 ILO AND CONTRACT LABOUR

Contract labour is increasingly becoming a prominent issue in different economic sectors in many countries around the world. There is no explicit internationally accepted definition of the term ‘Contract labour’ which is often used to refer to different ways of employing workers otherwise than under a normal employment contract between the workers concerned and the enterprise for which they work. This lack of conceptual clarity regarding contract labour gives rise to contradictory interpretations and inhibits the development of adequate protection for the workers involved.

The trend reported in different countries and economic sectors worldwide, towards increasingly wider recourse to contract labour calls for a more careful analysis of this phenomenon with a view to preventing the workers involved from being treated unfairly. Setting up labour standards for the countries is main responsibility of the ILO.

Repeatedly expressed concerns about contract labour practices have led the ILO to address the question from the perspective of the possible setting of international standards on the subject. The Governing body considered law and practice reports on this issue with a view to its possible inclusion in the agenda of the international labour conference at its 258th (November 1993), 259th (March 1994) and 262nd (March-April 1995) sessions. In these reports, the
office made it clear that it considered that further research on the subject was required to allow it to obtain the information and develop the conceptual basis necessary for it to assess the feasibility of international standards of contract labour. After supplementary allocations had been approved for this purpose, the office launched an intensive research project involving 20 countries worldwide and intended to build up comparative knowledge on the subject. National reports were commissioned from Argentina, Australia, Belgium, Canada, Cote d'Ivoire, India, Italy, Germany, Japan, Kenya, Malaysia, Mexico, Pakistan, Philippines, Portugal, Sweden, Thailand, United Kingdom, United States and Venezuela. This information was intended to serve as the basis for a new law and practice report containing some soundly based indications regarding the feasibility and possible content of international standards on the subject to be submitted to the Nov. 95 session of the governing body. However, at its 262nd session (March – April 1995) the governing body decided to include contract labour in the agenda of 1997 session of the conference as a new technical standard-setting item¹.

The question was examined according to the double discussion procedure established in article 39 of the standing orders of the conference, and the office has accordingly produced report in preparation for the first discussion by the conference. Though this report does not

¹ Extract from Report VI(I) on Contract Labour International Labour Conference 25th session 1997
claim to have reviewed the law and practice in all countries, it is aimed at presenting a fairly broad spectrum of existing law and practice, including the case-law of judicial and arbitration bodies, which are largely responsible for the way in which certain forms of contract labour are treated. Considering the large number of countries examined and legal texts and case-law decisions consulted reference have had to be limited to the major items or legislation.