CHAPTER-IV

INTERNATIONAL LABOUR CODE AND SOCIAL DIALOUGE ON CONTRACT LABOUR VIS-A-VIS NATIONAL LAW AND PRACTICE

4.1. INTRODUCTION

The Gross Domestic Product (GDP) focused economic growth is not sufficient. The economic system and the law must do more to empower individuals through decent work, support people through social protection, and ensure that the voices of the poor and marginalized are heard. The law is a technique for regulation of social power and the labour law is chiefly concerned with this elementary phenomenon of social power, the principal purpose of which is to regulate, to support and to restrain the power of management and the power of organised labour. The law does, of course, provides its own sanctions, administrative, penal, and civil, and their impact should not be undermined, but in labour relations legal norms cannot often be effective unless they are backed by social sanctions as well, that is by the countervailing power of trade unions and of the organised workers asserted through consultation and negotiation with the employer and ultimately, if this fails, through withholding their labour. This is a continuing struggle in labour relations management. This chapter, in fact is the presentation of this continued struggle between the conflicting interests and the resulting pacts at national and international level.

The chapter has been divided into three parts, namely the discussion on the International labour code on contract labour which is the result of social dialogue at international level, the comparative study of provisions of different legal systems for the protection of contract labour and finally the views and concerns of social partners on the issues of contract labour in Indian social dialogue platforms. The researcher has tried to present the significance of the process of social dialogue in shaping labour laws, and particularly contract labour law. The international labour standards prescribed by International Labour Organisation are the result of tripartite consultations held at various conferences, which become base for the development of

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2 Ibid.
labour law in the national jurisdictions including that of India. The analysis of legal provisions of other countries will enable the readers to think upon the solutions to contract labour problems from different dimensions and with different innovative approaches which may practicably be applied at home with suitable adjustments. The Indian social dialogue process will unfold the reasons of deadlock on amendments to the Contract Labour (Regulation and Abolition) Act, 1970.

4.2. INTERNATIONAL LABOUR CODE

‘International Labour Code’ refers to all the conventions adopted by International Labour Organisation (ILO) and ratified by the member states. These are alternatively known as ‘International Labour Standards’. The unratified conventions also create obligations on the member states to ratify the conventions and implement in their national law and practice, therefore these unratified conventions along with recommendations also form part of international labour standards. ILO supervises over their execution and the member states have to periodically report to the ILO on the actions taken by them in this regard. ILO has drafted many conventions and recommendations which cover a variety of subjects, such as relating to employment, unemployment, conditions of employment, employment of women and children, vocational training, industrial health and safety, social security, industrial relations, maritime labour immigration, freedom of association and trade union rights. At present, the International Labour Code comprised of 190 conventions. International Labour Standards aim at “promoting opportunities for men and women to obtain decent and productive work in conditions of freedom and equality with security and dignity and International labour standards are an essential component in the international framework for ensuring that the growth of the global economy provides benefits to all”.

4.3. SOCIAL DIALOGUE, SOCIAL PARTNERS AND TRIPARTITE MECHANISM

Social Dialogue means the process of interaction, consultations and negotiations amongst the stakeholders, predominantly the employers (usually through their organisations), workers (usually through trade unions) and the Government,

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resulting into instruments which ranges from mere resolutions to the legally binding conventions and pacts. The other stakeholder may include lawyers practicing in labour matters or their associations, contractors, educationists and experts on labour issues. These stakeholders are alternatively called ‘social partners’. When the social dialogue takes place amongst three parties i.e. employers’ associations, trade unions and the Government, it is called tripartite mechanism. It is a concept of Nanda Period which began in 1957 replacing the V.V Giri Approach of self-reliance for labour. Under tripartism, the three do not decide anything, but they try to advise about everything\(^5\). Their representatives sit together, in one kind of meeting or another, and strive to reach consensus; they study problems, and when they agree they make recommendations\(^6\). Of the three, the Government is most active, for although it decides nothing as one participant, it does take the initiative in calling management and labour together; and sometimes it cracks the whip over them a bit\(^7\). And of course it in nowise surrenders-although it may deprecate its overriding powers to take decisions even without its two partners’ consent\(^8\).

Trade unionism means maintaining the amicable industrial relationship by solving the issues between employer and the workers at negotiation table through their respective representatives (workers through trade union). Collective bargaining refers to methods by which problems of wages and conditions of employment are resolved amicably (although often reluctantly) peacefully and voluntarily between labour and management\(^9\). The system is highly developed in many countries and is making headway slowly in India\(^10\). Collective bargaining has been successful in resolving labour matters in international economic crisis in many multi-national corporations worldwide. It can further help in cases like safe work practices, technological changes and restructuring of business organisations.

\(^{6}\) Ibid.
\(^{7}\) Ibid.
\(^{8}\) Ibid.
\(^{9}\) Indian Law Institute, *Labour Law and Labour Relations- Cases and Materials* (New Delhi: The Indian Law Institute, 2007) 150.
\(^{10}\) Ibid.
In recent years, an increasing number of international framework agreements between multi-national enterprises and global union federations have been signed. A total of 142 agreements had been negotiated by March 2014 which differ from other type of private compliance initiatives as they are negotiated, implemented and monitored by workers’ representatives, for example, the European Directive 2009/38/EC to establish European Works Councils to enhance transnational social dialogue at the company level and The Accord on Fire and Building Safety in Bangladesh. Collective negotiations may take place at plant level, industry level, and sector level, national and international level. Periodical labour conferences held at national level i.e. Indian Labour Conference called upon by Ministry of Labour and Employment and at international level, The International Labour Conference called upon by ILO are also very significant platforms.

The Indian Labour Conference (ILC) has been hailed as ‘labour parliament’ by political leaders to their speeches to the ILC because the long history of ILC provides a strong institutional base for social dialogue, however, social dialogue through these tri-partite forums has not been productive as this forum has been used by the tripartite actors to push through their views and prospective rather than going beyond this for some policy compromises and solutions. The Government has been taking a pro-globalisation and pro-labour reform view and using this forum to convey and test their views and create a consensus on them. The voice of employers is gaining weight day-by-day. The Employers are represented by their associations such as Associated Chambers of Commerce and Industry in India (ASSOCHAM), Federation of Indian Chamber of Commerce and Industry (FICCI), All India Organisation of Employers (AIOE) etc.

In social dialogue, the power of trade unions plays pivotal role. Trade union is an outcome of factory system and is based on labour philosophy “united we stand,

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14 Id. at p. 57.
divided we fall"\textsuperscript{15} Even though labour movement started as early as 1860s but trade union movement, as we understand today, really developed in the 20\textsuperscript{th} century\textsuperscript{16}. The formation of the ILO in 1919 of which India was a founder member, the active interest taken by the nationalist movement in the organisation of the working class, and the formation of the All India Trade Union Congress (AITUC) in 1920, also helped the process, resulting into enactment of the Trade Unions Act, 1926\textsuperscript{17}. All India Trade Union Congress, Indian National Trade Union Congress (INTUC), Centre of Indian Trade Unions (CITU) and Bhartiya Mazdoor Sangh are some of the major national trade unions in India. Trade unions are voluntary organisations of workers formed to promote and protect their interests by collective action\textsuperscript{18}. A trade union must possess definite aims; its members must be welded together in a united front for the good of the whole group rather than for the promotion of any selfish individual interests; and it must, to be effective, take on a definite and permanent form of organisation through it strives to accomplish its goals\textsuperscript{19}. The Indian Trade Unions Act, 1926 gave the trade unions legal status and immunity to its officers and members from civil and criminal liability for concerted actions\textsuperscript{20}. The need of a provision for recognition of unions was stressed in the Second Five Year Plan and the First National Commission on Labour in its report has stated that “It would be desirable to make union recognition compulsory under a central law in all undertakings employing 100 or more workers or where the capital invested above a stipulated size”\textsuperscript{21}. However, no such amendment has still been made in the Trade Unions Act.

The ILO is the only international intergovernmental institution in which Governments do not have the exclusive voting power in setting standards and policies\textsuperscript{22}. Employers and workers have an equal voice with governments in its decision-making processes and this concept, known as “tripartism”, is based on Article 3 of the ILO constitution, which with great simplicity states that: “The General

\begin{itemize}
\item \textsuperscript{15} Indian Law Institute, \textit{Labour Law and Labour Relations- Cases and Materials} (New Delhi: The Indian Law Institute, 2007) 101.
\item \textsuperscript{16} Ibid.
\item \textsuperscript{17} Ibid.
\item \textsuperscript{18} V.V.Giri, \textit{Labour Problems in Indian Industry} (Delhi: Asia Publishing House, 1972) 1.
\item \textsuperscript{19} Ibid.
\item \textsuperscript{20} Id. at p. 7.
\item \textsuperscript{21} Id. at p. 8.
\end{itemize}
conference shall be composed of four representatives of each of the Members of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members"23.

Trade unionism and Collective Bargaining are imperative in social dialogue. Speaking about the significance of collective power, Sir Otto Kahn-Freund observed-

“The worker as an individual has to accept the conditions which the employer offers. On the labour side, power is collective power. The individual employer represents an accumulation of material and human resources, socially speaking the enterprise itself in this sense a “collective power” and if a collection of workers (whether it bears the name of a trade union or some other name) negotiate with an employer, this is thus a negotiation between collective entities, both of which are, or may at least be bearers of power. Labour law is chiefly concerned with this elementary phenomenon of regulation of social power”24. The collective bargaining function of unions straddles the ideologies of the welfare socialism and free market capitalism25. Using market techniques, negotiating on behalf of comparatively powerless individuals, and righting a socio-economic imbalance, unions perform an important welfare function26. As Kelly points out, ‘worker collectivism is an effective and situationally specific response to injustice, not an irrelevant anachronism”27.

4.4. UNITED NATIONS AND THE RIGHTS AT WORK-A HUMAN RIGHTS APPROACH

The United Nations (UN) is the universal organisation belonging to the international community as a whole replacing the League of Nations. It is a legal

26 Ibid.
27 Ibid
person subject to international law. The San Francisco Conference led to adoption of
the UN Charter by 51 countries which came into force on 24th October, 1945 and the
UN was formed. The UN Charter articulates the purposes of UN, namely-

1. The maintenance of international peace and security.
2. To develop friendly relations amongst nations.
3. International co-operation in solving international problems of social,
cultural and humanitarian in character.

Since its inception in 1945, the UN has continued to grow and adapt to the
challenges of a complex and changing world environment and one of the most
important recent evolutions in the UN has been the changing focus of the organisation
from its primary concern of international peace and security to the national security
and the issue of human security within the state. The words human security
unequivocally includes the ‘decent employment’ conditions, inter-alia. The decent
employment refers to productive work providing for fair remuneration, health and
safety, social security with due opportunity and security of employment itself. The
misfortune of being a contract worker is the lack of this ‘decent employment’. The
decent employment is the basic need of humans, which is the source of all material
enjoyments and thus itself a basic human right. The employment and human dignity
go hand in hand in any modern democracy. As an American judge has said-

“...a man or woman usually does not enter into employment solely for
the money; a job is status, reputation, a way of defining one’s self
worth, and worth in the community. It is also essential to financial
security, offering assurance of future income needed to repay present
debts and meet future obligations......in short, in a modern
industrialised economy, employment is central to one’s existence and
dignity”

United Nations- Confronting the Challenges of a Global Society (Delhi: Viva Books Private
Limited, 2005) 3.
29 As per Broussard J in Foley v. Interactive Data (1988) cal Rptr.211 cited with approval by
Lightman J in BCCI v. Ali (1999) 1 RLR 508, at para.1 in Robbin Allen and Rachel Crasnow,
Before moving towards the focused issue of contract labour in particular, it is pertinent to have a glance at the various international instruments which comprise the International Bill of Human Rights to make out a case for the basic rights at work which have been regarded as human rights and therefore, possessed by the entire labour worldwide including the contract labour. The national law and practice are supposed to ensure these rights by the highest possible legal standards and norms. The human rights are sometimes called fundamental rights or basic rights or natural rights. As fundamental or basic rights or natural rights, they are those which must not be taken away by any legislature or any act of Government and which are often set out in a Constitution. As natural rights, they are seen as belonging to men and women by their very nature. The following major international instruments of human rights provide for various rights at work-

4.4.1 United Nations Charter

The preamble of the UN charter acclaims for faith in fundamental human rights in the dignity and worth of human person and in the equal rights of men and women. Art. 1, 13(b), 55, 56, 62, 68 and 76(c) authenticate the pledging of the international community, through United Nations that they shall respect the human rights and freedoms without any discrimination as to race, caste, nationality, sex, language, etc. The United Nations bears the responsibility to promote human rights through its main organs and specialised agencies such as the International Labour Organisation (ILO).

4.4.2 The Universal Declaration of Human Rights (UDHR)

As adopted on 10th December, 1948 by General Assembly of UN, the UDHR comprises of 30 Articles. Art. 1 provides-

“Everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, natural or social origin, property, birth or other status. No distinction shall be made on the

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31 Ibid.
basis of political, jurisdiction or international status of the country to which a person belongs."  

Art. 22 to 27 contain the economic, social and cultural rights such as “right to work, free choice of employment, right to rest and leisure, right to standard of living adequate for health and well being, right to education and the right to participate in cultural life of the community. UDHR came out as a mere resolution of General Assembly. However, with the passage of time; it assumed the significance of being a continuation of the UN charter, and a universal ‘magna carta’ of human rights which was further confirmed and stepped up through different Covenants and Protocols and compositely, all these instruments came to known as the International Bill of Human Rights”.

After being adopted by member states, the human rights gradually started making their assumed place in the respective national law and practice including that of India (who is signatory to all these documents) where many of them were given the constitutional status by reading them into the fold of codified fundamental rights.

4.4.3 The International Covenant on Civil and Political Rights, 1966

The Covenant encloses 53 Articles divided in VI parts, and, inter alia, specifically provides for following rights in relation to labour:

1. Prohibition of Slavery, slavery trade, servitude, forced labour (Art. 8).
2. Right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (Art. 10).
3. Prohibition of imprisonment merely on the ground of inability to fulfil a contractual obligation (Art. 11).
4. Right to freedom of opinion and expression (Art. 19).
5. Right of peaceful assembly (21).
6. Right to freedom of association including the right to form and join trade union for the protection of interests (22).
7. Equality before law (26).

33 Ibid.
34 Id. at p. 58.
The measures of implementation of this Covenant are the reporting procedure, the inter-state communication system and individual communication system, as given in the Protocol to the Covenant.

4.4.4 The International Covenant on Economic, Social and Cultural Rights, 1966

This Covenant comprises of 31 Articles divided into IV parts. The rights at work are, namely35 -

1. Right to work freely chosen (Art. 6).
2. Right to enjoyment of just and favourable conditions of work (Art. 7).
3. Right to form trade unions and join the trade unions of choice (Art. 8).
4. Right to social security, including social insurance (Art. 9).
5. Right relating to family, motherhood, childhood and young person to protection and assistance and the right of free consent to marriage (Art. 10).
6. Right to adequate standard of living for himself and his family including adequate food, clothing and housing and to the continuous improvement of living conditions (Art. 11).
7. Right to the enjoyment of highest attainable standard of physical and mental health (Art. 12).

The implementation procedure provided under the Protocol to this Covenant is the annual reporting to the UN Secretariat. These principles, after being ratified, become the broad model norms and standards for further elaboration by the international community in their collective as well as individual efforts to regulate employment relationships.

4.5. INTERNATIONAL LABOUR ORGANISATION (ILO) AND ITS EFFORTS TO SAFEGUARD THE INTERESTS OF CONTRACT LABOUR

ILO has been vigilant and active on all the issues relating to labour. It has been aware of the problems created by the labour market segmentation. It paid specific attention to issues of contract labour. The published literature of ILO corroborates this

35 Id. at p. 59.
4.5.1 The Organisation and Objectives of the ILO

ILO was established as an autonomous partner of League of Nations on 11th April, 1919 and later on, through a special agreement, it got affiliated to UN (its Constitution was part XIII of the treaty of Versailles). Having it headquarter in Geneva, Switzerland, ILO functions as a specialised agency of UN (the first specialised agency of UN) to set norms and standards for the improvement of conditions of labour throughout the world. In 1969, the ILO was awarded with the prestigious Nobel Prize for Peace. Any nation state can become the member of ILO. The organisation works with its 187 member states at present. In the Preamble of the ILO, it has been elucidated that universal peace can be established only if it is based upon the social justice36. In 1944, the General conference of the ILO adopted a Declaration setting forth the aims and purposes of the Organisation which were incorporated in the constitution of the ILO in 1946 stating the fundamental principles on which the organisation is based, namely37.

1. Labour is not a commodity.
2. Freedom of expression and of association is essential to sustain progress.
3. Poverty anywhere constitutes a danger to prosperity anywhere.

Following are the main organs of ILO through which it performs its multi-dimensional functions-

1. General Conference- It is also known as International Labour Conference (ILC) having a representation of all member states. It is a regular annual meeting of the social partners to discuss, consult and adopt various conventions and recommendation which, in combination, are called International Labour Code. Every state has four representatives at the ILC, two of them being representative of state government and one each from the side of employers and workers. Each representative can cast one vote at the proceedings of ILC. The Conference elects the Governing Body of ILO.

37 Ibid.
2. **Governing Body**- Governing Body of ILO is the tripartite body which represents state Governments, employers and workers. At present, it has 54 members. The Governing body is the watchdog over all the functions of ILO. It performs its day to day functions. It appoints the Director General of ILO.

3. **International Labour Office or Secretariat**- It is the office of the Director General which is responsible for collection of data relating to labour from various sources, conduct or facilitate research on labour issues and to ensure that member states fulfil their promises to implement the international labour standards in their respective legal systems.

Thus, the United Nations sets out the globally accepted standards and norms of behaviour and its normative power resides not only in the organisation as a whole, but also in its individual agencies, programs, funds and the international agreements that fall under its auspices\(^{38}\). Since its inception in 1919, ILO aims at laying down international standards and securing conventions and recommendations on various issues dealing with labour. The conventions and recommendations are adopted by member states with or without reservations and thereafter, implemented in their respective national legal systems. The regulatory regime of ILO encompasses almost all the issues relating to labour (including contract labour in broader terms) in its conventions and recommendations, however, it failed to culminate into any binding agreement between member states addressing the problems of contract labour in specific despite of some efforts made in 1997 and 1998.

There are more than dozen of recommendations and conventions which indirectly relate to contract labour, such as recommendations or conventions dealing with hours of work, minimum wages, holidays with pay, forced labour, night work, employment injury, the fee charging employment agencies, the migration of employment, the plantation and social security etc.\(^{39}\) A review of these conventions and recommendations reveals that the feeling with respect to contract labour at the level of ILO has been that any new international instrument in the form of convention or recommendation on contract labour should be sufficiently flexible so as to allow

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the member states to choose out of different options to provide for the needed protection. Every member state has its own reservations as to the range and extent of the legally protectable rights of contract workers taking into account its own economic conditions, socio-economic goals, labour flexibility policies, demographic advantages, employment relationship transformation and labour market pressures. There is a need to come to certain conclusion and an international agreement as to the basic issues such as the nature of employer-employee relationship in contract employment, basic rights at work in the line with decent work agenda, the scope of employers’ right of termination of service, adequacy of remuneration and social security, the implementation mechanism at the worksite and outside the worksite, the role of related institutions including the state. It should be ensured that member states have proper legal compliance of such agreement in their respective legal systems.

4.5.2 The Current World Employment Patterns- Changing Nature of Jobs

Before moving ahead, it is appropriate to have a glance on the conditions of the international labour market and current trends in employment patterns in the world so as to understand the gravity of the research problem in its international perspective. World Employment and Social Outlook- Changing Nature of jobs, 2015 is a report which comes from the International Labour Office, ILO and presents a latest analysis of employment patterns in over 180 countries of the world. This report endeavours to disclose the situation of labour markets throughout the world and the consequential problems which need attention of the international community collectively. Among others, the problems of contract labour system have also been discussed. The main highlights of the report are-

4.5.2.1 Steep Rise in the Non-Standard Form of Employment (NSFE)

The report articulates that “there is a steep rise in the Non Standard Form of Employment patterns across the world. Less than one on four jobs is performed under a full time and stable employment relationship which is of regular nature. NSFE means work arrangements which fall outside the realm of the standard employment relationship understood as work that is full time and indefinite as well as of a

\[\text{Ibid.}\]
subordinate but bilateral employment relationship”\(^{41}\). NSFE includes work arrangements like “temporary employment, contractual arrangements involving multiple parties, ambiguous employment relationships including dependent, self-employment and disguised employment relationship and part-time employment”\(^{42}\). Thus, NSFE evidently includes the contractual employment relationships involving multiple parties such as user enterprises, workers and intermediaries like contractors, sub-contractors, private-employment agencies or service providers. The report suggests that such kind of work arrangements hide the workers’ true legal status, impose limitations upon their rights and create a state of confusion and blemish in the employment laws. It widens the income inequalities between the workers engaged in standard form of employments and in non-standard form of employment as the remuneration difference ranges from 15 to 65 percent. It also presents challenges for social dialogue and social cohesion as the work conditions are heterogeneous and organisations are differently positioned.

4.5.2.2 Employment Protection Legislations- Lack of Universal Standards

The report discusses the global situation regarding Employment Protection Legislations (EPL) which provide for protection of rights of workers employed in various kinds of work arrangements. It reveals that in European countries (particularly Germany, Norway, Argentina and Greece), the EPL regime is strong while in advanced countries from other parts of the world, it is quite low. In the case of emerging economies which includes India and China, EPL ratio is moderate. However, it is basically China which has made reforms in her employment regulations post 1990 increasing the EPL level by the amended ‘The Labour Contract Law, 2007’. Thus, there is no universal approach regarding EPL standards.

4.5.2.3 Global Supply Chains Create Employment Complex

Global supply chains (GSCs) are the common feature in almost all the major economies of the world including India. GSCs are defined as “demand and supply relationship that arises from the fragmentation of production across borders where different tasks of a production process are performed in two and more countries.


Firms engage in GSCs either as lead firms which allocate individual production tasks outside their home country or as suppliers that perform these tasks for lead firms in other countries. Global supply chains account for every one job in five jobs. The report concludes that GSCs have created complex situation for workers. Contractisation and casualisation of employment becomes inevitable. Skilled workers get benefits in GSCs while unskilled and semi-skilled workers are at loss. Their remuneration is quite low and other benefits like social security and employment security are minimal. GSCs informalise economies, create duality and EPL level either decreases or remains constant. Indian situation tells the same story. The contract workers, casual workers and unorganised sector workers, who are mostly semi-skilled or unskilled, do not get benefits of labour laws. There is much labour legislation for the benefit of workers, however, their impact is minimal. The dual nature of Indian economy creates complex situation. Thus, it is clear that contract labour system is the growing form of employment in the entire world and prone to various abuses and therefore, needs immediate attention of the international community.

The international community, through the ILO, once seemed to take up the issues and problems related with the ever increasing contract labour system. Debates, discussions and deliberations took place, however the whole process was derailed when the member states refused to give up individual considerations over the collective will. The collective efforts at ILO level have been discussed as under:

4.5.3 The International Labour Conference, 1997

The first ever discussions for the protection of contract labour were held in 1994 in the meetings of Governing Body of ILO. “A Committee on Contract Labour was constituted which was entrusted with the task to propose for a Convention supplemented by Recommendation specifically on the issue of legal protection to contract labour. The Conference Committee on Contract Labour examined the issue in the 85th session of International Labour Conference held in Geneva in 1997. The intention of the Conference was to adopt a Convention and Recommendation on

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contract labour which could not be materialised”44. The ILO member states failed to come to an agreement in this regard. Notably, the Government of India had supported the discussions.

4.5.4 Private Employment Agencies Convention, C 181, 1997

Despite of the failure of the International Labour Conference 1997 to come up with a comprehensive Convention on contract labour, the Conference was able to adopt a Convention on the regulation of private employment agencies on 19 June, 1997. It revises the Fee-Charging Employment Agencies Convention (Revised), 1949. ILO recognised the flexibility needs of labour market acknowledging the importance of private employment agencies subject to regulation providing for protection of certain basic rights of workers working through these private employment agencies. This Convention can be said to be a partial, yet minimal, fulfilment of ILO’s resolve to grant legal protection to certain categories of workers in situations needing protection. It is limited in scope and content. The main features of the Convention are:

1. Private Employment Agency (PEA) is defined as “any natural or legal person being independent of the public authorities which provide one or more services such as becoming a bridge between the jobseekers and the employers by bringing them together without creating any employment relationship with labour or supplying labour to user enterprises which provides work to them and supervises it and providing for information regarding jobseekers e.g. their qualifications and professional skills”45.
2. The term worker includes jobseekers too.
3. The Convention seeks to regulate the working of PEAs as per national law and practice of the member states.
4. The member states have the right to prohibit the operations of PEAs in specified categories of workers or the business operations.
5. The national law and practice shall provide for the licensing or certification of PEAs.

6. No worker in PEAs shall be discriminated on the basis of race, caste, colour, religion, sex, social norms, political opinion, national extraction or any such other ground.

7. The norms of privacy shall be maintained by the PEAs in handling the data regarding job profile of workers.

8. Any kind of fees or costs cannot be charged from workers for providing services by PEAs.

9. Child labour is strictly prohibited.

10. An adequate regulatory mechanism shall be ensured by member states to execute the mandate of this Convention.

11. The workers shall enjoy the basic rights at work such as freedom of association, collective bargaining, minimum wages, working time and other working conditions, statutory social security benefits, access to training, occupational safety and health, compensation in case of occupational accidents or diseases, compensation in case of insolvency and protection of workers’ claims, maternity protection and benefits and parental protection and benefits. The user enterprise and the PEA both are required to respect these rights and it shall be ensured through national law and practice.

12. Social Dialogue and collective bargaining are essential requirements to be followed by PEAs under this Convention.

13. The member states are required to provide for stringent penal consequences for the violation of the provisions providing for regulation of PEAs.

This Convention is binding upon the member states who ratify it as per due procedure provided in the Convention itself. PEAs would be covered under the definition of ‘Contractor’ under the Contract Labour (Regulation and Abolition) Act, 1970, however it is only one branch of contractor mechanism and operate mostly in urban areas. The Convention fails to answer the crucial question how to establish employment relationship in unclear circumstances. For example, if the PEAs merely supply labour to user enterprises which control and supervise the work of labour, the user enterprise should be held to be the employer and not the PEAs. It would be sham contracting and needs to be checked. Thus, it is afraid that PEAs may be used as a technique to circumvent the labour laws.
4.5.5 International Labour Conference, 1998

The second discussions on contract labour were held in 1998 in the 86th session of the International Labour Conference. Again, a tripartite Committee on Contract Labour was constituted headed by the then Labour Secretary of India, Dr. L. Mishra. The Committee again failed to present any draft for Convention due to lack of consensus amongst the member states. “The Governing Body of ILO was entrusted with the duty to place the issues before the future conference and to require the Director General to hold meetings of experts to settle down the issues regarding identification of the kind of workers who need protection and the remedies which can be provided to them. The International Labour office of ILO facilitated for the conduct of research studies in 29 countries including India which was authored by Rajasi Clerck and B.B Patel” 46. The research reports of these studies confirmed that the concept of employment relationship needs immediate attention. Contract labour system is prone to various abuses and contract workers’ problems need attention of the international community.

The International Labour Conferences held in 1997 and 1998 coined a new phrase, the “Workers in Situations Needing Protection” which includes contract labour. These ‘Workers in Situations Needing Protection’ were identified as:

“persons who perform work for a physical or a moral person (the user enterprise) personally under actual conditions of dependency on, or subordination to, the user enterprise and these conditions are similar to those that characterise an employment relationship under national law and practice but where the person who performs this work does not have a recognised employment relationship with the user enterprise” 47

It can very well be drawn from this definition that the contract labour employed in various industrial and service sectors in India including the contract labour employed in sports goods manufacturing industry in Jalandhar, which is the universe of the empirical study in this research work, is included in the definition of

‘Workers in Situations Needing Protection’. The employment relationship between the workers and user enterprises is disguised and difficult to establish in the court of law. User enterprises engage these workers through contractors even for core activities of production and a large number of labour works outside the premises of the user enterprise. Workers are dependent on these firms for their livelihood indefinitely. However, they do not get benefits of labour laws as the problem of establishment of employment relationship in the court of law prevails. Legal technicalities of interpretations of labour laws fade their colour. The deadlocks are being deliberately reserved under the pressure of demands for flexibility in labour market. Labour becomes a prey in the hands of mighty who play frauds on labour laws taking the benefit of this national and international void in the law.

### 4.5.6 Meetings of Experts on Workers in Situations Needing Protection, 2000

“A meeting of Experts on Workers in Situations Needing Protection was held in Geneva in 2000 which adopted a statement asserting that the concept of employment relationship has undergone a profound change both in reality and in law. Conditions vary from country to country and within a country from sector to sector”\(^\text{48}\). This is the reason for deadlock on international convention for contract labour. The statement suggests that a large number of workers today do not get the benefits of labour legislations and member states are required to take up necessary steps in this regard.

### 4.5.7 International Labour Conference, 2003

The Conference held general discussion on the concept of employment relationship. Employment relationship is the key to rights and benefits under the labour laws, arbitration awards and collective agreements in all legal jurisdictions. “There is an increasing tendency that workers are employed in fact but do find themselves out of the purview of employment protection under law. Contract labour is a growing by leaps and bounds and the Governments and employers and workers are required to come together and discuss the issues and find solutions for them. A Recommendation was considered which should strike a balance between flexibility

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and employment security which promotes social dialogue and collective bargaining”\textsuperscript{49}.

Thus, it can be concluded that though international community showed interest and concern in discussions on the problems of contract labour, yet it failed to showcase willingness and preparedness to take concrete steps in this regard and no concrete Convention or Recommendation could be adopted till date. Contract labour is left to the mercy of national law and practice which vary country to country and in a country from sector to sector. The economic inequality is so prevalent in the world that it becomes a hindrance in international collective actions. Besides the difference in the economic theories of nations prevent them to overcome their fears and greed. The theory of free market economy with flexible labour market leading to full employment situation is predominant and it seems that till the actual consequences of this theory are realised and analysed, not much is going to happen in favour of labour as a whole and the contract labour in particular.

4.5.8 Fundamental Principles and Rights at Work (FPRW)

ILO Declaration on Fundamental Principles and Rights at Work, 1998 has set out four Fundamental Principles and Rights at Work which are applicable to each and every worker (including contract labour) in every member state\textsuperscript{50}. These FPRW at work are-

1. Freedom of association and the effective recognition of the right to collective bargaining.
2. The elimination of all forms of forced or compulsory labour.
3. The effective abolition of child labour.
4. The elimination of discrimination in respect of employment and occupation.

There are eight fundamental conventions of ILO which, compositely constitute the Bill of Basic Rights of Workers which is the basis of FPRW. These conventions are-


1. The Forced Labour Convention, 1930 (No. 29).
5. The Equal Remuneration Convention, 1951 (No. 100).
8. The Worst Form of Child Labour Convention, 1999 (No. 182).

The ratification rate of these Conventions stands at over 90 per cent. The Convention no. 29 and 182 are most widely ratified whereas Convention no. 87 has the lowest rate of ratification (only 150 ratifications). India did not ratify Convention no. 87, 98, 138 and 182 whereas China has not ratified Convention no. 29, 87, 98 and 105. Interestingly these are the two countries which account for a population near to half of the total population of the earth. These Conventions along with the ILO Constitution and The Declaration of Philadelphia, 1944 are the documents upon which the Declaration of Fundamental Principles and Rights at Work is based. The FPRW was a result of the World Summit for Social Development, 1995 (Copenhagen) and WTO Ministerial Conference to the “Observance of Internationally Recognised Core Labour Standards” held in Singapore in 1996. The FPRW are required to be respected by member states of ILO even if they have not ratified any of the above mentioned eight fundamental Conventions. The responsibility arises out of their mere membership of ILO. These FPRW are so essential that they can become an effective means to eradicate the vicious circle of poverty as the realisation of these rights will lead to more balanced distribution of income, decrease in inequalities and efficient sustainable development. The requirements of national economic development and competitiveness cannot be and should not be made an excuse in the realisation of FPRW. Declaration provides for these rights as follows-

1. *Freedom of Association and the Effective Recognition of the Right to Collective Bargaining*—“The right of all workers and employers to create and join organisations of their own choice in order to freely defend their respective
interests and to negotiate collectively is an essential foundation of decent work and an indispensable pillar of democracy. The right to freedom of association and effective right to collective bargaining can be ensured in those legal systems in which there is respect for civil liberties and acceptance of importance of independent organisations. There should be no undue pressures or compulsions for unionising or not unionising". Anti-unionism discriminations should be checked. The collective bargaining has helped the economies of many countries to overcome the crisis particularly in European countries. “Trade union density in OCED countries till the year 2009 was high amongst Finland, Belgium, Norway and Sweden (65 per cent on average, meaning thereby that 65 per cent of total workforce is unionised) and low in Australia, France, Korea, Poland, United States and Estonia (10 per cent on average). Collective Bargaining Density in OECD countries till 2009 was high amongst Austria, Belgium, Finland, France, Greece, Italy, Slovenia and Sweden (75 per cent on average) and low in Canada, Japan, Spain and United States (10 per cent on an average)". The Labour laws in Europe and Latin America have strong provisions in favour of trade unions and collective bargaining.

2. **The Elimination of All Forms of Forced Labour**- the Fundamental Convention on Forced Labour, 1930 (No.29) prohibits all forms of forced labour or compulsory labour, which is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. Exceptions are provided for work required by compulsory military service, normal civic obligations, as a consequence in a court of law, in cases of emergency and for minor communal services performed by the members of a community in the direct interests of the community and the Convention also requires that the illegal extraction of the forced or compulsory labour be punishable as penal offence, and the

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ratifying states should ensure that the relevant penalties imposed by law are adequate and strictly enforced”53.

3. **Effective Elimination of Child Labour**- Child labour means “work that is prohibited for children of certain age groups. It is work performed by children who are under the minimum age legally specified for that kind of work or work which is considered unacceptable for children and is prohibited because of its detrimental nature or conditions”54. Child labour implications can be showed like:-Child Labour-Low Equality Employment- Low Income- Social Vulnerability- Marginalisation- Poverty-Child Labour. ILO has categorised certain forms of child labour as “worst forms of child labour such as slavery or trafficking or debt bondage and other forms of forced labour such as the forced employment of children for armed conflicts or child prostitution and pornography or illicit activities and any work that is likely to harm the health and safety or morals of a child either because of its nature or the conditions in which it is carried out. Facts of the year 2008 are alarming. There were some 306 million children aged 5 to 17 working or in employment in the world and a total of 215 million children or around 70 per cent of all children in employment were estimated to be in child labour of which 115 million were in hazardous work. The child labour is on decline. It declined by 30 million between 2000 and 2008 yet the targets set for 2016 do not seem to be realisable”55. The child labour ratio is highest in Latin America and Asia. 68 per cent child labour is unpaid family workers.

4. **Elimination of Discrimination in Employment and Occupation**- “Discrimination in employment and occupation consists of any distinction, exclusion or preference made on the basis of race, colour, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or

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occupation”  

Racial discrimination (which is 41 per cent of total employment complaints in Belgium, 36 per cent in New Zealand and 27 per cent in France), gender discrimination (in the form of gender stereotypes, occupational segregation, sex biased job classification systems and pay structures) and sexual orientation are common forms of discrimination at present times.

However the above stated definition of discrimination does not include the ever increasing employment status discrimination in the form of regular, contract, part-time worker, despite of doing the same work with same qualification. The report of ILO elaborates-

“...due to the steep rise in the non-standard form of employment, the weight of informal economy, the persistent exclusion of certain categories of workers, and the exposure of export led sectors to high levels of competition, all highlight important challenges in the full application of FPRW. Herein these cases, the challenge is to distinguish between valid business decisions to have recourse to these arrangements to meet operational needs and situations where they are deliberately used to get around effective guarantees of FPRW. There is much higher incidence of low wages and job insecurity amongst workers in non-standard form of employment. While the overwhelming majority of these workers are not subject to forced labour, the instability of their employment status and particularly the intervention of intermediaries in their employment relationship, when not properly regulated and monitored can aggravate situations of vulnerability and facilitate to the emergence of forced labour practices”.

The ILO programmes with primary responsibility for promoting FPRW are: "The Programme for the Promotion of the ILO Declaration on FPRW

(DECLARATION) established in October, 1999 following the adoption of the 1998 Declaration; IPEC, established in 1992; and the International Labour Standards Development (NORMES), where four teams are responsible for supporting the work of the supervisory bodies relating to the application of the fundamental conventions and for carrying out related promotional and technical assistance activities. These programmes are all located in the Standards and Fundamental Principles and Rights at Work Sector”58.

4.5.9 Decent Work Agenda

ILO launched an integrated programme called, “Decent Work Agenda” to secure certain basic standards and rights to workers, job creation and business development, social security and collective actions on the part of different stakeholders in economic activities. “Decent work agenda means opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men”59.

The programme proclaims that the economic growth which values the dignity of workers, their socio-economic well being by assuring their dignity of labour through law and practice can only be regarded as sustainable and inclusive growth. Economic systems should ensure full and productive growth with the distribution of its benefits to all and particularly the workers. Decent work is an integral part of United Nation’s New 2030 Agenda for Sustainable Development and Millennium Development Goals. This programme, if properly implemented through national legislations taking into the conditions of contract workers or other non-standard form of employments, will be of great benefit to ameliorate the conditions of workers and improve industrial relations.

4.5.9.1 Decent Work Indicators

ILO adopted ten substantive elements as “decent work indicators in the International Tripartite Meeting of Experts in September, 2008. These indicators are built upon the four strategic pillars of the decent work agenda which are full and productive employment, rights at work, social protection and the promotion of social dialogue”\(^\text{60}\). The decent work indicators are as follows-

1. **Employment Opportunities**- It is an indicator used to require the Governments to create adequate employment opportunities by creating a fair balance of demand and supply in labour market, creating quality jobs, unemployment insurance, skill development, curbing informal employment and labour underutilisation.

2. **Adequate Earning and Productive Work**- the legal system of member countries must provide for adequate minimum wage revised as per consumer price index. The low paid employment with lack of social security to workers are (as in the case of contract workers) is deemed as indecent work. The methodology of fixation of minimum wages, its effective implementation, and the coverage of law of wages are crucial components of decent work.

3. **Decent Working Time**- The working hours should not be excessive. Proper criteria for weekly leave and other leaves should be followed. Law should provide for maximum hours of work and paid and unpaid leave. The worker should be considered in terms of social being having family and society. Adequate leisure time should be provided for by law or practice. The decent working time will lead to good health, motivation and efficiency of the worker.

4. **Combining Work, Family and Personal Life**- The legal system should value the family obligation of workers. Measures like maternity leave, parental leave, casual leave, health insurance schemes for workers and their families, crèche facilities, community service and cultural and social participation are necessary for dignified labour practices. The coverage of workers, financing of such facilities and effective implementation is important to assess decent work agenda of a legal system.

5. **Work that should be abolished**- Child labour and forced labour must be abolished. The reason of both these problems is poverty. Proper poverty reduction programmes may be helpful, for example, Mahatma Gandhi National Rural

\(^{60}\) Retrieved from http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang-en/index.htm// banner visited on 2\textsuperscript{nd} April, 2016 at 6.00 pm
Guarantee Act in India. Convention on Fundamental Principle and Rights at Work mandatorily provides for abolition of worst form of child labour. There should be proper regulation of services of children or young persons at hazardous worksites. The law for free and compulsory education will be necessary.

6. **Stability and Security of Work**—According to ILO, stability and security of work means the continuity and definiteness of employment relationship which creates long term rights and benefits for workers. This is important in relation to contract workers, part-time work and other non-standard form of employments. The instability of employment contract and hire and fire are required to be checked by national law and practice. The undue differentiation between regular worker and contract worker needs to be eliminated. The rules regarding termination of employment, severance pay etc. should be accordingly framed to ensure decent work for the non-standard form of employments. The national law and practice must provide for adequate dispute resolution mechanism including conciliation, arbitration as well as judicial institution with fair, just and easily accessible procedures. The remedies should correspond to wrongs done to workers.

7. **Safe Work Environment**—To ensure occupational health and safety of workers, legal systems must provide for adequate accidental compensation, medical care, and medical leave, insurance and other like benefits. There should be strict rules in relation to the working conditions of hazardous worksites. The occupation diseases should be identified and indemnified. The responsibility lies on employer and the implementation of health and safety measures should be strictly implemented through industrial relations machinery including labour inspection in particular.

8. **Social Security**—According to ILO, “social security covers all measures that provide benefits, whether in cash or kind, to secure protection, inter-alia, from (a) lack of work related income (or insufficient income) caused by sickness disability, maternity, employment injury, unemployment, old age, or death of a family member; b) lack of access or unaffordable access to health care; (c) insufficient family support particularly for children and adult dependents; (d) general poverty and social exclusion”61. The social security is very important issue in contemporary labour jurisprudence. The poverty reduction programmes, social inclusion schemes, public expenditure in health, education, housing etc. are as important as

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the direct responsibility of employer to pay contributions to social security benefits. The contribution rates, the contributors, nature of payments, the substitute measures like leave or alternative employment to worker or his family members should be provided by national law or practice.

9. **Social Dialogue, Workers’ and Employers’ Representation** - To ensure peace, stability and mutual trust in industrial relations, social dialogue is imperative. As per ILO, “social dialogue refers to mutual interactions and negotiations amongst various stakeholders in the world of work, for example, employers, employees, trade unions, Governments and other interested parties in the industrial relations. It ranges from mere sharing of information to concrete pacts or agreements which are binding on parties being legally enforceable. The social dialogue can be effective if the right to tripartite consultations, right to collective bargaining, the right to freedom of association and the right to organise are secured by the legal system”\[^{62}\].

The trade unions of organisations of employers should be given freedom to manage their own affairs with no previous authorisations. The workers should not be victimised for union activities. The right to strike and the right to complaint is essential part of trade unionism.

10. **Equal Opportunity and Equal Treatment in Employment** - Everyone, irrespective of gender, should get equal opportunities in employment with equal pay for equal work. The terms of service must not discriminate on the basis of gender. The present report of the ILO suggests that indicators regarding equal opportunity and treatment to migrant workers, indigenous people, rural workers and persons with disabilities need to be developed and included in decent work agenda.

The decent work agenda are applicable to all the member states of ILO, and therefore, the national law and practice in these countries must strive to achieve the decent work indicators for all sections of workers including contract workers. Thus, a contract worker can be said to be performing ‘decent work’ if the legal system secures these standards for him or her also. The contract workers must be earning adequate remuneration with productive work. The law of minimum wages is applicable to contract workers yet; its enforcement in informal economy (even if it is scheduled employment) is very poor and needs subtle improvements. For example, the National

Floor Level Minimum Wage in India could be a helpful measure in this regard, however, its legislative enforcement is still contestable issue.

Contract workers work for long hours without adequate breaks for meals and leisure time. The piece rate system for payment of remuneration exploits the workers in terms of excessive working hours with no breaks and paid leaves. The social security benefits are almost non-existent. Their employment relationship is often disguised and there is no security and stability of employment. Contract workers do not get severance pay for dismissals. Contract workers are categorically discriminated in relation to all the decent work indicators. They need to organise, form strong organisations of their own and strive for collective bargaining. The national law and practice in accordance with international standards of ILO should facilitate them. This is an individual as well as collective responsibility of all member states of ILO to implement decent work agenda in their respective jurisdiction without any discrimination as to regular employment or contract employment or part-time work employment etc.

4.6. EUROPEAN DIRECTIVE ON AGENCY WORK, 2008

European Directive on Agency work 2008/104/EC was adopted on 19 Nov, 2008 after a considerably long community level debate in European Union which began in 1980s. The Directive provides that “Temporary Work Agency means any natural or legal person who concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction in compliance with national law. Temporary agency worker means a worker with a contract of employment or an employment relationship with a Temporary Work Agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction and user undertaking means any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily”63.

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Further, the Directive provides for the following-

1. The agency workers also have right to adequate working conditions which ensure health, safety and dignity, maximum working hours, rest periods and paid leave.

2. Employment insecurity and labour market segmentation needs to be checked and flexibility strategies should not be stretched beyond the required limit.

3. The national law and practice must respect the significance of social dialogue, the right to negotiate and collective agreements, in case of agency workers too. The agency workers should be included for calculating the threshold limit for formation of unions in user enterprise. The unions, if enter into agreements more favourable for agency workers than this Directive, member states should encourage it and not to restrict it.

4. The Directive recognises the agency workers’ right to equal treatment in matters such as training and skill development, canteen, maternity benefits, child care, transport, adequate remuneration including social security schemes, pension and sick pay as that of the regular workers of the user enterprise. Agency workers should not be discriminated on the basis of race, sex, colour, nationality etc.

5. The temporary work agencies should not charge any fee or charges from worker for their placements at user enterprises.

6. Member States should provide for administrative or judicial procedures to safeguard temporary agency workers' rights and should provide for effective, dissuasive and proportionate penalties for breaches of the obligations laid down in the Directive.\(^{64}\)

7. The member states were required to implement the Directive by 2011 through legislations, administrative processes and collective agreements legally binding in nature.

4.7. **CONTRACT LABOUR REGULATIONS-A COMPARATIVE ANALYSIS OF SOME SELECT COUNTRIES**

Despite of much of international legal instruments binding on nations, law has essentially a national character. Law on contract labour has the very same characteristics. International Conventions, treaties and directives are enforced through

national law and practice subject to reservations of member states. In the absence of any concrete and binding convention on contract labour, it would be quite valuable to have a glance at the specific legal provisions regarding contract labour in some selected countries. It will help to formulate an opinion on the international perspective of the research problem and to rethink about the need to have universal labour standards for contract labour.

Most of the legal jurisdictions include contract labour (engaged through intermediary) under the heads like ‘agency work’ or ‘service provider’ or ‘labour broker system’ or ‘outsourcing’ etc. The countries have been selected taking into account the various reports of ILO and Organisation for Economic Co-operation and Development\(^{65}\) (OECD) which present analysis of Employment Protection Legislation (EPL) indicators. These countries provide for certain restrictions on engagement contract labour and provisions for equal treatment of contract workers with regular workers of the user enterprise in certain respects. It may be helpful in considerations for reforms in Indian law on contract labour. Laws of different countries (arranged as per their continental geographical situation such as Europe, Latin America, Australia and Asia) provide for the following:

4.7.1 Argentina

Argentina is a federal state with a constitutional framework which provides for various rights to labour including the rights of contract workers. However, it is the Law on Contract of Employment, 1976, which more specifically regulates contractual employment in Argentina. In 1995, 1998, 2000 and 2009, this Act was amended to address to the local demands on industry and workers and is called as ‘ley de contrato de trabajo’, LCT\(^{66}\).

\(^{65}\) Organisation for Economic Co-operation and Development (OECD) is an international organisation of 34 countries set up in 1961 and headquartered in Paris. It works for economic policy comparisons, good practices, economic progress and international trade amongst the member countries which are mainly the developed economies. OECD has a rich OECD digital library with many books, reports, database, working papers and other research materials which are periodically published and widely referred by national and international institutes including ILO.

In Argentina, contract workers can be engaged through Temporary Work Agencies (TWA), which is a substitute word for contractors, only under certain circumstances such as:

1. When permanent employees of the user firm are absent or suspended or on vacation leave.
2. There is a sudden increase in the business of the user firm which needs extra labour for certain occasional demands, yet in extraordinary circumstances only.
3. When user enterprise needs to participate in exhibition, fairs etc. and need skilled contract workers for that purpose.
4. To avoid accidents or other dangers, the works such as repairs of machinery can be outsourced, only if the existing workers are unable to do so and that too in compelling circumstances only.

The use of intermediary service i.e. agency work is permitted only for temporary situations. TWA are required to be authorised by Labour Ministry and they have strict reporting obligations towards the Ministry. The regular as well as the contract workers both enjoy equal treatment in terms of remuneration and social security as secured by the LCT.

4.7.2 Norway

The Working Environment Act, 2005 (hereafter named as Act) is the key legislation in Norway to provide for conditions of service, health, safety and welfare of working people. Norway Government introduced amendments to the Act in March, 2015. In tune with the globalisation policies, the regulation regarding temporary work agencies or contractors have been relaxed and the collective right of unions to sue employer in case of unlawful use of agency workers have been extinguished. Earlier the Act permitted the use of agency workers in certain situations only. The employer had to prove that employment of agency workers is within the Act. However, some provisions of the Act are still quite protective. For example, in Norway, the companies cannot engage contract workers for duration of more than 12

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67 OECD/IBD Database: September, 2015 retrieved from www.Oecd.org/els/emp/Argentina.pdf visited on 13 April, 2016 at 3.27 p.m.
68 Retrieved from www.eurofound.europa.eu/observatories/eurwork/articles/working-conditions-industrial-relations/Norway-provisions visited on 15 April, 2016 at 5.15 p.m.
months and total number of temporary or contract workers cannot exceed 15 per cent of total workers. A contract for temporary workers cannot be succeeded by another temporary contract for the same work.

The Act provides for certain provisions regarding contract workers as follows:

1. **Preferential Right to Employment** - “An employee has a preferential right of employment in the same organisation in case regular post is created if he or she has been working in the establishment for not less than 12 months on temporary contract basis for two previous years. Part time employees also have the same right. The employee should be qualified for the post. The holder of preferential right may claim compensation as per sections 15 to 12 of the second paragraph of the Act in case of breach of the preferential right.”

2. **Written Contract** - Employees can be engaged through written contract only. It is the duty of the employer to ensure written contract. Written contract shall specify the identities of parties, the place of work, the title of post, description of work, duration of work, holidays and leaves, notice periods, wages, working hours, special working hour arrangements (if any) and collective pay agreements (if any).

3. **Temporary Contract Employment Constraints** - In general, employees can be recruited on regular basis only. Temporary contracts can be entered into only in few cases such as-a) when the work is not ordinary work of the establishment; b) temporary replacement for another person or persons; c) for work as a trainee; d) for employment in labour market schemes subject to regulations of Ministry of Labour; e) for athletes, trainers, referees and other leaders within organised sports.

4. **Collective Agreements** - The national unions can enter into collective agreements on behalf of the temporary contract workers also. The employers are required to discuss with unions regarding needs and implications of temporary contract employment.

5. **Compensation** - Employee may claim for compensation from the employer, in addition to other penal consequences, for the violation of various provisions of

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69 Retrieved from www.ilo.org/dyn/travail/docs/2477/act relating to working environment, working hours and employment protection, etc.pdf visited on 15 April, 2016 at 5.30 p.m.
the Act. However, the discretion of the court shall prevail for determination of amount of compensation.

6. **Quarantine Period** - The Act introduces “a 12 months quarantine period in which the employer cannot employ others to do work of the same nature as the previous temporary contract employee performed for the same business and the employers can count units with at least 50 employees as a separate business. A temporary employee does not receive permanent employment at the end of the contractual period. The employer is prevented to hire someone new within a period of 12 months though it will be possible to hire temporary contract workers on other legal grounds”\(^70\).

7. **Deemed Permanency** - Those employees who worked for three years on temporary basis will be deemed permanent employees after the expiry of such period.

### 4.7.3 Spain

Spanish labour law prohibits labour-only contracting and mandates the courts to distinguish between a genuine commercial contract with a contractor and a labour-only contract wherein a contractor is engaged merely to supply labour to the user enterprise so as to frustrate employment relationship and thereby avoid labour obligations. Spanish labour law provides that if a contractor is an entrepreneur, holds assets and machinery, bears risk of business which he himself manages; only then the contract with him or her can be said to be a genuine commercial contract, and if not so, the contract is not genuine and it will be taken as a mischief on labour law\(^71\).

### 4.7.4 The United Kingdom

In United Kingdom, the contract of employment is the governing law. Whatever is written in the contract will determine the rights of workers including the agency workers. However, to determine the employment relationship in ambiguous cases, courts have evolved the tests like ‘control test’ and the ‘integration or organisation test’ to determine the employment relationship in case of ambiguous

\(^{70}\) Retrieved from www.ilo.org/dyn/travail/docs/2477/act relating to working environment, working hours and employment protection, etc.pdf visited on 15 April, 2016 at 5.30 p.m.

circumstances. On control test, Hilbery J in the case of Collins v. Hertfordshire County Council\textsuperscript{72} observed-

“The test which is uniformly applied in order to determine the relationship as between employer and employee or master and servant is the existence of a right of control in respect of the manner in which the work is to be done. That distinction between a contract for services and a contract of service is put in this way that in the one the master can order or require what is to be done while in the other case he can not only order or require what is to be done but how itself it shall be done”\textsuperscript{73}.

With the passage of time, faced with the inadequacies inherent in the traditional control test, the courts shifted their focus from employer’s actual exercise of control to existence of right to control\textsuperscript{74}.

Lord Denning suggested the integration or organisation test in Stevenson v. MacDonald and Evans\textsuperscript{75} and observed-

“It is almost impossible to give a precise definition of the distinction. It is often easy to recognise a contract of service when you see it but difficult to say wherein the difference lies. A master of a ship or a chauffeur and a reporter on the staff of a newspaper are all employed under a contract of service but a pilot of ship or a taxi man and a newspaper contributor are employed under a contract for services. One feature which seems to run through the instances is that a man is employed as a part of the business under a contract of service whereas his work done for the business is not integrated into it but is only accessory to it under a contract for service”\textsuperscript{76}.

Lord Wright emphasised the importance of a multiple test in Montreal Locomotive Works Ltd. v. Montreal and A.G. for Canada\textsuperscript{77} stating that-

\begin{itemize}
\item \textsuperscript{72} 1947 KB 598 at p. 615.
\item \textsuperscript{73} Alok Bhasin, Law Relating to Contract Labour (Lucknow: Eastern Book Company, 2003)3.
\item \textsuperscript{74} Id. at p. 10.
\item \textsuperscript{75} (1952) 1 TLR 101.
\item \textsuperscript{76} Id. at p.11.
\item \textsuperscript{77} (1947) 1 DLR 161.
\end{itemize}
“The presence or absence of control was often relied on to determine in earlier cases whether the case was one of the master and servant and mostly in order to decide issues of tortuous liability on the part of the master or superior. More complicated tests have often to be applied in the more complex conditions of modern industry. It has been suggested that a fourfold test would in some cases be more appropriate with a complex involving control and ownership of the tools and chance of profit with risk of loss. Control in itself is not always conclusive. The master of a charted vessel is generally the employee of the ship owner though the charterer can direct the employment of the vessel. Again the law often limits the right of the employer to interfere with the conduct of the employee as also do trade union regulations. In many cases the question can only be settled by examining the whole of the various elements which constitutes the relationship between the parties. In this way it is in some cases possible to decide the issue by raising as the crucial question whose business is it or in other words by asking whether the party is carrying on the business in the sense of carrying it on for himself or on his own behalf and not merely for a superior”78.

4.7.5 Brazil

The Consolidation of Labour Law known as Consolidacao das leis do trabalho (CLT) is the major enactment providing for protection of contract workers in Brazil. CLT is a Decree-Law No. 5452 enacted in May 1943. Brazilian CLT makes following provisions for contract employment through intermediary79:

1. Workers through Temporary Work Agencies (TWA) i.e. contractors can be engaged to meet temporary needs or needs of seasonal character where regular or permanent employment is not available or where there is extraordinary workload. TWAs can work only in urban areas.
2. The contract can last for maximum duration of 3 months unless extended by Ministry of Labour and Employment.

79 OECD Database: September 2015 retrieved from www.oecd.org/els/emp/Brazil.pdf visited on 14 April, 2016 on 2.10 p.m.
3. Registration with Ministry of Labour and Employment mandatory for a TWA. TWA is under an obligation to supply necessary information to the Ministry as and when so required.

4. CLT provides that agency workers must receive the same pay for same work as it is paid to the regular workers in the user enterprise.

5. Courts in Brazil including the Superior Labour Court (e.g. Superior Labour Court Decisions in TST-RODC-30900-12.2009.5.15.0000 and TST-RO-173-02.2011.5.15.0000) have held that employers cannot resort to mass dismissals without consultation with the representative unions; however statutory law is silent on the issue.

4.7.6 Venezuela

Venezuela has a strong legislative framework for the protection of contract labour. The Organic Labour Law for workers (OLLW)-a Decree 8938 of April 30, 2012 provides for the following:\(^{80}\):

1. Outsourcing (Tercerización) is taken as fraud on labour law on the part of employers (Art.47 of OLLW).

2. Art.48 provides that contracting out work through intermediaries is a technique invented by employers which should be severely criticised. Any such agreements, work entities and contracts built upon civil or mercantile law are prohibited. The Agency work is illegal in Venezuela.

3. Provisions regarding dismissal of workers are stringent. A dismissal from employment cannot take place till it is notified to the judge of the corresponding jurisdiction.

4.7.7 Panama

Labour Code’s Art.94 and 95 provides for protection of rights of contract workers as under\(^{81}\):

1. Temporary Work Agencies (TWA), a term used for intermediary contractor, can be engaged only for temporary services for non-core activities only.

\(^{80}\) Retrieved from https://www.oecd.org/employment/emp/Venezuela.pdf visited on 16 April, 2016 at 10.25 p.m.

\(^{81}\) Retrieved from https://www.oecd.org/employment/emp/Panama.pdf visited on 16 April, 2016 at 10.35 p.m.
2. The TWA workers can be engaged for a maximum duration of 2 months only. The Ministry of Labour and Workforce Development prescribes further rules in this regard.

3. The highest minimum wage of the district (where in the work is done) shall be paid to TWA contract worker.

4. Both the user enterprise as well as TWA will be equally held responsible for violation of the Labour code.

4.7.8 Chile

The revised Art.64 of the Labour Code of Chile establishes the principle of subsidiary responsibility of enterprises using labour contractors for all wage and labour obligations between labour contractors and workers\(^{82}\). The workers can approach the labour tribunals for non-respect of labour legislation by the labour contractor and the enterprise alike. The revised Art.209 of the Labour Code introduces the responsibility of employer labour contractor for the payment of occupational safety and health insurance and the user enterprise has a subsidiary responsibility\(^{83}\).

4.7.9 Australia

In Australia, collective bargaining and industrial action initiated by the transport workers’ unions led to changes in the Industrial Arbitration Act (in 1979) granting contract workers the status of ‘deemed employees’\(^{84}\).

4.7.10 China

The Government of China followed the ‘Rice Bowl of China’ employment policy till the late 1970s which means that the responsibility to provide employment to citizens was that of the Government of China. The workforce of China was assured of employment by the state. With the transition towards a competitive market economy, the system of contract labour was introduced and legally legitimised in China. Fixed term contracts have been allowed since 1986. The labour law in 1994 provided that if an employee works for ten years for an employer, he or she can ‘request’ for regular employment which are called full-term or open-ended contracts.

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\(^{83}\) Ibid.

\(^{84}\) Ibid. at p. 20.
Thus, with the advent of nineties, the non-standard form of employment became the rule in labour market in China which was understood to be an exception in labour markets in other countries. It paid its dividends to China with high economic growth, yet not much benefiting to the workers at large. The abuse by the employers like non-issuance of written labour contracts, the massive layoffs and unemployment led to widespread labour and even social unrest in the 2000s, which led to the passing of Labour Contract Law (LCL) in 2007 in pursuit of social harmony\textsuperscript{85}. LCL is applicable to the whole territory of China with no exceptions created for foreign companies or special economic zones etc. The provinces may have their own regulations, yet not overriding the national law. LCL provides that Chinese workers can enter into five types of contracts which are as follows-

1. **Fixed –term Contracts**- In such contracts, the date of termination of employment is fixed in advance.

2. **The Task-oriented Contracts**- The contract end as soon as the particular operation or the task is performed.

3. **Open-ended Contracts**- This is a non-fixed term contract. When a worker gains 10 years of experience of work in an enterprise, he should be given an open-ended contract. The worker shall be eligible for open-ended contract if the employer fails to provide a written contract within one year of employment as well as on every second renewal of fixed term contract.

4. **Part-time Contracts**- These are specific contracts providing for term and conditions of work for limited time span in a full working day which cannot be said to be normal standard working hours.

5. **Seconded Employment Contracts**- These contracts are also called ‘Dispatch Work’. These are the contracts providing for contract labour engagements through intermediaries which are generally called Temporary Work Agencies or the Contractors.

LCL provides rules regarding Temporary Work Agencies (TWA) which relate to contract labour through intermediaries. “TWAs must be registered under company law and it is the legal employer of the seconded workers. It should issue written

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contract of employment on a fixed term basis. The tenure of employment must not be
less than two years. The seconded workers should generally be used for temporary or
auxiliary or substitutable positions. The workers will have the right to join union of
their staffing firm or those at the user enterprise. The workers shall have the right to
receive equal pay for equal work and also be paid statutory minimum wage as
compensation during the period of no work. The user enterprise should implement all
relevant labour standards and it should provide the workers with necessary training
and pay with overtime pay and performance bonus. The unemployed persons are paid
living allowance in China. Unemployment insurance is another scheme in which the
employer contributes two per cent and the employee contributes one per cent of the
wage during employment. It is lower than the minimum wage but higher that the
poverty line. Old age pension scheme and medical insurance including maternity
benefits are the other key social security measures adopted by the labour law in
China”86.

4.7.11 India

The Contract Labour (Regulation and Abolition) Act, 1970 is the major
enactment for the protection of contract labour. Among others, it provides for the
registration of the principal employers, licensing of contractors, minimum wages, and
certain health and welfare measures for the contract workers. The social security
legislations regarding the provident fund and medical insurance are applicable to
contract workers87.

The legal provisions of different jurisdiction provide for certain constraints on
engagement of contract labour such as use of contract workers only for temporary
works, fixing minimum and maximum duration of contract labour’s work, fixing cap
of employability of maximum number of contract workers as a percentage to the
regular workers, quarantine periods, preferential rights to contract worker in case
regular post is created and a right to compensation in case of violation of such right
along with equal remuneration for equal work with necessary social security to be
paid by the user enterprise. In India, the Government can adopt any of these measures
inter-alia for reforms in the Indian contract labour law with mild reservations as it

86 Ibid.
87 For detailed discussion, please refer to Chapter no.2 entitled as “Legislative Framework for the
Protection of Contract Labour in India”.
may deem necessary. The discussions on the comparative study of different legal
systems should take place in the annual labour conference.

4.8 SOCIAL DIALOGUE ON CONTRACT LABOUR IN INDIA

Social dialogue amongst various social partners plays significant role in
shaping the labour law and policy in any legal system. In India, there has been a
tradition supported by legislation that employers, employees and the representatives
of the state sit together on the conference table to discuss, consult and sign pacts on
various issues. This process is carried out at various platforms like the factory level
conciliation proceedings, arbitration, tripartite meets called upon by the state on
referred issues, meetings of expert groups, commissions and committees proceedings
such as standing labour committees and national commissions on labour, The Indian
Labour Conference (an annual tripartite meet at national level) and the 41
d session of
Indian Labour Conference in particular (wherein the issues of contract labour were
discussed in detail being one of the important agenda of the conference). The issues
were further considered in 42nd, 43rd and 44th sessions of the Conference. It would be
rather difficult and impracticable to write the individual proceedings of all these
platforms in detail, and therefore, the researcher has summarised the views of
different stakeholders on contract labour issues (being similar in nature) and presented
as under-

4.8.1 Views of Employers

The employers (individually as well as speaking through their organisations)
are in favour of more flexibility in labour laws. They demand more flexible use of
contract labour and relaxations in legislative restraints in this regard. Their views are-

1. Flexibility is the need of the time. Business environment is very competitive
and the system of contract labour is universal and inevitable and the law
should not create any restraints in the use of contract labour. The provision
under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970,
for abolition of contract labour, should be omitted.

2. Contract workers perform better than the regular workers. It increases the
efficiency of labour, saves the cost of production and leads to growth of
business and ultimately leads the economy to a full employment situation.
3. The businesses operate in highly competitive globalised economic conditions. Sometimes business may not get orders from the market, and particularly export orders in case of export units. Demand for the products changes with seasons and other business cycles. It becomes inefficient and uneconomical to employ regular workers in these indefinite conditions. Simple and easy termination of employment is required. Contract labour is easy to dispose off and therefore should be allowed without any hesitation. However, a provision for some retaining allowance may be made in industrial areas or special economic zones.

4. The contract labour system is a preparatory stage for permanency and provides opportunities for building skills.\textsuperscript{88}

5. There is no clear definition of core and non-core activities in the Contract Labour (Regulation and Abolition) Act and hence this is done by the regulator which is intrusive, dysfunctional, subjective and outdated, and this static methodology ill-fits the dynamic business environment, being the core and non-core classification changes as the technologies and corporate strategies change\textsuperscript{89}.

6. The restrictive provisions in the Industrial Disputes, Act, 1947 (ID Act) encourage the employers to resort to contract labour system to get around the rigidities generated by them, for example, Chapter V-B, section 25-B and the 25-F of the ID Act providing for restrictions on employer such as separation costs, notice and permission procedures and litigation risks\textsuperscript{90}.

7. The Contract Labour (Regulation and Abolition) Act 1970 provides for overregulation and under supervision. The administrative formalities such as highly technical records and registers etc. lead to corruption. The labour officers are indulged in corruption and do not check the activities of defaulting principal employers and contractors and blame is imposed upon all the employers’ fraternity.

8. The accountability to provide for welfare measures and social security should be of the contractor and the principal employer should be brought out of the


\textsuperscript{89} Id. at p. 24.

\textsuperscript{90} Id. at p. 22.
picture as the workers belong to contractor who knows them, recruits them and sets out theirs terms of employment. Contractors’ duty is primary but they avoid it saying the workers that duty is cast upon the principal employer. It creates confusion and workers do not get anything due to default of the contractor with whom all terms are set out at the time of entering into contract. Consequently, the registration requirement for principal employer is unnecessary and should be removed.

9. The Contract Labour (Regulation and Abolition), Act should be applicable to labour-only contracting (where contractor only supplies labour to user enterprise). The service contracting (where the contractor undertakes to perform some task on his own peril) should be specifically excluded out of the purview of the Act. Small scale enterprises should be exempted from the application of the Act.

10. The rules regarding training, safety, minimum wages and the equal pay for same or similar kind of work are contestable issues. Employers are prepared to come to an agreement on these issues within their economic capacities, if consensus is developed and labour department strictly implements the measures without discrimination.

4.8.2 Views of Trade Unions

Trade unions raising the issues of contract labour, and demanded for the following-

1. Contract workers are millions in number and widely belong to unorganised sector and they have a little bargaining power, have no employment security and often engaged in hazardous occupations endangering their health and safety. They are often denied minimum wages and other social security benefits. Only a miniscule section of contract workers are covered by licensed contractors and overwhelming majority of the contract workers in the country are outside the boundaries of legal inspection and scrutiny, where violation has become the order of the day.

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92 Ibid.
2. The contract workers are employed at large scale in perennial or permanent nature of jobs. They hold similar qualification as compared to regular workers, yet paid much lower than them. Thus, the contract workers should be paid same remuneration and other benefits for the same and similar kind of work. The legislation should be suitably amended and its proper implementation should be ensured.

3. The Government and other public sector workplaces should not engage contract labour and should come out as a model employer.

4. The contract workers should be categorically covered by the social security legislations and suitable mechanisms should be developed for its proper implementation. The primary duty should be fixed on the principal employer to pay such benefits.

5. The Act should provide for more wide powers for the abolition of contract labour and after abolition of such contract labour, the workers should be automatically absorbed and regarded as the regular workers of the principal employer. The judicial interpretation in the SAIL judgement is worth of criticism and frustrates the cause of the contract workers.

6. The contract workers should also get benefit of bonus and increments in pay with the increase of experience and skill. On retrenchment of contract workers, some provision for severance pay should be introduced.

7. The law should provide for some system for recognition of employment as regular one when the contract worker works for years for the same employer.

8. If the raw material is supplied by the employer, supervision is done by the employer and the end product or services are used by the employer and only payment is made through the contractor, the contract is false and the workers are the regular employees of the principal employer and should be so deemed by law by making specific provisions.\textsuperscript{93}

9. Outsourcing should be treated as contract and be covered by the contract labour law.

10. The applicability of the Act should be widened and the threshold limit (which is 20 workers at present) should be reduced so as to cover situations where

\textsuperscript{93} Id. at p.108.
user enterprises either split their units or engage more contractors, each engaging contract workers less than twenty in number.

4.8.3 Views of the Government

The Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the working conditions of contract labour to protect their interests. However, it failed to achieve desired results. The Government seems to come forward for labour law reforms; however, it faces certain problems and pressures. On the basis of views of Government representatives in Standing Labour Committee of Parliament 2013, Indian Labour Conference (41st session), the Report of Working Group on Labour Laws and Other Regulations for the Twelfth Five Year Plan (2012-17) of Ministry of Labour and Employment and the Report of Second National Commission on Labour, 2002, the views of Government have been summarised as under-

1. The Government feels that due to global competition and national liberal policies, the business community needs certain leverage in relation to labour matters. Contract labour is inevitable; however it should be properly regulated.
2. It has found difficulty in punishing the principal employer in case of violation of rules and regulations, which have been framed to stop the increasing exploitation of contract labour.
3. It is difficult to eliminate contract labour as the government offices and public sector enterprises themselves are engaging contract labour at large scale which saves the expenditure incurred on wages, promotional benefits and litigations.
4. The contract workers doing same or similar work as regular workers do should be paid same wages and social security benefits. The contract between the principal employer and the contractor should specifically provide for it.
5. The judicial interpretation that contract workers are not eligible for automatic absorption after abolition of contract labour under section 10 of the Act, has discouraged the Government to exercise the power to abolish contract labour, the resulting consequences of which would be unemployment of contract workers. Moreover judiciary is overburdened and unable to solve labour issues in time.
6. The unemployed job aspirants, particularly the fresher jobseekers get chances of employment due to contract labour system.
7. Wage payments should be paid through cheques only.
8. The enforcement machinery of labour department should be strengthened, better financed and made capable to address labour issues at earliest and therefore, paper formalities should be minimised and active supervision should be increased. Overhauling of industrial relation machinery is required to check corruption in labour departments.
9. The penal provisions of labour laws are not stringent. Most of the times, the cost of violation of laws is much lower than the profit earned from such violation and employers and contractors do not care about litigations.
10. It is unable to undertake studies to ascertain the extent and the nature of the problems involved in different industries. Labour Bureau of Ministry of Labour and Employment has conducted some studies such as contract labour problems in construction industry, petroleum industry and ship building industry, inter-alia, however, there is a lack of empirical evidences particularly from manufacturing sector.

4.8.4 Findings of Researchers

The intellectual community plays an essential role in shaping law and policy on any issue in any socio-legal system. This community includes social thinkers, academicians, researchers and experts on the issues. So far as contract labour is concerned, various research papers, books, reports and debates have taken place. Some of them have been conducted by the official departments such as Labour Bureau of Ministry of Labour and Employment (such as studies on petroleum industry, construction industry, ship building industry etc.) on specific terms of reference. At international level, the twenty countries research studies were conducted by ILO as per discussions at The International Labour Conference, 1997, as referred above. Apart from that these research studies, the research conducted by private institutions and individuals are also worth of reference such as Ahsan and Pages 2008, Besley and Burgers 2004, B.B.Patel 1997, Bhandari and Heshmati 2006, K.G. Parashurama, Contract Labour in India-Problems and Prospects (Jaipur: Prateeksha Publications, 2011) 93.

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D.P. A Naidu 1999\(^9\), FICCI-AIOE 2005\(^{100}\), Goldar 2009\(^{101}\), Kankiah 2000\(^{102}\), K.G Parashurama 2011\(^{103}\), K.N. Vaid 1966\(^{104}\), Maniben Kara Institute 2001\(^{105}\), Shyam Sunder 2012\(^{106}\), Sriram Centre for Industrial Relations and Human Resources 2004\(^{107}\), S.C Srivastava 2010\(^{108}\), Sanjay Upadhyaya 2013\(^{109}\), Sen, Saha and Maiti 2010\(^{110}\), Tulpule and Gupte 1999\(^{111}\), Team Lease 2005\(^{112}\), V.V. Giri National Labour Institute 2008\(^{113}\) and others. It is difficult to present the individual findings of these studies,

112 Team Lease, India’s Labour Market Case for Temporary Staffing Reform to Reduce Unemployment, A white Paper, Team Lease Services retrieved from http//www.teamlease.com visited on 23 May, 2014 at 5.15 pm.
however, a summarised account of these studies, as referred in their reports and published literature concludes that contract labour system is increasing by leaps and bounds. It is universal and inevitable. It provides some leverage to employers; however, it has become abusive, exploitive and detrimental to the interests of workers. The Contract Labour (Regulation and Abolition) Act, 1970 has lost its objectivity and failed to achieve the desired results. The judicial thinking has changed after SAIL judgement and contract labour has lost the edge. The implementation machinery under the Act is indulged in corruption and needs administrative overhauling. The Act needs to be amended to suit to present conditions particularly the non-standard form of employment problems.

The social dialogue is continued, however, no consensus could be developed on specific amendments in Contract Labour (Regulation and Abolition) Act, 1970, despite all being agreeing that the Act needs amendments.

4.9. CONCLUSION

Contract labour system is a universal phenomenon. With the steep rise in non-standard form of employment (which includes contract labour) worldwide, contract labour system is replacing the regular pattern of employment. The discussions, debates, conventions, recommendations and reports referred in this chapter clearly show that there is a serious concern on national and international level over the exploitative tendencies of the contract labour system. ILO, United Nations and member states agree that a consensus is needed to solve basic issues such as norms to establish employment relationship and extent of legal protection in non-standard form of employments, however, member states are not prepared to make due alterations in their national political commitments. Other than Convention on Temporary Work Agencies 1997 (which is limited in scope and dimensions), no other specific binding convention could be signed which could provide for basic, uniform and workable legal standards for contract labour. The socio-economic inequalities across the globe are a hindrance in collective actions. Some states want leverage in labour standards.

Many of the countries particularly from Europe and Latin America already have moderate provisions in their labour statutes in the favour of contract labour.

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China has also amended its labour law and provided for some protection to contract labour in 2007, however, Indian law, which seems to be good in theory, has proved to be ineffective in practice. The legal provisions of different jurisdiction provide for certain constraints on engagement of contract labour such as use of contract workers only for temporary works, fixing minimum and maximum duration of contract labour’s work, fixing cap of employability of maximum number of contract workers as a percentage to the regular workers, deemed permanency in case of long period of service, quarantine periods, preferential rights to contract worker in case regular post is created and a right to compensation in case of violation of such right along with equal remuneration for equal work with necessary social security to be paid by the user enterprise. These measures should become a part of debate on the contract labour law reforms in India and be adopted with suitable reservations as to the local needs.

Deadlock remains in social dialogue on contract labour at international as well as national level. No consensus could be developed between organisations of employers and workers on the issue of amendments to the Contract Labour (Regulation and Abolition) Act, 1970. Thus, there is a great need that various stakeholders should come to the negotiation table, both at national and international level, and come to an agreement to provide for regulations which are workable and sufficiently protect the rights of contract workers for adequate remuneration, social security, health and welfare, skill development and employment security.