

## **Legislations for Contract Labour in the Garment Industry: A Case of Delhi**

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### ***Abstract:***

*This paper assesses if labour laws are sufficient for ensuring rights to workers. It looks at the existing laws for the workers working as contract labour in the garment industry in Delhi. It assesses if laws are sufficient in addressing the workers' rights. Have laws helped in improving the working condition of workers.*

A contract labour in a garment industry is one who is hired on the basis of a contract whereby the time and hours of work are fixed and they do not get benefits like the permanent employees of the same company. These workers do the same work performed by a permanent employee. The Contract Labour Act defines contractual employment or employee as "A workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employee." In the garment industry the number of workers working as contract labour is much higher than permanent employees. Having defined the contract worker in the garment industry the paper compiles the existing laws for them, its implementation and thereafter ascertains if laws have ensured rights to the workers.

### **Laws and Legislations for Contract Labour**

The laws that are there for the contract labours include. The Contract Labour (Regulation and Abolition) Act, 1970, deals with contract workers. Apart from this, there are several other laws that apply to this sector. The study looks at the existing laws and the way they are manipulated or flouted by the employers. The laws which can be applied to the contract labour in the garment sector include The Trade Unions Act, 1926, The Payment of Wages Act, 1936, The Weekly Holidays Act, 1942, The Industrial Disputes Act, 1947, The Minimum Wages Act, 1948, The Factories Act 1948, The Maternity Benefit Act, 1961, The Personal Injuries (Emergency Provisions) Act, 1962, The Personal Injuries

(Compensation Insurance) Act, 1963, The Payment of Bonus Act, 1965, The Contract Labour (Regulation and Abolition) Act, 1970, The Payment of Gratuity Act, 1972, The Equal Remuneration Act, 1976 and The Unorganised Worker's Social Security Act, 2008.

The Factories Act, 1948,<sup>1</sup> deals with the definition of a factory. It enlists the various facilities that should be available in a factory so that the workers are comfortable working there and the work is carried out smoothly. It also enlists the facilities a factory should have. It defines factory as “any premise or precinct where 10 or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on”. It also specifies the procedure for appointment of the Inspector and the duties of the Inspector. It also speaks about health that includes cleanliness and disposal of waste. The factory should provide safe place of work and basic facilities to the workers. The place of work should be well ventilated and an optimum temperature should be maintained so that the workers can work comfortably and prevent threat/injury to health. The factory should provide drinking water, separate latrines and urinals for men and women workers which should be well-lighted and clean. The Act also enlists provisions for the safety of the workers. There should be space for sitting, washing and drying clothes, first-aid appliances and canteen should be there. The Act also specifies the hours of work which should not exceed 48 hours per week with a weekly rest. After 5 hours of work, an interval of minimum 30 minutes should be given to workers. In case of night shift, the worker should be given 24 hours of rest after his shift is over. In case of overtime, a worker should get double wages for the extra time he works.

If workers in a factory are paid on a piece-rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month, during which the overtime work was done, and such time rates shall be deemed to be the ordinary rates of wages of those workers. Home-based workers are not covered under this Act.

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<sup>1</sup> For further details, visit [http://pblabour.gov.in/pdf/acts\\_rules/factories\\_act\\_1948.pdf](http://pblabour.gov.in/pdf/acts_rules/factories_act_1948.pdf), accessed on 4<sup>th</sup> September 2012.

The companies should maintain a register of all adult workers which should be available for inspection by inspectors at all times. If their name are not registered workers should not be allowed to work in the factory. Workers who have worked for more than 240 days in a year are entitled to leave in the next year; one day leave should be given for every twenty days worked. Women workers are entitled to a twelve-week maternity leave.

In the interviews and discussions done in Delhi with garment workers (contract labour), it was seen that the factories flout this law and manipulate them to suit their interest. According to the workers, the companies did not have separate toilets for men and women. Women workers were uncomfortable sharing toilets with men. In most of these companies, the toilets were always locked and the key was with the supervisor. Whenever they wanted to use it, they had to go and ask for the key and return it back after use. This discouraged women workers from using the toilets. Most of them said that they used it only when it was very urgent. It was very difficult for them when they were not well like having stomach upset etc. Workers were even questioned if they used the toilets many times in a day.<sup>2</sup> By keeping the toilets locked, the supervisors were able to monitor the movement of workers and keep a check on them and see that they did not relax at their workplace.

The workplace was not well-ventilated and the factories did not have space for workers to sit and relax or wash clothes. The workers complained that the place was stuffy. The workers were given a 30 minute break, but not all workers were allowed to go together. They were given breaks in different groups and at different timings. This ensured that they returned back early from their break. It also ensured that the workers did not discuss their problems. In some companies, the lunch break was divided according to the type of work i.e. all tailors at one time, all packers at one time; in other companies, (from each section) workers were divided and then given break. By doing so, the factory ensured that the production process continued all throughout. One worker said that the time involved in switching off and switching on a machine is saved and the workers who get back from lunch resume the work from where the next batch of workers (those who were working and would be going for lunch) leave. This saves time and the output or per day production increases. The companies maintained registers, but the registers did not have the name of

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<sup>2</sup> Interview and group discussions with 60 contract workers in Delhi in November 2011.

all the workers working there. There were more workers working than were on the register.<sup>3</sup> This will be discussed in the section on contract labour.

Some of the workers were aware of the facilities that they should be getting. They were aware of the Factories Act, Minimum Wages Act etc. They discussed how these were not being followed. They never demanded the implementation of these laws as they would be removed from their job citing some other reason. The union was trying to get these laws implemented but they were not successful. The workers affirmed that the union had intervened on several occasions but were not successful. There is a close nexus between the inspectors and the owners. The owners are informed about the checks in advance and on those days, the records in the register were maintained. Even if the union manages to have surprise checks through some officer and the records are found to be manipulated, nothing much happens. The owners pay bribe and get away.

The workers narrated an incident when on the complaint by workers, CITU through the help of Labour Department, held a surprise check in their company. The Inspector found more workers than on the list and even the provisions in the Factories Act were not met by this company but nothing happened. The owners bribed the Inspector and work resumed. Whenever the workers demand better wages and the unions become strong, the company shifts the production unit by fake transfers which occur within the family and the active workers are removed from job. In other cases, the whole factory is shifted to some other location making it difficult for workers to travel and take the job.<sup>4</sup> The new workers are not unionised and could be easily exploited.

The Contract Labour (Regulation and Abolition) Act, 1970: This Act extends to both establishments and contractors employing more than twenty workers. It excludes establishment where work of intermittent or casual nature is performed. In any establishment, where work is carried for more than 120 days in a year and 60 days in case of seasonal work, it is considered contract labour. The act defines contractor as “a person who undertakes to produce a given result for the establishment, other than a mere supply of goods of articles of manufacture to such establishment, through contract labour or who

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

supplies contract labour for any work of the establishment and includes a sub-contractor”.

It also defines contractual employment or employee as “A workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employee.” However, this Act does not include out workers or home-based workers : a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer<sup>5</sup> and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer as workers of company or contract workers.

The company should make arrangements and provide space for canteens, restrooms, urinals and toilets and drinking water. It should also have provisions for first aid facilities. The contractor is liable for the payment of wages but in case he does not do so, the principal employer has to pay the wages.<sup>6</sup>

In Delhi, this Act is flouted by the employers in the garment sector. In all the companies, contract workers are more than the regular workers. These workers, like the permanent workers, work all throughout the year in the factories, but they are not enrolled as permanent workers so that the owners/employers do not have to give any social security benefit to the workers. Many workers were working for more than 5 years as contract labour. They come to the company everyday but their names do not exist on the rolls.<sup>7</sup>

In other cases, the designation is lowered, though the work they do is of a higher designation. Three of the workers interviewed were getting their pay as tailors, but they

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<sup>5</sup> The Act defines principal employer in a factory as the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948) the person so named.

<sup>6</sup> [http://pblabour.gov.in/pdf/acts\\_rules/contract\\_labour\\_regulation\\_and\\_abolition\\_act\\_1970.pdf](http://pblabour.gov.in/pdf/acts_rules/contract_labour_regulation_and_abolition_act_1970.pdf), accessed on 10<sup>th</sup> September 2012.

<sup>7</sup> Interview and group discussions with 60 contract workers in Delhi, in November 2011.

were masters and were being paid as tailors. Master is a rank above tailor and highest in the stitching section. In the above case, their name existed as tailors. In many other cases, their name did not exist in the rolls at all.

The Equal Remuneration Act, 1976,<sup>8</sup> states that both men and women should be paid equally for equal work. This is also stated in Article 39 of the Indian constitution that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. In order to give equal wages, the existing wage should not be lowered. There should be no discrimination in employment of workers. To address the issues, an Advisory committee should be formed of minimum ten members and one half of the members should be women. This Committee would look into the complaints of workers. Inspectors would be appointed to see if provisions of the act are being implemented.

In Delhi, women are paid equally as men for the same kind of work, but there is discrimination in the kind of work performed by men and women. Most of the male workers admitted that discrimination does exist but they too were of the view that women were not suited to be tailors. They may not be able to handle machines. The women workers felt that they were not given the opportunity but they were capable of handling machines and some of them knew how to stitch. Instances of discrimination in pay are reported from other places in the country. Studies conducted on garment sector in Bengaluru, Chennai and Tirrupur in India and other countries like Bangladesh, Indonesia show that women are paid lower than men for the same type of work.

The Trade Unions Act, 1926, lists the procedure for registration of the trade unions and defines law related to register trade unions. For registration as a trade union, a minimum of seven members are required. This act further lists the rules the union should follow like collecting membership fee, proper accounting of funds and maintenance of records which should be available for inspection. All the money collected should be spent only on the

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<sup>8</sup> For further details, visit [http://pblabour.gov.in/pdf/acts\\_rules/equal\\_remuneration\\_act\\_1976.pdf](http://pblabour.gov.in/pdf/acts_rules/equal_remuneration_act_1976.pdf) accessed on 10<sup>th</sup> September 2012.

payment of employees, compensation, legal disputes, welfare of workers or union related activities and in any year, not more than fourth of the total fund can be spent.<sup>9</sup>

The formations of unions are discouraged by most factories. Even in factories where unions are present, their activities are monitored. In most factories, the active members were victimized by not giving them promotion and in other cases; they were removed on flimsy grounds like inefficiency. This happens only when the factories are not ready to accommodate the demands of the workers and the union activities are more. By removing the leader, they are able to suppress the demand and also instill fear among other members who, in order to save their job, would never rebel.

The Unorganised Workers' Social Security Act, 2008, ensures social security to all the workers. It mandates labour departments to create tripartite welfare boards for all sectors within the unorganised sector.

It is clear that laws alone are not sufficient in strengthening workers' rights. Scholars have tried to understand why laws have not worked. While trying to understand the reasons why legislation have not worked in ensuring rights to workers Jose (2006) argue that there is a need to standardize work and after those legislations should be formulated to ensure that they are met. According to him, the reverse is happening in India, where legislations are made and institutions are expected to fit in the legislation. He feels that the policy makers are wrong in their view that legislations modelled on intelligent design of advanced countries would be followed by India and they would automatically remove the weak structures and build strong ones (underpin) without going through an evolutionary process. He also feels that countries should make laws based on their needs. Apart from this in our field work it was also seen that agencies of government support the employers rather than the workers. This makes it clear that people with money also possess the power to manipulate the system and make it work in their interest. There is a need to work towards breaking this nexus between power and capital so that the laws work for the benefit of the workers and not against their interest. Strict measures are required for this

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<sup>9</sup> For further details, visit [http://pblabour.gov.in/pdf/acts\\_rules/trade\\_unions\\_act\\_1926.pdf](http://pblabour.gov.in/pdf/acts_rules/trade_unions_act_1926.pdf) accessed on 4<sup>th</sup> September 2012.

## **Conclusion:**

Having looked at the laws and the experiences of the workers it is evident that laws have not helped the workers in getting their rights. The laws have been manipulated by the employers to deny the right to the workers .and several times instead of strengthening the right of the workers it has weakened them However laws are the first step towards improving the condition of the workers. Only after passing legislation can one demand it as a right or challenge it in court. Therefore, laws are essential though in the cases of the garment workers of Delhi it has not helped in ensuring their rights.

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